



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

Judgment No. 2023-UNAT-1368

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

JUDGMENT

Before:	Judge Martha Halfeld, Presiding Judge Kanwaldeep Sandhu Judge Dimitrios Raikos
Case No.:	2022-1725
Date of Decision:	30 June 2023
Date of Publication:	1 August 2023
Registrar:	Juliet Johnson

Counsel for Mr. Saleh:	Marcos Zunino, OSLA
Counsel for Secretary-General:	Angélique Trouche

JUDGE MARTHA HALFELD, PRESIDING.

1. Mr. Wassim Saleh, a former staff member with the United Nations High Commissioner for Refugees (UNHCR), contested before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) the imposition of the disciplinary sanction of separation from service, with compensation in lieu of notice, without termination indemnity (the contested decision).
2. By Judgment No. UNDT/2022/064 (the impugned Judgment), the UNDT granted the application and rescinded the contested decision and awarded in-lieu compensation.
3. Mr. Saleh appealed to the United Nations Appeals Tribunal (UNAT or Appeals Tribunal), and the Secretary-General cross-appealed.
4. For the following reasons, we dismiss both the appeal and the cross-appeal and affirm the impugned Judgment.

Facts and Procedure¹

5. On 12 January 2015, Mr. Saleh joined UNHCR on a one-year fixed-term appointment as a Supply Associate in Zahle, Lebanon. As part of his duties, Mr. Saleh coordinated and supervised the work of INTERSOS, a UNHCR implementing partner that was managing the UNHCR warehouse in Zahle. Mr. BK, INTERSOS Warehouse Manager, and Mr. BM, INTERSOS Warehouse Assistant, were responsible for hiring casual workers for the warehouse. Mr. Saleh acknowledged that he had no official role in the hiring of these casual workers during the relevant period; however, Mr. Saleh had previously held this responsibility at the warehouse in 2013-2014.²
6. In or around July 2018, after Mr. AD, an INTERSOS Transport Contractor, did not give sufficient work to Mr. OS as requested by Mr. Saleh, Mr. Saleh met Mr. BK, Mr. BM and Mr. AD in the warehouse. He told Mr. AD that he had to give one of every two or three trips to Mr. OS. Mr. Saleh was purportedly angry and allegedly told Mr. BK, Mr. BM and Mr. AD that they were not working for INTERSOS nor UNHCR, but for Mr. Saleh personally and that it was his warehouse.³

¹ See generally, impugned Judgment, para. 6.

² *Saleh v. Secretary-General of the United Nations*, Joint Statement of Facts Pursuant to Order No. 104 (NY/2021), paras. 2-5 (Joint Statement of Facts).

³ *Ibid.*, para. 26. Note that Mr. Saleh denies being angry and does not recall making this statement.

7. On 31 July 2018, Mr. BK sent a complaint concerning Mr. Saleh's conduct to the INTERSOS Head of Mission in Lebanon.⁴

8. On 15 January 2019, the Inspector General's Office (IGO) of UNHCR received information that INTERSOS had conducted an administrative investigation into allegations of misconduct against Mr. Saleh.

9. From 16 to 21 June 2019, an IGO investigation mission was in Zahle to investigate the allegations made against Mr. Saleh. Mr. Saleh, Mr. BK, Mr. BM, and Mr. AD were interviewed by the IGO, as well as, upon Mr. Saleh's request, Mr. JZ, who was Mr. Saleh's former supervisor at the UNHCR Sub-Office in Zahle.

10. On 2 August 2019, the IGO's draft investigation findings were shared with Mr. Saleh and his comments dated 3 August 2019 were taken into account for the finalization of the investigation report.

11. By letter dated 28 November 2019, the Director of the Division of Human Resources for UNHCR notified Mr. Saleh of the allegations of misconduct, to which he submitted his response on 30 January 2020.

12. On 5 June 2020, Mr. Saleh was informed of the High Commissioner's decision that, based on the investigation report, the evidence and Mr. Saleh's comments, it was established by clear and convincing evidence that:⁵

- a) Between June 2018 and June 2019, [Mr. Saleh] abused his authority and engaged in conflict of interest in pressuring INTERSOS personnel to hire specific individuals, at least one of whom was [his] relative and three came from [his] village; and
- b) [Mr. Saleh] abused [his] authority in telling INTERSOS personnel, in or around July 2018, that they were not working for INTERSOS nor UNHCR, but for [him] personally.

13. Based on the foregoing misconduct, the High Commissioner imposed as a disciplinary sanction, separation from service with compensation in lieu of notice and without termination indemnity pursuant to Staff Rule 10.2 (a)(viii).⁶

⁴ *Ibid.*, para. 23.

⁵ Appellant's Annex 7 (4 June 2020 Letter from Director, Division of Human Resources, to Mr. Saleh, Re: Disciplinary Measure)

⁶ *Ibid.*, page 2.

14. On 1 September 2020, Mr. Saleh challenged the imposition of the disciplinary measure before the UNDT.

15. On 30 June 2022, the UNDT issued the impugned Judgment. Reviewing whether the facts had been established, the UNDT found that the tone of Mr. Saleh's messages, which requested that specific individuals be hired by INTERSOS, was demanding rather than suggestive, giving an "impression of having the power to decide on which daily workers are to be hired and when".⁷ However, the UNDT found that it was not established that Mr. Saleh was in a position, or could be perceived to be in a position, to exert effective pressure, should his hiring requests not be executed.⁸ The UNDT held that it was also not established that Mr. Saleh exerted these pressures with any improper motive.⁹

16. Turning to whether the facts amounted to misconduct, the UNDT found that under UNCHR's Policy on Harassment, Sexual Harassment, and Abuse of Authority (the Policy), the only pertinent aspect was whether Mr. Saleh was found to have created a hostile or offensive work environment.¹⁰ The UNDT found that while the work environment had become intolerable, the concerned INTERSOS staff knew that Mr. Saleh had no authority over them.¹¹ With respect to Mr. Saleh's conflict of interest, the UNDT considered that it was logical that some of the individuals Mr. Saleh recommended for casual laborers came from Mr. Saleh's village, which was nearby. The UNDT thus concluded that the termination of Mr. Saleh's appointment was "manifestly incorrect" and rescinded the disciplinary measure.¹² It awarded compensation in lieu of the amount of the salary that Mr. Saleh would have earned, had his appointment not been terminated before expiry (close to seven months' net base pay).¹³ The UNDT did not award any compensation for non-pecuniary or moral harm because of lack of evidence.¹⁴

17. On 29 August 2022, Mr. Saleh filed an appeal of the impugned Judgment with the Appeals Tribunal. On 7 November 2022, the Secretary-General filed his answer. That same day, the

⁷ Impugned Judgment, para. 45.

⁸ *Ibid.*, paras. 46 and 52.

⁹ *Ibid.*, para. 51.

¹⁰ *Ibid.*, paras. 57-58. The UNDT stated that it was citing UNHCR/HCP/2014/4 issued on 29 August 2014; however, as will be discussed *infra* in this Judgment at paragraph 58, the quoted definition was from the 2005 version of the Policy.

¹¹ *Ibid.*, para. 58.

¹² *Ibid.*, para. 66.

¹³ *Ibid.*, para. 80.

¹⁴ *Ibid.*, para. 79.

Secretary-General also filed a cross-appeal. Mr. Saleh filed his answer to the cross-appeal on 9 January 2023.

Submissions

Mr. Saleh's Appeal

18. Mr. Saleh submits that the UNDT erred on a question of law and fact resulting in a manifestly unreasonable decision when it awarded as compensation in lieu of rescission only the salary for the remaining period on his fixed-term appointment.

19. The UNDT erred in fact resulting in a manifestly unreasonable decision when it found that it was unlikely that Mr. Saleh's appointment would have been extended beyond 31 December 2020 if it had not been for the unlawful disciplinary measure. Mr. Saleh submits that the UNDT committed an error of fact when it found that "[c]onsidering the circumstances surrounding the termination of the Applicant's appointment, the Tribunal finds it unlikely that—in the hypothesis that UNHCR had not terminated the appointment—it would have been renewed any further than 31 December 2020."¹⁵ At the time of his unlawful separation from service, Mr. Saleh avers that he had served for five and a half years as a Supply Associate and would have been eligible to have his appointment renewed for three additional years on 1 January 2021. In fact, Mr. Saleh was just short of 12 days to have been eligible for a three-year appointment on 1 January 2020. Moreover, from 2015-2018, Mr. Saleh had received consistent positive performance evaluation ratings from three different managers.

20. Furthermore, during the UNDT proceedings it was established that someone else was performing Mr. Saleh's post as a Supply Associate in Zahle. As Mr. Saleh's fixed-term appointment had been renewed yearly five times, his performance was satisfactory and the post he encumbered still existed, had it not been for the unlawful termination, Mr. Saleh submits that it is extremely likely that his appointment would have been renewed to this day. Accordingly, Mr. Saleh submits that the UNDT erred in fact in holding otherwise. This error of fact led to a manifestly unreasonable decision, insofar as it was the basis for awarding Mr. Saleh insufficient in-lieu compensation which rendered ineffective Mr. Saleh's right to fair and equitable damages.

¹⁵ The Appellant points to paragraph 74 of the impugned Judgment.

21. Mr. Saleh further submits that the UNDT erred on a question of law and fact, resulting in a manifestly unreasonable decision, when it found that Mr. Saleh had submitted no evidence of moral harm and that there was no basis for awarding any such compensation. In the case at hand, the UNDT erred in law when it held that there was no basis for awarding compensation for non-pecuniary harm as Mr. Saleh had not submitted evidence in this regard. As the Appeals Tribunal held in *Kallon*,¹⁶ the first type of moral harm can be established by the totality of the evidence and can be inferred logically from the factual circumstances. The UNDT appears to have erroneously required Mr. Saleh to provide specific evidence of the moral harm, such as medical certificates, as is the case for the second type of harm.

22. The UNDT also erred in fact when it held that there was no evidence of non-pecuniary harm. Mr. Saleh submits that the totality of the evidence in the casefile before the UNDT establishes that there was harm to his *dignitas* and reputation. Mr. Saleh had prospects within UNHCR which he can no longer realize due to the unlawful termination. He was unlawfully separated on disciplinary grounds, despite having committed no misconduct and doing his job tirelessly and conscientiously. He was a well-known person in the area and, as Mr. TK testified, it became known that Mr. Saleh had stopped working at the UNHCR warehouse in Zahle which obviously affected his reputation and self-worth.

23. It is logical and reasonable to infer from these facts, as established by the evidence adduced before the UNDT, that Mr. Saleh suffered an infringement of his *dignitas* that should be compensated. There was a fundamental breach of Mr. Saleh's contract in the form of unlawfully terminating it for misconduct when that was not the case. This undoubtedly infringed his fundamental right to dignity and wounded his feelings. Mr. Saleh claims that he deserves to be compensated for this harm and that the UNDT erred in law and in fact in not doing so. In *Kallon*, this Tribunal affirmed an award of USD 50,000 for non-pecuniary harm arising from unlawful decisions concerning the staff member's delegation of authority to perform certain functions.¹⁷

24. Mr. Saleh submits that the unlawfulness of separating someone who has not committed misconduct is unquestionably far more serious and the consequences of such a decision

¹⁶ *Kallon v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742, para. 68.

¹⁷ *Ibid.*, para. 82.

are undeniably much more severe. Accordingly, he requests comparable compensation for non-pecuniary harm.

25. Considering the foregoing, Mr. Saleh requests the Appeals Tribunal to modify the impugned Judgment and award him three years' net base salary as in-lieu compensation and adequate compensation for non-pecuniary harm.

The Secretary-General's Answer

26. At the outset, the Secretary-General reiterates the arguments set out in his cross-appeal, namely that the UNDT erred in law in applying an incorrect legal framework, leading to its erroneous conclusions that Mr. Saleh's conduct did not amount to misconduct. The Secretary-General notes that the arguments in his answer are without prejudice to the arguments made in his cross-appeal.

27. The UNDT correctly determined the compensation awarded to Mr. Saleh. The UNDT applied the principles regarding compensation as established by the UNAT to his case and determined that, at the time of the disciplinary measure, Mr. Saleh held a one-year fixed-term appointment expiring on 31 December 2020, which given the circumstances surrounding the termination of appointment, was unlikely to have been renewed beyond that date. Turning to the amount of compensation in lieu, the UNDT considered the actual financial impact that the unlawful contested decision had on Mr. Saleh's situation, and also the fact that it should not award exemplary or punitive damages pursuant to Article 10(7) of the UNDT Statute. The UNDT found that in the absence of the disciplinary measure imposed on 4 June 2020, Mr. Saleh would have likely received his salary, including benefits and entitlements, until the expiration of his appointment on 31 December 2020. The UNDT consequently ordered that this be the amount of compensation in lieu.

28. The Secretary-General submits that Mr. Saleh has failed to demonstrate that the amount of compensation in lieu awarded by the UNDT was in error. The UNDT based its reasoning in the impugned Judgment on UNAT jurisprudence, and Mr. Saleh does not demonstrate any error.

29. Concerning Mr. Saleh's chances of having his appointment renewed, the Secretary-General submits that the UNDT properly applied the UNAT's settled jurisprudence. Pursuant to Staff Regulation 4.5(c) and Staff Rule 4.13(c), and as consistently confirmed by the

UNAT, a fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal, irrespective of the length of service or performance. It was therefore not an error of law for the UNDT to award compensation in lieu only for the remainder of Mr. Saleh's fixed-term appointment.

30. Even if the UNDT had erred with respect to the possible renewal of Mr. Saleh's fixed-term appointment, the UNDT's determination of the amount of compensation in lieu should still stand. This is because such determination is based on the amount of time remaining under Mr. Saleh's appointment, which was an established fact, unlike the chances of renewal. Further, contrary to Mr. Saleh's argument, length of service is not a consistent criterion to determine the amount of compensation in lieu pursuant to UNAT case law. Indeed, compensation in lieu aims at placing staff members in the situation they would have been in the absence of an unlawful decision. Length of service is usually not relevant in this context. The UNDT, therefore, did not err in not expressly considering his service years. Mr. Saleh fails to demonstrate that the UNDT should have found exceptional circumstances and granted compensation in lieu as in *Lucchini*¹⁸ and *Haroun*¹⁹.

31. The Secretary-General submits that past awards in other cases are of limited relevance, unless it is demonstrated that these other cases present comparable factual circumstances. Here, Mr. Saleh merely argues that he would like the UNAT to increase compensation in lieu to a similar amount as in the latter cases, but without reasons. In the impugned Judgment, the UNDT made a reasoned application of UNAT jurisprudence on compensation in lieu. Listing cases where a higher award was made, as Mr. Saleh did in his brief, is not enough to demonstrate the UNDT erred.

32. On moral damages, Mr. Saleh has failed to demonstrate that the UNDT erred in awarding no compensation. The principle that compensation for harm must be supported by evidence is unequivocally enshrined in both the UNDT and the UNAT Statutes and has consistently been reaffirmed by the UNAT. Before the UNDT, Mr. Saleh did not substantiate his claim for harm to his *dignitas*. Contrary to his argument, the UNDT did not require "specific evidence" of harm, but simply evidence, which Mr. Saleh had not presented, and thus the UNDT correctly found such harm did not exist. In line with the Statutes of the UNDT and the UNAT, harm to *dignitas* has to be supported by evidence, and without it, Mr. Saleh's claim for moral damages must be dismissed.

¹⁸ *Lucchini v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1121, para. 63.

¹⁹ *Haroun v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-909.

The Secretary-General's Cross-Appeal

33. The Secretary-General submits that the UNDT made errors of law, which led to an erroneous conclusion that Mr. Saleh's conduct did not amount to misconduct. The Secretary-General thus argues that the impugned Judgment must be reversed.

34. Based on the current UNHCR definition of "abuse of authority", the Administration correctly found that Mr. Saleh's behavior amounted to misconduct. Mr. Saleh misused his position of power against INTERSOS staff by pressuring them to hire specific individuals as INTERSOS casual workers. This irremediably broke the trust relationship between the Organization and Mr. Saleh. The UNDT's finding that Mr. Saleh's behavior did not amount to misconduct leads to impunity and reputational damage for the Organization.

35. The UNDT erred in law by relying on an incorrect definition of abuse of authority. The Secretary-General notes that although the UNDT cited the correct Policy issuance (promulgated in 2014), the quoted excerpt in the impugned Judgment was from an earlier (2005) iteration of the Policy. The correct definition of "abuse of authority" in the Policy defines it as: "any improper use of a position of influence, power or authority by an individual against another person". Mr. Saleh's behavior was clearly in breach of the Policy, Staff Regulation 1.2 (b) as well as the UNHCR Code of Conduct's Principles 2, 4 and 9. By contrast, the outdated 2005 version of the Policy defined "abuse of authority" as, in relevant part, "[t]he improper use of a position of influence, power or authority by an individual against another colleague or group of colleagues". The UNDT focused on the word "colleagues" to conclude that this part of the definition of abuse of authority was not applicable, in part because Mr. Saleh and Mr. BK and Mr. BM were not "colleagues". The Secretary-General faults the UNDT for not relying on the correct definition of abuse of authority, although the Secretary-General had provided the relevant authority in his Reply to the application.

36. Because of this error, the Secretary-General submits that the UNDT missed a key element of the definition of abuse of authority, which is present in the instant case: the improper use of a position of influence, power, or authority. Mr. Saleh used his position of power for the benefit of the individuals he recommended for casual day labor work, which is not proper. He also used his position of power to influence a process that was not within his purview, namely the recruitment of casual workers. This exceeded his actual authority. While any suitable candidate could be hired to be a casual worker, Mr. Saleh wanted the individuals he recommended to be hired by INTERSOS. There was not only no need for him to assist INTERSOS with the task of hiring their

own casual workers, his interference with INTERSOS, a UNHCR implementing partner, was not one of his official duties. Moreover, Mr. Saleh, not only interfered with the implementing partner's activities, but he also followed-up and got angry if the individuals he had recommended were not hired.

37. The UNDT found that Mr. Saleh was trying to order that INTERSOS staff hire certain people, and that this was most certainly embarrassing for Mr. BM. The UNDT also noted that, for Mr. BM and Mr. BK, "the work environment had become intolerable".²⁰ However, the Secretary-General argues that the UNDT failed to draw adequate legal conclusions from these findings because it was relying on an incorrect and outdated definition of abuse of authority. The mere fact that Mr. Saleh repeatedly asked for specific individuals to be hired by INTERSOS staff, and followed-up on his requests, is enough to constitute abuse of authority and thereby misconduct. The declaration of Mr. Saleh, in the presence of three witnesses, that Mr. BM, Mr. BK and Mr. AD were working for him and not for UNHCR or INTERSOS, and that the Zahle warehouse was his, is also an instance of abuse of authority. Mr. Saleh, in his official function, was overseeing the warehouse operation and had a duty to be irreproachable in his dealings with INTERSOS. There was also a conflict of interest, given that Mr. Saleh's interest in having certain people from his family and village hired interfered with his obligation to conduct his official duties with the utmost integrity.

38. The Secretary-General submits that there was no legal basis for the UNDT to make the "absurd" finding that, because some of the individuals recommended by Mr. Saleh were from his village, Mr. Saleh should be not held accountable. In addition, the UNDT made a series of errors of law by considering irrelevant facts. Contrary to the UNDT's finding, there is no requirement under the legal framework that abuse of authority be effective for it to constitute misconduct, or that the Administration had to establish that Mr. Saleh had an improper motive.

39. The Secretary-General contends that the UNDT also erred in law in finding that UNHCR management failed to give guidance to Mr. Saleh on the hiring of casual workers. There is no legal basis to support the absence of guidance by UNHCR management, or that this would exempt Mr. Saleh from accountability. The hiring of casual workers was not part of Mr. Saleh's official duties and there were no instructions to be given by UNHCR management on this matter. It is not credible that Mr. Saleh was under the impression that his pressures on INTERSOS staff were

²⁰ Impugned Judgment, para. 58.

genuinely in line with Staff Regulation 1.2(g). A staff member is expected to know the legal framework, and ignorance is not an excuse. Mr. Saleh's abuse of office was completely ignored by the UNDT. Instead, the UNDT erroneously found that Mr. Saleh had no reason to believe that his behavior was improper, which seems hard to reconcile with the UNDT's finding that Mr. Saleh was trying to order INTERSOS staff to hire individuals he recommended.

40. The Secretary-General requests that the UNAT reverse the impugned Judgment and dismiss Mr. Saleh's appeal.

Mr. Saleh's Answer to Cross-Appeal

41. Mr. Saleh contends that the UNDT correctly found that UNHCR did not establish with clear and convincing evidence that Mr. Saleh's conduct constituted an abuse of authority. As to the Secretary-General's argument that the UNDT erred in relying on the wrong version of the Policy and therefore applied an incorrect definition of "abuse of authority", Mr. Saleh contends that the UNDT clearly referred to the correct administrative issuance from 2014, i.e., "UNHCR/HCP/2014/4". In any event, Mr. Saleh submits that the definition quoted by the UNDT and the current definition contained in the Policy are substantially the same. All the key elements of the abuse of authority definition relevant to the present case were correctly interpreted and applied by the UNDT.

42. The UNDT correctly identified and established the relevant facts and correctly concluded that Mr. Saleh did not improperly use a position of influence, power or authority against Mr. BK and Mr. BM, as Mr. Saleh did not have such a position over them, and both Mr. BK and Mr. BM knew that. Mr. Saleh disputes the relevance of the use of the word "colleague" in the 2005 version of the Policy, and the use of the word "persons" in the 2014 version. Mr. Saleh submits that the UNDT correctly identified that the key question is whether Mr. Saleh misused any power or authority to negatively influence Mr. BK or Mr. BM – and whether this matter was established by the Administration at the required standard of clear and convincing evidence. The Dispute Tribunal correctly found that the established facts showed that Mr. Saleh did not have any authority or power or influence over Mr. BK and Mr. BM such that he could negatively affect their careers or employment, as they both were INTERSOS staff and were not working under Mr. Saleh's authority.

43. Moreover, as correctly held by the UNDT, both Mr. BK and Mr. BM recognized Mr. Saleh's lack of authority over them. Specifically, Mr. BM was not able to explain how Mr. Saleh, "a UNHCR employee, would have been able to fire him or influence any such decision" and moreover, Mr. BM and Mr. BK took the decisions on hiring daily workers at the Zahle warehouse without taking Mr. Saleh's recommendations into account. Given that the UNDT correctly applied the key elements of the definition of abuse of authority and drew the correct legal conclusions, Mr. Saleh submits that a mere misquotation of the definition cannot and does not equal an error in law, let alone one that would require the impugned Judgment to be vacated in its entirety.

44. Mr. Saleh further contends that the UNDT correctly found that UNHCR did not establish with clear and convincing evidence that Mr. Saleh's conduct constituted misconduct. The Dispute Tribunal correctly found that at best Mr. Saleh attempted to influence Mr. BK and Mr. BM in a nonconsequential manner. The UNDT's clear and correct conclusion was that Mr. Saleh's actions needed to be assessed in the context of the situation he was put in by UNHCR, namely that he had been left without any guidance from UNHCR management regarding the warehouse, and that this same management had for years not only tolerated but accepted and approved of Mr. Saleh's work, at least tacitly. The only direction that UNHCR management had provided was that Lebanese daily workers should be given priority over foreign daily workers. Yet, when Mr. BK and Mr. BM complained against Mr. Saleh, the only reaction of UNHCR management was to shift the sole responsibility for the situation at the warehouse to Mr. Saleh. These facts did not escape the conclusion of the Dispute Tribunal.

45. The Secretary-General also failed to prove that Mr. Saleh had an alleged conflict of interest or that Mr. Saleh created an intimidating and hostile work environment. Although the Secretary-General contends that Mr. Saleh had a duty to be irreproachable in his dealings with INTERSOS when he was overseeing the warehouse operations, the Secretary-General does not hold UNHCR management to the same standard. Thus, the Dispute Tribunal's conclusion that under these circumstances the Secretary-General had failed to prove that Mr. Saleh's shortcomings were misconduct is accurate. In particular, with respect to Mr. Saleh allegedly creating a hostile work environment, the UNDT correctly established that the situation at the warehouse resulted from a conflict between Mr. BK and Mr. BM on the one side and Mr. Saleh on the other. In addition, Mr. Saleh was left without any guidance from his supervisors as to how to proceed in this situation.

46. Furthermore, as concerns the alleged conflict of interest, Mr. Saleh submits that the Dispute Tribunal correctly held that his recommendation of his wife's nephew and three other persons from his village as daily workers did not amount to a conflict of interest. The Lebanese government had encouraged UNHCR to hire Lebanese nationals. As Mr. Saleh resided, and was a well-known figure, in the local community near the Zahle warehouse, it was only logical that some of the daily workers he recommended came from his village. Mr. Saleh agrees with the UNDT that his wife's nephew cannot be regarded as a close relative. The Secretary-General fails to consider the facts salient in the present case, especially the lack of any guidance for Mr. Saleh from UNHCR management as to his warehouse assignment and clear direction to hire Lebanese workers on a priority basis.

47. Mr. Saleh also faults the Secretary-General for completely disregarding the extraneous motivation of Mr. BK and Mr. BM as witnesses and their strong self-interest in the case against Mr. Saleh.

48. Mr. Saleh therefore requests that the UNAT dismiss the cross-appeal in its entirety.

Considerations

Preliminary remarks

49. A preliminary matter relating to the receivability of the cross-appeal was not raised by either party. Nonetheless, the Appeals Tribunal wishes to make clear for the record that it is receivable. As decided in *Bagot*,²¹ under the current procedural legislative framework, the cross-appeal is a mechanism that allows a party to appeal the portion of a judgment unfavorable to him or her. In the present case, the Secretary-General seeks to eliminate the compensatory award made to Mr. Saleh, and reinstate the disciplinary decision, by requesting the Appeals Tribunal to dismiss his application and vacate the impugned Judgment in its entirety. Although the Secretary-General apparently was disinclined to initiate the appeal, once Mr. Saleh lodged his own appeal, the Secretary-General was entitled to cross-appeal on learning its content, namely, the request by Mr. Saleh for even greater compensation. The Secretary-General has hence undisputed standing to cross-appeal since he was adversely

²¹ *Bagot v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2017-UNAT-718, paras. 34-38.

affected by the impugned Judgment, to the extent it rescinded the contested decision and ordered the payment of compensation in lieu.

50. It follows that the Secretary-General's cross-appeal should be addressed before Mr. Saleh's appeal, since the Secretary-General challenges the rescission of the contested decision itself, as ordered by the impugned Judgment, while the issues brought by the appeal deal with the consequences of such rescission, that is to say, the amount of the compensatory award.

The merits of the cross-appeal: the lawfulness of the contested decision

51. The lengthy sanction letter of 4 June 2020 stated as follows:

Dear Mr. Saleh,

I write further to my letter dated 28 November 2019 inviting you to respond to allegations of misconduct. After carefully considering my recommendation with the Investigation Report and the evidence attached thereto, as well as your 30 January 2020 response to the allegations, the High Commissioner exercised his prerogative under Staff Regulation 10.1 (a) and decided to impose on you a disciplinary measure.

The High Commissioner was satisfied that the alleged facts were established on the basis of clear and convincing evidence for the following allegations:

- a) Between June 2018 and June 2019, you abused your authority and engaged in conflict of interest in pressuring INTERSOS personnel to hire specific individuals, at least one of whom was your relative and three came from your village; and
- b) You abused your authority in telling, in or around July 2018, INTERSOS personnel that they were not working for INTERSOS nor UNHCR, but for you personally.

The High Commissioner found that the evidence revealed that between June 2018 and June 2019, you pressured INTERSOS staff members to hire 14 specific individuals, of which at least one is your relative and three come from your village. Of those 14 individuals, there is written evidence (Whats App messages) demonstrating some sort of pressure for eight of them and there are corroborative testimonies for two others.

Moreover, the High Commissioner found that implicated INTERSOS personnel were credible when they recounted your statement that they were not working for INTERSOS nor UNHCR, but for you personally. Contrary to what you asserted in your

reply to the charge letter, it was not considered that their credibility was affected by the fact that their versions of the event differ with respect to the date of the meeting. Also, the credibility of their testimony was strengthened by your acknowledgement that it is possible you have claimed the ownership of the Zahle warehouse “in a spirit of dedication and zeal”.

The High Commissioner has found that your conduct amounted to misconduct. More precisely, he concluded that by pressuring INTERSOS personnel to hire specific individuals and by telling them that they were working for you personally, you improperly used your position of power, and therefore abused your authority. With respect to the allegation of conflict of interest, it was found that the tone used in your messages to INTERSOS personnel and the fact that you pressured for the hiring of individuals that came from your village, strongly suggest that you had a personal interest in the hiring of those specific individuals, and were therefore in a conflict of interest. Furthermore, by putting pressure on the hiring of specific individuals, the High Commissioner concluded that you used your office for the private gain of third parties and thus abused your office.

In light of the above, the High Commissioner concluded that you engaged in abuse of authority, misuse of office and conflict of interest, thus violating Staff Regulation 1.2 (b), (e), (g), (m), Staff Rule 1.2 (q), the Policy on Discrimination, Harassment, Sexual Harassment and Abuse of Authority (UNHCR/HCP/2014/4 of 29 August 2014) and Principles 2, 4 and 9 of the UNHCR Code of Conduct.

In determining the appropriate disciplinary measure to be imposed, the High Commissioner took into account mitigating and aggravating circumstances. In the present case, the High Commissioner considered as aggravating circumstances that you engaged in repeated conduct involving abuse of authority over a period of approximately one year. As mitigating circumstances, the High Commissioner considered that you have served UNHCR for over 5 years with a satisfactory record; your ePad shows that you are a very dedicated staff member; until now, you had an unblemished disciplinary record; and you appear to be remorseful.

The High Commissioner also applied the parity principle which requires equality and consistency in the treatment of employees and considered disciplinary measures imposed by the Secretary-General and the High Commissioner for similar cases.

Considering all of the above, the High Commissioner found that you failed to observe your basic obligations as a UNHCR staff member and that your conduct was unacceptable to the Organization. He therefore decided to impose on you the disciplinary measure of separation from service, with compensation in lieu of notice, without termination indemnity, in accordance with Staff Rule 10.2 (a) (viii).

Please note that in accordance with Staff Rule 10.3(c), any staff member against whom a disciplinary measure has been imposed following the completion of a disciplinary process may submit an application challenging the imposition of such

measures directly to the United Nations Dispute Tribunal, in accordance with chapter XI of the Staff Rules, within 90 days from the receipt of this notification.

I also wish to recall that you have the right to be assisted by a counsel of your choice. In this regard, you can contact the Office of Staff Legal Assistance at osla@un.org. You can also choose to be assisted by an outside counsel at your own expense. Please note that it is your own responsibility to contact such a counsel in case you wish to avail yourself thereof.

In view of the sensitive contents of the present letter, it will be hand-delivered to you and you will be asked to acknowledge its receipt in writing.

Yours sincerely,

[...]

Director

Division of Human Resources

52. The main issue in this appeal is to determine whether the UNDT erred when it found that Mr. Saleh's behavior amounted neither to an abuse of authority nor to a conflict of interest, and that therefore the termination of his appointment with UNHCR was manifestly disproportionate and incorrect.

53. The UNDT correctly recalled the Appeals Tribunal's jurisprudence with regard to the scope of judicial review in disciplinary cases. It is well-settled that the role of the Dispute Tribunal is "to examine: i) whether the facts on which the disciplinary measure is based have been established; ii) whether the established facts amount to misconduct; iii) whether the sanction is proportionate to the offence; and iv) whether the staff member's due process rights were respected".²² When termination of the staff member's appointment is the disciplinary sanction imposed, as in the instant case, the Administration must demonstrate clear and convincing evidence that the staff member committed the misconduct to support this severe outcome.²³

54. It is also settled jurisprudence that the Administration is bound by the motives established in the sanction letter. Indeed, the inclusion of stated reasons for a decision are essential for both the Dispute and Appeals Tribunals to exercise judicial review of administrative decisions, including assessing whether they were arbitrary, capricious, or

²² *Veronica Irima Modey-Ebi v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1177, para. 34.

²³ *Josef Reiterer v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1341, para. 52.

unlawful. In *Jafari*,²⁴ the Appeals Tribunal decided that a “harmful administrative decision must be fully and adequately motivated. The reasoning must be sufficiently clear, precise, and intelligible. A generic reasoning befitting every case is not enough and renders the decision unlawful.”

55. Some of the arguments in the Secretary-General’s appeal merely reiterate the submissions put forward to and rejected by the UNDT. These arguments relate particularly to Mr. Saleh having used his authority against INTERSOS staff by pressuring them to hire specific individuals as INTERSOS casual workers at the Zahle warehouse and thereby exceeding his purview. To the Secretary-General, this behavior irreparably broke the trust relationship between Mr. Saleh and the Organization. The Appeals Tribunal recalls that the mere reiteration of old arguments is not permissible. Although it is clear that the Secretary-General does not agree with the factual findings of the UNDT, he failed to establish in which respect these findings are unreasonable, given the circumstances of the case, as required by Article 2(1)(e) of the Appeals Tribunal Statute. As noted in *Krioutchkov*²⁵ and *Aliko*,²⁶ the Appeals Tribunal is not an instance for a party to reargue the case without identifying the specific defects and demonstrating on which grounds the impugned Judgment is erroneous. For this reason alone, the Secretary-General’s cross-appeal must fail.

56. Moreover, given the Joint Statement of Facts submitted by the parties, there is no reason why the Appeals Tribunal should intervene and modify the UNDT’s findings, which were both reasonable and equitable. Although pursuant to the agreed statement of facts, the hiring of casual workers was not part of Mr. Saleh’s official duties, he “coordinated and supervised the work of INTERSOS staff, had a ‘mentorship role’, and provided them with guidance and assistance in their work, as part of his functions of overseeing the warehousing operations”.²⁷ Given these responsibilities, as well as his previous intense involvement in the setting up and management of the Zahle warehouse, which had an established method of recruiting daily workers that was unchanged from when he had performed this task, it was understandable that Mr. Saleh forwarded some names for possible recruitment by INTERSOS. This finding is also in keeping with the undisputed fact that the Lebanese government had

²⁴ *Jafari v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-927, para. 36.

²⁵ *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-711, paras. 20-22.

²⁶ *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540, paras. 28-29.

²⁷ Joint Statement of Facts, para. 6.

asked UNHCR that preference should be given to employ nationals from Lebanon given the country's unemployment crisis at that time.²⁸

57. The problem arose due to the tone of Mr. Saleh's communication, which was correctly found by the UNDT to be demanding ("I want you to call and take care of...[ATS]" or "We want the boy [AMB] to work in the warehouse" or even "This ... get him [HAA] working every day at the warehouse") and his intent was thus not only to recommend certain daily workers, but to try and improperly order their hiring.²⁹ While the UNDT found that Mr. Saleh's conduct intended to assert some pressure, albeit ineffective, in the hiring process of daily workers, it also found that UNHCR provided no guidance regarding the appropriateness of Mr. Saleh's conduct. Notably, Mr. Saleh's supervisor, Mr. JZ, was unaware of how the warehouse was managed, leaving Mr. Saleh to his own devices.³⁰ It was only after the matter came to light that Mr. JZ discussed it *with his peer* in INTERSOS, and not with someone with firsthand knowledge of the situation, which would have been the appropriate way to better understand the context. In other words, the UNDT found that, given Mr. Saleh's established practice in the hiring of daily workers at the warehouse, and that no complaints regarding his behavior had been submitted before, Mr. Saleh did not have the opportunity to correct his conduct and thus the termination of his appointment "was manifestly incorrect and led to a disproportionate outcome".³¹

58. Furthermore, the written evidence showed that the number of candidates recommended by Mr. Saleh (based on express WhatsApp messages according to the agreed statement of facts), was six (less than the fourteen names indicated in the sanction letter as an aggravating circumstance).³² In this regard, it is also undisputed that, despite feeling pressure, Mr. BK and Mr. BM (of INTERSOS) had a clear understanding that they were not bound by Mr. Saleh's recommendations, given that he was a UNHCR staff member (not an INTERSOS staff member) and had no "instruction authority over them".³³ Put together, these facts render inconsistent the Secretary-General's submission (which was disputed by Mr. Saleh, *see supra*, paragraph 6 and footnote 3) that Mr. Saleh would have said that these two people were working

²⁸ Impugned Judgment, paras. 30, 34 and 60. See also Joint Statement of Facts, paras. 2-6.

²⁹ Impugned Judgment, paras. 45-46.

³⁰ *Ibid.*, paras. 52, 58, 60 and 61.

³¹ *Ibid.*, para. 66.

³² Joint Statement of Facts, paras. 7 and 11.

³³ Impugned Judgment, para. 58.

for Mr. Saleh personally, rather than for INTERSOS or even for UNHCR, as a way of abusing his influence over them.

59. In addition, the UNDT found no particular irregularity or conflict of interest in Mr. Saleh's recommendation of three individuals from his village and his wife's nephew (who could not be seen as a close relative), due to the then-prevailing recommendation from the Lebanese government that hiring preference should be given to Lebanese nationals.³⁴ The Appeals Tribunal has no reason to differ from the UNDT's finding in this regard. Apart from the fact that UNHCR did not provide Mr. Saleh with the necessary guidance or training regarding the scope of his new role, he had no opportunity to redress his behavior once the fault in his conduct had been established. Had Mr. Saleh been offered the opportunity to redress his behavior, he might have been able to continue his career of over five years with a satisfactory record, his ePAD having shown him to be a very dedicated staff member with an unblemished disciplinary record, not to mention that he expressed remorse once this situation had been brought to his attention, as recognized in the sanction letter.

60. This is not to say that the absence of guidance on the hiring of casual workers by UNHCR management exempts Mr. Saleh from accountability. Rather, had he received such guidance, his behavior could have been punished proportionately. It was precisely the lack of such training, however, that together with all the other elements of the case, allowed for a finding of disproportionality in the sanction by the UNDT.

61. As previously held by this Appeals Tribunal in *Samandarov*:³⁵

... (...) The proportionality principle limits the discretion by requiring an administrative action not to be more excessive than is necessary for obtaining the desired result. The purpose of proportionality is to avoid an imbalance between the adverse and beneficial effects of an administrative decision and to encourage the administrator to consider both the need for the action and the possible use of less drastic or oppressive means to accomplish the desired end. The essential elements of proportionality are balance, necessity and suitability.

... The main criticism of the impugned Judgment by the Secretary-General is that the UNDT usurped his discretion by failing to show due deference in substituting its own preference of sanction for that of his. The criticism, with respect, is somewhat

³⁴ *Ibid.*, paras. 47 and 65.

³⁵ *Samandarov v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-859, paras. 23-25 (internal footnotes omitted). See also *Balint Szvetko v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1311, para. 45.

overstated. It is undeniably true that the Administration is best suited to select an adequate sanction within the limits stated by the respective norms, sufficient to prevent repetitive wrongdoing, punish the wrongdoer, satisfy victims and restore the administrative balance, etc. But due deference does not entail uncritical acquiescence. While the Dispute Tribunal must resist imposing its own preferences and should allow the Secretary-General a margin of appreciation, all administrative decisions are nonetheless required to be lawful, reasonable and procedurally fair. This obliges the UNDT to objectively assess the basis, purpose and effects of any relevant administrative decision. In the context of disciplinary measures, reasonableness is assured by a factual judicial assessment of the elements of proportionality. Hence, proportionality is a jural postulate or ordering principle requiring teleological application.

... Our jurisprudence has expressed the standard for interference variously as requiring the sanction to be “blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity” or to be obviously absurd or flagrantly arbitrary. The ultimate test, or essential enquiry, is whether the sanction is excessive in relation to the objective of staff discipline. As already intimated, an excessive sanction will be arbitrary and irrational, and thus disproportionate and illegal, if the sanction bears no rational connection or suitable relationship to the evidence of misconduct and the purpose of progressive or corrective discipline. The standard of deference preferred by the Secretary-General, were it acceded to, risks inappropriately diminishing the standard of judicial supervision and devaluing the Dispute Tribunal as one lacking in effective remedial power.

62. As we held in *Specker*:³⁶ “The principle of proportionality requires that a disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of their misconduct. The Administration has discretion to impose a disciplinary measure that it considers appropriate to the circumstances of a case, and the Tribunal should not interfere with administrative discretion unless it is tainted by irrationality or is arbitrary.” On the other hand, to accept the submission of the Secretary-General that general due deference should be shown without question to his own administrative decisions, apart from distorting the jurisprudence of this Appeals Tribunal settled in *Sanwidi*,³⁷ would negate the power of review and leave the officials of the Administration free from judicial supervision over their employment decisions.

³⁶ *Leontine Geertina Petronella Specker v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1298, para. 26.

³⁷ *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 47.

63. The present case does not deal with the type of dishonesty when a single extreme action may lead to termination. Nor does it deal with deliberate or intentional misconduct. Rather, we have several incidents where a staff member, who undeniably had an oversight and mentorship role at the Zahle warehouse and had previously recruited daily workers himself, intended to exercise some pressure on INTERSOS employees to hire certain local workers, in line with the request from the Lebanese government. Although the pressure Mr. Saleh exerted was inappropriate in that it was too assertive, it was ineffective, because there is no evidence that the individuals recommended by Mr. Saleh were hired.³⁸ The fact of the matter is that, as correctly found by the UNDT, Mr. Saleh received no guidance or effective supervision in his new role,³⁹ in which he had transitioned from being the manager of the Zahle warehouse to having a coordination or mentorship role.⁴⁰ The disciplinary measure of separation from service with compensation in lieu of notice, without termination indemnity, was indeed disproportionate, not to mention that it was based on arguably exaggerated aggravating circumstances (relating to the undisputed number of individuals who were recommended by Mr. Saleh). In keeping with the pedagogical approach, Mr. Saleh not only should have received adequate training, but also, once the misconduct had been identified, he should have received a lesser sanction, in order to allow him the opportunity to redress such misconduct while keeping his post. This did not occur and the UNDT in its thorough Judgment was correct in finding that the sanction of separation from service was disproportionate to the offence.

64. Lastly, a new argument was proposed by the Secretary-General in his appeal, namely that the UNDT relied on a definition of abuse of authority that appeared in a prior version of the Policy.⁴¹ In this regard, Section 5.4 of the current version of the Policy provides that “abuse of authority” is “any improper use of a position of influence, power or authority by an individual against another *person*” (and does not use the previous word “*colleague*”, as quoted by the

³⁸ Impugned Judgment, para. 47.

³⁹ *Ibid.*, paras. 60-61.

⁴⁰ Joint Statement of Facts, para. 6.

⁴¹ At paragraph 56 of the impugned Judgment, the UNDT quoted the following definition for “abuse of authority” from the previous version of the Policy, dated April 2005 (emphasis added):

The improper use of a position of influence, power or authority by an individual against another *colleague or group of colleagues*. This is particularly serious when an individual misuses his/her influence, power or authority to negatively influence the career or employment conditions (including—but not limited to—appointment, assignment, contract renewal, performance evaluation or promotion) of another. It can include a one-off incident or a series of incidents. Abuse of authority may also include misuse of power that creates a hostile or offensive work environment, which includes—but is not limited to—the use of intimidation, threats, blackmail or coercion.

UNDT in the impugned Judgment).⁴² This legal definition also stipulates that the abuse of authority:

is particularly serious when an individual misuses their influence, power or authority to negatively influence the career or employment conditions of another, including, but not limited to, appointment, assignment, contract renewal, performance evaluation or promotion. It can include a one-off incident or a series of incidents. Abuse of authority may also include conduct that creates a hostile or offensive work environment, which includes - but is not limited to - the use of intimidation, threats, blackmail or coercion. Discrimination and harassment, including sexual harassment, are particularly serious when accompanied by abuse of authority.

65. While the Secretary-General is correct that the UNDT relied on an outdated version of the legal instrument in force at the time of the events, the focus on the word “colleague” instead of “person” does not have the extensive impact claimed by the Secretary-General. The legal slip is indeed rather inconsequential for the purposes of the present case, as regardless of the term used, the UNDT was correct when it found that abuse of authority was not established. The UNDT therefore drew the correct legal conclusions from its factual findings.

66. The cross-appeal accordingly fails.

The appeal: the amount of compensation in lieu and compensation for moral damages

67. In his appeal, Mr. Saleh claims that the UNDT erred in determining the amount of in-lieu compensation and in awarding no compensation for moral harm.

68. Regarding the amount of compensation in lieu, while the UNDT awarded an amount equivalent to his regular salary for the period between the date of his unlawful termination (4 June 2020) until the expiry of his fixed-term appointment (31 December 2020) including all related benefits and entitlements, Mr. Saleh seeks to be granted three years’ net-base salary. In this regard, Mr. Saleh contends that the UNDT erred in finding that it was unlikely that his appointment would have been extended beyond 31 December 2020, had it not been for the unlawful disciplinary measure.

⁴² Emphases added.

69. As held in *Ashour*,⁴³ the purpose of in-lieu compensation is to place the staff member in the same position he or she would have been in, had the unlawful decision not been made. Although the Appeals Tribunal exercises discretion in establishing the amount of in-lieu compensation, it shall ordinarily give some justification and set an approximate amount that it considers is an appropriate substitution for rescission or specific performance in the circumstances. In other words, compensation must be set following a principled approach and on a case-by-case basis.

70. The determination of the amount of in-lieu compensation will depend on the circumstances of each case, but some relevant factors that can be considered, among others, are the nature of the post formerly occupied, the remaining time to be served by a staff member on their appointment, and their expectancy of renewal.⁴⁴

71. Mr. Saleh's arguments, however, do not persuade the Appeals Tribunal, firstly because of the very nature of a fixed-term appointment, and the well-established principle that fixed-term appointments or appointments of limited duration carry no expectation of renewal or conversion to another type of appointment.⁴⁵ Even the renewal of the appointment of a staff member on successive contracts does not, in and of itself, give grounds for an expectancy of renewal, unless the Administration has made an express promise to that effect.⁴⁶ Separation as a result of the expiration of a fixed-term appointment takes place automatically, without prior notice, on the expiration date specified in the letter of appointment.⁴⁷ Secondly, contrary to what Mr. Saleh contends, this case is not of an exceptional nature so as to warrant compensation of three years' net base salary, and such a showing is required by Article 9(1)(b) of the Appeals Tribunal Statute for an award in excess of two years' net base salary. As found earlier in this Judgment, Mr. Saleh's misconduct, even though not deserving the disciplinary measure of

⁴³ *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.

⁴⁴ *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-712, para. 16.

⁴⁵ *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, paras. 25-27; *Muwambi v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-780, para. 25; *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.

⁴⁶ *Kule Kongba*, *op. cit.*, para. 25.

⁴⁷ *Koumoin v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-119, para. 20.

separation from service, was still reproachable and his appeal seeks an excessive increase beyond the reasonable amount correctly fixed by the UNDT.

72. Likewise, there was no error in the impugned Judgment to the extent that the UNDT dismissed Mr. Saleh's claim of compensation for moral harm. Mr. Saleh's argument of affront to *dignitas*, apart from being far-fetched (given the finding that he improperly intended to assert some pressure on other persons), is unsupported by the evidence. Such evidence is a requirement under both the Appeals Tribunal Statute and its jurisprudence, particularly in that it is incumbent on a claimant to submit specific evidence to sustain an award of moral damages, as provided by Article 9(1)(b).⁴⁸ The UNDT's finding in this regard must prevail.

73. In light of the above, the UNDT did not err in determining the compensation awarded to Mr. Saleh and his appeal also fails.

⁴⁸ *Dahan v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-861, para. 23.

Judgment

74. Mr. Saleh's appeal and the Secretary-General's cross-appeal are dismissed and Judgment No. UNDT/2022/064 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 30th day of June 2023 in New York, United States.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Sandhu

(Signed)

Judge Raikos

Judgment published and entered into the Register on this 1st day of August 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar