



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

Judgment No. 2014-UNAT-467

Goodwin
(Respondent/Appellant on Cross-Appeal)

v.

Secretary-General of the United Nations
(Appellant/Respondent on Cross-Appeal)

JUDGMENT

Before: Judge Sophia Adinyira, Presiding
Judge Rosalyn Chapman
Judge Mary Faherty

Case No.: 2013-539

Date: 17 October 2014

Registrar: Weicheng Lin

Counsel for Mr. Goodwin: George G. Irving

Counsel for Secretary-General: Zarqaa Chohan

JUDGE SOPHIA ADINYIRA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General of the United Nations against Judgment No. UNDT/2013/111, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi in the case of *Goodwin v. Secretary-General of the United Nations* on 30 August 2013. The Secretary-General appealed on 25 October 2013, and Mr. Craig Goodwin filed his answer and cross-appeal on 6 January 2014. On 10 March 2014, the Secretary-General filed his answer to the cross-appeal.

Facts and Procedure

2. The following facts are uncontested:¹

... The Applicant has been a United Nations staff member since February 2001. Effective March 2004, he was appointed to the United Nations Advance Mission in Sudan (UNAMIS), where he served at the P-4 level. Effective 24 March 2005, the Security Council by its resolution 1590 (2005) transferred all functions performed by UNAMIS, together with its staff and logistics, to the United Nations Mission in Sudan (UNMIS). Accordingly, the Applicant served with UNMIS initially as a Logistics Officer and subsequently as the Chief Aviation Officer against a P-5 post until December 2005.

... In response to concerns about potential misconduct and corruption in the Department of Peacekeeping Operations (DPKO), the General Assembly adopted resolution 59/296 (Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations: cross-cutting issues), adopted on 22 June 2005, section IV of which, stated in part:

The General Assembly,

4. *Requests* the Secretary-General, as a matter of priority, to entrust the Office of Internal Oversight Services with a comprehensive management audit to review the practices of the Department of Peacekeeping Operations and to identify risks and exposures to duplication, fraud and abuse of authority in the following operational areas: finance, including budget preparation; procurement; human resources, including recruitment and training; and information technology, and to report thereon to the General Assembly at its sixtieth session;

5. *Also requests* the Secretary-General to entrust the Office of Internal Oversight Services, in the light of the increasing demands with which the

¹ Impugned Judgment, paras. 18-31, 3-7.

Department of Peacekeeping Operations is faced and the burden this is putting on its functioning, with carrying out a review of the management structures of the Department, while taking into account the Security Council mandates and existing recommendations formulated on previous occasions by the Office of Internal Oversight Services and the Board of Auditors and paying specific attention to the interaction, coordination and cooperation of the Department with other Secretariat departments and offices, including but not limited to the Department of Political Affairs, the Department of Public Information, the Office of Programme Planning, Budget and Accounts and the Department of Management, as well as the relevant funds and programmes, and to report thereon to the General Assembly at its sixty-first session.

... Between September and December 2005, [the Office of Internal Oversight Services (OIOS)] conducted a management audit of the Department of Peacekeeping Operations. On 4 October 2005, the outside consulting firm of Deloitte and Touche (Deloitte) was tasked by the Secretariat to conduct a six-week, forward-looking diagnostic assessment of internal procurement controls. Deloitte ultimately issued its report on "Assessment of Internal Controls in the United Nations Secretariat Procurement Operations" on 30 November 2005 (Deloitte Report).

... In early December 2005 a draft management audit report by OIOS (Draft OIOS Report) was circulated and its contents, involving several cases of alleged procedural irregularities, were subsequently leaked to the press.

... On 10 January 2006 the Applicant was recalled to United Nations Headquarters in New York.

... On 12 January 2006, an ad hoc Procurement Task Force (PTF) was established by OIOS to investigate allegations of wrongdoing in United Nations procurement activities under specific terms of reference. The PTF commenced full operations in April 2006.

... On 16 January 2006 Mr. Mark Malloch Brown, then Chef de Cabinet, informed the Applicant of the following:

1. In view of the ongoing audit and investigation into the Organization's procurement activities, the Secretary-General has decided that it is in the best interest of the Organization to place you on special leave with full pay pursuant to staff rule 105.2(a) (i), effective immediately.
2. While on special leave, you will not be discharging any of your normal functions but will be expected to cooperate fully with all audit and investigation processes. The situation will be assessed following an appropriate determination of the facts, and you will be returned to duty if no further action is required at that time.

3. I wish to emphasize that your placement on special leave with full pay is a purely administrative measure, which is not disciplinary in nature and is taken to assist the Organization in conducting a full assessment of the situation.

... Prior to the Applicant's placement on [special leave with full pay (SLWFP)], he was provided with a copy of the Draft OIOS Report and allowed to submit comments, which he did in January 2006. However, according to the Applicant his comments were not included in the formal DPKO reply to the draft OIOS Report and subsequently PTF initiated an investigation into the allegations relating to his role in UNMIS.

... Following a management audit of DPKO and the Department of Management (DM), OIOS issued its final report on 19 January 2006 (Final OIOS Report). The same day, an Associated Press story was published which named the Applicant as well as the seven other staff members as the staff placed on SLWFP.

... On 30 January 2006, the then Secretary-General disseminated a letter on procurement activities to United Nations staff that informed, *inter alia*, of an OIOS investigation into a number of cases of possible fraud, abuse and waste that had been identified during an audit; and that 8 staff members "in positions related to procurement" had been placed on SLWFP in "response to the findings" of the audit report.

... By a letter dated 17 April 2006, the Applicant submitted a request for administrative review to the Secretary-General. By a letter dated 21 April 2006, Ms. Adele Grant, then Officer-in-Charge, Administrative Law Unit, Office of Human Resources Management (OHRM) informed the Applicant as follows:

[T]he decision to place you on [SLWFP] was taken by the Secretary-General in the interests of the Organization pursuant to staff rule 105.2(a)(i) in view of events taking place in the procurement area, relating to issues which arose when you were serving as Chief Aviation Officer. These events are subject to a number of fact-finding investigations within the Organization, as well as investigations by national bodies.

Your placement on [SLWFP] was intended to prevent accusations that key personnel involved in procurement influenced the outcome of these investigations. The decision was not linked to your performance or conduct, neither of which are being pre-judged.

... On 14 August 2006, Mr. Malloch Brown advised the Applicant that his SLWFP was being lifted and that on the basis of the PTF findings, he would be charged with misconduct. He was then charged with misconduct on 15 August 2006 for lack of management oversight. On 6 September 2006, the PTF issued a revised investigation report concerning the allegations against the Applicant and on 14 September 2006,

the Respondent issued a revised set of allegations. The Applicant submitted comments and supporting documentation in response to the charges on 13 October 2006.

... On 16 January 2007, Ms. Jane Holl Lute, the then Assistant Secretary-General, DPKO, wrote to the Applicant advising that as a result of a further review, “the Organization has concluded that you have provided a satisfactory explanation of your conduct [...]. Accordingly, it has been decided that these matters should not be pursued further”. The letter also contained a reprimand for his failing to exercise the necessary level of management oversight. Additionally, Ms. Holl Lute informed the Applicant that he would not be returned to his assignment in UNMIS but would be placed in another position commensurate with his qualifications and the Organization’s needs.

... On 22 January 2007, Ms. Holl Lute advised the Applicant that, on the instruction of the Secretary-General, the reprimand was being withdrawn and removed from his file.

[Proceedings before the JAB, the former Administrative Tribunal, and the UNDT]

... Following the decision to place him on SLWFP, the Applicant appealed to the former Joint Appeals Board (JAB) on 15 May 2006. The JAB found that “the Respondent’s actions constituted a fundamentally serious and damaging violation of the [Applicant’s] due process rights as well as to his reputation” and recommended compensation in the amount of two years net base salary at the time the decision was implemented on 16 January 2006. The Respondent rejected the recommendation of the JAB.

... In this connection, on 12 August 2008, the Deputy Secretary-General transmitted a copy of the JAB report dated 30 August 2007 to the Applicant and advised him of the Secretary-General’s decision which was as follows:

The Secretary-General has examined your case in the light of the JAB’s report and all the circumstances of the case. He is of the view that it cannot be determined that the decision to place you on SLWFP was taken in a manner that resulted in a violation of your due process rights or in damage to your reputation. He has therefore decided not to accept the conclusions and recommendations of the JAB and has also decided to take no further action in this matter.

As a general comment, the Secretary-General notes that the JAB erroneously stated in its report that, according to an Associated Press release, the Under-Secretary-General for Management and the UN Spokesman identified the eight staff members, including yourself. The Secretary-General notes that the Associated Press report clearly attributes this information to unnamed sources.

... The Respondent accepted the recommendations of the JAB in regard to the other seven staff members who were also on SLWFP. The Applicant avers that this amounts to discriminatory treatment.

... On 24 February 2009, the Applicant filed an application to the former United Nations Administrative Tribunal [(former Administrative Tribunal)] for rescission of the Respondent's rejection of the findings and recommendation of the JAB. The Respondent submitted his answer on 15 October 2009.

... As a result of the transitional measures relating to the introduction of the new system of administration of justice, the case was transferred from the former United Nations Administrative Tribunal to the United Nations Dispute Tribunal [...] on 1 January 2010.

3. On 30 August 2013, the UNDT rendered Judgment No. UNDT/2013/111, finding that Staff Rule 105.2(a)(i) on special leave had been wrongly applied and that the decision to place Mr. Goodwin on SLWFP was a "veiled disciplinary suspension". The UNDT further found that by failing to take any measures to protect Mr. Goodwin after his name was made public in the context of the investigation, the Organization "effectively condoned the unauthorized and untimely dissemination" of information and the "absence of protective measures resulted in damage to [Mr. Goodwin's] reputation and violated his rights". The UNDT ordered compensation in the amount of two years' net base salary effective from the date of Mr. Goodwin's placement on SLWFP.

Submissions

The Secretary-General's Appeal

4. The UNDT erred in awarding excessive compensation in light of the Judgment of the Appeals Tribunal in the *Cabrera* case.² Mr. Goodwin was placed on SLWFP under the same circumstances as Mr. Cabrera. In the *Cabrera* case, the Appeals Tribunal found that Mr. Cabrera "faced anxiety and worry" since the Secretary-General had failed to respect his due process rights. The Appeals Tribunal reduced the compensation of two years' net base salary awarded by the UNDT to ten months' net base salary which corresponded to the period he was placed on SLWFP. Consistent with this ruling, the compensation awarded to Mr. Goodwin should be reduced to seven months, which is the period he was placed on SLWFP.

² *Cabrera v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-215.

5. The UNDT erred in concluding that the Organization effectively condoned the unauthorized dissemination of information and basing the award of compensation, in part, on this conclusion. It is clear from both the media reports and the internal broadcasts, that the Organization had not authorized the release of any information about the names of the eight staff members. The UNDT explicitly acknowledged that the dissemination of the names was “unauthorized”. The UNDT erred in finding fault with the Organization for not taking actions that would, in any event, have been futile and for awarding compensation.

6. The UNDT erred in failing to take into account the compensation already awarded for harm to Mr. Goodwin’s reputation based upon the same injury and the same set of facts. To the extent that Mr. Goodwin’s reputation was harmed by the PTF investigation, the Secretary-General contends that each discrete action taken in the context of the same disciplinary case cannot give rise to separate grounds for compensation when the subject of the injury - Mr. Goodwin’s reputation - remained the same. The cumulative effect of the impugned Judgment and Judgment No. 2012/126³ is that Mr. Goodwin has been doubly awarded compensation for harm to his reputation and career.

7. The Secretary-General requests that the Appeals Tribunal reduce the award of compensation accordingly.

Mr. Goodwin’s Answer

8. The UNDT did not err in awarding compensation in the amount of two years’ net base salary. Contrary to the Secretary-General’s contention, the Appeals Tribunal Judgment in *Cabrera* cannot be relied on as a precedent since that case can be distinguished on several grounds. Unlike Mr. Goodwin, Mr. Cabrera resumed his former procurement functions after ten months, he suffered no loss of promotion or position as a result of the violation of his rights, he was not subjected to a disguised disciplinary measure of being removed from his post and denied a pending promotion, and he was not subsequently subjected to improper

³ On 21 June 2011, the UNDT issued Judgment No. UNDT/2011/104, in which it concluded that while the Organization had a valid reason to reprimand Mr. Goodwin on 16 January 2007, it breached his procedural rights by removing it three days later, and by reinstating it in June 2009. The UNDT further held the decision to transfer Mr. Goodwin from his functions at UNMIS was a disguised disciplinary measure in breach of his terms of employment. On 17 August 2012, the UNDT issued Judgment No. UNDT/2012/126 on compensation, awarding USD 30,000 as compensation for “harm to [Mr. Goodwin’s] reputation, exacerbated by delay and due process violations”, which has “also affected his general possibilities for career advancement and promotions”. This compensation was affirmed on appeal (*Goodwin v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-346).

disciplinary proceedings. A more appropriate precedent for compensation is the case of Mr. Goodwin's immediate supervisor, Mr. Johnson.⁴ In that case, the UNDT also awarded two years' net base salary as compensation and that award was not appealed by the Secretary-General.

9. Mr. Goodwin further contends that the UNDT properly found that the Organization effectively condoned the unauthorized dissemination of information and properly based its award of compensation in part on this conclusion. The fact that no one officially released the names does not absolve the Organization of its responsibility for discussing the cases publicly long before the reports were finalized and the due process rights were respected. Furthermore, the Organization made no efforts to rectify the misinformation leaked to the public. Notably, no announcement was made of Mr. Goodwin's return to service and his exoneration of any wrongdoing.

10. Finally, contrary to the Secretary-General's assertion, the UNDT did not err in failing to take into account the compensation already awarded for harm to Mr. Goodwin's reputation based on the same injury and the same set of facts. The compensation awarded in Judgment No. UNDT/2012/126 arose from an entirely different set of facts that arose at a later time.

11. Mr. Goodwin asks that the Appeals Tribunal reject the appeal and award USD 12,500 in costs for the appeal and for the "unnecessary protraction of the case" by the Secretary-General.

Mr. Goodwin's Cross-Appeal

12. The UNDT erred in not awarding compensation for specific financial losses or for emotional stress. Mr. Goodwin filed his original application on 20 February 2009 under the former system of justice, "which did not emphasize the elaboration of specific pleadings on compensation". Had he been allowed to elaborate on the effects of the Administration's actions on his reputation, his career and the suffering he endured from the treatment he received, he would have addressed these matters more extensively.

⁴ *Johnson v. Secretary-General of the United Nations*, Judgment No. UNDT/2011/123.

13. Mr. Goodwin was never awarded compensation for the losses resulting from the illegal action of removing him from, and prohibiting him to return to, the P-5 post he had been placed against (although he was a P-4). Making him whole necessarily implies returning him to his former position and implementing the recommended promotion to P-5 with retroactive effect, or in the alternative, compensation for pecuniary damage in the amount of USD 33,000. His loss in earnings will also affect his pension. The combined financial loss is calculated at USD 85,000 or 12 months' net base pay. This specific pecuniary loss distinguishes Mr. Goodwin from his other similarly situated colleagues who were at headquarters at the time, who returned to their original posts and levels and who, unlike him, did not have a pending promotion placed on hold.

14. Turning to the emotional stress he endured, Mr. Goodwin contends that he would have presented specific evidence of the "emotional toll that being placed on SLWFP took on him, aggravated by the adverse publicity generated by the very public nature of the Administration's actions". He was the only one among the eight placed on SLWFP who was displaced from his duty station. He sought counseling at UNMIS in Sudan and at the Headquarters in New York and could have presented the counselor for UNMIS as a witness to substantiate his claim.

15. Mr. Goodwin further contends that the UNDT erred in failing to award costs. The "excessive litigation" by the Secretary-General "unduly protracted proceedings that were unnecessary had there been consistency in the treatment of similar cases". He requests that the Appeals Tribunal award USD 12,500 in costs.

16. Finally, Mr. Goodwin submits that the UNDT erred in failing to award compensation for the excessive delays in concluding his case, especially in light of the inequality of treatment afforded him vis-à-vis his similarly situated colleagues. His case has been under adjudication since 2006 and should he be awarded compensation on the merits that ought to have been paid in 2008, he requests an award of interest on that amount as well as moral damages arising from the delay.

The Secretary-General's Answer to Mr. Goodwin's Cross-Appeal

17. Mr. Goodwin fails to establish that the UNDT erred in not awarding compensation for specific financial losses, emotional stress, costs and other sums. While Mr. Goodwin argues

that he was denied the opportunity to present his pleas, the Secretary-General contends that he could have presented his arguments on compensation before both the former Administrative Tribunal and the UNDT. Under the Statutes of both Tribunals, a staff member bringing a claim is entitled to make pleadings on compensation. Mr. Goodwin is now precluded from introducing new issues which he had not previously raised. In any event, the UNDT considered his claims of specific financial losses and emotional stress and properly found them to be without merit.

18. The Secretary-General contends that Mr. Goodwin fails to establish that the UNDT erred in refusing to award costs. He claims costs on the sole basis of the fact that he is still involved in litigation and provides no evidence of an abuse of process by the Secretary-General. The Appeals Tribunal has declined to award compensation due to “protracted litigation”.

19. The Secretary-General submits that Mr. Goodwin has failed to establish that the UNDT erred in failing to award interest and compensation for delay and moral damages. A review of Judgment No. UNDT/2012/126⁵ reveals that he has already been awarded compensation for both the delay and moral damages. As to Mr. Goodwin’s claim for interest, he did not previously raise this claim and is therefore precluded from raising it on appeal.

20. Finally, the Secretary-General submits that Mr. Goodwin has not established any basis for the Appeals Tribunal to conclude that an increase in compensation awarded by the UNDT is warranted.

21. The Secretary-General requests that the Appeals Tribunal dismiss the cross-appeal in its entirety and vacate the UNDT’s findings in line with his appeal in this matter.

Considerations

The Secretary-General’s Appeal

22. The Secretary-General requests this Tribunal to reduce the award of compensation to Mr. Goodwin in the amount of two years’ net base salary effective from the date of his placement on SLWFP, based on three grounds, namely:

⁵ *Goodwin v. Secretary-General of the United Nations*, Judgment No. UNDT/2012/126.

- a) The UNDT erred in awarding excessive compensation in light of the Appeals Tribunal's Judgment in the *Cabrera* case;
- b) The UNDT erred in concluding that the Organization effectively condoned the unauthorized dissemination of information and basing the award of compensation, in part, on this conclusion; and
- c) The UNDT erred in failing to take into account the compensation already awarded for harm to Mr. Goodwin's reputation based upon the same injury and the same set of facts.

Did the UNDT err in awarding excessive compensation in light of the Appeals Tribunal's Judgment in the Cabrera case?

23. The Secretary-General submits that Mr. Goodwin was placed on SLWFP under the same circumstances as Mr. Cabrera and six others in January 2006 as a result of the ongoing PTF investigation. Mr. Cabrera was similarly awarded two years' net base salary effective from the date of his placement on SLWFP. The Secretary-General notes that the Appeals Tribunal in *Cabrera*,⁶ reduced the compensation of two years' net base salary awarded by the UNDT to 10 months' net base salary which corresponds to the period that he was placed on SLWFP.

24. Mr. Goodwin was placed on SLWFP for seven months and the Secretary-General submits that:

[I]n consistency with the ruling of the UNAT in Cabrera, ... the compensation awarded should not exceed the period for which [Mr. Goodwin] was placed on SLWFP. Accordingly, ... that the UNDT erred in awarding two years' net base salary and the compensation should be reduced from two years' net base salary to seven months' net base salary.⁷

25. We reject this submission as the *Cabrera* case is distinguishable from Mr. Goodwin's case. To this end, the Appeals Tribunal endorses Mr. Goodwin's submissions that, unlike him, Mr. Cabrera resumed his former procurement functions after ten months, he suffered no loss of promotion or position as a result of the violation of his rights, he was not subjected to the disguised disciplinary measure of being removed from his post and denied a pending promotion, and he was not subsequently subjected to improper disciplinary proceedings.

⁶ *Cabrera v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-215.

⁷ Underline in the original.

26. We note that Mr. Goodwin only returned to full service with a proper assignment more than three years after he was put on SLWFP and was never allowed to return to his original post.

27. Mr. Goodwin contends that a more appropriate precedent for compensation is the case of his immediate supervisor, Mr. Johnson.⁸ In that case, the UNDT also awarded two years' net base salary as compensation and that award was not appealed by the Secretary-General.

28. We recall *Larkin* where we held: "The UNDT has discretion to determine the amount of damages awarded, taking into account the circumstances of the case."⁹ In light of the long duration spent by Mr. Goodwin before returning to full service and the fact that the amount of compensation awarded was based on the JAB's recommendation, we do not find that the UNDT erred in the exercise of its discretion.

29. Accordingly, this Tribunal holds that the award of compensation in the amount of two years' net base salary is reasonable. This ground of appeal is dismissed.

Did the UNDT err in concluding that the Organization condoned the unauthorized dissemination of information and basing the award of compensation, in part, on this conclusion?

30. The UNDT, in computing compensation, held *inter alia* that:

... By not taking any measure to protect the Applicant after his name was made public in the context of the investigation, the Organization effectively condoned the unauthorized and untimely dissemination of information that should have been confidential at least until the conclusion of the PTF investigation. The absence of protective measures resulted in damage to the Applicant's reputation and violated his rights.¹⁰

31. The Secretary-General submits that it is clear from both the media reports and the internal broadcasts that the Organization did not authorize the release of any information about the names of the eight staff members and that the UNDT explicitly acknowledged that fact in the Judgment. The Secretary-General therefore submits that there was no basis for the UNDT to conclude that the Organization condoned the unauthorized dissemination of adverse information.

⁸ *Johnson v. Secretary-General of the United Nations*, Judgment No. UNDT/2011/123.

⁹ *Larkin v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-134, para. 5.

¹⁰ Impugned Judgment, para. 90(d).

32. Addressing the issue of unauthorized dissemination of information, the UNDT referred to the external and internal coverage of the various news reports and opined that:

... The Tribunal is of the considered view that once words like “fraud”, “mismanagement”, “abuse”, “waste” and “serious wrongdoing” were employed by prominent people such as Ambassador Bolton, Mr. Annan and Mr. Malloch Brown after the names of the Applicant and the other seven staff members had been released by the Associated Press, a perception was created, within and outside of the United Nations, that these staff members had been placed on SLWFP due to wrongdoing. Unfortunately, since the PTF investigation report was not concluded until April 2006, the Applicant ended up being tried, wittingly or unwittingly, in the court of public opinion based on the initial findings of a preliminary audit investigation.¹¹

33. The UNDT went on to endorse JAB’s finding that:

... [I]t is a practical impossibility to avoid all press leaks. However, the Panel would consider that, if the Administration thought there to be exceptional circumstances requiring SLWFP to protect the Organization’s reputation, an appropriate balancing would call for exceptional procedures to safeguard information that, if released, might adversely affect reputations of staff members [...]. Thus, while the Organization might not be held accountable for the appearance of [the Applicant’s] name in the media, the unnamed U.N. officials responsible were agents of the United Nations; the lack of any apparent efforts to protect his reputation – beyond blanket statements that the measure was not disciplinary but “more” administrative in nature – materially contributed to the damage thereto. In this regard, the Panel notes that such measures are necessary *precisely because*, once staff is placed on special leave, the Organization will have limited control over how information is digested in the media, and over limiting the damage caused to [the Applicant].¹²

34. The Secretary-General submits further that the UNDT, in relying on the cases of *Bangoura*¹³ and *Van der Graaf*¹⁴, “appears to suggest that whenever information is publicly disseminated about a staff member, then compensation can be awarded”. The Secretary-General misconstrues the UNDT’s reasoning on this point. The damages awarded by the UNDT were based on the UNDT’s determination that although the dissemination of adverse information was unauthorized, the Organization failed to put in place protective measures, the absence of which

¹¹ Impugned Judgment, para. 81 (internal footnote omitted).

¹² Impugned Judgment, para. 82.

¹³ Former Administrative Tribunal Judgment No. 1029, *Bangoura* (2001).

¹⁴ Former Administrative Tribunal Judgment No. 997, *Van der Graaf* (2001).

resulted in damage to Mr. Goodman's reputation and violated his rights. For clarity, we quote the relevant portion of the UNDT Judgment:

... Accordingly, this Tribunal holds that the intense media coverage adversely impacted the Applicant's reputation because the public nature of the Organization's statements and the external media reports resulted in the Applicant being associated with fraud, abuse, mismanagement and other serious wrongdoing and as a result of this association, his career suffered palpably. The record shows that he was not restored to the post of UNMIS Chief Aviation Officer at the P-5 level even after the Respondent decided not to pursue disciplinary proceedings against him.

... The Tribunal rejects the Respondent submission that the Applicant suffered no harm because he was exonerated by the subsequent PTF investigation. This was a very hollow victory indeed in light of the fact that there is no evidence in the record showing that the Applicant's exoneration was acclaimed as loudly and publicly in the external and internal United Nations media sources as was the pronouncement of his suspension in response to the findings of the OIOS report. In the absence of any public dissemination, the Tribunal finds it hard to accept that the Applicant's subsequent exoneration mitigated and/or eliminated the damage to his reputation. Unfortunately, disabusing people of negative perceptions is not a task that can be achieved by silence when the erroneous facts were loudly proclaimed.

35. The Appeals Tribunal does not find any error of law or fact in the findings of the UNDT as would entitle us to interfere with the computation of damages on this ground of appeal.

36. The UNDT has discretion to determine the amount of damages awarded taking into account the circumstances of each case.¹⁵ In *Lutta*, we stated that we will respect the opinion of the trial judge as to how to determine damages in each particular case.¹⁶ The trial judge is best placed to assess the nature and evidential value of evidence placed before it by the parties to justify its findings and award of damages.¹⁷

37. In the absence of a compelling argument that the UNDT erred on a question of law or fact, we will not lightly interfere with the computation of damages by the UNDT. Accordingly, this ground of appeal fails.

¹⁵ *Larkin v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-134.

¹⁶ *Lutta v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-117.

¹⁷ *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123.

Did the UNDT err in failing to take into account the compensation already awarded for harm to Mr. Goodwin's reputation based upon the same injury and the same set of facts?

38. The Secretary-General submits that in considering whether to award Mr. Goodwin compensation, the UNDT failed to take into account the compensation already awarded in Judgment No. UNDT/2012/126.

39. Mr. Goodwin responds that the compensation awarded in Judgment No. UNDT/2012/126 did not arise from the same facts but from totally different events that arose at a later time.

40. We have examined Judgment No. UNDT/2012/126 and find that the case involved claims arising out of events *following* the period of Mr. Goodwin's SLWFP. The amount of USD 30,000 was awarded as compensation for the harm caused to his career prospects and reputation as exacerbated by delay. We therefore dismiss this ground of appeal.

41. Accordingly, the Secretary-General's appeal is dismissed in its entirety.

Mr. Goodwin's Cross-Appeal

42. Mr. Goodwin cross-appeals on the grounds that:

- a) The UNDT erred by declining to award compensation for specific financial losses and emotional stress;
- b) The UNDT erred in failing to address his claim for costs and to award costs; and
- c) The UNDT erred in failing to award compensation for delay.

Did the UNDT err by declining to award compensation for specific financial losses and emotional stress?

43. Mr. Goodwin submits he filed his original application on 20 February 2009 under the former system of justice, "which did not emphasize the elaboration of specific pleadings on compensation". Had he been allowed to elaborate on the effects of the Administration's actions on his reputation, his career and the suffering he endured from the treatment he received, he would have addressed these matters more extensively.

44. The Secretary-General contends that Mr. Goodwin could have presented his arguments on compensation before both the former Administrative Tribunal and the UNDT. Under the Statutes of both Tribunals, a staff member bringing a claim is entitled to make pleadings on compensation. Mr. Goodwin is now precluded from introducing new issues which he had not previously raised.

45. Taking a look at Mr. Goodwin's application to the former Administrative Tribunal of 20 February 2009,¹⁸ we note that in paragraph 8(e), Mr. Goodwin requested the former Administrative Tribunal "to award the Applicant additional exceptional compensation to be determined by the Tribunal for the actual, consequential and moral damages suffered by the Applicant as a result of the Respondent's actions or lack thereof in prolonging his embarrassment and refusing to address his mistreatment."¹⁹

46. There was no mention of compensation for specific financial losses and emotional stress. Though Mr. Goodwin could have sought leave before the UNDT which subsequently heard the case, to make further submissions on his claim for compensation, he failed to do so. He is therefore precluded from raising a new issue which he had not previously raised.²⁰

47. The issue before the UNDT was limited to whether Mr. Goodwin should have been put on SLWFP and whether his due process rights were respected. These issues were effectively dealt with by the UNDT, which awarded the maximum amount of compensation under Article 10(5)(b) of the UNDT Statute. For the foregoing reasons, this ground of appeal fails.

Did the UNDT err by declining to award costs and compensation for delay?

48. Mr. Goodwin in his application asked for costs in the amount of USD 12,000 as legal fees and USD 500 in expenses and disbursement, a total of USD 12,500. On cross-appeal, he submits that the UNDT erred in failing to address his claim for costs for "unduly protracted proceedings". While the UNDT did err in failing to address Mr. Goodwin's claim for costs, we find that this error caused no harm to Mr. Goodwin, since the circumstances of his case did not justify an award of costs. The Appeals Tribunal held in *Bi Bea*:

¹⁸ Annex 5 to Secretary-General's Answer to Mr. Goodwin's Cross-Appeal.

¹⁹ *Ibid.*

²⁰ *Abu Jarbou v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-292, quoting *Shakir v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-056.

A delay, in and of itself, is not a manifest abuse of proceedings. In order to award costs against the Secretary-General, it was necessary for the UNDT to be satisfied on the evidence that, in causing the delay, the Secretary-General had “manifestly abused the proceedings”. The plain language of those words meant that before the UNDT could lawfully award costs against the Secretary-General, it was necessary to determine on the evidence that the delay was clearly and unmistakably a wrong or improper use of the proceedings of the court. Proof that the delay was frivolous or vexatious would have satisfied this requirement.²¹

49. We dismiss the claim for costs as the delay was caused by the attempt at settlement which failed.

Judgment

50. The appeal and the cross-appeal are dismissed. The UNDT Judgment is affirmed in its entirety.

²¹ *Bi Bea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-370, para. 30.

Original and Authoritative Version: English

Dated this 17th day of October 2014 in New York, United States.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Chapman

(Signed)

Judge Faherty

Entered in the Register on this 22nd day of December 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar