



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

Judgment No. 2018-UNAT-811

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

JUDGMENT

Before: Judge John Murphy, Presiding
Judge Sabine Knierim
Judge Richard Lussick

Case Nos.: 2017-1098 & 2017-1099

Date: 22 March 2018

Registrar: Weicheng Lin

Counsel for Ms. Aghadiuno: Joseph N. Obiora
Counsel for Secretary-General: Amy Wood

JUDGE JOHN MURPHY, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it two appeals against Judgment No. UNDT/2017/039 rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 31 May 2017, in the case of *Applicant v. Secretary-General of the United Nations*.
2. Ms. Rita Aghadiuno filed a perfected appeal on 31 July 2017, and the Secretary-General filed an answer on 29 September 2017. The case was registered as Case No. 2017-1098.
3. The Secretary-General also appealed the same UNDT Judgment on 31 July 2017, and Ms. Aghadiuno filed a perfected answer on 6 October 2017. On 14 October 2017, she filed a perfected cross-appeal, to which the Secretary-General filed an answer on 15 December 2017. The case was registered as Case No. 2017-1099.
4. By Order No. 294 (2017), the Appeals Tribunal consolidated these two cases.

Facts and Procedure

5. Ms. Aghadiuno joined the Organization on 28 April 1998 at the GS-3 level. In 1999, she was transferred to the Department for General Assembly and Conference Management (DGACM). In 2008, she passed the 2007 English proof-reader and editor examination and began working in the Office of Legal Affairs (OLA) with a Special Post Allowance at the P-2 level. In May 2012, Ms. Aghadiuno was promoted to the Professional Level as an Editor at the P-3 level in the Treaty Section, OLA, on a permanent appointment. Ms. Aghadiuno was dismissed from service effective 6 March 2015 for having submitted a series of claims for Special Education Grants (SEG) that contained false information, signatures, seals and/or stamps.
6. From 1994 until her promotion in May 2012, Ms. Aghadiuno was a General Service staff member and not eligible to receive ordinary education grants for her children. However, in terms of Staff Rule 3.9(j), all staff members, irrespective of their levels and duty stations, are eligible to receive SEG for a child with a disability, if they hold a fixed-term, continuing or permanent appointment.

7. In terms of Section 11 of Administrative Instruction ST/AI/2011/4 (Education grant and special education grant for children with a disability) eligible staff members may claim the SEG upon certification by the Medical Services Division (MSD), Office of Human Resources Management (OHRM), that the child is unable, by reason of physical or mental disability, to attend a regular educational institution and therefore requires special teaching or training, on a full- or part-time basis, to prepare him or her for full integration into society; or that the child, while attending a regular educational institution, requires special teaching or training to assist him or her in overcoming the disability. When submitting a claim for SEG, the staff member is required to submit a medical certificate attesting to the disability of the child.¹

8. In terms of Section VI of Information Circular ST/IC/2005/25 (Education grant and special education grant for children with a disability),² after certification by the MSD, the eligible staff member needs to submit a P.45 form (Request for payment of education grant and/or advance against education grant) for an advance, prior to the start of a school year and no later than the end of the fourth month into the school year. The advance is normally 100 per cent of the anticipated costs of education and is paid out approximately one month prior to the start of the school year.

9. Upon the completion of the school year, the staff member needs to resubmit a P.45 form and a P.41 form (Certificate of attendance and costs and receipt for payments) for settlement of the SEG claim. The P.41 form must be accompanied by written evidence of the child's attendance, education costs and the specific amounts paid by the staff member; it must be signed and certified by a responsible official on behalf of the school on its official stationery or on paper bearing its seal. Neither the P.41 form certified by the school nor the certificate of attendance may be changed in any way. The staff member is also required to provide evidence that he or she has exhausted all other sources of benefits (scholarships, bursaries or similar grants) that may be available for the education and training of the child, including those that may be obtained from

¹ In contrast to the SEG, there is another type of education grant simply called the "Education Grant" (EG) available only to staff members at the Professional or above levels, when the staff member works for the Organization outside of his or her home country (international recruit) and holds a fixed-term, continuing or permanent appointment. The amount of the EG is 75 per cent of the admissible costs of attendance. Like the SEG claim, the staff member needs to submit P.45 prior to the start of the school year. Upon completion of the school year, the staff member needs to resubmit P.45 and P.41 for settlement of the EG claims. There are no separate forms for either SEG claims or EG claims. Unlike the EG, which an eligible staff member can receive for his or her child as of five years of age, there is no age restriction for SEG.

² This issuance applied at all material times, but has now been superseded by ST/IC/2014/12/Rev.1.

the State and local governments and from the United Nations contributory medical insurance plans. The amount of the expenses used as the basis for the calculation of the SEG is then reduced by the amount of any benefits to which the staff member is entitled.

10. During the material time, Ms. Aghadiuno had four children residing with her.³ The eldest child was a daughter born on 25 July 1994 (Daughter). The second eldest child was a son born on 11 September 1996 (Son One). The next eldest child was also a son born on 17 November 2005 (Son Two), and the fourth child was again a son born on 1 November 2008 (Son Three).

11. For the school year 2008-2009, Ms. Aghadiuno claimed and received a SEG for Son Two to attend a school called Bright Horizons. For the school year 2009-2010, Ms. Aghadiuno was granted SEGs for Son One to attend Oakwood Friends School (Oakwood) and for Son Three to attend St. Florence Day School (St. Florence). For the school year 2010-2011, Ms. Aghadiuno received SEGs for Son One to attend Oakwood and for Son Two and Son Three to attend St. Florence. For the school year 2011-2012, Ms. Aghadiuno was granted SEGs for Son One to attend Oakwood and Son Two and Son Three to attend St. Florence. For the school year 2012-2013, Ms. Aghadiuno received the SEG advances for Son Two and Son Three to attend St. Florence. According to OHRM, over the five school years from 2008-2009 through 2012-2013, Ms. Aghadiuno received SEGs for her three sons totalling USD 225,444, with a breakdown as follows:⁴

School Year	Child	School Name	SEG Claim by Ms. Aghadiuno (USD)	Amount paid to Ms. Aghadiuno (USD)
2008-2009	Son Two	Bright Horizons	13,750	13,725
2009-2010	Son One	Oakwood	25,170	25,170
	Son Two	St. Florence	19,200	19,200
2010-2011	Son One	Oakwood	29,481	29,101
	Son Two	St. Florence	17,400	17,400
	Son Three	St. Florence	19,048	19,048

³ Ms. Aghadiuno had an adopted child not residing with her in the duty station. She never claimed any SEG for that child.

⁴ This is adapted from the table in paragraph 60 of a memorandum dated 4 April 2014 in which Ms. Aghadiuno was charged with having submitted to the Organization, between 2008 and 2012, one or more SEG claims and/or documentation that contained false information, signatures, seals and/or stamps.

2011-2012	Son One	Oakwood	30,500	29,300
	Son Two	St. Florence	17,400	17,400
	Son Three	St. Florence	19,500	19,500
2012-2013	Son Two	St. Florence	17,700	17,700
	Son Three	St. Florence	19,800	17,900

12. On 11 February 2012, Ms. Aghadiuno submitted a P.45 form backdated to 31 August 2011 to OHRM, requesting an SEG advance of USD 29,745 for Daughter for the school year 2011-2012 for her attendance at Oakwood. This was the first such claim that Ms. Aghadiuno filed for her daughter. The MSD had certified her daughter's disability retroactively to cover the school year 2011-2012 that began in August 2011. The Oakwood enrolment contract attached to the P.45 form, signed by both Ms. Aghadiuno and the head of school of Oakwood, and dated 16 June 2011, reflected, *inter alia*, a tuition fee of USD 23,288 and a learning skills fee of USD 6,107.

13. As it was more than four months after the start of the 2011-2012 school year, OHRM advised Ms. Aghadiuno to submit a P.41 form for settlement of the total expenses for her daughter's attendance at Oakwood. On 13 February 2012, Ms. Aghadiuno submitted a P.41 form for the SEG claim in respect of Daughter's education at Oakwood for the 2011-2012 school year. The form was apparently signed by Ms. S. Masciale-Lynch, Associate Director of Admissions, Oakwood (Ms. Lynch) and dated 13 February 2012. A rectangular ink stamp stating, "OAKWOOD FRIENDS SCHOOL 22 SPACKENKILL ROAD POUGHKEEPSIE, NY" was affixed to the left bottom of the form. The P.41 form reflected tuition of USD 29,745 and other fees, but only a partial payment of USD 18,000. OHRM then asked Ms. Aghadiuno to refile a P.41 form reflecting the total educational expenses, explaining that the P.41 form that Ms. Aghadiuno had filed would result in settlement at the lower amount indicated, i.e., USD 18,000. Ms. Aghadiuno later submitted a revised P.41, which listed an additional payment of USD 14,461 made on 27 April 2012.

14. As the P. 41 forms raised questions, OHRM contacted Oakwood for clarification by phone and e-mail and sent the two P.41 forms to Mr. P. Baily (Mr. Baily), the head of the school, for verification. Mr. Baily informed OHRM that the financial numbers in the forms were incorrect and differed from those held on record at the school, that the signatures attributed to him and Ms. Lynch were not authentic, and that the stamp affixed to the forms was not the seal of Oakwood. Ms. Lynch indicated that she had never seen the two P.41 forms. Mr. Baily

furthermore informed OHRM that Ms. Aghadiuno was receiving a grant from the school for Daughter.

15. Accordingly, no advance was paid to Ms. Aghadiuno in respect of her SEG request for Daughter. OHRM advised Ms. Aghadiuno that the matter was “under review” and refused to return the P.41 forms that Ms. Aghadiuno had filed for Daughter despite her requests to withdraw them. The SEG advance of USD 29,300 for Son One to attend Oakwood during the school year 2011-2012 was also not settled. Nevertheless, Ms. Aghadiuno still received the SEG payments for Son Two and Son Three for attending St. Florence in the school year 2012-2013.

16. In June 2012, OHRM sent Ms. Aghadiuno’s case to OLA, which OLA, in July 2012, referred as a case of possible misconduct to the Office of Internal Oversight Services (OIOS) for investigation.

17. OIOS conducted a review and analysis of the documentary evidence and held interviews with the relevant school officials and Ms. Aghadiuno. A written transcript of the audio interview was sent to Ms. Aghadiuno for her review and signature. She did not sign or return a copy of the transcript or provide any comment. She was given an opportunity to comment on the draft investigative report and did so on 23 December 2013.

18. OIOS issued its investigation report on 7 January 2014. It found that Ms. Aghadiuno had submitted fraudulent SEG claims for Daughter for the school year 2011-2012 as well as for Son One by forging statements, signatures, invoices and schedules of fees allegedly provided by Oakwood as supporting documents.

19. Both Mr. Baily and Ms. Lynch had confirmed to OIOS that the signatures on the P.41 forms and enrolment contract for Daughter were not theirs and that the school stamps were not authentic. Mr. Baily provided OIOS with samples of the embossed school seal which had been used by the school for many years. There was also clear and incontrovertible evidence that the children at Oakwood had received partial financial aid for the three school years between 2009 and 2012 and a sibling discount, which Ms. Aghadiuno had failed to disclose in the documentation submitted to OHRM.

20. After reviewing relevant documentation furnished by Oakwood and OHRM, OIOS thus found significant discrepancies between the fees levied by Oakwood in respect of Son One and the amounts Ms. Aghadiuno received as SEG for him in the three school years in question.

For the 2009/2010 school year, the fees payable to Oakwood, after deduction of USD 9,300 awarded as a grant and USD 1,500 as a sibling discount were USD 13,725. Ms. Aghadiuno claimed a SEG of USD 25,170, which was paid to her. For the 2010/2011 school year, after receiving a discount in terms of a grant (USD 9,300) and a sibling discount (USD 1,500), the fees were USD 11,985. Ms. Aghadiuno's SEG claim for 2010/2011 was USD 29,481, and she received USD 29,101. For the 2011/2012 school year, the fees for Son One at Oakwood, after a discount of a grant (USD 10,000) and a sibling discount (USD 1,500), were USD 14,607. Ms. Aghadiuno claimed USD 30,500 and obtained an advance of USD 29,300. Ms. Aghadiuno also claimed USD 29,745 for Daughter in 2011/2012, when the fees payable for her, after allowing for a grant of USD 11,300, were USD 12,338. As noted earlier, once the OIOS investigation was under way, Ms. Aghadiuno withdrew the request for this SEG.

21. The information provided by Oakwood to OIOS hence established *prima facie* that the amounts of SEG claimed by Ms. Aghadiuno in respect of Oakwood were grossly inflated compared to her actual expenditures.

22. In addition, OIOS found that the SEG claim made in respect of Son Two for the school year 2008-2009 at Bright Horizons contained a forged signature and a forged school stamp.

23. Regarding the SEG claims for Son Two and Son Three at St. Florence, OIOS recorded that it had been unable to contact St. Florence or locate its whereabouts. In the P.41 and P.45 forms, Ms. Aghadiuno had provided multiple telephone numbers for St. Florence. OIOS made several calls to the various numbers which resulted in the calls going to voicemail or recorded messages that the numbers were not in service. Ms. Aghadiuno had provided two addresses in Poughkeepsie for St. Florence. OIOS visited both. One was a non-existent address and the other was the Poughkeepsie Plaza Mall. Long-standing tenants of the Poughkeepsie Plaza Mall informed OIOS that they had never heard of St. Florence.

24. In November 2012, Ms. Aghadiuno sent an unsolicited e-mail to OIOS describing St. Florence as "a private, alternative home-based schooling system following the school curriculum" and adding that special education, speech, physical and occupational therapies were given "at home and at designated clinics". In her interview with OIOS, Ms. Aghadiuno eventually explained that the school work was done at her home and at two locations in Poughkeepsie City and Wappingers Falls, which she described as "a special needs gym for occupational therapy and a modern gym with a room for speech therapy". When asked to show OIOS the two locations,

Ms. Aghadiuno was evasive. Further investigation established that St. Florence was owned and run by Ms. Amanda Noni, an acquaintance of Ms. Aghadiuno from her home country, Nigeria, and that Son Two and Son Three were the only regular students at St. Florence and were receiving speech therapy and occupational therapy.

25. OIOS thus established that St. Florence was not accredited with the New York State Board of Education and could not be found in any search for day schools, nursery schools, pre-schools and private schools in the Poughkeepsie area, State of New York. Moreover, despite Ms. Aghadiuno having received USD 129,796 as SEGs in respect of St. Florence for the 2009-2013 period, Ms. Aghadiuno provided OIOS with proof of only one payment of USD 17,400 to Ms. Noni.

26. OIOS concluded that the established facts constituted reasonable grounds supporting that Ms. Aghadiuno had failed to observe the standards of conduct expected of an international civil servant. It recommended that OLA take appropriate action against Ms. Aghadiuno, including the possible recovery of the funds paid to her. It noted that her conduct was probably in violation of United States local laws and intimated that consideration should be given to referring the matter to the national law enforcement authorities. OLA subsequently referred Ms. Aghadiuno's case to OHRM for appropriate action.

27. In a memorandum dated 4 April 2014, OHRM charged Ms. Aghadiuno with having engaged in misconduct by submitting to the Organization between 2008 and 2012 one or more SEG claims and/or documentation containing false information, signatures, seals and/or stamps, in respect of Bright Horizons, St. Florence, and Oakwood. It alleged *inter alia* that Ms. Aghadiuno had i) grossly inflated the amounts of SEG claims in respect of Oakwood compared to the actual expenditures; ii) failed to disclose discounts received from Oakwood; iii) claimed, as part of her SEG applications in respect of Son One, the "learning skills" support when he did not receive that instruction; iv) had been evasive about the true nature and location of St. Florence; and v) could produce proof of only one payment to Ms. Noni in the amount of USD 17,400 (despite receiving approximately USD 130,000 as SEGs for St. Florence). The OIOS investigation report of 7 January 2014 was attached to the memorandum. Ms. Aghadiuno was requested to provide a written statement or explanations in response to the allegations of misconduct against her. She was also advised to avail herself of the assistance of the Office of Staff Legal Assistance for free or any other counsel in her defense at her own expense.

28. On 11 June 2014, Ms. Aghadiuno provided a response to the allegations of misconduct. The response took issues with certain specific details of the report, but did not directly address all the allegations of forgery and uttering of the various forms and documents submitted to OHRM. Ms. Aghadiuno's response to the allegations was limited to an assertion that Ms. Lynch's signature had differed greatly from communication to communication in the three-year period. She did not coherently address the allegations by both Mr. Baily and Ms. Lynch that their signatures had been forged and that the stamp on the relevant documentation was not that of the school.

29. In her response, Ms. Aghadiuno made repeated allegations that Mr. Baily was harsh and discriminatory towards her and her family because she had lodged a complaint about him with the board of the school. The complaint concerned Mr. Baily's initial refusal to refund a payment for a school trip which Ms. Aghadiuno had cancelled. Ms. Aghadiuno in effect alleged in relation to the SEGs that Mr. Baily was in collusion with OIOS in concocting false documents as part of a malicious vendetta he was conducting against her in retaliation for her complaint against him. She maintained that she had paid Oakwood the full amount of the SEGs for the children, had received no discount in respect of Son One but received a "100% tuition and fees' grants" for Daughter on the understanding that full payment would be made once a SEG was granted for Daughter, and that she had never taken any actions, knowingly or unknowingly, to defraud the Organization.

30. At a later stage, Ms. Aghadiuno provided proof of certain payments to Oakwood in excess of the fees charged for Son One. OHRM concluded that these payments, in amounts marginally less than the SEG for Son One, appeared to be for both Daughter and Son One, and were made at a time when no SEG was granted for Daughter. Ms. Aghadiuno did not submit any official documentation confirming that Daughter attended Oakwood for free. Mr. Baily and Ms. Lynch denied the existence of such an arrangement.

31. As regards St. Florence, Ms. Aghadiuno stated that Ms. Noni provided customized educational services to her children with special needs in a private setting which is "discreet, family-to-family, referral based". She added that she had paid the full amounts of all the SEGs in respect of St. Florence to Ms. Noni but furnished no proof of that. Much of her response regarding St. Florence is taken up with accounting for the fact that the school had no physical address or contact information, which now can be evaluated in the light of her concession that

Ms. Noni conducted the school at Ms. Aghadiuno's home with her children as the only regular students.

32. By letter dated 26 February 2015, the Assistant Secretary-General for OHRM informed Ms. Aghadiuno of the decision taken by the Under-Secretary-General for Management (USG/DM), on behalf of the Secretary-General, to impose on her the disciplinary measure of dismissal effective on the date of her receipt of the letter. The letter stated that based on a review of the record the USG/DM had concluded that it was established by clear and convincing evidence that Ms. Aghadiuno in the relevant period had knowingly submitted one or more SEG claims and/or documentation that contained false information, signatures and/or stamps and, that her conduct violated Staff Regulation 1.2(b), which requires staff members to uphold the highest standards of efficiency, competence and integrity, including probity, honesty and truthfulness in all matters affecting their work and status. The USG/DM concluded furthermore that Ms. Aghadiuno's conduct was inconsistent with the requirements of Section 9.1 of ST/AI/2011/4, which obliges a staff member submitting a request for a SEG to ensure the accuracy and completeness of the information provided and not to alter documentation provided by the educational institution. The provision explicitly provides that incorrect, untrue or falsified information, as well as misrepresentation or partial disclosure, may result in disciplinary measures under the Staff Regulations and Rules.

33. Detailed reasons for the decision of the USG/DM were set out in Annex 1 to the letter.

34. The USG/DM concluded that it had been established by clear and convincing evidence that the SEG claims for St. Florence had contained false information. The documentation created a false impression that St. Florence was a "brick and mortar" educational institution. By her own account, Ms. Aghadiuno admitted that St. Florence did not offer classroom instruction; was staffed by only one person (Ms. Noni); was attended mostly by her own two children; and was based at her own home. The documentation in relation to St. Florence gave two non-existent addresses for the school and sought to create the false impression that the school was an educational institution with a physical address. In addition, the letters of enrolment submitted by Ms. Aghadiuno to OHRM falsely stated that St. Florence provided learning and therapy "in individual and group *classroom* settings"; was "a special school that creates a unique learning environment for children 18 months to 10 years who have learning difficulties"; was staffed by "teachers and assistants"; and was a "learning community". The USG/DM accordingly concluded that these untrue statements were aimed at creating the false impression that St. Florence had

classrooms, multiple teachers and several students. The inclusion of charges for transportation in the claims for SEG also created the false impression that St. Florence was an educational institution with a physical location.

35. In relation to Oakwood, the USG/DM concluded that the SEG claims and the supporting documentation submitted by Ms. Aghadiuno contained stamps and signatures that were not authentic. Each of the P.41 forms bore a signature attributed to Ms. Lynch, but both Ms. Lynch and Mr. Baily had confirmed these were not genuine. The enrolment contract submitted for Daughter dated 16 June 2011 bore a signature attributed to Mr. Baily which he confirmed was not his. Various documents submitted by Ms. Aghadiuno as part of the claims bore stamps attributed to Oakwood which Mr. Baily confirmed were not genuine since Oakwood used a seal, not a stamp. Moreover, the documentary evidence clearly indicated that Ms. Aghadiuno had overstated the amounts charged by Oakwood by several thousand dollars, by including amounts that Oakwood had not charged for learning skills and omitting any mention of the various discounts (grants, sibling discounts and a discount for prompt payment). In each of the four P.41 forms Ms. Aghadiuno had submitted to OHRM, she certified that she was not in receipt of any grant or financial assistance in respect of the children. The documentation supplied by Oakwood disclosed that Ms. Aghadiuno had in fact received substantial grants of approximately USD 10,000 per child per year and sibling discounts of USD 1,500.

36. Finally, the USG/DM held that Ms. Aghadiuno had deliberately misled OHRM when stating that her daughter was permitted to attend Oakwood for free while she paid her son's tuition there in full. The assertion was not supported by the evidence in that the officials of the school denied the existence of such an arrangement and the contemporaneous documentation reflected that fees had been paid for the daughter who received a grant from Oakwood and indicated that the inflated claim for SEG had been applied to pay both children's fees.

37. The original allegation of misconduct regarding Ms. Aghadiuno's SEG claim in respect of Bright Horizons for Son Two for the school year 2008-2009 was dropped by the USG/DM as there was no clear and convincing evidence to establish fraud or misconduct.

38. Ms. Aghadiuno received the letter of dismissal on 6 March 2015 and was separated from service effective that day. On 4 June 2015, she appealed the dismissal decision to the UNDT.

The proceedings before the Dispute Tribunal

39. The UNDT held an oral hearing at which six witnesses testified over five days in July and August of 2016. The witnesses were: Mr. Baily, Ms. Lynch and Ms. Lonczak (officials from Oakwood); Ms. Zolezzi from OHRM; Ms. Noni and Ms. Aghadiuno. The author of the OIOS investigative report did not testify. The transcription of the proceedings and the testimony of the witnesses comprise more than 700 pages.

40. For reasons unknown, the UNDT, in its Judgment of 78 pages, makes virtually no mention of the testimony given at the hearing, beyond the odd oblique reference. The Judgment makes no specific findings on the credibility, reliability or probabilities of the evidence proffered by the witnesses at the hearing. The UNDT relied, instead, on extracts of the joint written submissions filed by the parties before the hearing, which it merely recited without pertinent comment or analysis.

41. The testimonial evidence given under oath by Mr. Baily, Ms. Lynch and Ms. Lonczak before the UNDT in relation to Oakwood is of decisive importance in this appeal. At the hearing, counsel for the Secretary-General meticulously and thoroughly led the three witnesses through the documentary evidence in support of the allegations of fraud, forgery and uttering. The witnesses confirmed the relevant evidence involving them in the OIOS investigative report, which, absent the affirming testimony of its author, is hearsay of imperfect evidentiary weight or value. For that reason, the evidence of these witnesses, as said, is the most (if not only) reliable evidence for determining whether the alleged misconduct in relation to Oakwood was established.

42. Mr. Baily is presently the Executive Director of the Association of Independent Schools in Maryland and Washington D. C., after serving as the Principal of Oakwood for 15 years. He has an ongoing relationship with, and emotional attachment to, Oakwood and contributes to it financially. In his testimony, he explained that Oakwood is a Quaker school which was established in 1796. Mr. Baily is a Quaker and testified that he has served the school in accordance with the principles and values of his faith.

43. Mr. Baily described and explained the financial-aid system at Oakwood. Parents who require financial aid are obliged to provide detailed documentary records of their financial situation. These are submitted to the School Scholarship Service which makes a calculation

based on that information regarding the amount of tuition a family is able to pay. The relevant committee at the school then looks at its own funds within the financial-aid budget and makes an offer of aid to the family. Mr. Baily's role in this regard was not to deliberate on individual cases but to oversee the financial-aid program. The deliberation of individual cases is done by the relevant committee of which he was not a member. The application of Ms. Aghadiuno was processed in the usual way and both of her children at Oakwood received substantial financial aid in the form of a 40-50 per cent fee reduction.

44. Mr. Baily was responsible for the conclusion of the enrolment contracts with the parents of the children enrolled at the school. After receiving the completed contract from the parents (setting out the amount of tuition fees, other charges, and any financial aid and sibling discounts), Mr. Baily would typically sign the contract, file the original and dispatch a copy to the parents. Mr. Baily would either sign the contracts by hand or authorize his secretary to sign by using a rubber-ink stamp of his signature. Mr. Baily followed this process in relation to the enrolment of Ms. Aghadiuno's children. He signed the enrolment contract with Ms. Aghadiuno in respect of both children for each year they were enrolled at Oakwood. Each enrolment contract sent to Ms. Aghadiuno indicated the amount of financial aid granted to each child for each year he or she was enrolled. Ms. Aghadiuno in turn signed all the enrolment contracts and they were filed of record at the school. The relevant enrolment contracts were submitted by Ms. Aghadiuno to OHRM as part of the documentation for the SEGs.

45. Mr. Baily testified that when the investigation into Ms. Aghadiuno commenced he was asked by OIOS to look at the P.41 forms and to compare the original enrolment contracts in the school records with the enrolment contracts submitted to OHRM. He immediately noted inconsistencies and misinformation in the documents. As he put it, "tuition numbers differed". The documents submitted by Ms. Aghadiuno to OHRM attested that there had been no grants or awards to help defray the full costs of tuition, when, in fact, Oakwood had made substantial grants of financial aid. In addition, several of the documents obtained from OHRM and presented to Mr. Baily by the investigators appeared to contain a signature purportedly his, which was not his usual signature or in his ordinary handwriting. He confirmed that the supposed signature of Ms. Lynch on the various documents was not hers either. He had worked with Ms. Lynch for 15 years, had seen her sign documents and knew her signature well.

46. Mr. Baily provided the OIOS investigators with the original enrolment contracts and other documents reflecting his true signature and that of Ms. Lynch which were evidently at variance with the signatures on the documents submitted by Ms. Aghadiuno to OHRM.

47. Mr. Baily confirmed that the school stamp used on the documents submitted to OHRM was not used at Oakwood. The school did not use a stamp. It used a seal, round in shape, which would emboss the paper of the document. The stamp on the documents presented to him by OIOS, on the other hand, was a rubber ink stamp, rectangular in shape, with the name and address of the school as typically would appear as an address on the back of an envelope. The school had never used such an ink stamp in the 15 years he was employed at Oakwood. Only the round seal was used on official documents. This seal was kept in a drawer in the office of the school Registrar.

48. Mr. Baily further testified that there was no arrangement where a child would be enrolled for free if the cost of full tuition of a sibling was paid in full. The version given by Ms. Aghadiuno was that she had an arrangement with Oakwood, whereby Son One would pay full tuition fees, without any financial aid, which would be the total amount of the SEG, and that Daughter would get free tuition. Oakwood then would internally adjust the accounts to reflect that both children had paid about 50 per cent tuition after receiving financial aid. If that were true, as Ms. Aghadiuno saw it, the SEG for Son One would not have overstated the amount payable by Ms. Aghadiuno to Oakwood. All three witnesses associated with Oakwood denied such an arrangement and affirmed that the policy of the school was never to grant financial aid in an amount of more than 50 per cent of the tuition. In the 15 years that Mr. Baily had been at the school, no student had ever received a 100 per cent scholarship. Thus, both children of Ms. Aghadiuno were expected to pay fees. Both had received 40-50 per cent reductions as grants of financial aid, and Son One had received a sibling discount of USD 1,500 per year.

49. Mr. Baily was aware that Ms. Aghadiuno had received assistance from the Organization for school fees, but was not familiar with the specifics.

50. After leading Mr. Baily through the evidence pertaining to the OIOS investigation, Counsel for the Secretary-General specifically, for the purposes of the record, took Mr. Baily through the enrolment contract filed by Ms. Aghadiuno with OHRM in June 2011 and compared it with the original contract on file at the school. Once again, Mr. Baily confirmed that the signature on the document filed by Ms. Aghadiuno with OHRM was not his, and that the stamp

used in one place where his signature normally would have been was not the school seal. He added that it was not the school practice to stamp or emboss enrolment contracts. Normally, enrolment contracts were merely signed by him, either by hand or using a rubber ink stamp of his signature. The purpose of his signing the enrolment contracts was to attest to the tuition rate and the agreed financial-aid grant. Under the heading: “Schedule of Tuition, Room, Board and Fees – 2011/2012” in the original enrolment contract for June 2011, kept on file at the school, it is recorded that a financial-aid grant of USD 10,000 and a sibling discount of USD 1,500 were awarded to Son One. This amount, however, is not reflected in the enrolment contract submitted by Ms. Aghadiuno to OHRM.

51. Counsel for the Secretary-General likewise took Mr. Baily through three P.41 forms for the 2009, 2010 and 2011 school years, submitted by Ms. Aghadiuno to OHRM, which should have been completed by Oakwood, but apparently were not. Paragraph 11 of these forms requires the school to indicate, “[i]f applicable, the amount of **non-UN scholarship, grant(s) or any financial assistance (excluding loans)**”.⁵ Each P.41 form submitted by Ms. Aghadiuno to OHRM reflected a zero or “N/A” (not applicable) next to the question. Mr. Baily and Ms. Lynch confirmed that the answers were a misrepresentation in that substantial financial aid had been granted. Ms. Lynch affirmed in her testimony that she had not been asked to complete any P.41 forms, and that the signatures on these documents were not hers and thus forgeries. She added that had she ever been required to complete any of the P.41 forms she would have used the school’s embossed seal and not a rubber-ink stamp.

52. In his cross-examination of the three Oakwood witnesses, Counsel for Ms. Aghadiuno did not challenge this evidence of fraud, forgery and uttering in a meaningful way. He sought to create the impression that Mr. Baily was motivated by bias arising from issues in the relationship between Mr. Baily and Ms. Aghadiuno, which Mr. Baily readily conceded. Mr. Baily admitted his disappointment and grievance against Ms. Aghadiuno, who he believed had defrauded the United Nations Organization by uttering forged documents in the name of the school.

53. Ms. Aghadiuno’s version that the Oakwood staff had conspired with OIOS to concoct false charges against her was never appropriately put to the witnesses. In argument to the UNDT, it was alleged that the Oakwood employees had generated false documents after OIOS had visited the school. The possible motive for doing that was never fully explained. Nor, as

⁵ Bold and italics in original.

just said, were the witnesses afforded a proper opportunity to deal with that allegation in cross-examination. In any event, the enrolment contracts and schedules on file at Oakwood were signed by Ms. Aghadiuno personally and thus were clearly not falsified.

54. Counsel for Ms. Aghadiuno in his questioning placed emphasis on the payment of the fees of both children by a single cheque in the hope of establishing the existence of the arrangement by which Daughter allegedly obtained free tuition, arguably meaning that the SEG for Son One was for the correct amount. The connotation of this line of evidence was that Oakwood agreed to charge full tuition for Son One (in the amount of the SEG) without any financial aid and that Daughter received 100 per cent financial aid. Mr. Baily responded that there was nothing to be inferred from the fact that a single cheque was received and divided in the accounts proportionally between the amounts owing in respect of each child. He reiterated that the policy did not allow financial aid beyond 50 per cent of the tuition rate.

55. Ms. Aghadiuno did not adduce any contemporaneous documentary evidence to support her version about the special arrangement, which was contradicted by the content of the enrolment contracts. Doubt was cast on the veracity of her version during her cross-examination by an inconsistent or contradictory e-mail she addressed to Ms. Lynch on 13 April 2010, in which she asked whether her application for 50 per cent tuition assistance for both children had been successful. Such a query would not have been necessary if Daughter had been granted free tuition. Other e-mails confirm that Ms. Aghadiuno knew she was receiving financial assistance and hence that the SEG she received was way more than the tuition fees payable to Oakwood. Moreover, as mentioned, the enrolment contracts and tuition schedules, which detailed the financial aid, were signed personally by Ms. Aghadiuno.

56. Therefore, no evidence was elicited in the cross-examination of the three Oakwood witnesses, which countered, or cast doubt on, the evidence of the discrepancies between the original enrolment contracts and those submitted to OHRM or that pertaining to the P.41 forms. In effect, that evidence stands largely uncontested. Nonetheless, Ms. Aghadiuno denied that she was party to any forgery or uttering of the relevant documents.

57. The evidence of Ms. Noni related exclusively to the SEG's for St. Florence. For reasons that will become apparent presently, there is no need to examine it in any detail.

58. On 31 May 2017, the UNDT issued its Judgment, now under appeal by both parties. The UNDT determined that Ms. Aghadiuno's due process rights had been respected throughout the disciplinary process leading to her dismissal. After the OIOS investigation, Ms. Aghadiuno was properly notified of the allegations of misconduct and was given a full opportunity to respond.

59. The UNDT determined that the Administration had failed to meet the burden of clear and convincing evidence to substantiate its charges against Ms. Aghadiuno regarding the SEG claims in respect of St. Florence, as Ms. Aghadiuno had provided the information and the supporting documents in P.41 forms without alteration. Any misrepresentation or false impression about St. Florence being a brick and mortar school gained from the P.41 forms and supporting documents could not be attributed to any actions or omissions of Ms. Aghadiuno. The UNDT was influenced in its finding by the fact that it is permissible to obtain a SEG for home-based schooling, and that the P.41 form is generic in nature and not adapted to a SEG for home-based schooling.

60. The UNDT did not deal, in its Judgment, with the fact that Ms. Aghadiuno had not, during the investigation, been able to provide proof of payment of the fees to St. Florence. It merely "noted" that "the Applicant filed evidence of payments".⁶ Ms. Noni testified that her fee was USD 17,000 a year and the record includes various documents apparently taken from the school ledger. The matter was not canvassed meaningfully in the evidence of Ms. Aghadiuno and no other witness testified in relation to the issue. Nor did the UNDT, in its Judgment, address or make any findings in relation to the allegation that the letters of enrolment submitted by Ms. Aghadiuno to OHRM included untrue statements aimed at creating the false impression that St. Florence had classrooms, multiple teachers, and several students.

61. The UNDT also accepted that while Ms. Noni was not licensed she was a qualified speech therapist. It discounted the issue of the non-existent address as "a clerical mistake",⁷ though it did not address the evidence of Ms. Noni that the address was her address and not the address of a school.

62. On this incomplete basis, the UNDT determined that the facts identified in the letter of dismissal in relation to St. Florence did not legally qualify as misconduct.

⁶ Impugned Judgment, para. 84.

⁷ *Ibid.*, para. 88.

63. As for Oakwood, the UNDT noted that, in line with the findings of OIOS, Ms. Lynch confirmed in her testimony under oath that the signatures on the P.41 forms were not hers. It failed to note that Mr. Baily had testified that certain signatures attributed to him had also been false. As for the school seal, it found that there was no evidence to show it was used regularly. It did not discuss the evidence of the officials of Oakwood that the stamp on the documents was not that of the school, which did not use a stamp but an embossed seal. The UNDT found rather that, in the absence of a forensic and/or handwriting expertise/analysis, there was no clear and convincing evidence to substantiate the allegation that Ms. Aghadiuno had submitted the supporting documents with stamps and signatures that were not authentic.

64. The UNDT nonetheless agreed that there was clear and convincing evidence to substantiate the allegation that Ms. Aghadiuno had committed misconduct by overstating the amount charged by Oakwood and by omitting to declare the sibling discounts and the scholarship that Son One had received from Oakwood for three school years from 2009 through 2012. The amount of these discrepancies, as appears from the OIOS investigative report, was more than USD 50,000. The UNDT held that the evidence in the OIOS report in relation to this misconduct was accurate and correctly assessed by the USG/DM.

65. Finally, the UNDT rejected Ms. Aghadiuno's assertion of the existence of an arrangement between her and Oakwood, whereby Oakwood had agreed to allow her to pay the full tuition for Son One and let her daughter attend Oakwood for free, as it was not only "not corroborated by the evidence in the present case",⁸ but also belied by Ms. Aghadiuno's correspondence with Oakwood in which she requested and received scholarship for both Son One and Daughter from Oakwood. The explanation of Ms. Aghadiuno was thus deliberately misleading and misrepresented the truth.

66. Nevertheless, the UNDT held that the decision to dismiss Ms. Aghadiuno from service for SEG fraud was disproportionate and excessive, too severe and therefore unlawful. The UNDT doubted the gravity of the offence as the misconduct "only consisted in filing three special education grant claims for [Oakwood] for [Son One], without stating the sibling discount and the scholarship received from [Oakwood]".⁹ The UNDT also held that Ms. Aghadiuno did not commit any misconduct with regard to the P.41 forms and supporting documents submitted in respect of St. Florence. Additionally, the UNDT held that there was no clear and convincing

⁸ *Ibid.*, para. 107.

⁹ *Ibid.*, para. 135.

evidence that Ms. Aghadiuno had forged any signatures, seals, or stamps in her P.41 forms in respect of Oakwood. Finally, it decided that the SEG claims for Daughter in respect of Oakwood “had no legal consequences and produced no prejudice to the Organization” as she had withdrawn them once the investigation into her conduct had commenced.¹⁰ The UNDT made no findings regarding the potential prejudice of this *prima facie* fraudulent conduct.

67. The UNDT consequently upheld Ms. Aghadiuno’s application in part, ordered partial rescission of the dismissal decision (to be replaced with separation from service with termination indemnity) or six months’ net base salary as an alternative compensation in place of the complete rescission of the dismissal decision. The UNDT also ordered that the impugned Judgment be included in Ms. Aghadiuno’s Official Status File (OSF) and all references to dismissal be removed from her OSF to be replaced with the new sanction of separation from service with termination indemnity.

68. After the parties filed their respective appeals and Ms. Aghadiuno filed a cross-appeal, on 2 February 2018, Ms. Aghadiuno filed a motion for anonymity, requesting that her name not be used in any judgment to be issued by the Appeals Tribunal so as to protect her children from being stigmatized or besmeared and to preserve their privacy and confidentiality regarding their disabilities.

Submissions

Case No. 2017-1098

Ms. Aghadiuno’s Appeal

69. Ms. Aghadiuno maintains that the UNDT relied on the same evidence it discredited to find misconduct for non-disclosure of alleged sibling discounts and scholarships received from Oakwood for Son One. The alleged genuine enrolment contracts provided by Oakwood never existed; they were generated *post facto* by Oakwood to justify the alleged sibling discounts and school grants. The UNDT “punched the holes” in the credibility of those documents, but at the same time gave undue weight to the discredited evidence of sibling discounts and school grants. Having made a categorical finding that there was no clear and convincing evidence showing that Ms. Aghadiuno had submitted fraudulent documents in support of her SEG claims, the

¹⁰ *Ibid.*, para. 105.

Dispute Tribunal could not use the same discredited documents to find misconduct against Ms. Aghadiuno. Despite the falsity of the e-mails released by the Associate Director of Admissions of Oakwood, the Dispute Tribunal used them to find that Ms. Aghadiuno had applied and received scholarship for both Son One and Daughter from Oakwood.

70. The UNDT misrepresented the evidence on record related to the authenticity of the signature of the head of school of Oakwood. It noted that the OIOS investigators had not collected the originals of the documents that Oakwood had provided to them. This means that the head of school of Oakwood freely generated, copied, scanned, and manipulated the corrupted documents that the Administration used as evidence against Ms. Aghadiuno. In this regard, the UNDT failed to consider Ms. Aghadiuno's allegation of bias against the head of school of Oakwood.

71. The UNDT erred in concluding that Ms. Aghadiuno's due process rights were respected. It failed to consider Ms. Aghadiuno's submissions on breaches of her due process rights. Procedural irregularities included the fact that Ms. Aghadiuno was not promptly informed of the charges against her, she was lured by OHRM staff to provide the very documents that were later used against her, the OIOS investigators colluded with the head of school of Oakwood to generate questionable documents and manipulated the existing documents, and the investigators and the Administration already pre-determined Ms. Aghadiuno's guilt prior to the investigation.

72. The UNDT unduly shifted the burden of proof to Ms. Aghadiuno by calling her to the witness stand, made her take a fresh oath and asked her whether she had misrepresented or altered any of the documents, when it was clear that the Secretary-General never proved the allegation of forged or fraudulent documents.

73. The UNDT failed to grant proper relief to Ms. Aghadiuno. It erred in not awarding moral damages to her in compensation for her traumatic experiences and the irreversible damages inflicted on her children. Likewise, it erred in refusing to award SEG of USD 45,000 in respect of Daughter for the 2012-2013 school year while Ms. Aghadiuno was still in service, on the ground that Ms. Aghadiuno did not initiate a request for management evaluation. She was never informed officially that her SEG claim for Daughter for the 2012-2013 school year had been rejected. Consequently, Ms. Aghadiuno could not have initiated a management evaluation. The Dispute Tribunal erred in stating that Ms. Aghadiuno was in receipt of a relocation grant, when there was in fact no such payment to her.

74. Ms. Aghadiuno requests that the Appeals Tribunal set aside the impugned UNDT Judgment, order rescission of the dismissal decision and grant her unspecified amount of compensation for harm and moral damages, which should be higher than two years' net base salary due to the exceptional circumstances of the present case.

The Secretary-General's Answer

75. Without prejudice to the appeal that he has filed against the impugned Judgment, the Secretary-General states that he lawfully decided to dismiss Ms. Aghadiuno from service for misconduct in the proper exercise of his discretion, and that the dismissal decision should be upheld by the Appeals Tribunal.

76. Ms. Aghadiuno has failed to establish any basis for an appeal. She has failed to demonstrate that the UNDT erred in law or fact resulting in a manifestly unreasonable decision, or in its finding that her due process rights had been respected. Ms. Aghadiuno makes a number of assertions related to the Dispute Tribunal's assessment of the evidence, yet fails to specify how and in what way the impugned Judgment is defective.

77. Ms. Aghadiuno has failed to establish that the UNDT erred because it did not grant her the proper form of relief. In this regard, Ms. Aghadiuno again makes several allegations without substantiation. As Ms. Aghadiuno suffered no harm because her separation from service was warranted and her due process rights were fully respected, she is not entitled to any compensation. Furthermore, the UNDT properly dismissed Ms. Aghadiuno's assertion that she is owed various amounts of monies for entitlements because either they were emoluments to which she was not entitled or they were not properly before the UNDT in the absence of any prior management evaluation.

78. The Secretary-General requests that the Appeals Tribunal dismiss Ms. Aghadiuno's appeal in its entirety.

Case No. 2017-1099

The Secretary-General's Appeal

79. The Secretary-General submits that the UNDT erred by finding the established facts in relation to Ms. Aghadiuno's SEG claims in respect of St. Florence did not amount to misconduct. The evidence in the case clearly demonstrated that the SEG claims submitted by Ms. Aghadiuno in respect of St. Florence contained patently false or inaccurate information. The UNDT erred in holding that Ms. Aghadiuno's conduct could not legally amount to misconduct, because "OHRM confirmed that the United Nations pays for home-based schooling of a child when that child is in receipt of a special education grant".¹¹

80. The Secretary-General also submits that the UNDT erred in finding that there was no clear and convincing evidence to show that Ms. Aghadiuno had submitted falsified documents in relation to her SEG claims in respect of Oakwood. While the UNDT held that there was clear and convincing evidence that Ms. Aghadiuno had committed misconduct by not providing accurate and complete information in her SEG claims in respect of Oakwood, it found that there was insufficient evidence to support the allegation that the relevant documents contained forged stamps and signatures because it was not supported by expert forensic and handwriting evidence. There is no requirement that an allegation of falsification of documents be proven through expert testimony. Both parties during the UNDT proceedings considered it unnecessary to have elicited such expert testimony during either the OIOS investigation or the UNDT proceedings. The evidence of Mr. Baily and Ms. Lynch, that their signatures had been falsified, was uncontested. It therefore met the evidentiary standard of clear and convincing evidence.

81. The UNDT further erred by holding that the disciplinary sanction of dismissal was disproportionate. Ms. Aghadiuno committed serious acts of dishonest misconduct unlawfully appropriating the Organization's limited resources. Her conduct resulted in a fundamental breakdown of the relationship of trust between her and the Organization, rendering the continuation of an employment relationship untenable, thus warranting her separation from service. The sanction of dismissal against Ms. Aghadiuno was reasonable and proper considering the gravity of her wrongful actions. Her dismissal from service was consistent with the practice of the Secretary-General in cases involving similarly serious lapses of integrity.

¹¹ *Ibid.*, para. 83.

82. The Secretary-General requests that the Appeals Tribunal uphold the dismissal decision, vacate the impugned Judgment, except with respect to its findings that i) the investigation was not vitiated by procedural error or tainted by discrimination, bias or other improper motive; and ii) Ms. Aghadiuno committed acts of serious misconduct warranting her separation from service.

Ms. Aghadiuno's Answer

83. Ms. Aghadiuno contends firstly that the Secretary-General's appeal is not receivable. The impugned Judgment was communicated to the parties on 31 May 2017. The deadline for an appeal against that Judgment was 30 July 2017. As the Secretary-General filed his appeal on 31 July 2017, the appeal was out of time and not receivable.

84. The UNDT did not err in law by finding that the established facts concerning Ms. Aghadiuno's SEG claims in respect of St. Florence did not amount to misconduct. The P.41 form does not specifically require an applicant for an SEG to disclose information regarding the physical nature of the school, "brick and mortar" or home-based. The relevant regulations also do not require the recipient of SEG for a home-based instruction to provide proof of teacher's certification, and no certification was requested in this case.

85. The UNDT correctly held that no clear and convincing evidence existed to support the dismissal decision. Mr. Baily was a biased and unreliable third-party witness and his sole interest was Ms. Aghadiuno's dismissal. The primary OIOS investigative work was conducted by an administrative assistant unqualified to conduct any investigation. There existed a multitude of inconsistencies on record, and the Administration was aware of the flawed investigation. However, it chose to suppress the exculpatory evidence and relied on the "biased, one-sided, sensationalized and prejudicial" OIOS report in deciding to dismiss Ms. Aghadiuno.

86. The UNDT was competent to conclude that the sanction of dismissal was disproportionate and correctly ordered its rescission.

87. Ms. Aghadiuno requests that the Appeals Tribunal dismiss the Secretary-General's appeal as not receivable. Alternatively, she requests that the Appeals Tribunal uphold the UNDT's findings in respect of her SEG claims for Bright Horizons, St. Florence and Oakwood, except with respect to its findings that i) Ms. Aghadiuno's due process rights were respected; and ii) there was clear and convincing evidence that Ms. Aghadiuno had failed to declare sibling discounts and scholarships for Son One for the school years from 2009 through 2012 in respect

of Oakwood. Ms. Aghadiuno further requests that the Appeals Tribunal uphold the UNDT finding that the sanction of dismissal was disproportionate and excessive, except with respect to its substitute sanction of separation from service.

Ms. Aghadiuno's Cross-Appeal

88. Ms. Aghadiuno submits that the UNDT erred by finding that she had committed misconduct after holding that the dismissal decision was unlawful and was not supported by clear and convincing evidence. She contends that the sanction of separation from service with termination indemnity was disproportionate, and that the UNDT erred in refusing to award her compensation for moral and emotional damage. The relief sought in the cross-appeal is the same as that sought in Ms. Aghadiuno's appeal.

The Secretary-General's Answer to Cross-Appeal

89. Ms. Aghadiuno's cross-appeal is not receivable because it is a duplication and a reiteration of the arguments and assertions already made in the appeal that she filed with the Appeals Tribunal on 31 July 2017.

Considerations

Request for oral hearing

90. Ms. Aghadiuno has requested an oral hearing in the appeal. We see no benefit in holding an oral hearing in this appeal. The facts and arguments are fully ventilated on the record and in the briefs. The seminal issues are also relatively straightforward and can be determined without hearing oral argument. An oral hearing in this appeal would not assist in the expeditious and fair disposal of the appeal, as required by Article 18(1) of the Rules of Procedure of the Appeals Tribunal (Rules).

Request for anonymity

91. Ms. Aghadiuno has filed a motion seeking anonymity with respect to the publication of her name in this Judgment on the grounds that the information revealed will be confidential and sensitive and would reveal the identity of the names of her children who need protection from stigmatization. The record reflects that, in all the documents related to the school years in question, the children did not bear the same surname as Ms. Aghadiuno.

Moreover, in this Judgment, the full names of her children are redacted and they are referred to as “Son One”, “Daughter”, etc. In our view, their identities are adequately protected, and the concern for their stigmatization is not warranted. The fact that the information arising in this appeal may be sensitive and will cause Ms. Aghadiuno obvious embarrassment is no basis for departing from the requirements that justice should be done transparently.¹² It is in the interests of justice that Ms. Aghadiuno’s conduct and her pursuit of legal remedies be subject to open scrutiny. Her motion for anonymity is accordingly dismissed.

Receivability of the Secretary-General’s appeal

92. Ms. Aghadiuno’s contention that the appeal of the Secretary-General is not receivable because it is time-barred is mistaken. The Judgment of the UNDT was delivered to the parties on 31 May 2017. Both parties only filed perfected appeals on Monday, 31 July 2017. Article 7(1)(c) of the Statute of the Appeals Tribunal provides that an appeal shall be receivable if it is filed within 60 calendar days of the receipt of the judgment of the UNDT. The calculation of time limits is governed by Article 29 of our Rules. Article 29(a) of the Rules provides that the calculation will not include the day of the event from which the period runs. On that basis, the period for filing the appeals expired, in this instance, on Sunday, 30 July 2017, the day before both appeals were filed. However, Article 29(b) of the Rules provides that the time period shall include the next working day of the Registry when the last day of the period is not a working day. Sunday is not a working day for the Appeals Tribunal. Accordingly, the parties had until the close of business on 31 July 2017 to file their appeals. In the premises, the Secretary-General’s appeal is not time barred; it is receivable.

Merits

93. We agree with the UNDT that the record discloses no instance of material procedural unfairness. The submissions by Counsel in the appeal brief that Ms. Aghadiuno was not promptly informed of the charges, was lured by OHRM to provide documents against her interest and was predetermined guilty by a collusion of OIOS and Oakwood were not advanced with reference to any testimony on record. Ms. Aghadiuno has thus not met her evidentiary burden on those issues.

¹² *Buff v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-639; *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557; *Fedorchenko v. Secretary General of the International Civil Aviation Organization*, Judgment No. 2015-UNAT-499, quoting *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-456.

94. This appeal requires the determination of three questions of fact. First, did Ms. Aghadiuno in the Oakwood SEG documentation provide false information and overstate the fees owing to the school? Second, did Ms. Aghadiuno submit documents containing stamps and signatures that were not authentic? Third, did the requests for SEGs for tuition at St. Florence contain false and misleading information about the nature of the school and tuition fees payable in respect of it?

95. Mr. Baily's evidence in relation to the Oakwood situation is decisive. His testimony was candid, balanced and non-evasive. He made appropriate concessions about his relationship with Ms. Aghadiuno and was not without concern for the well-being of her children. He is a relatively disinterested third party.

96. To reject Mr. Baily's evidence and accept the version of Ms. Aghadiuno, we need to find that he opted to commit fraud, forgery and uttering, as well as the crime of conspiracy, by concocting and delivering forged enrolment contracts to OIOS; and that he then went on to perjure himself in his testimony before the UNDT. It is hard to understand why Mr. Baily would expose himself in this way to a real risk of censure and prosecution. He had little or nothing to gain personally from such a course of conduct.

97. Mr. Baily admitted easily and openly to the fact that he had issues with Ms. Aghadiuno before the investigation into her alleged misconduct. The dispute over the refund of an airfare for a school trip introduced a tension to the relationship. He, moreover, candidly stated that he felt aggrieved that Ms. Aghadiuno might have profited improperly through misrepresentations involving his school. But having regard to the manner of his testimony, the position he held, the nature, history, and ethos of the school at which he held it, his unchallenged and wholly credible declaration of his ethical and religious values, as well as the inherent probabilities of the situation, it is highly unlikely that Mr. Baily would have done what Ms. Aghadiuno said he did.

98. In our opinion, Mr. Baily was an honest, credible and wholly reliable witness. We accept his evidence regarding the discrepancies in the Oakwood documentation without qualification. And, the documentary record shows incontrovertibly that documents containing false and incomplete information about the fees payable, with forged signatures and stamps, were submitted to OHRM.

99. There was no need (as the UNDT erroneously believed) to proffer the forensic proof of a handwriting expert. The evidence of Mr. Baily and Ms. Lynch was more than sufficient proof that the signatures on the documents were false. Additionally, an expert could add nothing to the factual question of the use of a stamp unknown to, and never used by, the staff at Oakwood.

100. The only person who stood to benefit financially from the forgeries and false information was Ms. Aghadiuno. She, or someone associated in design with her, was the most likely author of the forged signatures. The most probable, if not only reasonable, inference to be drawn is that Ms. Aghadiuno knowingly submitted the forged documents containing false information with the intention to deceive and benefit financially. The UNDT accordingly erred in its finding that the evidence regarding the stamps and signatures was insufficient.

101. Therefore, the evidence of Mr. Baily, corroborated by his colleagues and supported by the contemporaneous documentation, is clear and convincing evidence establishing as a high probability the fact that Ms. Aghadiuno acted dishonestly in furtherance of her own financial interests to the actual and potential prejudice of the Organization and Oakwood. The Secretary-General has accordingly discharged his burden to establish the facts of misconduct by clear and convincing evidence in relation to all the allegations of wrongdoing regarding the Oakwood SEGs. The contrary findings of the UNDT are erroneous.

102. There can be no doubt that the conduct revealed by the evidence in relation to Oakwood constitutes misconduct. Ms. Aghadiuno's conduct violated Staff Regulation 1.2(b), which requires staff members to uphold the highest standards of integrity, including probity, honesty and truthfulness in all matters affecting their work and status. It was inconsistent with the requirements of Section 9.1 of ST/AI/2011/4, which obliges a staff member submitting a request for a SEG to ensure the accuracy and completeness of the information provided and not to alter documentation provided by the educational institution. Moreover, Ms. Aghadiuno's conduct infringed various provisions of ST/IC/2005/25. Her failure to disclose the grants and discounts from Oakwood specifically breached paragraph 6 of ST/IC/2005/25, which provides that should the anticipated admissible educational expenses become lower than the amount requested in the application for an advance, it is incumbent on the staff member to report the fact promptly so that the amount of the advance may be adjusted and any excess payment recovered. In addition, both Section 15.1 of ST/AI/2011/4 and paragraph 37 of ST/IC/2005/25 required

Ms. Aghadiuno to disclose and exhaust all other benefits that were available for the education and training of her children and to reduce the amount of the expenses claimed in the SEG by the amount of the benefits she received from the school. And, lastly, Section 17 of ST/IC/2005/25 provides that neither the P.41 form certified by the school nor the certificate of attendance should be changed in any way.

103. Ms. Aghadiuno's proven behaviour in violation of the Staff Regulations and Rules is therefore in fact serious misconduct. Ms. Aghadiuno enriched herself personally by approximately USD 50,000 as a result of submitting false information in relation to the SEGs for Oakwood. The nature of the misconduct and the manner of its execution deliver fatal blows to any chance of continuing an employment relationship of good faith and trust. The breach is made worse by Ms. Aghadiuno's dishonest persistence with the false explanation, aimed at deliberately misleading OHRM that her daughter was permitted to attend Oakland for free while she paid her son's tuition in full. The assertion is not supported by the evidence. The officials of the school denied the existence of such an arrangement; and the contemporaneous documentation, including Ms. Aghadiuno's e-mail correspondence, reflects that fees were paid for Daughter, who also received financial aid. The inflated claim for SEG for Son One was probably applied to pay both children's fees, at a time when there was no such entitlement for Daughter. In the face of dishonesty and impropriety of this kind, the only proportionate sanction is the ultimate penalty of summary dismissal, without any benefits. The continuation of an employment relationship would be intolerable and untenable in the circumstances.¹³

104. Our finding regarding the Oakwood SEGs obviates the need to determine the issues pertaining to St. Florence. Suffice it to say that the facts give rise to a strong suspicion of impropriety. The statements in the letters of enrolment submitted by Ms. Aghadiuno to OHRM falsely created the impression that St. Florence provided learning in *classroom* settings, had several students and was a special school staffed by multiple teachers. Moreover, in so far as similar fact evidence of a demonstrated propensity may be relevant and admissible, the recidivist pattern evident in Ms. Aghadiuno's behaviour supports the proposition that the information in relation to St. Florence was likewise probably misrepresented for self-enrichment. But, as intimated, there is no need in these proceedings to make a final

¹³ *Rajan v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-781, citing *inter alia Ainte v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-388.

determination about this alleged wrongdoing. The facts established in connection with Oakwood were sufficient to ground in the Secretary-General a right to terminate the employment contract summarily.

105. It follows that the appeal of the Secretary-General must be upheld and Ms. Aghadiuno's cross-appeal and appeal be dismissed.

Judgment

106. The Secretary-General's appeal is upheld; Ms. Aghadiuno's cross-appeal and appeal are dismissed; and Judgment No. UNDT/2017/039 is vacated.

Original and Authoritative Version: English

Dated this 22nd day of March 2018 in Amman, Jordan.

(Signed)

Judge Murphy, Presiding

(Signed)

Judge Knierim

(Signed)

Judge Lussick

Entered in the Register on this 23rd day of May 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar