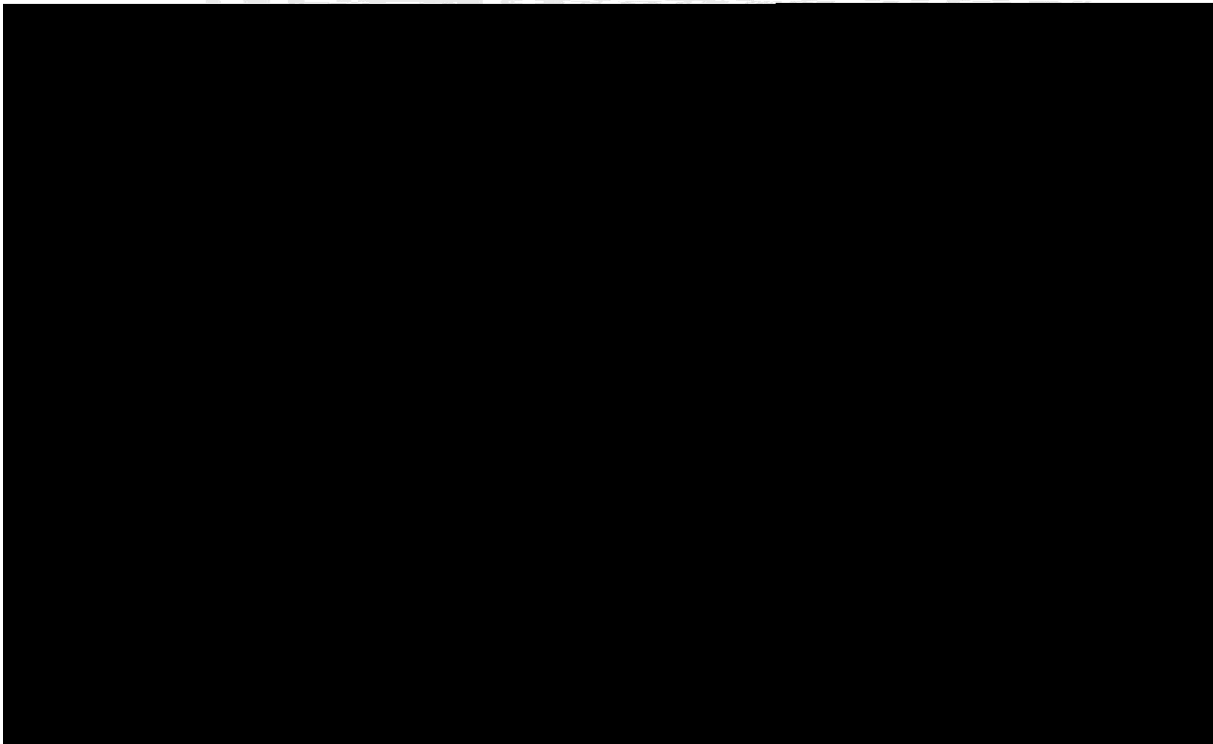


Judgment No. 2016-UNAT-697



JUDGE RICHARD LUSSICK, PRESIDING

c. The Administration's disregard of the concerns raised by the Applicant concerning the breaches of procedural requirements in the impending selection process.

... The Applicant additionally challenged the decision of the Management Evaluation Unit (MEU) not to award him remedies for the violation of his procedural rights.

... By a Reply filed on 6 May 2014, the Respondent prayed: (i) that the Application be dismissed on the ground that it was filed outside of the time limits allowed by the Statute of the Dispute Tribunal; and (ii) the decision of the MEU on the award of remedies is not an administrative decision and is therefore not receivable.

3. In Judgment No. UNDT/2016/021 now under appeal, the Dispute Tribunal first reviewed the issue of receivability of Mr. Nwuke's application. It rejected two of Mr. Nwuke's claims that the USG/DM denied in his letter of 15 November 2012 as not receivable *ratione temporis*. However, the UNDT held that Mr. Nwuke's claim regarding the removal of the special notice from the JO for the Director/GPAD post that the Secretary-General admitted and for which he had asked for time in order to determine an appropriate amount of compensation "survived the legislation governing time limits since by implication, the said time limits had been effectively waived or suspended by the Respondent himself

5. The Dispute Tribunal further held that after the Secretary-General admitted his liability on 15 November 2012, he “cannot be heard to later say that the appropriate remed[y] due to the Applicant was that he was not deserving of any remedies at all”, and “the only option open to him is to grant appropriate remedies”.⁵ Consequently, the Secretary-General’s decision of 18 December 2013 not to grant a remedy to Mr. Nwuke was “perverse”. The UNDT ordered three months’ net base salary as compensation for the breach of Mr. Nwuke’s due process rights.

Submissions

The Secretary-General’s Appeal

6. The Dispute Tribunal erred in law and fact and exceeded its competence by treating the MEU determinations in the first MEU letter of 15 November 2012 and the second MEU letter of 18 December 2013 as administrative decisions subject to judicial review, in disregard

9.

14. The UNDT's award of damages is proper; it is supported by reason and evidence, such as the long delay in considering Mr. Nwuke's harassment complaint. The Secretary-General has failed to provide evidence to support his assertion that the UNDT's award amounts to punitive or exemplary damages.

15. Mr. Nwuke requests that the Appeals Tribunal affirm the UNDT Judgment in its entirety. He also requests that the sUNDT 4(men)-.2ts

Considerations

Preliminary Matter

18. The Secretary-General has filed an answer to the “Putative Cross-Appeal” filed by .-268m8-.0021

23. Thus, in conformity with our jurisprudence, we find that the MEU's reviews dealt with in its letters of 15 November 2012 and 18 December 2013 were not administrative decisions and the UNDT was not competent to pass judgment on them.

24. Moreover, the MEU did not make admissions binding on the Secretary-General. In

Judgment

28. The appeal is allowed and Judgment No. UNDT/2016/021 is vacated, with the exception of its findings of non-receivability in paragraphs 61 and 68(d) of the Judgment.

Original and Authoritative Version: English

Dated this 28th day of October 2016 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Halfeld

Entered in the Register on this 20th day of December 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar