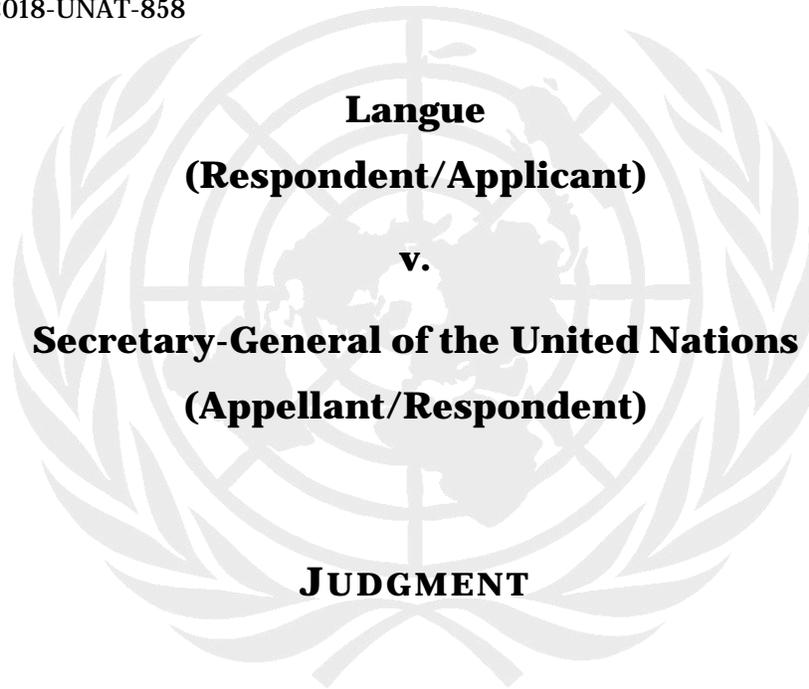




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2018-UNAT-858



**Langue
(Respondent/Applicant)**

v.

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

JUDGMENT

Before:	Judge Deborah Thomas-Felix, Presiding Judge John Murphy Judge Sabine Knierim
Case No.:	2018-1151
Date:	29 June 2018
Registrar:	Weicheng Lin

Counsel for Ms. Langue:	Sètondji Roland Adjovi
Counsel for Secretary-General:	Nathalie Defrasne

JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2017/092, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 13 December 2017, in the case of *Langue v. Secretary-General of the United Nations*. The Secretary-General filed the appeal on 12 February 2018, and Ms. Gisèle Langue filed her answer on 30 May 2018.

Facts and Procedure

2. The following facts are uncontested:¹

... The Applicant joined [the United Nations Children's Fund (UNICEF)] on 1 September 1999 on a fixed-term appointment. On 18 April 2012, she was granted a permanent appointment effective 30 June 2009. She was a Communication Specialist at the rank of P-3 Step 13 when she separated from UNICEF on 19 October 2014.

... In July 2013, the Applicant was granted special leave without pay (SLWOP) in order to undertake an advanced degree programme. She did not retain a lien against her post while on SLWOP. The Applicant explained that she had been aware of the associated employment risk, she nevertheless had had no intent to remain or return to UNICEF Benin because of the intolerable working environment, where 7 out of 10 staff members had resigned and the Applicant had filed a complaint for abuse of authority against the Country Representative which had eventually been settled within the Country Office.

... Once the training completed, the Applicant sought an extension of her SLWOP for another year in order to take another professional course and continue looking for positions matching her qualification and experience. She sought advice from UNICEF's Human Resources Division, applied for several positions within the Organization as early as January 2014 but was never shortlisted for any. Mainly, she applied for several positions at the P-4 and P-5 level. In October 2014, the Applicant got an opportunity for a job with Oxfam. She wrote to the Human Resources Department to seek approval to take up the position while on SLWOP but this was denied. She accepted the offer from Oxfam on 20 October 2014.

... The Applicant sent her resignation by email on 28 October 2014 directed, among others, to the UNICEF Representative in Benin, the UNICEF Director of Human Resources and two other human resources officers. In December 2014, the Applicant inquired about the status of her separation entitlements and was asked by Christine Dolo, UNICEF Operations Manager in Cotonou, Benin, to reissue the letter

¹ Impugned Judgment, paras. 6-16 (footnotes omitted).

of resignation so that the paperwork could be done internally because nobody could trace the initial resignation.

... On 24 December 2014, the Applicant reissued her resignation letter and sent it, on 26 December 2014, to Christopher Watson, Human Resources (HR) at UNICEF headquarters with a copy to Ms. Dolo. Her resignation was accepted on 13 January [2015] with an effective date of 19 October 2014.

... On 29 January 2015, the Applicant received an email informing her of her separation entitlements which covered travel (Cotonou – Yaoundé) with excess baggage; unaccompanied shipment; shipment insurance or equivalent in cash; repatriation grant; pension; travel lump sum option for her and one child; and accrued annual leave.

... Between February and April 2015, the Applicant corresponded with UNICEF on the matter of her separation entitlements and the necessary paperwork.

a. On 9 February 2015, she sent several documents to support her separation process[,] namely: a lump sum request for travel and shipment; a payroll clearance action form; the United Nations pension fund form; the status report and request for payment of dependency benefits; and the exit questionnaire.

b. On 17 February 2015, the Applicant transmitted a proof of residence document. Mr. Watson responded to the Applicant on the same day informing her that the proof of residency needed to be sent to New York.

c. On 27 February 2015, the Applicant was informed that she had failed to sign the documents. She transmitted the signed documents on 2 March 2015 indicating in her communication that she had made a mistake by failing to sign the said documents.

d. On 6 March 2015, UNICEF HR informed the Applicant that they had received her proof of residency but section one of the document required the UNICEF Representative's signature and that the form could not be processed until this happened.

e. On 11 March 2015, the Applicant informed UNICEF HR that she had sent all the requested originals using express delivery mail.

f. On 31 March 2015, the Applicant wrote to Mr. Watson querying the separation process. She indicated that she had done all the paperwork and requested further guidance.

g. On 1 April 2015, the Applicant wrote to the UNICEF Deputy Director, Division of Human Resources Management (DHRM) requesting her assistance with the separation process. The Deputy Director/DHRM

responded to the Applicant on 27 April 2015 and asked her UNICEF HR colleagues to provide an update and clarification to the Applicant.

h. On 28 April 2015, Maria Bergeron, UNICEF HR, informed the Applicant that they had been working on her separation case since December 2014 and that she would be paid for her annual leave balance and repatriation grant in two to three days.

i. On 5 May 2015, the Applicant received payments on account of unused leave and repatriation grant, from which a lion's share of USD 19,539 was deducted for [the United Nations Federal Credit Union (UNFCU)], thus leaving USD 4,961.66, and on 11 May 2015 she received USD 718.90 as equivalent of repatriation travel.

... On 20 May, 28 July and 18 August 2015, the Applicant wrote to UNICEF HR officials, including the UNICEF Director, Human Resources and the Ethics Office, for clarification regarding her separation entitlements. She queried specifically about the lump-sum owed to her. On 20 August 2015, after the Applicant informed about engaging the formal justice mechanisms, the Director Human Resources informed that a travel lump sum of USD 718.79 had been paid by the Benin Country Office and transferred to her account.

... On 14 September 2015, the Applicant again sought guidance about her entitlements, and asked about the nature of payments that she had received. She also queried about termination indemnity. On 16 September 2015, she received a response acknowledging an oversight regarding the sum to be paid, namely, failure to pay her lump sum *en lieu* of unaccompanied shipment in the amount of USD 15,000, due to an oversight by the Finance Unit. That email informed that the lump-sum of USD 15,000 had been paid into her bank account.

... By email dated 25 October 2015, the Applicant sought management evaluation of the decision to not pay her termination indemnity and compensation for delay in other payments.

... In the management evaluation response dated 9 December 2015, the non-payment of the indemnity was upheld and the claim for payment for delay was rejected.

3. On 8 March 2016, Ms. Langue filed an application with the UNDT, contesting the amount of separation entitlements she received following her resignation from the Organization. The Secretary-General filed a reply on 30 March 2016. In his reply, he apologized for the oversight and delay in processing Ms. Langue's unaccompanied shipment allowance and conceded to pay Ms. Langue interest at the United States prime rate then in effect on the amount from the date it should have been processed in May 2015 until the actual date of payment in September 2015.

The Secretary-General also agreed to pay, “as a gesture of goodwill”², such interest for the period from 29 January 2015 to the date of each payment in respect of each separation entitlement and interest upon that interest from the date it was owed until the date of the UNDT hearing on 31 October 2017. The UNDT held a hearing on the merits on 31 October 2017 during which it received oral evidence from Ms. Langué.

4. The UNDT rendered its Judgment on 13 December 2017, partially granting Ms. Langué’s application. The UNDT rejected Ms. Langué’s challenge of the denial to grant her a termination indemnity finding that, pursuant to Staff Regulation 9.3(c), read in conjunction with Staff Rule 9.6(b), termination indemnities may only be paid to staff members whose contracts have been terminated by the Secretary-General but not to those who have resigned and that the Administration had no obligation to offer termination instead of resignation so as to allow long-serving staff members to obtain a termination indemnity. The UNDT found, however, that the UNICEF Administration had failed to fulfil its duty of timely payment of the lump sum in lieu of accompanied shipment which took four months longer than it would have taken had normal workflows been respected.

5. As regards remedies, the UNDT denied Ms. Langué’s plea for pecuniary damages finding that the material damage she had suffered had been fully compensated by the Secretary-General’s concession to pay interest for the period of undue delay. With respect to moral injury, the UNDT considered that the “lengthy and undu[e]”³ delay in payment which occurred “in the context of a relative vulnerability on her part”⁴ given Ms. Langué’s financial strain and the treatment she received from the Administration when she followed up on her claims caused her “frustration, helplessness and indignity”.⁵ Referring to the Appeals Tribunal Judgment in *Kallon*,⁶ the UNDT considered that the circumstances “demonstrate a pattern of neglect and a breach of contractual rights of a fundamental nature”.⁷ It found that Ms. Langué’s testimony and correspondence with UNICEF showed, “in light of common experience and common sense that a moral injury has been sufficiently proven”.⁸ On that basis, the UNDT ordered an award of compensation in the amount of USD 1,500.

² *Ibid.*, para. 37.

³ *Ibid.*, para. 63.

⁴ *Ibid.*, para. 64.

⁵ *Ibid.*, para. 65.

⁶ *Kallon v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742.

⁷ Impugned Judgment, para. 65.

⁸ *Ibid.*

6. On 12 February 2018, the Secretary-General filed the appeal against the UNDT Judgment. By Order No. 321 (2018), the Appeals Tribunal granted Ms. Langué's motion for waiver of the time limit to file an answer. She filed her answer on 30 May 2018.

Submissions

The Secretary-General's Appeal

7. The Secretary-General submits that the UNDT erred on a question of law in its award of compensation for moral damages without corroboration of Ms. Langué's testimony.

8. The UNDT failed to take into consideration the holding of the majority of the Appeals Tribunal Judges in the case of *Kallon*,⁹ as confirmed by later jurisprudence, that the testimony of an applicant alone without corroboration by independent evidence affirming that moral harm had indeed occurred is not satisfactory proof for an award of damages.

9. The Secretary-General asserts that in the present case, the UNDT relied on Ms. Langué's testimony without independent evidence. The UNDT noted that during her testimony, Ms. Langué had stated that she had been under a financial strain which had caused her anguish, and the UNDT referred to the e-mails sent by Ms. Langué to UNICEF at the time of the events. In the Secretary-General's view, this correspondence is not independent corroborating evidence as it still emanates from Ms. Langué and not from an independent source and thus does not constitute appropriate evidence of harm in accordance with the requirements set out in Article 10(5)(b) of the UNDT Statute.

10. In light of the foregoing, the Secretary-General requests that the Appeals Tribunal vacate the award of moral damages in the amount of USD 1,500.

Ms. Langué's Answer

11. Ms. Langué submits that the Secretary-General's argument regarding the alleged lack of corroboration of her testimony is misleading. In fact, the UNDT drew its conclusion of undue delay warranting compensation from the totality of the circumstances of the case. It detailed the variety of corroborated evidence and took into consideration her various unsuccessful attempts to follow up with the Administration. Moreover, it was established that Ms. Langué could not pay

⁹ *Kallon v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742.

back certain loans to the bank until she received the outstanding payment and thus was morally affected by the Administration's negligence.

12. Furthermore, Ms. Langué argues that the appeal is unfair and amounts to an abuse of process. The Appeals Tribunal should duly sanction such frivolous application, considering in particular that the UNDT Judgment was measured in that it had only partially granted Ms. Langué's application and had awarded only limited compensation for moral damages.

13. Based on the foregoing, Ms. Langué requests that the Appeals Tribunal dismiss the appeal, affirm the impugned Judgment and "order the payment as per the UNDT Judgment with the appropriate interest rate".

Considerations

14. The sole issue to be determined by the Appeals Tribunal is whether the UNDT erred in law when it made an award of compensation for what is described as "[Ms. Langué's] moral injury"¹⁰ without the support of evidence.

15. In 2014, Article 10(5) of the UNDT Statute was amended by General Assembly resolution 69/203. Article 10(5) now provides, in relevant part, that the Dispute Tribunal may award compensation for harm if such harm is "supported by evidence". This is the current law on compensation for harm and it is the law which the UNDT must apply when it is contemplating such a finding.

16. The UNDT referred to the Appeals Tribunal reasoning in *Kallon*¹¹ to support its decision to award compensation for Ms. Langué's "moral injury"¹² and stated that the circumstances in Ms. Langué's case "demonstrate a pattern of neglect and a breach of contractual rights of a fundamental nature, and were such that normally cause distress exceeding the level of vexation and amounting to frustration, helplessness and indignity".¹³ The UNDT also found that Ms. Langué's testimony and correspondence with UNICEF showed "that a moral injury (...) ha[d]

¹⁰ Impugned Judgment, para. 66.

¹¹ *Kallon v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742.

¹² Impugned Judgment, para. 66.

¹³ *Ibid.*, para. 65.

been sufficiently proven”.¹⁴ As a result, the UNDT ordered an award of compensation in the amount of USD 1,500.

17. The UNDT, in applying the reasoning enunciated in *Kallon*, failed to take into consideration the majority decision in that case on the issue of compensation for harm. The law on compensation for harm, as decided by the majority in *Kallon*, a decision which is binding on the UNDT, is that “a staff member’s testimony alone is not sufficient to present evidence supporting harm under Article (...)10(5)(b) of the UNDT Statute”.¹⁵ Therefore, the testimony of an applicant in such circumstances needs the corroboration of independent evidence to support the contention that harm has occurred.

18. In other words, “evidence of moral injury consisting exclusively of the testimony of the complainant is not sufficient without corroboration by independent evidence (expert or otherwise) affirming that non-pecuniary harm has indeed occurred”.¹⁶

19. Apart from the testimony of Ms. Langue, during which she produced e-mails as evidence, there is not sufficient proof before the Appeals Tribunal to suggest that there was supporting evidence before the UNDT to justify its findings of “moral injury”.

20. It is the ruling of the Appeals Tribunal that the UNDT erred when it awarded compensation on a claim of “moral injury” without the support of evidence, apart from the testimony of Ms. Langue. This award is inconsistent with the ruling in *Kallon* and the applicable statutory provision; the award of USD 1,500 for “moral injury” is, therefore, vacated.

21. Ms. Langue’s submissions that the appeal is “unfair”, an “abuse of process and a frivolous application which the [Appeals] Tribunal should duly sanction” is without merit.

¹⁴ *Ibid.*

¹⁵ *Kallon v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742, concurring Opinion of Judge Knierim, para. 2.

¹⁶ *Ibid.*, para. 4.

Judgment

22. The appeal is upheld and Judgment No. UNDT/2017/092 is vacated as regards the award of compensation for moral harm.

Original and Authoritative Version: English

Dated this 29th day of June 2018 in New York, United States.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Murphy

(Signed)

Judge Knierim

Entered in the Register on this 10th day of August 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar