



**JUDGE MARTHA HALFELD, PRESIDING.**

1. Mr. Wassim Saleh, a former staff member with the United Nations High Commissioner for Refugees (UNHCR), contested before the United Nations Dispute Tribunal (UNDT or



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Secretary-General also filed a cross-appeal. Mr. Saleh filed his answer to the cross-appeal on 9 January 2023.

**Submissions**

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21. Mr. Saleh further submits that the UNDT erred on a question of law and fact, resulting in a manifestly unreasonable decision, when it found that Mr. Saleh had submitted no evidence of moral harm and that there was no basis for awarding any such compensation. In the case at hand, the UNDT erred in law when it held that there was no basis for awarding compensation for non-pecuniary harm as Mr. Saleh had not submitted evidence in this regard. As the Appeals Tribunal held in *Kallon*,<sup>16</sup> the first type of moral harm can be established by the totality of the evidence and can be inferred logically from the factual circumstances. The UNDT appears to have erroneously required Mr. Saleh to provide specific evidence of the moral harm, such as medical certificates, as is the case for the second type of harm.

22. The UNDT also erred in fact when it held that there was no evidence of non-pecuniary harm. Mr. Saleh submits that the totality of the evidence in the casefile before the UNDT establishes that there was harm to his *dignitas* and reputation. Mr. Saleh had prospects within UNHCR which he can no longer realize due to the unlawful termination. He was unlawfully separated on disciplinary grounds, despite having committed no misconduct and doing his job tirelessly and conscientiously. He was a well-known person in the area and, as Mr. TK testified, it became known that Mr. Saleh had stopped working at the UNHCR warehouse in Zahle which obviously affected his reputation and self-worth.

23. It is logical and reasonable to infer from these facts, as established by the evidence adduced before the UNDT, that Mr. Saleh suffered an infringement of his *dignitas* that should be compensated. There was a fundamental breach of Mr. Saleh's contract in the form of unlawfully terminating it for misconduct when that was not the case. This undoubtedly

are undeniably much more severe. Accordingly, he requests comparable compensation for non-pecuniary harm.

25. Considering the foregoing, Mr. Saleh requests the Appeals Tribunal to modify the impugned Judgment and award him three years' net base salary as in-lieu compensation and adequate compensation for non-pecuniary harm.

**The Secretary-General's Answer**

26. At the outset, the Secretary-General reiterates the arguments set out in his cross-appeal, namely that the UNDT erred in law in applying an incorrect legal framework, leading to its erroneous conclusions that Mr. Saleh's conduct did not amount to misconduct. The Secretary-General notes that the arguments in his answer are without prejudice to the arguments made in his cross-appeal.

27. The UNDT correctly determined the compensation awarded to Mr. Saleh. The UNDT applied the principles regarding compensation as established by the UNAT to his case and determined that, at the time of the disciplinary measure, Mr. Saleh held a one-year fixed-term appointment expiring on 31 October 2021. (TJ0 Tc 0 4(a)-3.1 ( (T)-6.6.)-8.1 (a)-2)10609

UNAT, a fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal, irrespective of the length of service or performance. It was therefore not an error of law for the UNDT to award compensation in lieu only for the remainder of Mr. Saleh's fixed-term appointment.

30. Even if the UNDT had erred with respect to the possible renewal of Mr. Saleh's fixed-term appointment, the UNDT's determination of the amount of compensation in lieu should still stand. This is because such determination is based on the amount of time remaining under Mr. Saleh's appointment, which was an established fact, unlike the chances of renewal. Further, contrary to Mr. Saleh's argument, length of service is not a consistent criterion to determine the amount of compensation in lieu pursuant to UNAT case law. Indeed, compensation in lieu aims at placing staff members in the situation they would have been in the absence of an unlawful decision. Length of service is usually not relevant in this context. The UNDT, therefore, did not err in not expressly considering his service years. Mr. Saleh fails to demonstrate that the UNDT should have found exceptional circumstances and granted compensation in lieu as in *Lucchini*<sup>18</sup> and *Haroun*<sup>19</sup>.

31. The Secretary-General submits that past awards in other cases are of limited relevance, unless it is demonstrated that these other cases present comparable factual circumstances. Here, Mr. Saleh merely argues that he would like the UNAT to increase compensation in lieu to a similar amount as in the latter cases, but without reasons. In the impugned Judgment, the UNDT made a reasoned application of UNAT jurisprudence on compensation in lieu. Listing cases where a higher award was made, as Mr. Saleh did in his brief, is not enough to demonstrate the UNDT erred.

32. On moral damages, Mr. Saleh has failed to demonstrate that the UNDT erred in awarding no compensation. The principle that compensation for harm must be supported by evidence is unequivocally enshrined in both the UNDT and the UNAT Statutes and has consistently been reaffirmed by the UNAT. (y)- h a9 (hr)1.7803 Ti9A0 T2 016 Tw Ti9A04.2 (pl)8.1-C (9 ( ( s co)-1.7 (n)6.8 (si)2.3





own casual workers, his interference with INTERSOS, a UNHCR implementing partner, was not one of his official duties. Moreover, Mr. Saleh, not only interfered with the implementing partner's activities, but he also followed-up and got angry if the individuals he had recommended were not hired.

37. The UNDT found that Mr. Saleh was trying to order that INTERSOS staff hire certain people, and that this was most certainly embarrassing for Mr. BM. The UNDT also noted that, for Mr. BM and Mr. BK, "the work environment had become intolerable".<sup>20</sup> However, the Secretary-General argues that the UNDT failed to draw adequate legal conclusions from these findings because it was relying on an incorrect and outdated definition of abuse of authority. The mere fact that Mr. Saleh repeatedly asked for specific individuals to be hired by INTERSOS staff, and followed-up on his requests, is enough to constitute abuse of authority and thereby misconduct. The declaration of Mr. Saleh, in the presence of three witnesses, that Mr. BM, Mr. BK and Mr. AD were working for him and not for UNHCR or INTERSOS, and that the Zahle warehouse was his, is also an instance of abuse of authority. Mr. Saleh, in his official function, was overseeing the warehouse operation and had a duty to be irreproachable in his dealings with INTERSOS. There was also a conflict of interest, given that Mr. Saleh's interest in having certain people from his family and village hired interfered with his obligation to conduct his official duties



THE UNITED NATIONS A

46. Furthermore, as concerns the alleged conflict of interest, Mr. Saleh submits that the Dispute Tribunal correctly held that his recommendation of his wife's nephew and three other persons from his village as daily workers did not amount to a conflict of interest. The Lebanese government had encouraged UNHCR to hire Lebanese nationals. As Mr. Saleh resided, and was a well-known figure, in the local community near the Zahle warehouse, it was only logical that some of the daily workers he recommended came from his village. Mr. Saleh agrees with the UNDT that his wife's nephe



THE UNITED NATIONS APPEALS TRIBUNAL

measures directly to the United Nations Dispute Tribunal, in accordance with chapter XI of the Staff Rules, within 90 days from the receipt of this notification.

I also wish to recall that you have the right to be assisted by a counsel of your choice. In this regard, you can contact the Office of Staff Legal Assistance at [osla@un.org](mailto:osla@un.org). You can also choose to be assisted by an outside counsel at your own expense. Please note that it is your own responsibility to contact such a counsel in case you wish to avail yourself thereof.

In view of the sensitive contents of the present letter, it will be hand-delivered to you and you will be asked to acknowledge its receipt in writing.

Yours sincerely,

[...]

Director

Division of Human Resources

52. The main issue in this appeal is to determine whether the UNDT erred when it found that Mr. Saleh's behavior amounted neither to an abuse of authority nor to a conflict of interest, and that therefore the termination of his appointment with UNHCR was manifestly disproportionate and incorrect.

53. The UNDT correctly recalled the Appeals Tribunal's jurisprudence with regard to the scope of judicial review in disciplinary cases. It is well-settled that the role of the Dispute Tribunal is "to examine: i) whether the facts on which the disciplinary measure is based have been established; ii) whether the established facts amount to misconduct; iii) whether the sanction is proportionate to the offence; and iv) whether the staff member's due process rights were respected".<sup>22</sup> When termination of the staff member's appointment is the disciplinary sanction imposed, as in the instant case, the Administration must demonstrate clear and convincing evidence that the staff member committed the misconduct to support this severe outcome.<sup>23</sup>

54. It is also settled jurisprudence that the Administration is bound by the motives established in the sanction letter. Indeed, the inclusion of stated reasons for a decision are essential for both the Dispute and Appeals Tribunals to exercise judicial review of administrative decisions, including assessing whether they were arbitrary, capricious, or

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<sup>22</sup> Veronica Irima Modey -Ebi v. Secretary-General of the United Nations , Judgment No. 2021-UNAT-1177, para. 34.

<sup>23</sup> Josef Reiterer v. Secretary-General of the United Nations , Judgment No. 2023-UNAT-1341, para. 52.



unlawful. In Jafari,<sup>24</sup> the Appeals Tribunal decided that a “harmful administrative decision must be fully and adequately motivated. The reasoning must be sufficiently clear, precise, and intelligible. A generic reasoning befitting every case is not enough and renders the decision unlawful.”

55. Some of the arguments in the Secretary-General’s appeal merely reiterate the submissions put forward to and rejected by the UNDT. These arguments relate particularly to Mr. Saleh having used his authority against INTERSOS staff by pressuring them to hire specific individuals as INTERSOS casual workers at the Zahle warehouse and thereby exceeding his purview. To the Secretary-General, this behavior irreparably broke the trust relationship between Mr. Saleh and the Organization. The Appeals Tribunal recalls that the mere reiteration of old arguments is not permissible. Although it is clear that the Secretary-General does not agree with the factual findings of the UNDT, he failed to establish in which respect these findings are unreasonable, given the circumstances of the case, as required by Article 2(1)(e) of the Appeals Tribunal Statute. As noted in Krioutchkov

asked UNHCR that preference should be given to employ nationals from Lebanon given the country's unemployment crisis at that time.<sup>28</sup>

57. The problem arose due to the tone of Mr. Saleh's communication, which

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overstated. It is undeniably true that the Administration is best suited to select an adequate sanction within the limits stated by the respective norms, sufficient to prevent repetitive wrongdoing, punish the wrongdoer, satisfy victims and restore the administrative balance, etc. But due deference does not entail uncritical acquiescence.

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 20

UNDT in the impugned Judgment).<sup>42</sup> This legal definition also stipulates that the abuse of

69. As held in *Ashour*,<sup>43</sup> the purpose of in-lieu compensation is to place the staff member in the same position he or she would have been in, had the unlawful decision not been made.

Although the Appeals Tribunal exercises discir-.04 79(i)07.217 04 79(i)01.8 ( d)-1.1 (i) (f)10.8 (8 (a)5.

separation from service, was still reproachable and his appeal seeks an excessive increase beyond the reasonable amount correctly fixed by the UNDT.

72. Likewise, there was no error in the impugned Judgment to the extent that the UNDT dismissed Mr. Saleh's claim of compensation for moral harm. Mr. Saleh's argument of affront to dignitas , apart from being far-fetched (given the finding that he improperly intended to assert some pressure on other persons), is unsupported by the evidence. Such evidence is a requirement under both the Appeals Tribunal Statute and its jurisprudence, particularly in that it is incumbent on a claimant to submit specific evidence to sustain an award of moral damages, as provided by Article 9(1)(b).<sup>48</sup> The UNDT's finding in this regard must prevail.

73. In light of the above, the UNDT did not err in determining the compensation awarded to Mr. Saleh and his appeal also fails.



**Judgment**

74. Mr. Saleh's appeal and the Secretary-General's cross-appeal are dismissed and Judgment No. UNDT/2022/064 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 30<sup>th</sup> day of June 2023 in New York, United States.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Sandhu

(Signed)

Judge Raikos