



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

Judgment No. 2021-UNAT-1122

**Yasmina Laasri
(Respondent/Appellant)**

v.

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

JUDGMENT

Before: Judge Martha Halfeld, Presiding
Judge Graeme Colgan
Judge Dimitrios Raikos

Case Nos.: 2020-1435 & 2020-1437

Date: 25 June 2021

Registrar: Weicheng Lin

Counsels for Respondent: Thad M. Guyer, Esq.
Alain G. Norman, Esq.
Samantha Feinstein, Esq.

Counsel for Secretary-General: André Luiz Pereira de Oliveira

JUDGE MARTHA HALFELD, PRESIDING.

1. Yasmina Laasri (Ms. Laasri), a former staff member who served as an Operations Manager, National Professional Officer, NO-C level, with the United Nations Children's Fund (UNICEF) in the Morocco Country Office, contested the Organization's decision to abolish her post and consequently not to renew her appointment beyond 31 May 2016.
2. The United Nations Dispute Tribunal (Dispute Tribunal or UNDT) found the contested decision unlawful, ordered its rescission, but did not order *in lieu* compensation in light of the fact that the Secretary-General had already offered such compensation to the staff member.¹ The UNDT also awarded compensation for moral damages in the amount of two months' net base salary.
3. Both Ms. Laasri and the Secretary-General appealed against the Judgment. For the reasons set out below, the United Nations Appeals Tribunal (Appeals Tribunal) affirms the UNDT Judgment.

Facts and Procedure

4. During an audit of the UNICEF Morocco Country Office that took place between August and September 2014, Ms. Laasri reported various forms of non-compliance with UNICEF regulations and other violations of internal controls.

First decision to abolish the incumbent's post

5. In October 2014, Ms. Laasri was informed of the decision to abolish her post effective 30 November 2014. This decision was allegedly based on the Programme Budget Review for the Rabat Office, which proposed the abolition of her post and the creation of an Operations Manager post at the P-3 level.

¹ *Laasri v. Secretary-General of the United Nations*, Judgment No. UNDT/2020/101 dated 29 June 2020 (Impugned Judgment).

6. On 7 November 2014, Ms. Laasri requested management evaluation of the decision, but the Administration later rescinded the decision because it had not been approved by the Deputy Executive Director, Management. Her request for management evaluation was thus found to be moot.

7. On 20 November 2014, Ms. Laasri filed a complaint with the Ethics Office, UNICEF, concerning retaliation. The Ethics Office found a *prima facie* case of retaliation and referred the case to the Office of Internal Audit and Investigation (OIAI), UNICEF. OIAI initiated an investigation to determine whether there was misconduct in the form of retaliation. However, due to insufficient evidence, no disciplinary measures ensued.

Second decision to abolish the incumbent's post

8. In December 2015, a review of the needs of the Morocco Country Office was conducted. A review panel was constituted to mitigate concerns about retaliation against Ms. Laasri. It comprised individuals with no connection to Ms. Laasri's initial complaint, the original abolition recommendation, or the Morocco Country Office. The panel concluded that the Morocco Country Office should replace the post encumbered by Ms. Laasri with a P-3 post.

9. On 1 March 2016, Ms. Laasri was informed of the decision to abolish her post effective 1 June 2016 (the Contested decision). She timeously requested management evaluation of this decision.

10. On 30 March 2016, Ms. Laasri filed a second complaint with the Ethics Office, UNICEF, concerning retaliation in relation to the most recent decision to abolish her post, but the Ethics Office did not find a *prima facie* case of retaliation.

11. By letter dated 6 April 2016, the Deputy Executive Director, Management, UNICEF, replied to Ms. Laasri's request for management evaluation. The Deputy Executive Director explained that legitimate reasons were found for the "internationalization" of Ms. Laasri's post, but she noted that the review panel did not address the fact that the generic job description for the P-3 post had not been changed from Ms. Laasri's original job description. Therefore, she found that the panel failed to address whether the incumbent might have been able to fulfil the requirements of the P-3 post. Consequently, Ms. Laasri was granted compensation in the amount of 12 months' net base salary for loss of chance of contract renewal.

12. On 31 May 2016, Ms. Laasri was separated from service.
13. On 5 July 2016, Ms. Laasri filed an application with the Dispute Tribunal, Nairobi Registry, challenging the Administration's decision to abolish her post and not to renew her contract beyond 31 May 2016.
14. On 19 March 2019, the case was transferred to the UNDT Geneva Registry. The UNDT conducted a Case Management Discussion (CMD) on 4 March 2020 with the participation of Ms. Laasri, her counsel and the counsel for UNICEF. During CMD, the tribunal informed the parties that since the Administration had recognized the unlawfulness of the Contested Decision and had already paid compensation in the amount of 12 months' net base salary, there was no need for a hearing and the case would be decided on the papers.
15. In her final submission to the UNDT on 20 May 2020, Ms. Laasri repeated her objection previously made at CMD regarding disposition of the case without an in-person, or remote, hearing where she could prove the elements of her case and the quantum of her damages. The Administration also filed its closing submission on 20 May 2020.

UNDT Judgment

16. On 29 June 2020, the UNDT issued its Judgment, finding that the Contested decision was unlawful. The tribunal did not hold a hearing on the merits and summarized the facts of the case, as accepted by the Administration. In arriving at its conclusion, the tribunal noted that the UNICEF Ethics Office did not find a *prima facie* case of retaliation with respect to the *Second decision to abolish the incumbent's post*. The tribunal accepted this UNICEF Ethics Office conclusion, despite Ms. Laasri's assertion that the *Second decision to abolish the incumbent's post* was also tainted by bias and ulterior motives.
17. The reason propounded by the UNDT in finding the Contested Decision unlawful was no more than the Administration had admitted that although there were legitimate reasons to abolish Ms. Laari's post, the decision to do so was based, in part, on flawed considerations.²

² Impugned Judgment, para. 25.

18. Having found the Contested Decision unlawful, the tribunal addressed the remedies sought by the staff member, to wit: reinstatement to her post, a request for compensation in the amount of two years of her net base salary, moral damages, together with costs and legal expenses.

19. The UNDT ordered rescission of the Contested Decision and set *in lieu* compensation equal to one year's net base salary pursuant to Article 10(5) of the Dispute Tribunal Statute (UNDT Statute). The UNDT reasoned that Ms. Laasri's lost the chance to have her appointment renewed for another year as a result of the Administration's failure to consider her for the internationalized P-3 post.³

20. However, because the Administration had already elected not to rescind the decision at the conclusion of the second management evaluation and provided one year's net base salary as compensation instead, the tribunal found no additional compensation was to be provided to the aggrieved staff member.

Moral damages

21. The UNDT granted Ms. Laasri compensation for moral damages in the amount of two months' net base salary. The tribunal had requested evidence from the staff member regarding her moral damages claim, and the latter submitted a medical certificate from her gynecological surgeon dated 23 March 2020 and an e-mail dated 27 August 2014, containing details of the impact on her health as a result of the challenges she was facing at work.

22. In accepting the 23 March 2020 medical certificate, the tribunal reasoned:⁴

While the medical certificate does not specifically refer to [Ms. Laasri's] situation in 2016, there is no doubt that her health condition was aggravated as of 2015 by the difficult situation that she was facing at work, and which she shared with her doctor as indicated in the medical certificate. However, the Tribunal is not persuaded of the relevance of the email dated 27 August 2014, since it is not a medical certificate but, rather, [Ms. Laasri's] own account of events.

³ Impugned Judgment, para. 37.

⁴ Impugned Judgment, para. 43 - 44.

... The Tribunal is of the view that moral damages must only be granted based on the evidence presented in the form of the medical certificate. Consequently, the Tribunal finds adequate and proportionate to the gravity of said impact to grant [Ms. Laasri] moral damages in the amount of two months' net base salary.

23. In addition, the tribunal also considered Ms. Laasri's claim for costs and legal fees, found there was no evidence of a manifest abuse of proceedings and accordingly rejected her request.

Procedure before the Appeals Tribunal

24. Both parties appealed against Judgment No. UNDT/2020/101. On 25 August 2020, the Secretary-General filed his appeal, and Ms. Laasri filed her answer on 26 October 2020. The appeal was registered with the Appeals Tribunal as Case No. 2020-1435.

25. On 27 August 2020, Ms. Laasri filed her own appeal, which the Secretary-General answered on 2 November 2020. This appeal was registered with the Appeals Tribunal as Case No. 2020-1437.

26. As the two appeals challenge the same UNDT Judgment, by Order No. 407 (2021), the Appeals Tribunal decided to consolidate them for all purposes.

Submissions

The Secretary-General's Appeal

27. The Secretary-General maintains that the UNDT erred in law in awarding Ms. Laasri compensation for moral damages. The Administration submits there was no evidence that the alleged harm suffered by the staff member was in any way connected to the 2016 Contested Decision and the tribunal's reliance on the medical certificate is misplaced. The Administration also argues that the harm described in the medical certificate occurred in 2015, which was a year before the 2016 Contested Decision. Although the 2015 health problems were caused by "other" issues at work, they were not directly related to the 1 June 2016 Contested Decision.

Ms. Laasri's Answer

28. Ms. Laasri distinguishes her case from *Harris*,⁵ *Rehman*,⁶ and *Ho*,⁷ relied upon by the Secretary-General and argues that her case is exceptional and warrants compensation for moral damages. She further argues that being denied a hearing, she was deprived of the opportunity, even electronically, to demonstrate the full scope of the harm and damages she suffered as well as establish the causal link between the administrative action and the harm she suffered

29. Ms. Laasri submits that she was entitled to moral damages for the ongoing harm done to her by the lengthy campaign (starting in 2014) to retaliate against her by eliminating her job, even if that tainted decision was not fully executed until 2016.

30. For Ms. Laasri, the Secretary-General's argument that the Independent Review Panel decision to abolish her post is untainted by bias or improper motives is not sufficient to demonstrate its independence, as she was denied the opportunity to challenge the impartiality of the panel. This created a situation where the Secretary-General is urging a bar on psychological damages while at the same time excluding examination of the evidence that led to the unlawful administrative decision.

31. According to Ms. Laasri, the UNDT should have allowed her a hearing so that she could demonstrate she was victim of whistleblower retaliation. This would be in line with the requirements of Section 5.16 of Secretary-General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority). She also contends that the UNDT and the Secretary-General suffered from a distorted view that if the Organization simply conceded the administrative decision was procedurally unlawful, then no hearing would be warranted. A hearing is actually warranted on any contested fact issues, even if limited only to the issue of damages.

32. Ms. Laasri finally maintains that the UNDT applied an erroneous legal standard that only expert evidence is admissible regarding psychological injury. Once expert evidence is presented as a threshold matter, the testimony of the victim as to her psychological injury is

⁵ *Harris v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-896, para. 61.

⁶ *Rehman v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-885, para. 25

⁷ *Ho v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-791, para. 23.

admissible. It would be a miscarriage of justice if the staff member is denied the opportunity to present the full measure of the harms visited upon her and would send a signal that retaliation against those who cooperate with audits and investigations will go unpunished.

Ms. Laasri's Appeal

33. The UNDT relied exclusively on the unreviewable determinations of the UNICEF Ethics Office and the UNICEF Independent Review Panel. The UNDT did not inquire whether the *Second decision to abolish the incumbent's post* was also tainted by improper motives. Ms. Laasri submits that the UNDT should have required the Administration to prove the absence of improper motive, since it no longer benefitted from the presumption of regularity.

34. The UNDT would only accept an account of facts, limited to those accepted by the Administration and did not consider facts set forth by Ms. Laasri in her declaration and her annexes. Ms. Laasri was denied an oral hearing in person, or electronically, and was deprived of the opportunity to prove there was no justification to abolish her post and that she suffered extreme mental injury as a result.

35. The UNDT rejected Ms. Laasri's claim that her case is an exceptional one warranting a higher compensation for harm done. But Ms. Laasri argues she was deprived of the opportunity to demonstrate the exceptionality of her case, as she did not have a hearing. Ms. Laasri also questioned the basis for the Administration's conclusion that her contract would have been renewed for only one year, as previous renewals were for two years.

36. The UNDT failed to exercise jurisdiction by allowing UNICEF to dictate entitlement to damages for only one year.

37. The UNDT also failed to apply the proper legal standard when it comes to moral damages. Ms. Laasri reiterates in her appeal that once expert evidence is presented, the testimony of the staff member as to psychological injury should also have been considered.

The Secretary-General's Answer

38. Ms. Laasri's appeal on the merits is not receivable because a party may not file an appeal against a Judgment in which the party's position has prevailed. The Secretary-General submits mere disagreements with the reasoning of the Judgment are not enough to sustain the appeal and do not demonstrate any prejudice.

39. The UNDT did not err in its calculation of compensation *in lieu* of reinstatement. The UNDT's consideration of compensation already paid by UNICEF was proper.⁸ The staff member did not show additional pecuniary harm and the assertion that her contract would have been renewed multiple times over is meritless since there is no expectancy of renewal for a Fixed Term Appointment. Finally, the argument that the contract would have been renewed for two years, instead of one, should also be rejected as it is being raised for the first time on appeal.

40. The Secretary-General finally also submits that the former staff member is not entitled to moral damages and that all her other submissions in her appeal are mere repetitions of arguments submitted before the UNDT and is an attempt to reargue the case.

Considerations

41. The issues for consideration and determination in the appeals are related to the remedies. With regard to the unlawfulness of the Contested Decision, as acknowledged by the UNDT, there was no appeal. However, the UNDT did not order payment of compensation *in lieu*, having found that the Secretary-General had already elected to pay compensation *in lieu* of rescission. The UNDT, however, awarded the payment of compensation for moral damages in the amount of two months' net base salary.

42. In her appeal, Ms. Laasri requests an increase in the amount of the compensation awarded. In turn, the Secretary-General also appealed, contending that there is no evidence to support the award of compensation for moral damages. Since the Secretary-General's appeal was filed first and contains a preliminary matter of whether or not there was sufficient evidence of the moral harm suffered by Ms. Laasri, the Appeals Tribunal will examine it beforehand.

⁸ See *Larkin v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-134, para. 42.

The Secretary-General's appeal

43. The Secretary-General maintains that the UNDT erred in law in awarding compensation for moral damages to Ms. Laasri. He claims that the medical certificate on which the UNDT relied for such an award does not establish a link between the Contested Decision of abolition of the post and non-renewal of appointment, which was taken in 2016, and the harm Ms. Laasri suffered “perhaps as a consequence of prior retaliation” in 2015. Moreover, the Secretary-General claims that the harm suffered as a result of discomfort at work or harassment was not an issue put before the UNDT.

44. The Secretary-General's line of reasoning is incorrect or at least incomplete. There is no denying that: (i) the abolition of the post and subsequent non-renewal of appointment were unlawful, and (ii) Ms. Laasri suffered moral damages resulting from the incontestable previous retaliation or harassment. The issue in discussion here is whether there is sufficient evidence of moral harm as a result of the *Second decision to abolish the incumbent's post*, taken in 2016.

45. The UNDT drew the conclusion that from the medical certificate of Ms. Laasri's gynecological surgeon dated of 23 March 2020 that, although it did not specifically refer to her situation in 2016 when the unlawful administrative decision was taken, “her health condition was aggravated *as of 2015* by the difficult situation that she was facing at work, and which she shared with her doctor as indicated in the medical certificate”.⁹ In other words, the UNDT found that the harm had aggravated her condition *from 2015 onwards*, not only in 2015. For this reason, the UNDT awarded compensation for moral damages in the amount of two months' net base salary.

46. It is true that the medical certificate does not specifically refer to Ms. Laasri's situation in 2016. On the other hand, it is also accurate that the medical certificate encompasses a long period of around eight years, up to March 2020, and reports on Ms. Laasri's general medical condition and the surgeries she underwent since 2012, in accordance with a “regular monitoring due to her previous medical surgeries”.

47. This same medical certificate also provided a detailed account of another surgery and subsequent persistent symptoms and pain in 2015. These grievances had been aggravated as a result of Ms. Laasri's malaise at work and her recurrent claims of moral harassment, which

⁹ Impugned Judgment, para. 43 (emphasis added).

were reported at each medical appointment, leading to serious consequences involving insomnia and the taking of anxiolytics as prescribed by her psychiatrist. The medical certificate ultimately states that, due to Ms. Laasri's health status on the date it was issued (23 March 2020), a close medical surveillance was recommended together with possible future urgent medical treatment.

48. In light of this comprehensive medical certificate which included thorough information about Ms. Laasri's health condition throughout the period from 2012 until 2020, the Appeals Tribunal determines that the UNDT did not err in its finding in that the medical certificate constituted "enough evidence of the harm she suffered to her health by the issues she was having at work". Contrary to what the Secretary-General states, the medical certificate did not limit its scope to the harm suffered by Ms. Laasri in 2015. Rather, it was quite explicit about the continuous harm she suffered after the surgery she underwent in 2015 and the malaises thereafter up until 2020, as a direct consequence of the harmful situation she had been experiencing at work.

49. Also contrary to the Secretary-General's assertion, these issues were effectively presented to the UNDT, as evidenced by Ms. Laasri's complaint that the Contested Decision impacted on her existing health condition by causing her additional mental distress.¹⁰

50. There was accordingly no error in the UNDT Judgment in assessing this piece of evidence. The Secretary-General's appeal must thus fail.

Ms. Laasri's appeal

Receivability of the appeal

51. At the outset, the Appeals Tribunal will address the issue of receivability of Ms. Laasri's appeal, raised by the Secretary General in the answer to her appeal. He claims that the UNDT's Judgment is in her favour, insofar as it found the Contested Decision to be unlawful. For the Secretary-General, mere disagreements with the reasoning of the Judgment and procedures adopted by the tribunal are not enough prejudice to sustain an appeal. According to the Secretary-General, Ms. Laasri's appeal is only receivable with regard to the matter of the amount of compensation awarded by the UNDT.

¹⁰ Impugned judgment, para. 41.

52. It is true that a party may not file an appeal against a judgment concerning a claim in which that party's position has prevailed. This is to say that, ordinarily, an appeal is not receivable if it is filed by the party which prevailed in the first instance proceedings. Mere disagreements with the reasoning of the judgment are not enough to sustain an appeal even though the party prevailed. In *Sefraoui*,¹¹ this Tribunal held that a party in whose favour a case has been decided is not permitted to appeal against the judgment on legal or academic grounds. The rule is, however, not absolute. There are circumstances in which the appeal, even though filed by the prevailing party at first instance, is receivable.¹² And of course, a party may succeed on questions of liability and yet still appeal against the remedies granted. A party may also succeed on some questions of liability but fail on others, which failure affects questions of remedy, and so may appeal against those failed liability findings. Ms. Laasri's case is in that latter category.

53. In the present case, Ms. Laasri's claims of possible errors in the UNDT Judgment could significantly impact the amount of compensation awarded. Indeed, to challenge the amount awarded, Ms. Laasri needs to demonstrate that the UNDT's reasoning is incorrect. This particular significance regarding the issue of damages is enough to justify the receivability of her appeal.

Merits of the case

54. Ms. Laasri raises the issue that she was denied a hearing where she could have proved that there was no justification to abolish her post and that she had been the victim of retaliation. She claims that she was also denied the opportunity to prove her extreme mental harm from retaliation.

55. The applicable legal framework in terms of protection against retaliation derives from Secretary-General's Bulletin ST/SGB/2005/21 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations), which institutes protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations. It provides in relevant parts the following:

1.1 It is the duty of staff members to report any breach of the Organization's regulations and rules to the officials whose responsibility it is to take appropriate action. An individual who makes such a report in good faith has the right to be protected against retaliation.

¹¹ *Sefraoui v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-048, para. 18.

¹² See *Kozul-Wright v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-843.

...

1.4 Retaliation means any direct or indirect detrimental action recommended, threatened or taken because an individual engaged in an activity protected by the present policy. When established, retaliation is by itself misconduct.

...

5.2 The functions of the Ethics Office with respect to protection against retaliation for reporting misconduct or cooperating with a duly authorized audit or investigation are as follows:

- (a) To receive complaints of retaliation or threats of retaliation;
- (b) To keep a confidential record of all complaints received;
- (c) To conduct a preliminary review of the complaint to determine if (i) the complainant engaged in a protected activity; and (ii) there is a *prima facie* case that the protected activity was a contributing factor in causing the alleged retaliation or threat of retaliation.

...

5.8 If the Ethics Office finds that there is no credible case of retaliation or threat of retaliation but finds that there is an interpersonal problem within a particular office, it will advise the complainant of the existence of the Office of the Ombudsman and the other informal mechanisms of conflict resolution in the Organization.

56. The Appeals Tribunal will decide in turn on the matters of compensation *in lieu* and compensation for moral damages.

Compensation in lieu of rescission

57. By accepting the facts of the Administration and not conducting a hearing on the merits, the tribunal only found the Contested Decision unlawful because it was based in part on “flawed considerations”.¹³

58. The question which arises is therefore whether the shortcut undertaken by the UNDT, giving credit to the Ethics Office and Independent Review Panel’s conclusions and accepting UNICEF’s admission that there were improper considerations,¹⁴ deprived Ms. Laasri of the

¹³ Ms. Laasri was not considered for the internationalized P-3 post even though the generic job description for the new internationalized P-3 post did not differ from her previous job description. See Impugned Judgment, para. 20.

¹⁴ Impugned Judgment, paras. 24 and 25.

opportunity to show that her case was an exceptional one, and thus permits granting a higher amount of compensation *in lieu*.

59. The Appeals Tribunal conceded that the gravity of the wrongful conduct can ordinarily impact on the amount of compensation for damages in some national jurisdictions. The unlawfulness of a decision due to “flawed considerations” (procedural) does not carry the same weight when compared to the unlawfulness as a result of retaliation. Since Ms. Laasri disputes the Ethics Office and Independent Review Panel’s conclusions, any inquiry about whether or not she had been a victim of retaliation would have shed more light on the real reason(s) for the unlawfulness of the Contested Decision. Questions such as whether there was animosity towards Ms. Laasri, or whether she had been a victim of retaliation, remained unanswered. Even considering the apparent reasonable justification for the determination of the Ethics Office,¹⁵ Ms. Laasri was ultimately denied the opportunity to produce oral evidence that there was a case of retaliation against her.

60. As stated in *Belkhabbaz*,¹⁶

Review on the grounds of procedural fairness examines whether there has been compliance with the principles and proscriptions of *audi alteram partem* (a fair hearing) and *nemo iudex in sua causa* (bias). The right to a fair hearing is context specific. The content of fairness is not static but must be tailored to the circumstances of each case. The purpose of a fair hearing is to give affected persons an opportunity to participate in the decisions that may adversely affect them and a chance of influencing the ultimate outcome. The aim is to guarantee the dignity of the affected persons and to improve the quality and rationality of decision-making in order to enhance its legitimacy. The rule against bias recognises that decisions are more likely to be sound if they are taken by persons who are unbiased.

¹⁵ Among the considerations for its final determination that there was no *prima facie* case of retaliation in the Contested Decision, the Ethics Office invoked the fact that Ms. Laasri had not presented any specific evidence or *prima facie* indicators that the impugned decision had any retaliatory motive or that there was a causal connection between the reporting of misconduct and the 2016 abolition decision. Rather, continued the Ethics Office, Ms. Laasri seemed to take the view that – because the 2014 abolition decision was deemed to be retaliatory by the Organization itself – any subsequent abolition decision would also be retaliatory, regardless whether at a later stage, there are substantive reasons for the abolition decision. The Ethics Office then took the view that each decision needed to be considered on its own merits. Accordingly, since the report of the Independent Review Panel set out clear and objective reasons for the 2016 abolition decision and the Independent Review Panel did not have knowledge of the prior history, the Ethics Office found that there was no sufficient basis to find *prima facie* evidence that the Contested Decision of 2016 constituted a detrimental action taken against Ms. Laasri, as a result of her reports of misconduct in 2014. Principal Advisor, Ethics, “Letter addressing ethics complaint”, letter to Ms. Laasri, 2 August 2016.

¹⁶ *Belkhabbaz v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-873, para. 68.

61. Having stated the above, the unlawfulness of the decision has been in any case established. The UNDT rescinded the contested decision and awarded compensation *in lieu* of an amount equal to one year's net base salary. However, after having found that the Secretary-General had already paid this compensation, the UNDT considered that the Secretary-General had already elected not to rescind the decision but rather to pay compensation *in lieu* in recognition of Ms. Laasri's loss of chance to have her contract renewed for another year.¹⁷ As a result, the UNDT determined that no additional compensation was necessary.

62. The issue that this Appeals Tribunal is called on to determine now is whether the UNDT erred when setting the amount for compensation *in lieu* of rescission of the Contested Decision and whether any possible evidence of retaliation would have affected this amount. As established by our case law, the amount of compensation shall be fair, adequate and reasonable. It is therefore the Appeals Tribunal's role to assess whether there is a need for an upward adjustment in the compensation award, as requested by Ms. Laasri in her appeal.¹⁸

63. It is settled jurisprudence that the very purpose of *in lieu* compensation is to place the staff member in the same position in which he or she would have been, had the Organization complied with its contractual obligations. In establishing the amount of *in lieu* compensation, the Appeals Tribunal exercises discretion; however, it shall ordinarily give some justification and set an amount that the Tribunal considers to be an appropriate substitution for rescission or specific performance in a given and concrete situation.¹⁹

64. To this extent, the elements which can be considered are, among others, the nature and the level of the post formerly occupied by the staff member (i.e., continuous, provisional, fixed-term), the remaining time on the contract, and chances of renewal. It must also be taken into account that the two-year limit imposed by the UNDT Statute constitutes a maximum, as a general rule, albeit with exceptions. As such, it cannot be the average "in lieu compensation" established by the Tribunal.²⁰

¹⁷ Impugned Judgment, paras. 37 and 38.

¹⁸ *Mushema v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-247, para. 27.

¹⁹ *Ashour v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-899, para. 18.

²⁰ *Mushema v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-247, para. 28.

65. In the present case, in determining the amount of *in lieu* compensation equal to one year's net base salary, the UNDT considered the particular circumstances of Ms. Laasri's fixed-term appointment expiring at its term, as well as the lost chance for Ms. Laasri to have her appointment renewed for another year.²¹ In this regard, it appears that the UNDT adopted the analysis of UNICEF that the contract could have been renewed for one year.

66. The Appeals Tribunal does not have any reason to disagree with the UNDT in this regard; firstly because, ordinarily, there is no expectation of renewal for a fixed term appointment;²² and secondly, because the issue of more extensive previous renewals was only raised for the first time on appeal, and thus, the Appeals Tribunal is barred from admitting this line of reasoning at this stage of the proceedings.²³

67. Regarding the issue of retaliation and its possible impact on the amount awarded, Ms. Laasri contends the burden of proof was on the Secretary-General to establish that the decision not to renew her appointment was not tainted by retaliatory *animus*. Nonetheless, this argument is in direct contradiction with both: (i) the Appeals Tribunal's jurisprudence, which places the burden on the staff member to show a legitimate expectancy of renewal or that the non-renewal of her fixed-term appointment was arbitrary or motivated by bias, prejudice or improper motive against the staff member;²⁴ and (ii) Ms. Laasri's own challenge to the UNDT's order not to hold an oral hearing, precluding her from producing any evidence regarding any bias or improper motive regarding her non-renewal.

²¹ Impugned judgment, para. 37; Fatoumata Ndiaye, Deputy Executive Director, Management, "Management Evaluation", letter to Ms. Laasri, 6 April 2016.

²² *Muwambi v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-780, para. 25, citing *Ncube v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-721, para. 15; *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-311, para. 32; *Badawi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2012-UNAT-261, para. 33.

²³ *Fedorchenko v. Secretary General of the International Civil Aviation Organization*, Judgment No. 2018-UNAT-867, para. 56; *Anshasi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2017-UNAT-790; *Buff v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-639; *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-547.

²⁴ *Hepworth v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-503, para. 44; *Obdeijn v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-201; *Jennings v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-184; See also *Tadonki v. Secretary-General of the United Nations*, Judgment No. UNDT/2013/032, para. 145.

68. Apart from these contradictions in Ms. Laasri's contentions, what matters most in the present case is the fact that any purported retaliation would still not have entitled Ms. Laasri to a higher *in lieu* compensation. It bears recalling that the purpose of *in lieu* compensation is to restore the rights to the staff member, had the unlawful decision not occurred. Indeed, the main goal of a compensation payment *in lieu* is to compensate for pecuniary or economic loss, including loss of earnings. Any possible further compensation must be awarded on account of harm, including non-pecuniary harm, in light of Article 10(5) of the UNDT Statute and Article 9(1) of the Appeals Tribunal Statute (Statute).

69. The aforementioned are the reasons why Ms. Laasri would not be entitled to additional *in lieu* compensation, if the UNDT were to find a case of retaliation against her despite the Ethics Office conclusion to the contrary. What was important in the UNDT Judgment was to correctly determine the amount of compensation which was payable instead of the rescission of the unlawful decision. This pecuniary compensation would not have been affected by a possible higher degree of severity of the reasons behind the unlawfulness.

Compensation for moral damages

70. The Appeals Tribunal will now turn its attention to assess whether the amount of compensation for moral damages (i) would have been affected by any evidence of retaliation, and (ii) whether it needs to be increased, as claimed by Ms. Laasri in her appeal. From the outset, the Appeals Tribunal notes that the amount awarded as compensation *in lieu* already compensates for the failure to consider Ms. Laasri for the newly internationalized P-3 post that had previously been hers. The issue now under consideration relates to non-pecuniary or moral damages.

71. In this regard, the Appeals Tribunal concedes that any possible evidence of retaliation related to Ms. Laasri's "whistleblowing" of non-compliant actions or intention to submit a complaint about inappropriate conduct could have customarily had an impact on the amount of compensation for moral damages.²⁵ The oral hearing could potentially have served to establish that Ms. Laasri had been the victim of retaliation and, as a result, her post was abolished and her appointment not renewed. However, given that the unlawfulness of the

²⁵ Impugned Judgment, para. 12.

Contested Decision was ultimately acknowledged by the UNDT, the same outcome was achieved by other means of reasoning.

72. More important, however, in determining the impact of any possible extraneous retaliatory factor on the amount of compensation for moral damages, is the fact that, according to Article 9(3) of the Statute, it “shall not award exemplary or punitive damages”. This prohibition, introduced upon recommendation of the Secretary-General, was justified by the fact that it would be inappropriate to use the public funds of the Organization to award compensation to individual staff members to punish the Organization or to deter future wrongdoing.²⁶ It therefore appears that while the accountability and punishment for possible wrongdoings are then matters for the Organization to resolve with the staff member who engaged in the misconduct, this decision has little or no impact in the compensation to the staff member who originally suffered harm.

73. In other words, the lack of authority to award exemplary or punitive damages means that, to the extent that it deals with a staff member injured by an unlawful decision, the applicable legal framework prioritizes *redress* of the harm done to the staff member rather than fixing the *cause* of such harm. The *consequence* takes precedence over the *cause* of the harm, the latter being transferred to the Administration to deal with. This does not mean, however, that the Administration does not have an interest and a duty of care towards keeping a good work environment. Prohibited conduct interferes with work, creating intimidation, hostility and an offensive work atmosphere, which can be extremely harmful to staff and to the good quality of service.

74. In the present case, a psychiatrist’s certificate dated 15 May 2020 was included in the annexures, even though it was not mentioned by the UNDT in its Judgment. The Appeals Tribunal finds that this was due to the fact that this certificate relates to events which have occurred in 2014, prior to the unlawful decision.

75. Nonetheless, the consequences of the harm suffered by Ms. Laasri were detailed in the medical certificate previously assessed in this Judgment when the Secretary-General’s appeal was determined. Whereas the Appeals Tribunal’s jurisprudence requires corroboration of the

²⁶ *Wu v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-042, paras. 29 and 33.

staff member's own evidence of moral damages,²⁷ it does not require that this should be provided by medical certificate or testimony. Any piece of evidence must be examined in its specific case and context, as much will depend on the circumstances of any given situation. In this regard, the medical certificate provided by Ms. Laasri was broad and the UNDT was aware of the full extent of the harm she suffered.

76. As this Appeals Tribunal has previously stated:²⁸

As regards the award of compensation for harm, our jurisprudence has evolved following the 2014 General Assembly resolution 69/203, which amended our Statute and that of the UNDT, introducing the expression “supported by evidence” after “compensation for harm” in Article 10(5)(b) of the UNDT Statute and Article 9(1)(b) of the Appeals Tribunal Statute. A breach of staff member's rights, despite its fundamental nature, is thus not sufficient to justify such an entitlement. There must indeed be proven harm stemming directly from the Administration's illegal act or omission for compensation to be awarded.

(...) Our jurisprudence holds that, generally speaking, a staff member's testimony alone is not sufficient as evidence of harm warranting compensation under Article 10(5)(b) of the UNDT Statute.□ The testimony of an applicant in such circumstances needs the corroboration of independent evidence (expert or otherwise) to support the contention that non-pecuniary harm has occurred. Much will depend on the circumstances of the situation at hand, as the existence of moral damages shall be assessed on a case-by-case basis.

77. As for the amount of compensation set by the UNDT, the Appeals Tribunal has previously stated that it will not interfere with the UNDT's decision, in the absence of a finding of any error of law or fact, in accordance with Article 2(1)(c) and (e) of its Statute. Specifically, the Appeals Tribunal has held that the trial judge is best placed to assess the nature and evidential value of the information being provided by an applicant to the UNDT to justify an award of damages, including pecuniary damages. In the absence of a compelling argument that the UNDT erred on a question of law or on a question of fact resulting in a manifestly

²⁷ *Kallon v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742, para. 60; *Rehman* Judgment, *op. cit.*, paras. 17 - 18.

²⁸ *Kebede v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-874, paras. 21 - 22 (footnote omitted).

unreasonable decision, the Appeals Tribunal will not lightly interfere with the findings of the Dispute Tribunal.²⁹ Accordingly, this ground of appeal fails.

78. The other issues raised by Ms. Laasri in her appeal concern repetition of previous arguments, in an attempt to reargue her case. However, as already noted in *Krioutchkov*³⁰ and *Aliko*,³¹ an appeal to the Appeals Tribunal is not a vehicle for a party to reargue the case without identifying the defects and demonstrating on which grounds an impugned UNDT judgment is erroneous. A party cannot, without more, repeat on appeal any arguments which did not succeed before the UNDT. More is required in that an appellant must demonstrate that the UNDT has committed an error of fact or law warranting intervention by this Tribunal.³²

79. The UNDT did not err in any of its factual findings and did not err in its legal conclusions that the Contested Decision was unlawful. Compensation *in lieu* had already been paid, and Ms. Laasri suffered compensable emotional and non-monetary losses (supported by evidence), which warranted an award of moral damages. The UNDT did not err in these amounts awarded.

80. The Appeals Tribunal thus finds that Ms. Laasri has not achieved the necessary requirements to reverse or modify the UNDT Judgment, which thus prevails.

²⁹ *Flores v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-525, para. 26; *Goodwin v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-467, para. 37.

³⁰ *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-711, paras. 20-22.

³¹ *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540, paras. 28-30.

³² *Abdel Rahman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-610, para. 20; *Aliko* Judgment, *op. cit.*, para. 28; *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035, para. 30.

Judgment

81. Both appeals are dismissed, and Judgment No. UNDT/2020/101 is hereby affirmed.

Original and Authoritative Version: English

Dated this 25th day of June 2021.

(Signed)

Judge Halfeld
Juiz de Fora, Brazil

(Signed)

Judge Colgan
Auckland, New Zealand

(Signed)

Judge Raikos
Athens, Greece

Entered in the Register on this 13th day of July 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar