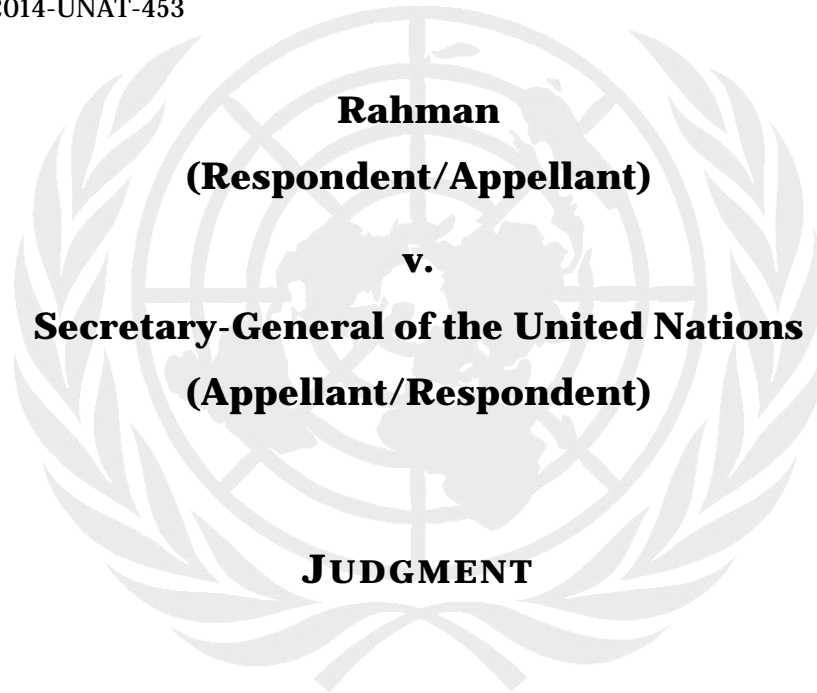




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2014-UNAT-453



**Rahman
(Respondent/Appellant)**

v.

**Secretary-General of the United Nations
(Appellant/Respondent)**

JUDGMENT

Before: Judge Richard Lussick, Presiding
Judge Inés Weinberg de Roca
Judge Sophia Adinyira

Case Nos.: 2013-524 & 2013-540

Date: 27 June 2014

Registrar: Weicheng Lin

Counsel for Mr. Rahman: George Irving

Counsel for Secretary-General: Rupa Mitra/Zarqaa Chohan

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it two appeals against Judgment No. UNDT/2013/097/Corr. 1, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Geneva on 9 July 2013 in the case of *Rahman v. Secretary-General of the United Nations*. One appeal (Case No. 2013-524) was filed by the Secretary-General of the United Nations on 9 September 2013, and Mr. Khalilur Rahman answered on 2 October 2013. The other appeal (Case No. 2013-540) was filed by Mr. Rahman on 1 November 2013, and the Secretary-General answered on 6 January 2014.

Facts and Procedure

2. The following findings of fact are taken from Judgment No. UNDT/2013/097/Corr. 1, paras. 4-36:

... The Applicant joined [the United Nations Conference on Trade and Development (UNCTAD)] in Geneva on 25 February 1991 as Special Adviser. After several promotions and changes of position, he was promoted to the D-1 level in 2005.

... In July 2008, after having worked in the Executive Office of the Secretariat of the United Nations, the Applicant returned to UNCTAD in Geneva where he was designated as Chief of the Division on Technology and Logistics. In April 2009, the Applicant was also appointed as the Chief of the Division of Management.

... In May 2009, the Applicant drew the attention of the management at UNCTAD and Office of Internal Oversight Services (OIOS) to an e-mail sent on 10 May 2009 by Mr. Chutikul, Special Advisor to the Secretary-General of UNCTAD, and to another e-mail sent on 4 June 2009 by the same staff member.

... On 4 June 2009, the Applicant wrote to OIOS to report possible misconduct by Mr. Chutikul.

... On 5 June 2009, the Secretary-General of UNCTAD confirmed the Applicant in his post as Chief of the Division of Management.

... On 8 June 2009, the Applicant informed the Deputy Secretary-General of UNCTAD about the letter sent on 4 June 2009 to OIOS. The Deputy Secretary-General informed the Secretary-General of UNCTAD.

... The Secretary-General of UNCTAD removed the Applicant from his duties as Chief of the Division of Management on 17 June 2009.

... On 26 June 2009, the Applicant filed a request for protection against retaliation with the Ethics Office, to which he felt he had been subjected by the Secretary-General [of UNCTAD] for having reported misconduct.

... On 30 June 2009, the Secretary-General of UNCTAD informed all staff that an OIOS investigation had been opened into UNCTAD following a report of misconduct by one of its staff members.

... On 2 November 2009, a vacancy announcement for the post of Director (D-2), Division on Africa, Least Developed Countries and Special Programmes, UNCTAD, was published in the Galaxy e-staffing system under No. 09-ECO-UNCTAD-6422454-R-Geneva (G). In total, 123 applications, including the Applicant's, were received. Five were from internal candidates.

... On 14 January 2010, the Ethics Office referred the Applicant's complaint to OIOS for investigation, having determined that there might be a case of retaliation.

... On 16 February 2010, the Applicant asked the Human Resources Management Section of UNCTAD whether he would be interviewed for the post of Director for which he had applied.

... On 1 March 2010, the Applicant requested a management evaluation of the decision to not interview him for the post of Director for which he had applied.

... On 28 April 2010, the Applicant was invited for an interview scheduled to take place on 10 May 2010. On the day of the interview, he refused to participate because of the person chosen as an *ex-officio* member of the selection panel. Another invitation was sent to the Applicant on 21 May 2010 for an interview on 25 May 2010, which he declined as he was ill.

... On 21 May 2010, the Secretary-General of UNCTAD was questioned by OIOS investigators following the Applicant's complaint of retaliation.

... After a third interview date was refused, the Applicant was invited for a fourth time to attend an interview on 22 June 2010. He proposed another date because he would be on leave that had already been approved. Although the Applicant had repeatedly expressed his wish to be interviewed by the selection panel in person, he agreed to a telephone interview on 22 June 2010.

... After the interviews had been conducted, the selection panel recommended to the Secretary-General of UNCTAD the three strongest candidates, including the Applicant, who was considered by the panel to have met one of the necessary competencies only partially, while the two other recommended candidates were considered to have met all five of the necessary competencies fully.

... On 2 July 2010, the Management Evaluation Unit informed the Applicant that it was no longer necessary to decide upon his request with respect to an interview, since he had been interviewed.

... On 20 October 2010, the Senior Review Group requested the Secretary-General of UNCTAD to re-advertise the vacancy announcement for the post of Director (D-2), Division on Africa, in order to attract new female candidates. The post was re-advertised from 3 November 2010 to 3 December 2010 in Inspira under vacancy announcement 10-ECO-UN CONF ON TRADE AND DEVELPMT-17024-R-GENEVA.

... On 20 November 2010, on the recommendation of the Ethics Office, the Applicant was temporarily assigned to the United Nations Office for Partnerships in New York.

... Following the re-advertisement of the vacancy announcement for the post on 3 November 2010, the Applicant applied again for the post of Director (D-2), Division on Africa. During that second round, candidates who had already been interviewed were not reinterviewed, and three male candidates, including the Applicant, were again recommended by the selection panel, since no qualified female candidates had been identified. On 7 February 2011, their names were submitted to the Senior Review Group, which, on 25 February 2011, asked UNCTAD once again to reopen the vacancy for an additional 30 days, on the grounds that no female candidate had been recommended.

... On 8 March 2011, the Director of the Ethics Office wrote to the Applicant to inform him that, further to the OIOS report, the Director considered the Applicant to have been the victim of retaliatory action by two staff members of the Office of the Secretary-General of UNCTAD and that he had recommended to the Under-Secretary-General of the Department of Management that disciplinary actions should be instituted against them. In addition, the Director of the Ethics Office informed the Applicant that he had recommended that the Secretary-General of the United Nations should transfer the Applicant laterally to another United Nations agency with the same grade and level of responsibility.

... After a third round of interviews had been held according to the same procedures as before, the Applicant and four other candidates were again recommended by the selection panel: the Applicant having met four competencies fully and the fifth partially, while the other four had met the five competencies fully.

... On 24 July 2011, the list of five recommended candidates was sent to the Senior Review Group by the Secretary-General of UNCTAD. The Senior Review Group recommended four candidates to the Secretary-General, excluding the Applicant because he did not meet all the requisite competencies. The Chef de Cabinet of the Secretary-General selected one of the candidates recommended by the Senior Review Group and, on 19 September 2011, the Applicant was notified in writing that he had not been selected for the post.

... On 14 November 2011, the Applicant requested a management evaluation of the decision not to select him for the post in question.

... On 12 December 2011, the Under-Secretary-General for Management informed the Applicant that he would be returning to UNCTAD in Geneva as of 1 June 2012 once certain conditions had been met.

... On 23 December 2011, the Counsel for the Applicant wrote to the Director of the Ethics Office to remind her that her recommendations had not yet been implemented by the Secretary-General [of the United Nations].

... On 4 January 2012, the Applicant requested a management evaluation of the decision to return him to UNCTAD as of 1 June 2012 and the refusal to implement the recommendations of the Ethics Office.

... On 17 January 2012, the Management Evaluation Unit rejected the Applicant's request with regard to the decision not to select him for the post of Director (D-2), Division on Africa.

... By letter of 24 January 2012, the Director of the Ethics Office replied to the letter from the Counsel for the Applicant of 23 December 2011, informing him that, given the difficulties of effecting the lateral transfer of the Applicant, her Office would comply with the conditions for his return to UNCTAD decided by the Secretary-General [of the United Nations].

... On 25 January 2012, the Counsel for the Applicant wrote to the Director of the Ethics Office in particular to express his opposition to the Applicant's return to UNCTAD.

... On 16 April 2012, the Applicant filed an application, which was registered on 20 April 2012 by the Geneva Registry of the [Dispute] Tribunal under number UNDT/GVA/2012/034, in which he contests the decision not to select him for the post of Director (D-2), Division on Africa.

... On 30 April 2012, in response to his request for a management evaluation of the decision given on 12 December 2011, the Applicant was informed that the Secretary-General had decided, *inter alia*:

- a. To confirm the closure of his complaint of harassment and retaliation;
- b. To appoint him, as of 1 June 2012 and until his retirement date, to a D-1 level post as Principal Officer in the United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS) in New York.

3. In Judgment No. UNDT/2013/097/Corr. 1, the Dispute Tribunal consolidated Mr. Rahman's two applications in respect of his non-selection for the D-2 post and his reassignment. The UNDT found no evidence to indicate that the conditions under which the interview with Mr. Rahman took place hampered the interview panel in its evaluation of his competencies, or cast doubt on the integrity of the interview panel members. The

Dispute Tribunal rejected Mr. Rahman's allegation that he had been a victim of retaliation during the selection process for the D-2 post as well as his request for compensation for damages resulting from his non-selection. As for Mr. Rahman's reassignment, the UNDT held that the original decision to reassign him to Geneva had been rendered moot by the subsequent decision to retain him in New York. The Dispute Tribunal noted that Mr. Rahman had been advised that the disciplinary processes had been undertaken in respect of Messrs. C. and G., but he had not been informed of the outcome thereof. The UNDT therefore ordered the Secretary-General to inform Mr. Rahman as soon as possible of the nature of the disciplinary measures imposed on Messrs. C. and G.

4. Both parties appeal.

Case No. 2013-524

The Secretary-General's Appeal

5. The Secretary-General appeals only those parts of the Judgment relating to the UNDT's order to disclose the nature of the disciplinary measures meted out to Messrs. C. and G. The Secretary-General requests the Appeals Tribunal to affirm the remainder of the UNDT Judgment.

6. The Secretary-General submits that the UNDT erred in exercising jurisdiction over Mr. Rahman's claim to be informed of the nature of the disciplinary measures imposed on Messrs. C. and G. He notes that Mr. Rahman's request for management evaluation specifically identified the reassignment decision of 12 December 2011 as being the contested decision, which did not concern disciplinary processes against staff members in any aspect, much less the issue of whether the Administration had any obligation to divulge the outcome of the disciplinary processes to Mr. Rahman. Neither the management evaluation decision nor Mr. Rahman's UNDT application asserted the issue of the right to be informed of the outcome or nature of the disciplinary sanctions against Messrs. C. and G.

7. The Secretary-General also submits that even assuming that Mr. Rahman's request for management evaluation went beyond the reassignment decision, the issue of the outcome of the disciplinary processes against Messrs. C. and G. and of any right of Mr. Rahman to information thereof was still beyond the scope of management evaluation. The Secretary-General maintains

that the UNDT's granting of a remedy beyond that which had been sought by Mr. Rahman was at odds with the Appeals Tribunal's emphasis of its *ultra petita* rule.

8. The Secretary-General further submits that there is no requirement that a staff member must be informed of the imposition of disciplinary measures on other staff members. It is clear from ST/SGB/2005/21 (Protection Against Retaliation for Reporting Misconduct and for Cooperating with Duly Authorized Audits or Investigations) that such a requirement is not included in that Secretary-General's Bulletin, in contrast to ST/SGB/2008/5 (Prohibition of Discrimination, Harassment, Including Sexual Harassment, and Abuse of Authority), which requires the responsible official to inform the aggrieved individual of the outcome of a fact-finding investigation and of any action taken. The Secretary-General submits that the Dispute Tribunal has essentially amended the legal framework to include a new obligation on the part of the Administration, which is found nowhere in the Regulations, Rules or any administrative issuances. In this connection, the Secretary-General maintains that the right to know the nature of disciplinary measures imposed on other staff members does not come within the terms of Mr. Rahman's appointment or his contract of employment.

9. The Secretary-General finally submits that, contrary to the conclusion of the UNDT, Mr. Rahman, as a victim of retaliation, does not have the same entitlements as a victim of criminal attack and that the UNDT's order to inform Mr. Rahman of the nature of the disciplinary measures imposed on Messrs. C. and G. does not come within any article of the UNDT Statute.

Mr. Rahman's Answer

10. Mr. Rahman submits that the Secretary-General merely seeks to assert his continuing right in cases of retaliation to suppress the transparent dissemination of information instead of addressing his pleas.

11. According to Mr. Rahman, the two perpetrators were fined in the range of USD 10,000 to USD 15,000. That information was reported (with the amounts and names omitted) to the General Assembly on 24 July 2012 as part of the Secretary-General's annual report on the practice of the Secretary-General in disciplinary matters and possible criminal behaviour, 1 July 2011 to 30 June 2012.

12. Mr. Rahman further submits that the token fines imposed and the undue delay in doing so do not lend themselves to a notion of accountability; nor do they provide an effective and proportionate remedy to the problem of retaliation.

13. Mr. Rahman requests that the Appeals Tribunal reject the Secretary-General's legal arguments as, in his view, they appear specious in light of his real motive to cover up the "gross mishandling" of his case.

Case No. 2013-540

Mr. Rahman's Appeal

14. Mr. Rahman submits that the Dispute Tribunal failed to exercise appropriate jurisdiction by refusing to review or decide on a number of issues on the grounds of receivability. In addition, it overlooked important elements of evidence and erred in law in its evaluation of the evidence, leading to a manifestly unreasonable decision. The Judgment under appeal failed to respect both the letter and the spirit of the Organization's ethics policy as well as the findings and recommendations of the Ethics Office issued pursuant to that policy.

15. Regarding his non-selection for the D-2 post, Mr. Rahman submits that the Dispute Tribunal failed to draw appropriate conclusions from the OIOS reports and the circumstances surrounding the selection process. It erred in fact in failing to review or account for the numerous procedural irregularities in the selection process (initial exclusion of his candidacy, irregular conduct of the interview, absence of signatures of the interview panel members on the final version of that panel's report and existence of undue influence by Messrs. C. and G.

16. Concerning his reassignment, Mr. Rahman submits that the Dispute Tribunal erred in fact when it referred to a transfer to a post in New York. He had made it clear to the UNDT that there was no actual transfer because there was neither a post in New York, an official job description, a place in the office structure, nor a physical office.

17. Mr. Rahman maintains that the Dispute Tribunal misinterpreted his request as wishing to be informed of the nature of the disciplinary measures imposed on Messrs. C. and G., when such information was already widely known and which did nothing to lead credibility to the policy of accountability.

18. Mr. Rahman finally submits that the Dispute Tribunal erred by declining to award any damages on the grounds that there was no demonstrable harm and that he did not ask for indemnification and that in any event this should have been the subject of a separate request for management evaluation.

The Secretary-General's Answer

19. The Secretary-General submits that the Dispute Tribunal correctly determined that the scope of the case was limited to those matters identified in Mr. Rahman's requests for management evaluation.

20. The Secretary-General also submits that the Dispute Tribunal, having correctly found that the decision not to appoint Mr. Rahman to the D-2 post was lawful, carefully reviewed the sequence of the events related to his complaint to the Ethics Office and examined the issues of whether his interview had taken place under disadvantageous conditions and whether the UNCTAD senior management had influenced the selection panel to determine that he only partially met the communication competency, compared to the other candidates who were found to fully meet the criteria. In the opinion of the Secretary-General, the evidence on the record supports the UNDT's conclusion that Mr. Rahman did not meet the burden of proof for his position that he had been the victim of retaliatory acts during the selection procedure.

21. The Secretary-General further submits that the UNDT correctly concluded that the Administration had properly carried out the recommendations of the Ethics Office "as well as possible". In this regard, the Secretary-General notes that the recommendations of the Ethics Office are not binding, that Mr. Rahman's argument that he was not placed against an actual post but against a post funded by general and temporary assistance funds from UNCTAD is irrelevant, and that the time it took to resolve Mr. Rahman's case was reasonable in the circumstances of the case.

22. The Secretary-General finally submits that Mr. Rahman has not established any error warranting a reversal of the UNDT's decision not to award him compensation in the present case.

Considerations**Case No. 2013-540***Lawfulness of non-selection for D-2 post*

23. In relation to his non-selection for the D-2 post, Mr. Rahman submits that the UNDT failed to draw appropriate conclusions from the OIOS reports and the circumstances surrounding the selection process and failed to review the numerous procedural errors in the selection process. In particular, Mr. Rahman submits that:

- (a) The UNDT determined that the OIOS reports did not have any relevance to the selection process, having ignored Mr. Rahman's argument and evidence that there was a conspiracy by the retaliators to sabotage his career and a clear intent to prevent his promotion.
- (b) The UNDT found that the arrangements for the interview were a reasonable accommodation, while ignoring the fact of his initial exclusion.
- (c) The UNDT ignored Mr. Rahman's comments on the documents provided by the Secretary-General, pointing out "all the procedural anomalies that called the process into question, including why the underlying conclusions of the panel were suspect".
- (d) Mr. Rahman had argued that proper procedures were not followed in adopting the report of the selection panel insofar as the panel members were neither shown it nor asked to sign off on it. However, the UNDT, instead of focusing on the irregularities, asked the panel members, three years later, to "authenticate" the report, and then relied on this document to make its ruling.
- (e) The UNDT never directly addressed the issue of undue influence and ignored the evidence in the OIOS reports pointing to such influence, in particular, that "[n]either [Mr. C. or Mr. G.] had the decision-making authority on D-2 appointments, as it lay with the SRG and the United Nations Secretary-General; however, [Mr. G.] was in a position to influence the process during the vacancy management and interview stages."

24. Our review of the UNDT Judgment shows that it is well-reasoned, thorough and meticulous. The UNDT took the view that, as it was recognized that Mr. Rahman had been the victim of retaliatory acts, it could find his allegations credible. Therefore, the UNDT very carefully considered “the documents submitted by the parties, requested documents that could be of interest and asked the panel members to certify in writing, under oath, that the record of the panel’s discussions included in the case file is a true reflection of what transpired during those discussions”.

25. There is nothing in the Judgment which would support Mr. Rahman’s allegation that the UNDT had ignored his arguments or comments. On the contrary, the UNDT stated that it had even considered certain of Mr. Rahman’s comments that were submitted late, even though it had been asked by the Secretary-General not to consider them.

26. It is clear from the Judgment that the UNDT very carefully examined the circumstances of Mr. Rahman’s interview for the D-2 post and decided that the unusual conditions of the interview were largely the responsibility of Mr. Rahman, who had not made himself available in a timely manner, but that “there [was] nothing to indicate that the conditions under which the interview took place hampered the panel in its evaluation of the Applicant’s competencies”. That decision is supported by the evidence.

27. The UNDT did not ignore the fact of his initial exclusion, as claimed by Mr. Rahman. Mr. Rahman’s exclusion is listed among the facts examined in the UNDT’s Judgment. The UNDT simply did not draw the inference that it was motivated by retaliation. Contrary to what Mr. Rahman suggests, the fact that his candidature was considered after he had filed a request for management evaluation is not evidence that his exclusion was an act of retaliation.

28. Mr. Rahman challenges the authenticity of the Interview Panel Report on the ground that it had not been signed by the panel members. However, it was reasonable for the UNDT to find that the subsequent certification under oath by the four voting panel members that the report was an exact reflection of what they had collectively decided was confirmation that the panel did indeed decide that Mr. Rahman met the communication competency only partially. Mr. Rahman takes objection to this procedure on the ground that the proper procedure ought to have been followed at the time. This does not advance his appeal, however, as the panel’s decision would obviously have been the same. Mr. Rahman argues,

without giving any reasons, that the UNDT exceeded its jurisdiction in requiring these certifications. This argument cannot be sustained, as the Dispute Tribunal may order production of documents or such other evidence as it deems necessary.¹

29. There is no merit in Mr. Rahman's argument that the UNDT failed to draw appropriate conclusions from the OIOS reports and the circumstances surrounding the selection process. The UNDT thoroughly examined the selection process and concluded, firstly, that there was no convincing reason to conclude that the Chef de Cabinet, who was responsible for appointing a candidate other than Mr. Rahman, may have wished to engage in retaliatory acts against him; secondly, that there was nothing in the case file that would lead it to find that the Senior Review Group, in deciding not to recommend Mr. Rahman, was engaging in retaliatory acts against him; thirdly, that in not recommending Mr. Rahman, the Senior Review Group was clearly motivated by the view that it should recommend only those candidates who met all of the competencies; fourthly, that the interview panel's assessment of Mr. Rahman's competencies alone was the true reason that he was not selected; fifthly, that two of the four voting members of the selection panel were from outside UNCTAD and there was no reason to question their independence; sixthly, that it was pure speculation that the Secretary-General of UNCTAD might have influenced the other two panel members, who were UNCTAD staff members; and lastly, that even if the Deputy Secretary-General of UNCTAD, who was chair of the panel, could have been pressured by the Secretary-General of UNCTAD, there was no evidence that cast doubt on the integrity of the four panel members.

30. We can find no fault in these conclusions, which were fully supported by the evidence.

31. The UNDT obviously considered that the OIOS reports were not relevant to the selection process, since there was nothing in the reports to establish that the two UNCTAD staff members who were found to have engaged in retaliatory acts had in fact influenced the selection process.

32. The UNDT's finding that Mr. Rahman did not meet the burden of proof that he had been the victim of retaliatory acts during the selection procedure and was not therefore entitled to compensation for damages resulting from his non-selection was fully supported by the evidence before it.

¹ See the Dispute Tribunal Statute, Article 9(1).

The legality of the decision to transfer Mr. Rahman back to UNCTAD in Geneva

33. Mr. Rahman's appeal is grounded on the following arguments:
- (a) The Dispute Tribunal committed a mistake of fact in misreading his original request for management evaluation and severely limiting the scope of the case.
 - (b) The UNDT erred in referring to a "transfer to a post in NY" when there was no actual transfer because there was no post in New York.
 - (c) The UNDT's finding that the time it took the Secretary-General to find a solution was not excessive ignores the fact that "but for his own initiatives and his formal challenge, he would have been kept in UNCTAD or sent back, and that no action would have been instituted against the perpetrators".
 - (d) The UNDT erred "most egregiously" in declining to award any damages. Mr. Rahman claims that "[t]he issue of damages was never addressed although it was recognized as a legitimate and well founded concern by the [Secretary-General] himself in the management evaluation".
34. Contrary to what Mr. Rahman alleges, the UNDT did not err in law and in fact in misreading the original request for management evaluation. The UNDT found that Mr. Rahman's request for management evaluation identified the subject decision as the decision of 12 December 2011 to reassign him to UNCTAD in Geneva as of 1 June 2012, together with the resulting decisions of "the closure of his case despite the fact that the Ethics Office recommendations had not been implemented in full and ... the tacit refusal by the Secretary-General to take action to protect him from harassment and retaliatory acts and ensure him a proper work environment". No fair and objective reading of Mr. Rahman's management evaluation request could have come to any other conclusion. Mr. Rahman's application to the UNDT was couched in similar terms, stating that he was contesting the decision of 12 December 2011 reassigning him to UNCTAD in Geneva, the failure to implement the recommendations of OIOS and the Ethics Office and the delays in providing him with a proper work environment.

35. We find that there was no error in the UNDT's conclusion that the dispute was limited to the administrative decisions already referred to and as set forth in the request for management evaluation and repeated in the application to the UNDT and that it was therefore not seized with the issue of compensation for damages resulting from retaliatory acts against him.

36. The UNDT also correctly held that the decision of 12 December 2011 to reassign Mr. Rahman to UNCTAD in Geneva had been abrogated by the decision of 30 April 2012 placing him in New York as of 1 June 2012 until his retirement date, rendering his application non-receivable insofar as it concerned the decision of 12 December 2011.

37. The UNDT found that "the Secretary-General carried out the recommendation of the Ethics Office as well as possible and protected the Applicant from retaliation on the part of the UNCTAD staff members, which was the objective to be met. While it is unfortunate that as of the date of the present decision, the Applicant will not yet have his job description in hand, that is no basis for contesting the decision of the Secretary-General, nor is the fact that the post would be funded by UNCTAD on a temporary basis only." This finding was supported by the evidence and we are not persuaded by Mr. Rahman's arguments to the contrary.

38. The UNDT also found that the time it took the Secretary-General to find a solution that was in accordance with the recommendations of the Ethics Office and acceptable to Mr. Rahman was not excessive. This decision was well-reasoned by the UNDT after a consideration of the relevant facts and history of the case. We find that Mr. Rahman's arguments on this issue are without merit.

39. We reject Mr. Rahman's claim that the issue of damages was never addressed. We note that following the management evaluation the Secretary-General decided not to agree to any settlement. We can find no error in the UNDT's decision not to award damages. The Dispute Tribunal concluded that the decision of 12 December 2011 was not carried out and resulted in no damages to Mr. Rahman and that in view of its other decisions in the case, there could be no compensation of any kind. The UNDT was entitled to come to this conclusion on the evidence.

40. We also find that the UNDT correctly applied the law in not granting Mr. Rahman an order for costs against the Secretary-General.

41. In summary, we find that Mr. Rahman has failed to establish that the Dispute Tribunal committed any error of fact or law. The appeal has no merit.

Case No. 2013-524

42. The Dispute Tribunal ordered the Secretary-General to inform Mr. Rahman as soon as possible regarding the nature of the disciplinary measures imposed on the persons responsible for retaliation. In making this order, the UNDT acknowledged that there was no legal provision requiring the Secretary-General to disclose disciplinary measures imposed on staff members. However, the UNDT held that professional misconduct involving retaliation against another staff member was an exception whereby justice to the victim entitled the victim to know whether the disciplinary measure was commensurate in gravity with the misconduct. The UNDT found that in the present case, the Secretary-General did not do everything in his power to alleviate the harmful effects that the retaliation may have had on Mr. Rahman, and there was no reason why Mr. Rahman could not be informed.

43. The Secretary-General appeals this decision on the grounds that the subject matter was not included either in the management evaluation decision or in Mr. Rahman's application to the UNDT and there is no legal requirement that a staff member must be informed of disciplinary measures on other staff members.

44. We find that the UNDT's decision was not *ultra vires*. We agree that the victim of retaliation is entitled to know whether justice was done to the perpetrators of the retaliation, and that it is fair and reasonable to require the Secretary-General to provide this information, regardless of whether or not there is any legal provision to that effect. As the UNDT held, it is the Secretary-General's responsibility to dispense justice for the victim.

45. In the present case, Mr. Rahman advises that he already knew what disciplinary proceedings had been taken and in fact this was general knowledge throughout UNCTAD. Mr. Rahman claims that the UNDT had misunderstood his case, and that what he was actually requesting was accountability and transparency. Nonetheless, the Secretary-General has not shown that the UNDT erred in law or in fact.

Judgment

46. In Case No. 2013-524 (the Secretary-General's appeal), the appeal is dismissed and the Judgment of the UNDT is affirmed.

47. In Case No. 2013-540 (Mr. Rahman's appeal), the appeal is dismissed and the Judgment of the UNDT is affirmed.

Original and Authoritative Version: English

Dated this 27th day of June 2014 in Vienna, Austria.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Adinyira

Entered in the Register on 29th day of August 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar