



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

Judgment No. 2018-UNAT-832

**Nikolarakis
(Respondent/Applicant)**

v.

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

JUDGMENT

Before: Judge Richard Lussick, Presiding
Judge Deborah Thomas-Felix
Judge Martha Halfeld

Case No.: 2017-1121

Date: 22 March 2018

Registrar: Weicheng Lin

Counsel for Mr. Nikolarakis: Robbie Leighton, OSLA

Counsel for Secretary-General: Rupa Mitra

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2017/068, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 25 August 2017, in the case of *Nikolarakis v. Secretary-General of the United Nations*. The Secretary-General filed the appeal on 24 October 2017, and Mr. George Nikolarakis filed his answer on 21 December 2017.

Facts and Procedure

2. The following facts are uncontested:¹

... The Applicant [a Security Officer serving at the S-2 level, step 11, in the Department of Security and Safety (DSS) in New York]^[2] commenced employment with the Organization on 12 July 2004 and has had no breaks in service. His unrebutted testimony is that whilst serving at the S-2 level, he performed a number of S-3 level SSO (Senior Security Officer) duties working as a Desk Officer, UMOJA Time Administrator, “CC Officer SOC-CCTV Operator” (an unknown abbreviation), and Firearms Armorer.

... On 1 October 2007, following a competitive recruitment exercise, by letter from the then Executive Officer of DSS, the Applicant was placed on a roster for S-3 level SSO positions for one year expiring on 1 October 2008.

The 2008 roster recruitment

... In 2008, there was another recruitment exercise for the S-3 SSO position, which resulted in additional rostered candidates (“2008 roster”). The Applicant contends, and which has not been disputed, that the 2008 roster exercise did not include competency-based interviews or a central review body clearance.

The 2011 roster recruitment

... In 2011, another recruitment exercise took place, 37 officers were promoted and eight candidates were rostered (“2011 roster”).

Job opening #42689

... On 18 June 2015, the Chief of DSS sent daily orders to DSS staff members, including the Applicant, announcing job opening (“JO”) #15-SEC-DSS-42689-R-NEW YORK (R) (“JO #42689”) for eight S-3 level SSO positions published on Inspira (the United Nations online jobsite) with the expiry date of 18 July 2015. The announcement further stated (emphasis added):

¹ Impugned Judgment, paras. 28-41, 9, 18 and 19.

^[2] *Ibid.*, para. 1.

[...] the intention is to fill these eight posts from the 2011 roster which is the valid current roster for S-3, as per [Office of Human Resources Management (“OHRM”)]. All rostered candidates who are still interested in being considered for the higher level position are required to apply. Only the rostered candidates who have applied for the advertised position will be considered.

... There are at least another nine (9) posts to be filled through the “normal process” (i.e., written technical assessments, interviews) and will be posted shortly. The decision to publish two JOs was made in order to make the process more efficient considering the level of operational activities in the coming months.

... The vacancy announcement for JO #42689 was published on Inspira on 18 June 2015 for one month.

... According to the [Management Evaluation Unit (MEU)] response, after JO #42689 was advertised, a number of additional staff members, who were rostered in the previous online jobsite, Galaxy, prior to 2010, received notifications from the OHRM that their roster membership was still valid. The DSS requested the OHRM to clarify the issue of legacy rosters and indefinite roster membership. On 23 July 2015, the OHRM replied to the DSS advising that:

[...] the S-3 selection[s] were made on 3 September 2008. Based on the existing ST/AI on Staff Selection (ST/AI/2006/Rev.1- 9.3) their roster memberships were valid for one or three years [...] Roster membership became indefinite as of 1 July 2009, when the S-3 of the 2008 exercise were still rostered. Hence, since they had a valid roster status as 1 July 2009, they were granted indefinite roster membership.

... Following the above clarification and advice from OHRM, JO#42689 for the eight posts was cancelled.

The contested recruitment: Job Opening #52215

... On 24 December 2015, a new JO (#52215) was issued on Inspira announcing the recruitment for twenty S-3 level SSO positions. Daily orders to the DSS staff dated the same day encouraged both rostered and unrostered candidates to apply. The Applicant applied.

... On 1 March 2016, the Chief of DSS released the names of the 20 officers selected to the S-3 level SSO posts for JO#52215. The Applicant was not selected. No full competitive recruitment exercise took place as recruitment of all 20 posts was from the roster.

... On 27 April 2016, the Applicant filed a request for a management evaluation challenging the decision to exclude him from the recruitment exercise. The Applicant primarily argued that, by conducting a roster recruitment for twenty posts to include

candidates who were no longer on a valid roster, the Organization violated his right to full and fair consideration.

... [On 24 August 2016, the Applicant (...) filed an application [with the Dispute Tribunal] contesting his “[e]xclusion from [a] recruitment procedure for S-3 Senior Security Officers on job opening [“JO”] #52215”, published on 24 December 2015. (...)]

... (...) The application was transmitted by the [Dispute] Tribunal on the same day to the Respondent, who was instructed to file the reply by 23 September 2016.[³]

(...)

... Subsequent to the Applicant’s 24 August 2016 filing of the (...) application [[before the UNDT], one week prior to the expiry of the deadline for the filing of the reply, and whilst the application was [still] pending (...)]⁴, the [Under-Secretary-General, Department for Management (USG/DM)] by letter dated 16 September 2016, informed the Applicant that he had accepted the conclusion of the MEU. The MEU agreed that the roster membership of twelve of the twenty candidates was invalid, concluding as follows (emphasis added):

The MEU noted that there were only twenty candidates in total released by OHRM from the roster for consideration (and, ultimately, selection) for twenty S-3 posts. *The roster membership of eight of those candidates is not in doubt. Therefore, if in fact the remaining twelve candidates were not actually on the roster at that time, the Administration would indeed have had to conduct a selection exercise that would have included non-rostered candidates such as yourself.* The MEU examined the legal framework to assess your contention that the roster membership for twelve of the twenty candidates was invalid. ...

[...] *the MEU concluded that the roster membership of those candidates from the 2008 roster had lapsed, and thus [they] were not eligible for recruitment from roster. [...] the consequence of filling the S-3 SSO posts with candidates from [the] 2008 lapsed roster resulted in denying you [the Applicant] the opportunity to go through a competitive selection exercise.*

... The USG/DM further informed the Applicant that the Secretary-General accepted the recommendation of the MEU and agreed to compensate the Applicant USD 833.45. Having concluded that the OHRM incorrectly instructed the DSS to include the twelve additional candidates from the 2008 roster, the MEU turned to assess compensation as follows (emphasis added):

[³] *Ibid.*, paras. 1 and 7.

[⁴] *Ibid.*, para. 8.

In determining the amount of compensation, the MEU was guided by the nature of irregularities in the selection process and the likelihood that you would have been selected for the post had these irregularities not been committed. See *Solanki* 2010-UNAT-044; *Mezoui* 2012-UNAT-220; *Appleton* 2013-UNAT-347. The MEU further considered that the compensation should correspond to the material injury that you suffered as a result of the irregularity in the process. *This injury corresponds to the difference in salary between S-3 and S-2 level from the date on which other candidates were promoted to S-3 post and until you are promoted to S-3 post, but in any event the duration of damages awarded should be limited to two years (Hastings, 2011-UNAT-109)*. Such damages should also be adjusted in accordance with your chances of success in being selected (Emphasis added).

[...] OHRM released 105 applications of candidates to be considered for 20 available posts. Eight candidates were rostered in 2011 and the validity of their roster membership is not in doubt. Accordingly, the MEU concluded that had the 2008 roster membership not have been taken into account 12 posts would have been available for 97 candidates. Thus, your chances of being selected for the post were 12 out [of] 97, namely 12.3 percent.

While implementing the said formula, the MEU noted that the annual salary of S-2 Security Officer at step 11 (your step in grade) equals USD 63,745. Had you been promoted, in accordance with Staff Rule 3.4, you would have been promoted to S-3, step 9 and your salary would have equalled USD 67,133. The difference between your S-2 and S-3 annual salary would have been USD 3,388. Since DSS standard contracts are issued for two years, we multiplied USD 3,388 by two which equalled USD 6,776. As your chances of being successful in the selection exercise were 12.3%, we multiplied USD 6,776 by 12.3% and concluded that your overall compensation should be USD 833.45.

... Regarding the Applicant's request for compensation for the loss of opportunity to be considered for a continuing appointment, the USG/DM indicated in his letter that the MEU concluded as follows:

[...] As the recruitment of security officers at the S-2 level is not vetted by the Central Review Board, they are not eligible to be considered for a continuing appointment.

Accordingly, if, *arguendo*, you were selected for a[n] S-3 post at [...] namely [in] April 2016, you would still not be eligible for

consideration for continuing appointment until at least April 2021. [...] the conversion for continuing appointment is not automatic and is contingent on the continuing operational needs of the Organization. [...] you would also have to satisfy a myriad of other criteria, such as receiving at least “meets expectations” in the four of the most recent performance appraisals before conversion; to have at least seven years of service remaining before retirement; not have been subject to any disciplinary measure in the five years prior to consideration; and continuity of service must not be broken until 2021. Given the myriad conditions that you will require to meet by the time the conversion exercise takes place, the MEU considered that your prospects for conversion at this stage are purely theoretical and are thus not quantifiable. Accordingly, [...] you are not entitled to any compensation for the alleged loss of opportunity to be considered for conversion to a continuing appointment.

...

... On 23 September 2016, the Respondent filed his reply [to the application before the UNDT], incorporating the position set out in the aforesaid letter, stating that the USG/DM “accepted the Applicant’s claim, and authorized the payment in the amount of USD 833.45 for his non-selection”.

...

... On 28 February 2017, the parties attended a [Case Management Discussion (CMD)], whereat it was agreed that the only remaining issue in dispute involved relief, notably the quantum of damages. The Respondent informed the [Dispute] Tribunal that the Administration had, on 10 November 2016, via payroll, deposited USD 833.45 directly into the Applicant’s bank account, the [Dispute] Tribunal having received no prior notification of this payment during the pending proceedings.

... Neither the [Dispute] Tribunal nor the Applicant appeared to have received any formal notification of such payment and, on the same day, following the CMD, the Respondent submitted a copy of the payroll document reflecting the payment. The [Dispute] Tribunal note[d] that this payment was made unilaterally whilst proceedings were pending before the [Dispute] Tribunal, and that it is not contended that this unilateral deposit of USD 833.45 into the Applicant’s account constitutes an acceptance, or full and final settlement by the Applicant, nor a waiver of his rights.

3. The UNDT rendered its Judgment on 25 August 2017 finding that the Secretary-General had correctly conceded that the contested recruitment exercise was “unlawful from the outset”⁵ in violation of Mr. Nikolarakis’ “right to full and fair consideration”.⁶ The UNDT noted that pursuant to Article 10(5)(a) of the UNDT Statute, the Secretary-General could elect between either implementing an order of rescission of the contested decision or paying in-lieu compensation. However, it found that the Secretary-General’s method of calculating such compensation—namely based on the difference in salary between Mr. Nikolarakis’ current position and the contested position over a two-year period, multiplied by his loss of chance to compete against a total of 97 candidates for twelve positions (12.3 per cent)—was “fundamentally flawed”.⁷ The Dispute Tribunal disagreed with the Secretary-General’s assertion that he had correctly based his calculation on the two-year maximum articulated by the Appeals Tribunal in *Hastings*.⁸ According to the UNDT, “the two-year yardstick is not a hard and fast rule” and even if the formula were to apply, there would be a “compelling’ case” for awarding higher compensation as one of the Secretary-General’s “princip[al] factors (...) upon which the (...) calculation was predicated upon”, namely that another S-3 selection exercise would take place within the first quarter of 2017, had turned out to be “unreliable” and Mr. Nikolarakis’ “prospects for promotion appear bleak, at least for the next few years, the last such recruitment exercise having taken place way back in 2011”.⁹

4. Further, the UNDT considered that the method of calculation employed by the Secretary-General based on the number of competing candidates was “unrealistic and unreliable” as the other candidates were “not co-complainants, not applicants in a class action, and not short-listed candidates” and because “there is no information whether these candidates were external, met the minimum requirements or were at all eligible, had relevant experience or the requisite skill sets, or were short-listed”.¹⁰ In light of such “imponderables”, the UNDT found that it was necessary to assess Mr. Nikolarakis’ chances of success “in the round”.¹¹ Damages for loss of opportunity should be determined by a fair, equitable and objective measure of a candidate’s loss. The UNDT considered that Mr. Nikolarakis was the candidate “with the greatest

⁵ *Ibid.*, para. 44.

⁶ *Ibid.*, para. 49.

⁷ *Ibid.*, para. 61.

⁸ *Ibid.*, para. 58, referring to *Hastings v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-109, para. 18.

⁹ *Ibid.*, paras. 58-59.

¹⁰ *Ibid.*, para. 61.

¹¹ *Ibid.*, para. 63.

seniority and more relevant experience”¹² than any other internal candidate and that it was “more probable than not that he would have been selected as he is long serving, a strong candidate with a good record of service, and has been recommended for promotion by his reporting officers” and he had scored only slightly below the required score to be successful in a 2011 recruitment exercise.¹³

5. In light of the foregoing, the UNDT ordered rescission of the “decision to exclude [Mr. Nikolarakis] from the recruitment exercise” and in-lieu compensation in the sum of USD 20,000.¹⁴ In addition, the UNDT ordered payment of USD 5,000 “for loss of opportunity for career advancement and for loss of job security”,¹⁵ considering, in particular, that Mr. Nikolarakis would have no possibility to compete for an S-3 level post for some time and that he had lost an opportunity to become eligible for a continuing appointment as such conversion requires staff members to have been vetted by a Central Review Board which is only done starting from the S-3 level. The amount of USD 833.45 already paid to Mr. Nikolarakis was to be deducted from the compensation awarded by the UNDT.

6. On 22 September 2017, the Secretary-General filed an application for revision of judgment requesting the UNDT to take note of a new DSS JO issued in April 2017 for thirteen S-3 vacancies for which Mr. Nikolarakis was invited to interview. The application for revision before the UNDT is still pending.

Submissions

The Secretary-General’s Appeal

7. The Secretary-General argues that the UNDT erred in finding that the rule for a two-year maximum duration for calculation of compensation did not apply in the instant case. The UNDT incorrectly rejected the Secretary-General’s use of a two-year period to calculate the difference between the S-2 and S-3 level annual salaries, which was based on the fact that DSS appointments generally last two years. According to the Appeals Tribunal’s jurisprudence, the duration used in such calculations should generally be no more than two years except in “compelling cases”, as reflected in Article 10(5)(b) of the UNDT Statute.

¹² *Ibid.*, para. 66.

¹³ *Ibid.*, para. 67.

¹⁴ *Ibid.*, para. 75.

¹⁵ *Ibid.*

8. In particular, the UNDT erred in finding that the calculation had been principally based on the assumption that another DSS selection exercise would take place soon, which turned out not to be the case. If that had been a principal factor, the duration may have been factored in at one year, rather than two since DSS was planning to hold another S-3 selection exercise about one year from the date of the contested decision. The UNDT further erred in finding that there were unusual circumstances taking the case out of the normal two-year limitation. Particularly, contrary to the UNDT's finding, the fact that the next S-3 selection exercise was delayed did not create such exceptional circumstances as it did not affect Mr. Nikolarakis' chances of being selected in the contested exercise. The UNDT exceeded its jurisdiction in even speculatively opining when the next selection exercise might occur.

9. In effect, the UNDT awarded compensation on the assumption that Mr. Nikolarakis had a 100 per cent chance of being selected and that the next DSS S-3 selection exercise would not take place earlier than seven years from the last exercise held in 2015, which is not supported by the evidence and manifestly unreasonable. Even if the Appeals Tribunal finds that the applied calculation method was improper, the damages should not exceed the amount Mr. Nikolarakis would have received had he actually been selected which is the difference in salary to a normal two-year DSS S-3 appointment, namely USD 6,776. To hold otherwise would effectively amount to punitive damages prohibited under Article 10(7) of the UNDT Statute.

10. The Secretary-General further contends that the UNDT erred in dismissing the other 96 candidates' chances of selection. Particularly, the UNDT committed an error in procedure affecting the decision in the case when it assessed the compensation amount "in the round" due to uncertainty about the other candidates' qualifications instead of requiring the Administration to provide additional documentary evidence or hearing witnesses on that issue. The UNDT also overstated Mr. Nikolarakis' chances of selection. Having decided that it lacked relevant information regarding the other candidates' professional backgrounds, the UNDT nevertheless drew favourable conclusions about Mr. Nikolarakis as compared to those other candidates, e.g. by considering him "a strong candidate" with "the greatest seniority", which are necessarily relative assessments. This created an appearance of bias in the Judgment. By favouring Mr. Nikolarakis' candidacy, the UNDT also improperly assumed functions reserved to the Secretary-General who has the responsibility for staff selection and promotion.

11. Further, the Secretary-General submits that the UNDT erred in awarding compensation for loss of opportunity for career advancement and for loss of job security. The UNDT made a duplicative award by ordering payment of USD 5,000 in addition to the in-lieu compensation of USD 20,000 which already took into account the impact on Mr. Nikolarakis' career opportunities and already served to put him in the position he would be in had the selection exercise been properly conducted. Moreover, the UNDT based its award on the groundless assumption that another S-3 selection exercise would not take place for several years. The additional ground that Mr. Nikolarakis could not be considered for conversion to a continuing appointment was too speculative as he would not be eligible for such a conversion until April 2021 and it was contingent on several factors including the operational needs of the Organization.

12. In light of the foregoing, the Secretary-General requests that the Appeals Tribunal vacate the UNDT Judgment, save for the finding that the claim for moral damages was not sustainable.

Mr. Nikolarakis' Answer

13. Mr. Nikolarakis submits that the "percentage formula" as applied by the Secretary-General is not an appropriate method for calculating loss of opportunity compensation in this case. In contravention of the Appeals Tribunal's jurisprudence, this formula treats the calculation of loss of opportunity as purely mathematical. The only cases in which the Appeals Tribunal has applied this calculation method concerned situations where the pool of candidates was relatively small or had been reduced through excluding weaker candidates. In the present case, the UNDT was correct in rejecting the application of the percentage formula as it treats as undistinguishable the quality of a large group of candidates without any preselection and therefore leads to enhanced speculation and inexactitude. The Appeals Tribunal's holding in *Hastings*,¹⁶ which considered the mathematical approach as being too speculative when it provides a percentage below ten per cent, is applicable in this case as the Secretary-General's calculation at 12.3 per cent is inflated by the fact that there were twelve available posts. In fact, Mr. Nikolarakis' chances of being selected were calculated at being one per cent against each post.

14. Mr. Nikolarakis further contends that the UNDT adopted an appropriate principled approach to establishing loss of opportunity damages which, in accordance with the Appeals Tribunal's jurisprudence, considered the nature of the irregularity and other elements

¹⁶ *Hastings v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-109, paras. 2 and 18.

that went to an equitable, objective measure of Mr. Nikolarakis' loss. The UNDT correctly assessed that since the irregularity in this case resulted in the loss of opportunity of recruitment for twelve posts rather than a single one and for promotion rather than lateral transfer, it was more serious than in other cases in which the Appeals Tribunal had upheld far higher compensation amounts than that offered by the Secretary-General. Further, in considering elements relevant to assessing the strength of Mr. Nikolarakis' candidacy, the UNDT did not step into the decision-maker's shoes.

15. Furthermore, Mr. Nikolarakis claims that the compensation awarded does not contravene the two-year maximum as contained in Article 10(5)(b) of the UNDT Statute. The Secretary-General mischaracterizes the UNDT's rejection of the percentage formula as being a separate rejection of the use of a two-year salary differential. In actuality, there is no holding to the effect that the two-year maximum duration for calculation of compensation does not apply. The award does not contravene Article 10(5)(b) of the UNDT Statute as this provision contains a maximum for overall damages awarded and does not provide that all compensation must be calculated by reference to that rule. As he was not awarded damages at a higher level than the two-year limit—USD 20,000 representing between 3.5 and 4 months' net base salary—no exceptional circumstances were required to justify the award.

16. In addition, the fact that the anticipated further recruitment process in 2017 proved unreliable was not the sole basis for not applying the percentage formula. Moreover, the Secretary-General's assertion that compensation may not exceed the amount that would have been secured in case of selection is unsupported by any jurisprudence and fails to recognize the Appeals Tribunal's awards of significant damages in cases where selection would only have resulted in lateral transfer and no salary increase.

17. Mr. Nikolarakis further contends that the UNDT was correct in not calculating compensation by reference to the number of candidates in the process. Seeking additional information about other candidates, as suggested by the Secretary-General, would not have assisted the UNDT since the recruitment process was at an early stage without any preselection which rendered treating all candidates as equal speculative. The Appeals Tribunal's jurisprudence specifically directs that the chances of promotion should be assessed in addition to the nature of the irregularity and there was uncontested evidence indicating, without conducting a comparative review, that Mr. Nikolarakis was a strong candidate.

18. Finally, Mr. Nikolarakis argues that the award of compensation for impact on career development and job security should not be disturbed. The UNDT correctly drew a distinction between loss of opportunity compensation and compensation for damage to career progression which is measured not only based on the financial impact but in terms of “development of career, opportunity to advance and take on new roles and responsibilities”. Mr. Nikolarakis’ career progression was significantly impacted when the Administration filled twelve positions from an unlawful roster as opportunities for promotion are finite. In addition, if recruited to a S-3 post, he would be eligible for consideration for continuous appointment under Section 2.1 of Secretary-General’s bulletin ST/SGB/2011/9 (Continuing appointments) as such recruitment would fulfill the gateway requirement of selection for a position subject to review by a Secretariat review body.

19. In view of the foregoing, he requests that the Appeals Tribunal dismiss the appeal.

Considerations

20. The Secretary-General has acknowledged liability for the irregularities in the contested selection process. His appeal challenges the quantum of damages awarded by the UNDT.

21. As already recited above, the Secretary-General paid Mr. Nikolarakis compensation in the sum of USD 833.45. However, the UNDT took the view that there was a “‘compelling’ case”¹⁷ for awarding higher compensation on the basis that the Secretary-General’s calculation of compensation was wrongly based on the probability that another S-3 selection exercise would take place within the first quarter of 2017, whereas his “prospects for promotion appear bleak, at least for the next few years, the last such recruitment exercise having taken place way back in 2011”.¹⁸

22. Consequently, in its Judgment issued on 25 August 2017, the UNDT ordered rescission of the contested administrative decision and in-lieu compensation of USD 20,000, plus USD 5,000 for loss of opportunity for career advancement and for loss of job security.

23. One of the main factors in the UNDT’s assessment of compensation was its assumption that Mr. Nikolarakis had been deprived of an opportunity to compete for an S-3 level appointment for a significant period of time.

¹⁷ Impugned Judgment, para. 58.

¹⁸ *Ibid.*, para. 59.

24. In regard to that particular question, on 22 September 2017, the Secretary-General filed an application for revision of judgment, requesting the UNDT to take note of the new DSS JO that was issued in April 2017 for thirteen S-3 level vacancies, for which Mr. Nikolarakis was invited to interview.

25. The present appeal was filed on 24 October 2017, which was the deadline for filing the appeal, since the UNDT Judgment was issued on 25 August 2017. The filing of the appeal has prevented the UNDT from proceeding with the hearing of the application for revision. This is because, pursuant to Article 12(1) of the UNDT Statute, an application for revision must relate to an executable judgment, whereas, under Article 7(5) of the Appeals Tribunal Statute, the filing of the appeal has the effect of suspending the execution of the judgment. Consequently, the application for revision of judgment is still pending before the UNDT.

26. Article 12(1) of the UNDT Statute provides:

Either party may apply to the Dispute Tribunal for a revision of an executable judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Dispute Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

27. Article 7(5) of the Appeals Tribunal Statute states: “The filing of appeals shall have the effect of suspending the execution of the judgement or order contested.”

28. In our view, the application for revision that is currently pending before the Dispute Tribunal concerns a new consideration which could be relevant to the issue of the quantum of compensation. The outcome of the application for revision, whatever it may be, is likely to impact on the appeal before us. Therefore, we are of the view that to proceed with the appeal without giving the UNDT an opportunity to hear and pass judgment on the application for revision would neither be appropriate for the fair and expeditious disposal of the case nor to do justice to the parties.

29. In the circumstances, it is appropriate to remand the case.

Judgment

30. The case is remanded to the UNDT to complete its hearing of the application for revision of judgment.

Original and Authoritative Version: English

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

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Halfeld

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

(Signed)

Weicheng Lin, Registrar