



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

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Judgment No. 2025-UNAT-1566

**Ernest Edward Hunt**  
**(Appellant)**

**v.**

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

## **JUDGMENT**

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Before:	Judge Abdelmohsen Sheha, Presiding Judge Katharine Mary Savage Judge Kanwaldeep Sandhu
Case No.:	2024-1959
Date of Decision:	27 June 2025
Date of Publication:	14 August 2025
Registrar:	Juliet E. Johnson

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Counsel for Appellant: George G. Irving

Counsel for Respondent: Rupa Mitra

**JUDGE ABDELMOHSEN SHEHA, PRESIDING.**

1. Mr. Ernest Edward Hunt (Mr. Hunt), a former staff member of the United Nations Joint Staff Pension Fund (UNJSPF) contested the decision of the Administration to impose on him the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity for harassment and abuse of authority toward the Complainant, disclosing confidential and commercially sensitive information to the media, and engaging in unauthorized outside activities (contested decision).
2. On 4 September 2024, by Judgment No. UNDT/2024/056 (impugned Judgment),<sup>1</sup> the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissed Mr. Hunt's application.
3. Mr. Hunt lodged an appeal against the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

**Facts and Procedure<sup>2</sup>**

5. In 2007, Mr. Hunt joined the Organization as a P-5 Senior Investment Officer in the Office of Investment Management (OIM) of the UNJSPF. OIM is responsible for managing the investments of the UNJSPF.
6. In 2017, S.R. was appointed Assistant-Secretary-General and Representative of the Secretary-General (the former RSG) for Investments of the UNJSPF, effective 1 January 2018.
7. On 14 February 2018, the Complainant, who held a P-3 Investment Officer position, was reassigned to the temporary job opening (TJO) of special assistant of the former RSG at the P-4 level.
8. On 1 March 2019, Mr. Hunt wrote to the former RSG by e-mail, copying his supervisor, H.B., OIM Director at the D-2 level, about the 2020 budget for the Real Assets team, which he headed at that time. In this e-mail, Mr. Hunt raised concerns about the former RSG's proposal to

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<sup>1</sup> *Hunt v. Secretary-General of the United Nations*, Judgment No. UNDT/2024/056.

<sup>2</sup> Based on the parties' joint statement on agreed facts, as referenced in the impugned Judgment, para. 6.

fill a P-4 position to handle infrastructure with the Complainant, without a competitive selection process.<sup>3</sup>

9. On 6 March 2019, Mr. Hunt e-mailed E.C., copying his entire team, requesting: “Please also drop [the Complainant] from [the Investment Fund (...)] (...) as she is not a member of our team.”

10. According to Mr. Hunt, on 8 May 2019, the “Real Assets portfolio, including infrastructure, was removed from [his] supervision without explanation”.<sup>4</sup>

11. On 24 May 2019, Mr. Hunt e-mailed H.B. stating, among other things, that the Complainant’s work on the Global Infrastructure Partners (GIP) IV (Investment Fund transaction) project was “not executed in a professional manner because of inexperience”.

12. On 1 July 2019, the former RSG approved OIM’s internal policy on information sensitivity, classification of documents, and records management.

13. On 19 July 2019, Mr. Hunt, along with six other staff members, filed a complaint against the former RSG and H.B. with the Office of Internal Oversight Services (OIOS).<sup>5</sup>

14. On 19 September 2019, Mr. Hunt e-mailed the former RSG and other senior managers, objecting to the Complainant’s appointment to conduct the due diligence exercise for the Investment Fund transaction, attaching his e-mail dated 1 March 2019. On the same day, Mr. Hunt sent another e-mail with the same distribution list, in which he stated that he “still believe[d] that further investments in infrastructure (...) should wait until OIM hire[d] a qualified P-4 with seven years’ experience in infrastructure”, noting that “no one [was] currently employed at OIM with those qualifications”.<sup>6</sup>

15. On 30 October 2019, OIOS received a report of possible misconduct involving Mr. Hunt. It was specifically alleged that he “harassed and discriminated, and abused his authority against [the Complainant] (...), by amongst other things, making disparaging remarks about her in front

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<sup>3</sup> E-mail from Mr. Hunt to the former RSG dated 1 March 2019. See also appeal, para. 6.

<sup>4</sup> Appeal, para. 7.

<sup>5</sup> Complaint dated 19 July 2019 to OIOS.

<sup>6</sup> Letter of allegations of misconduct memorandum dated 28 September 2022, para. 19.

of other UNJSPF staff, isolating her from work and creating a hostile work environment for her that threatened her professional duties and career”.<sup>7</sup>

16. On 6 December 2019, Mr. Hunt sent an e-mail to T.B., a senior OIM staff member, stating that:<sup>8</sup>

[T.B.] — I sent this to [M.R.] to forward to the [news media]. [MR], I just wanted to make sure this supplemental information, which is not in my memos, gets to the [news media] reporter. [The former RSG] recused himself on [the Investment Fund] transaction in the May 10th PMC meeting saying he had a conflict of interest because the former head of the World Bank (...) As mentioned in my memo, we have always required staff and management to agree on any illiquid investment in a ‘dual key’ arrangement. But by proposing this transaction under pressure from Goldman and using inexperienced staff [the Complainant] for due diligence and avoiding my involvement he was effectively approving his own transaction which is a violation of his fiduciary duty as RSG.

17. On 12 December 2019, Mr. Hunt exchanged e-mails with F.F., a journalist, about an article to be published later that day or the following day. On that same date, he e-mailed his OIM colleagues explaining that F.F. was “very interested in doing more profiles on [them]”, working “off the record as she did with [him]”, and provided her contact details for those wishing to speak with her directly.<sup>9</sup>

18. From February to May 2020, OIOS conducted an audit of the governance mechanisms and related processes in the OIM.<sup>10</sup>

19. On 13 March 2020, Mr. Hunt filed, on his own behalf and on behalf of seven other staff members, a written complaint to the Secretary-General, raising several “concerns regarding actions taken by the [former RSG] over the past two years”.<sup>11</sup>

20. On 30 March 2020, the former RSG resigned and the Secretary-General appointed an Acting RSG (the new RSG).<sup>12</sup>

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<sup>7</sup> OIOS Referral memorandum dated 20 July 2022.

<sup>8</sup> Letter of allegations of misconduct memorandum dated 28 September 2022, para. 57.

<sup>9</sup> *Ibid.*, para. 59.

<sup>10</sup> Audit of governance mechanisms and related processes in the Office of Investment Management of the United Nations Joint Staff Pension Fund, Report of the Office of Internal Oversight Services, dated 21 July 2020.

<sup>11</sup> Complaint from Mr. Hunt to the Secretary-General dated 13 March 2020.

<sup>12</sup> Answer, para. 14.

21. On 11 April and 25 May 2020, Mr. Hunt sent two e-mails to the new RSG regarding the Complainant, expressing surprise that she was still “introduc[ed] (...) as head of infrastructure” and stating that he “refused to bring on [the Complainant] on as a P-4 infrastructure into the Real Assets group”.

22. On 9 June 2020, the Complainant resubmitted her harassment complaint to OIOS.

23. On 24 November 2021, Mr. Hunt’s laptop and information communication technology (ICT) equipment were seized by OIOS.

24. On 20 July 2022, OIOS completed its investigation into allegations of misconduct against Mr. Hunt and issued its Investigation Report. It concluded that while there was “insufficient evidence that Mr. Hunt abused his authority and influenced decisions about [the Complainant]’s career”, it was nevertheless established that he failed to observe the standards of conduct expected of a United Nations civil servant by harassing the Complainant, engaging in unauthorized outside activities and leaking confidential information to the press. OIOS recommended that the Administration take appropriate action.<sup>13</sup>

25. On 28 September 2022, the Director, Administrative Law Division, Office of Human Resources (ALD/OHR), notified Mr. Hunt by letter of the following allegations of misconduct issued against him and the initiation of a disciplinary process:<sup>14</sup>

2. The [Investigation Report] pertains to allegations that you engaged in prohibited conduct amounting to harassment and abuse your authority of [the Complainant] (...), by, *inter alia*, making disparaging remarks about her in front of other UNJSPF staff, isolating her from work and creating a hostile working environment for her that threatened her professional duties and career.

3. It was further alleged that you: (1) disclosed confidential and commercially sensitive information to the media about the Global Infrastructure Partners (GIP) IV investment transaction; and (2) engaged in unauthorized outside activities relating to the Catskill Mountain Railroad (CMRR). Additionally, during the investigations, you disclosed information to OIOS regarding ICT resources issued to you, which were in your family’s possession for their personal use.

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<sup>13</sup> Investigation Report, paras. 2-5 and 199-207.

<sup>14</sup> Letter of allegations of misconduct dated 28 September 2022, paras. 2-3.

5. It is noted that the [Investigation Report] stated that there is insufficient evidence that you abused your authority by attempting to influence decisions affecting [the Complainant]'s appointment in the Organization. However, as will be further discussed below, the Office of Human Resources does not accept this finding.

6. Accordingly, based on the evidence referenced in the IR and annexes thereto, it has been decided to initiate a disciplinary process against you for the allegations relating to harassment, abuse of authority, disclosure of confidential information, and engaging in outside activities. (...)

26. Mr. Hunt was also provided with a copy of the Investigation Report and afforded an opportunity to respond to the allegations within one month, which he did on 5 December 2022.<sup>15</sup>

27. By letter dated 1 May 2023, the Assistant Secretary-General for Human Resources (ASG/HR) informed Mr. Hunt that the Under-Secretary-General for Management Strategy, Policy and Compliance (USG/DMSPC) had determined that the following allegations raised against him had been established:<sup>16</sup>

*i. Harassment and Abuse of Authority*

11. First, upon a review of the entirety of the record, it is established by clear and convincing evidence [that] Mr. Hunt harassed [the Complainant] by sending emails to staff, including senior managers, attacking her professionalism and integrity.

...

14. Secondly, upon the review of the entirety of the record, it is established by clear and convincing evidence that, Mr. Hunt harassed [the Complainant] by directly speaking to OIM staff members about her professional experience and unsuitability for the Real Assets team.

...

17. In sum, the evidence established that Mr. Hunt also disparaged [the Complainant]'s integrity to senior OIM staff, misrepresented her educational background, and questioned her suitability for the Real Assets Team. Mr. Hunt also acknowledged these facts.

18. Thirdly, upon a review of the entirety of the record, it is established by clear and convincing evidence that Mr. Hunt abused his authority by making negative comments on [the Complainant]'s work and integrity in emails to OIM staff and emails to the new RSG (...), dated 11 April 2020 and 25 May 2020, in order to damage her professional standing.

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<sup>15</sup> *Ibid.*, para. 85.

<sup>16</sup> Annex to the sanction letter dated 1 May 2023, pp. 5-13.

20. In sum, the evidence established that Mr. Hunt attempted to influence [the Complainant]’s career by making negative comments about her work to senior OIM staff. The evidence further establishes that Mr. Hunt sent two emails to the RSG (...) in an attempt to influence the decision to extend [the Complainant]’s temporary appointment at the P-4 level.

*ii. Disclosure of Confidential Information*

21. Upon review of the entirety of the record, it is established by clear and convincing evidence that Mr. Hunt disclosed information denoted as confidential to the media by:

- a. Corresponding with [F.F.], author of *MandateWire*, prior to her publication of two articles on 12 December 2019 and 2 March 2020;
- b. Discussing with [F.F.] specific details about the GIP IV transaction, the circumstances surrounding the [United Nations] approval process of the transaction, and [the Complainant]’s appointment to the due diligence team; and
- c. Sharing with [F.F.] a copy of an internal memorandum he drafted wherein he voiced his objections to the GIP IV transaction, and her contact information with other senior staff at OIM and encouraging them to contact her.

...

23. In sum, the evidence established that Mr. Hunt spoke with [F.F.], author of *MandateWire*, prior to her publication of two articles on 12 December 2019 and 2 March 2020. Mr. Hunt acknowledged his interactions with [F.F.].

24. The evidence further established that Mr. Hunt met with [F.F.] whereby he shared details about the GIP IV transaction, the circumstances surrounding the [United Nations] approval process of the transaction, and [the Complainant]’s appointment to the GIP IV team.

25. Based on the evidence, it is established that Mr. Hunt provided [F.F.] with a copy of an internal memorandum he drafted wherein he voiced his objections to the GIP IV transaction. He also shared [F.F.]’s contact details with other senior OIM staff and encouraged them to contact her. Mr. Hunt further acknowledged that he did neither sought nor was granted permission to speak with the media.

*iii. Outside activities*

Upon review of the entirety of the record, there is clear and convincing evidence that Mr. Hunt engaged in unauthorized outside activities by:

- a. Serving in the role and holding the title of President, CEO, Director, and Staff Coordination, CMRR since 2006;
- b. Undertaking a financial, operational, legal, and representational role in CMRR;
- c. Holding approximately 100 shares in CMRR, which were not disclosed in his United Nations Financial Disclosures in 2019 through 2021;

d. Using United Nations' photocopiers to scan contracts and letters signed by him in his role as President of CMRR; and

e. Sending and receiving e-mails regarding CMRR during his United Nations' working hours.

...

28. In sum, the evidence established that Mr. Hunt engaged in unauthorized outside activities by working with CMRR in senior roles performing substantial operational and administrative functions since 2006. Mr. Hunt performed these functions during his official working hours. The evidence further established that Mr. Hunt holds a financial interest in CMRR, which he did not disclose in his United Nations Financial Disclosures in 2019 through 2021.

28. The USG/DMSPC concluded that Mr. Hunt's actions constituted misconduct, in respect of which the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity was imposed.<sup>17</sup>

29. In reaching its decision, the USG/DMSPC considered as aggravating factors:<sup>18</sup>

- (a) Mr. Hunt's role as a senior manager with OIM entailed an increased responsibility to ensure an environment free of workplace harassment and abuse of authority;
- (b) the power disparity between Mr. Hunt, a serving staff member at the P-5 level, and the affected individual, [the Complainant], who was serving at the P-3 level at the time; and
- (c) Mr. Hunt's role as a senior investment officer in the UNJSPF placed the reputation of the Organization at undue risk by disclosing confidential and commercially sensitive information to the media.

30. On 20 July 2023, Mr. Hunt filed an application before the Dispute Tribunal challenging the contested decision.

#### *Procedures before the Dispute Tribunal*

31. Before the Dispute Tribunal, Mr. Hunt requested the Secretary-General to disclose, by 10 June 2024: i) the special review/audit report carried out by OIOS in March 2020; ii) the draft Governance Audit Report; and iii) any OIOS interviews of the Complainant. The Dispute Tribunal granted his request on 4 June 2024.<sup>19</sup>

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<sup>17</sup> *Ibid.*, para. 50.

<sup>18</sup> *Ibid.*, para. 49.

<sup>19</sup> *Hunt v. Secretary-General of the United Nations*, Order No. 063 (NY/2024), para. 19(b).



32. On 10 June 2024, the Secretary-General responded that he could not disclose the requested documentation due to its confidentiality, observing that “he ha[d] no means of compelling OIOS to do so due to the independent nature of OIOS’s operations under its mandate”. The Secretary-General also stated that no adverse inference should be drawn from OIOS’s refusal to disclose the documentation. Attached to his submissions was an Interoffice Memorandum dated 5 June 2024, in which OIOS explained its reasons for the decision not to disclose.<sup>20</sup>

33. On 19 June 2024, the UNDT issued Order No. 068 (NY/2024), scheduling a case management discussion (CMD) and ordering the Secretary-General to ensure that a representative from OIOS with decision-making power attend “to explain its non-disclosure decision and make an immediate decision regarding the possible disclosure, or not, of the relevant documentation”.<sup>21</sup>

34. On 20 June 2024, the UNDT issued Order No. 070 (NY/2024), ordering the Secretary-General to file the documentation requested by Mr. Hunt by 21 June 2024. The UNDT noted that the relevance of the documentation was for the UNDT to determine, not the Secretary-General or OIOS, and added that “should the [Secretary-General] fail to comply with its order on disclosure, this could result, as appropriate, in adverse findings against him when deciding the present case”.<sup>22</sup>

35. From 24 to 26 June 2024 and on 8 July 2024, the UNDT held a hearing on the merits of the case, during which it heard oral evidence from Mr. Hunt, the Complainant, the new RSG, M.R. (a former UNJSPF staff representative) as well as M.S. and A.R. (former colleagues of Mr. Hunt).<sup>23</sup>

### *Impugned Judgment*

36. On 4 September 2024, the UNDT issued the impugned Judgment, concluding that the contested decision was lawful and dismissing Mr. Hunt’s application.

37. First, in respect of his reporting to the media, the UNDT held that Mr. Hunt was not entitled to whistleblower protection under Section 4 of Secretary-General’s Bulletin ST/SGB/2017/2/Rev. 1 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations) (the PAR Bulletin). The UNDT found that Mr. Hunt failed to show that his reporting of alleged misconduct to the media was necessary

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<sup>20</sup> *Hunt v. Secretary-General of the United Nations*, Order No. 068 (NY/2024), para. 7.

<sup>21</sup> *Ibid.*, para. 9.

<sup>22</sup> *Hunt v. Secretary-General of the United Nations*, Order No. 070 (NY/2024), paras. 3, 4 and 8.

<sup>23</sup> Impugned Judgment, para. 4.

to avoid substantive damage to the Organization's operations.<sup>24</sup> The UNDT also concluded that he failed to demonstrate that, at the time he made the report, "he had grounds to believe that he would be subjected to retaliation by OIOS, or the Assistant Secretary-General for Human Resources Management (i.e., the [persons] he should report to pursuant to the established internal mechanism)".<sup>25</sup> Additionally, the UNDT found that Mr. Hunt's communications with F.F. were not protected under the Bulletin, as they occurred in December 2019, less than six months after his complaint had been filed with OIOS on 18 July 2019.<sup>26</sup>

38. Second, the UNDT found that there was clear and convincing evidence that Mr. Hunt harassed and abused his authority toward the Complainant, thus violating Staff Regulations 1.2(a) and 1.2(b), Staff Rules 1.2(a) and (f), and Sections 1.3, 1.4 and 3.5(c) of Secretary-General's Bulletin ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority) (Anti-Harassment Bulletin).

39. The UNDT found that Mr. Hunt made disparaging remarks about the Complainant in front of other UNJSPF staff members, which were not mere disagreements over her work performance but direct attacks on her qualifications. It concluded that, contrary to Mr. Hunt's contention, these remarks were not protected under Section 1.1. of the Anti-Harassment Bulletin.<sup>27</sup> The UNDT further found that Mr. Hunt's remarks were unfounded, as the Complainant possessed the relevant qualifications and experience for the P-4 position, for which she had been selected through a regular competitive selection process. The UNDT found that it had been established, based on the documentary evidence, that Mr. Hunt isolated the Complainant at work by excluding her from meetings and instructing OIM staff members not to work with her. Consequently, the UNDT concluded that Mr. Hunt's conduct toward the Complainant created a hostile work environment.

40. The UNDT held that Mr. Hunt abused his position to influence the Complainant's deployment by making derogatory remarks about her to and/or in front of several staff members and the new RSG, in an effort to harm her professional reputation, in breach of Section 1.8 of the Anti-Harassment Bulletin.<sup>28</sup>

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<sup>24</sup> *Ibid.*, paras. 22-25.

<sup>25</sup> *Ibid.*, para. 31.

<sup>26</sup> *Ibid.*, paras. 32-34.

<sup>27</sup> *Ibid.*, para. 77.

<sup>28</sup> *Ibid.*, para. 99.

41. Third, relying on e-mails from December 2019, the UNDT found that it had been established by clear and convincing evidence that Mr. Hunt disclosed confidential and commercially sensitive information about the Investment Fund transaction to the media. It noted that the news media reporter's (F.F.'s) e-mail dated 12 December 2019 confirmed that the information disclosed by Mr. Hunt was published, and the UNDT thus held him responsible for the article's content.<sup>29</sup> The UNDT held that Mr. Hunt's conduct violated Sections 3, 4, and 5 of UNJSPF/OIM (2019) (Information sensitivity, Classification of Documents and Records Management Policy), Staff Regulation 1.2(i) as well as Secretary-General's Bulletin ST/SGB/2007/6 (Information sensitivity, classification and handling). Mr. Hunt's argument that no policy providing guidance on dealing with media inquiries to OIM existed at the relevant time of events was dismissed.

42. Fourth, the UNDT found that it had been demonstrated by clear and convincing evidence that Mr. Hunt engaged in unauthorized outside activities, in contravention of Section 3.1 of Administrative Instruction ST/AI/2000/13 (Outside activities), by serving as President, Chief Executive Officer (CEO), Director, and Staff Coordinator of the Catskill Mountain Railroad (CMRR) since 2006, and by holding approximately 100 CMRR shares, which he failed to disclose in his 2019-2020 United Nations Financial Disclosure statements. The UNDT rejected his claim that disclosure was unnecessary because CMRR was a non-profit entity, noting that, according to its website, it was a "for-profit organization, which depend[ed] on tickets sales and volunteer efforts to operate", thus requiring disclosure of his interest (shares) in it.<sup>30</sup>

43. Last, the UNDT found that the sanction imposed on Mr. Hunt was proportionate to his offences, emphasizing that Mr. Hunt's conduct "left no possibility for any other punishment than separation", especially given the Organization's zero-tolerance policy for harassment. It noted that factors "such as that the harassing behaviour was repeated over a period of time, and that [Mr. Hunt] was aware that he needed authorization to interact with the media were validly considered as aggravating".<sup>31</sup>

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<sup>29</sup> *Ibid.*, para. 119.

<sup>30</sup> *Ibid.*, para. 127.

<sup>31</sup> *Ibid.*, para. 144.

*Procedure before the Appeals Tribunal*

44. On 31 October 2024, Mr. Hunt filed an appeal against the impugned Judgment with the Appeals Tribunal, to which the Secretary-General responded on 20 December 2024.

**Submissions****Mr. Hunt's Appeal**

45. Mr. Hunt requests the Appeals Tribunal to reverse the impugned Judgment and rescind the contested decision. He further asks the Appeals Tribunal to order the reinstatement of his lost pension coverage or, alternatively, payment of the difference in pension benefits, as well as compensation for material and moral damages, including harm to *dignitas*.

46. Mr. Hunt submits that the UNDT erred in finding that he did not meet the criteria for whistleblower protection. He argues that he had already been recognized as a whistleblower, having engaged in a protected activity on 19 July 2019, when he filed, along with six other staff members, a complaint against the former RSG and H.B. with OIOS. In this regard, he emphasizes that the United Nations Ethics Office (UNEO) had determined that he engaged in a protected activity and that there was a *prima facie* case of retaliation against him by the former RSG. He contends that the UNDT exceeded its jurisdiction by conducting its own assessment and concluding that he was not entitled to whistleblower protection, thereby effectively overturning the UNEO's findings without a "substantive review of the matter". In this context, he maintains that, as he was fulfilling his duty to report potential misconduct by the former RSG, the private communications he made in pursuit of that protected activity could not be deemed improper.

47. Mr. Hunt contends that the UNDT erred in law by misinterpreting the Anti-Harassment Bulletin. Specifically, he argues that the UNDT erroneously found that his "criticism of [the Complainant]'s suitability for the position to which the former RSG had unilaterally assigned her" constituted prohibited conduct. He further asserts that the UNDT failed to consider: i) that the communications on which it relied were either reports made to the Head of Office or private e-mail exchanges with colleagues; ii) the resignation of the former RSG; and iii) the subsequent changes introduced by the new RSG, including the reassignment of the Complainant to her prior P-3 position. These elements, he contends, created a rebuttable presumption that his concerns were well-founded.

48. Mr. Hunt also argues that the UNDT failed to distinguish between his “comments on investments issues and official discussions with the new RSG as opposed to his private communications with other whistleblowers”. He claims that the UNDT ignored the testimony of the new RSG who stated that he had not witnessed any harassment of the Complainant by Mr. Hunt. He also notes that the UNDT overlooked the fact that the Complainant was eventually promoted to the P-4 level in due course, which, he argues, undermines her claim that her career was negatively impacted.

49. Mr. Hunt asserts that the UNDT conflated “the selection process for the temporary P-4 job of Special Assistant to the former RSG with the proposed P-4 position in Real Assets/Private Investment to which [the Complainant] was later assigned by the RSG without any selection process”.

50. Mr. Hunt contends that the UNDT erred in law by failing to address the Secretary-General’s refusal to disclose the OIOS documentation, despite its instructions to do so in Order No. 070 (NY/2024).

51. Mr. Hunt argues that there is no evidence that he disclosed any confidential information to F.F. He further notes that “clarity regarding the policy within OIM on exchanges with the press only occurred after the appointment of the new RSG, which was several months” after he communicated with F.F.

52. Mr. Hunt disputes the UNDT’s finding that he engaged in unauthorized outside activities, describing it as “incongruous at best”. He reiterates that he had been involved with the CMRR since 2006, that his role was unpaid, and that he had disclosed his involvement to his supervisors at that time.

53. Last, regarding the proportionality of the disciplinary measure, Mr. Hunt contends that it is unclear how the relevant factors “were weighted or why separation from service was warranted”.

#### **The Secretary-General’s Answer**

54. The Secretary-General requests the Appeals Tribunal to uphold the impugned Judgment and dismiss the appeal in its entirety.

55. The Secretary-General submits that the UNDT correctly concluded that Mr. Hunt's actions toward the Complainant amounted to prohibited conduct. He asserts that Mr. Hunt's behaviour went far beyond mere disagreement on the Complainant's work performance or criticism of investment decisions. The Secretary-General emphasizes that the UNDT's findings were based on a thorough and systematic assessment of Mr. Hunt's conduct, supported by numerous examples and a clear application of the relevant legal framework. He further argues that Mr. Hunt's challenge amounts to a mere disagreement with the UNDT's conclusions and a reiteration of arguments already raised before the UNDT, which is insufficient to demonstrate that the impugned Judgment is defective.

56. The Secretary-General argues that the UNDT properly considered all relevant evidence before concluding that Mr. Hunt had harassed and abused his authority toward the Complainant. Contrary to Mr. Hunt's assertions, the Secretary-General contends that the UNDT correctly rejected his claim that his communications about the Complainant were private, noting instead that Mr. Hunt had given a certain degree of "publicity" to his attacks on the Complainant.<sup>32</sup> As for the elements Mr. Hunt claims the UNDT ignored and which, in his view, created a rebuttable presumption that his concerns were well-founded, the Secretary-General recalls that the UNDT is not required to address each and every claim made by a litigant. He maintains that, in the present case, the alleged omissions do not demonstrate any error in the impugned Judgment.

57. Regarding Mr. Hunt's claim that the UNDT failed to distinguish between his "comments on investments issues and official discussions with the new RSG as opposed to his private communications with other whistleblowers", the Secretary-General argues that this assertion amounts to a mere disagreement with the UNDT's conclusions and fails to demonstrate any error resulting in a manifestly unreasonable decision. In any event, he observes that Mr. Hunt did not assert before the UNDT that the former RSG had "unlawfully selected the Complainant for her impugned role".

58. The Secretary-General submits that the UNDT correctly found that Mr. Hunt was not entitled to whistleblower protection for his criticisms of the Complainant or for his external disclosures to the media. He emphasizes that Mr. Hunt's prior designation as a whistleblower did not authorize his subsequent misconduct. Furthermore, relying on Appeals Tribunal jurisprudence, the Secretary-General contends that even if Mr. Hunt reported misconduct in one

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<sup>32</sup> *Ibid.*, paras. 61 and 99.

instance, that did not “automatically justify his unlawful external disclosures of confidential information and sensitive information in a subsequent instance – even assuming, *arguendo*, that the information was identical in both instances”.<sup>33</sup>

59. The Secretary-General submits that the UNDT was under no obligation to draw an adverse inference or specifically address the OIOS documentation in the impugned Judgment, noting that the documentation pertained to matters that were not before the UNDT. In any event, he recalls that the UNDT is not required to enumerate all the facts and evidence it considered in reaching its conclusions.

60. The Secretary-General asserts that the UNDT correctly held that there was clear and convincing evidence that Mr. Hunt disclosed confidential and commercially sensitive information to the news media, while a policy prohibiting outside media activity and reporting was in effect. The Secretary-General contends that Mr. Hunt’s arguments in this regard are self-contradictory and further notes that he made no submission regarding his violation of Staff Regulation 1.2(i) and ST/SGB/2007/6.

61. The Secretary-General submits that the UNDT correctly found that Mr. Hunt engaged in unauthorized outside activities. He reiterates that Mr. Hunt’s contrary arguments merely reflect a disagreement with the UNDT’s conclusions and constitute a repetition of arguments that were unsuccessful before the UNDT.

62. The Secretary-General contends that the UNDT correctly determined that the disciplinary measure imposed on Mr. Hunt was proportionate to his offences.

63. Last, in the absence of illegality, the Secretary-General submits that no compensation can be awarded.

### **Considerations**

64. The appeals process under the formal system of administration of justice is of a corrective nature. The role of this Tribunal is not to review cases *de novo*, but rather to examine the impugned judgment for any errors of law, of fact resulting in an unreasonable result, or of procedures that

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<sup>33</sup> *John Gerald O’Brien v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1490, para. 104.

might have affected the decision.<sup>34</sup> It is the appellant's burden to prove that such errors exist.<sup>35</sup> As such, it is not sufficient for the appellant to simply disagree with the impugned judgment or to reiterate arguments that were unsuccessful before the lower court.<sup>36</sup> More is needed. The appellant must demonstrate in what respect and for what reasons the impugned judgment was defective.

65. The task of the UNDT in disciplinary matters is to determine whether i) the facts on which the sanction is based have been established; ii) the established facts qualify as misconduct in terms of the applicable legal framework; iii) the sanction is proportionate to the misconduct; and iv) there has been due process or procedural fairness by the original decision-maker.<sup>37</sup>

66. On appeal, Mr. Hunt advances various contentions against the impugned Judgment. These contentions fall under three prongs of the four-prong test: the establishment of facts, the characterization of the facts as misconduct, and proportionality. Mr. Hunt does not take issue with the protection of his due process rights during the investigation.

67. We will discuss each part of the test separately below.

*Whether the UNDT erred in the establishment of facts*

68. As we held in *Molari*, “when termination is a possible outcome, misconduct must be established by clear and convincing evidence. Clear and convincing proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt—it means that the truth of the facts asserted is highly probable”.<sup>38</sup>

69. We have also held in *Abbassi* that:<sup>39</sup>

... (...) In order to overturn a finding of fact by the UNDT, the Appeals Tribunal must be satisfied that the finding is not supported by the evidence or that it is unreasonable. The Appeals Tribunal considers that some degree of deference should be given to the factual findings by the UNDT as the court of first instance, particularly where oral evidence is heard.

<sup>34</sup> *Likukela v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-737, para. 33.

<sup>35</sup> *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-744, para. 36.

<sup>36</sup> *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035, para. 30.

<sup>37</sup> *Iyad Youssef Zaout v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1183, para. 31.

<sup>38</sup> *Molari v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-164, para. 30.

<sup>39</sup> *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110, para. 26.



The UNDT has the advantage of assessing the demeanour of witnesses while they are giving evidence and this is critical for assessing the credibility of the witnesses and the persuasiveness of their evidence.

70. On appeal, Mr. Hunt makes several factual contentions that reflect the following questions: (i) did the UNDT err when it failed to distinguish his written comments on investment issues and official discussions with the new RSG as opposed to his private communications with other whistleblowers who complained to OIOS and then to the Secretary-General? (ii) did the UNDT err when it confused the selection process for the TJO of Special Assistant to the former RSG with the proposed P-4 position in Real Assets/Private Investment to which the Complainant was allegedly later assigned by the RSG without a competitive selection process? (iii) did the UNDT err when it failed to consider that the Complainant was promoted to P-4 in due course, which contradicted her claim that her career had suffered? (iv) did the UNDT err when it found that Mr. Hunt had disclosed confidential information to the media?

*i. Whether the UNDT erred when it failed to distinguish Mr. Hunt's written comments on investment issues and official discussions with the new RSG as opposed to his private communications with other whistleblowers who complained to OIOS and then to the Secretary-General*

71. Mr. Hunt asserts that the UNDT erred when it failed to distinguish his written comments on investment issues and official discussions with the new RSG as opposed to his private communications with the other whistleblowers who complained to OIOS and then to the Secretary-General. He submits that it was the former RSG who disclosed the comments that were shared with him in private with other officials, including the Complainant.

72. The Secretary-General argues that these arguments lack merit. He asserts that the UNDT had already reviewed the alleged private character of Mr. Hunt's communications. Further, to the extent that these communications were work-related, as alleged by Mr. Hunt, then there would have been no expectation of confidentiality. The Secretary-General submits that Mr. Hunt's arguments reveal a mere dissatisfaction with the UNDT's findings without clear explanation in what respect the UNDT erred.

73. The Appeals Tribunal finds no difficulty in rejecting Mr. Hunt's arguments in this regard. The UNDT specifically addressed the alleged private character of Mr. Hunt's comments and found that these arguments lacked merit.<sup>40</sup> The UNDT expressly found that the initial e-mail sent from

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<sup>40</sup> Impugned Judgment, para. 61.

Mr. Hunt to the former RSG, that was later forwarded to other staff on 19 September 2019, did not “bear evidence that it was meant to be private by insertions such as ‘private email’, ‘not for wider distribution’ or similar”.<sup>41</sup> Further, the Dispute Tribunal found that the e-mail was originally copied to one more person, which removed it from the realm of privacy, because it was distributed beyond the addressee.<sup>42</sup> We share the UNDT’s sound analysis and note that Mr. Hunt does not challenge the UNDT’s analysis in this regard convincingly but merely reargues his case. His argument is, therefore, without merit.

74. We also do not accept Mr. Hunt’s claim that the UNDT failed to consider the new RSG’s testimony that he had never witnessed any harassment of the Complainant by Mr. Hunt. In the impugned Judgment, the UNDT had indeed recorded the new RSG’s testimony that he never witnessed any harassment by Mr. Hunt against the Complainant, which Mr. Hunt argued demonstrated the extent of her embellishment of the facts.<sup>43</sup> Although the Dispute Tribunal did not specifically address this testimony, we find that the UNDT did not have to. The UNDT makes its determination considering the totality of the evidence presented and does not have to specifically address every and each argument or submission.<sup>44</sup>

75. In respect of the new RSG’s testimony, we recall first that this testimony is only valid for the period in which the new RSG held office. This testimony has no bearing on the previous period in which the former RSG served. Second, the new RSG’s testimony that he “never witnessed any act of harassment or abuse of authority by Mr. Hunt”<sup>45</sup> does not preclude the Dispute Tribunal from assessing the totality of his testimony, together with the other evidence available, and potentially arriving at the conclusion that Mr. Hunt, taking the overall context, engaged in acts of harassment or abuse of authority to influence the Complainant’s professional prospects. In this respect, the UNDT noted from the new RSG’s own testimony that Mr. Hunt shared his concerns with him that the Complainant “was not the best person to be involved in the infrastructure projects”.<sup>46</sup> The Dispute Tribunal also noted Mr. Hunt’s e-mail of 5 November 2020 to his OIM colleagues where he stated: “We don’t want [the Complainant] to get [a P-4 position] by default. I hope that [the new RSG] knows that this is one

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<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*, para. 38(m).

<sup>44</sup> *Mizyed v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-550, paras. 34-35; *Abu Jarbou v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-292, para. 47.

<sup>45</sup> See UNDT hearing, 26 June 2024, at 6:52 (testimony of former RSG).

<sup>46</sup> Impugned Judgment, para. 91.

case where he has to make an exception. Of course, [the Complainant] will likely file a complaint if she is not selected.”<sup>47</sup> In light of the foregoing, we find that the UNDT did not err when it found that Mr. Hunt abused his authority by seeking to undermine the Complainant’s professional prospects. As such, Mr. Hunt’s argument fails.

*ii. Whether the UNDT erred when it confused the selection process for the TJO job of Special Assistant to the former RSG with the proposed P-4 position in Real Assets/Private Investment to which the Complainant was allegedly later assigned by the RSG without a competitive selection process*

76. Mr. Hunt submits that the UNDT erred when it confused the selection process for the TJO of Special Assistant to the former RSG with the proposed P-4 position in Real Assets/Private Investment to which the Complainant was allegedly later assigned by the RSG without a proper competitive selection process.

77. The Secretary-General submits that Mr. Hunt merely disagrees with the UNDT’s findings. Mr. Hunt had not claimed before the UNDT that the former RSG unlawfully selected the Complainant for her role. It is within the discretion of the RSG to assign staff members to functions. In any event, this argument has no effect on the UNDT’s finding that Mr. Hunt committed the misconduct and the UNAT should not intervene unless the error of fact committed by the UNDT led to a manifestly unreasonable decision.

78. Contrary to the Secretary-General’s argument, the Appeals Tribunal notes that Mr. Hunt had indeed claimed in his application before the UNDT that the former RSG appointed the Complainant “with no competitive selection process” to “a proposed P-4 post to manage infrastructure investments”.<sup>48</sup> Instead of inquiring into this claim, the UNDT reviewed the Complainant’s temporary appointment to the post of Special Assistant on a TJO basis and found that her selection to that role was made on a competitive basis.<sup>49</sup> Thus, we agree with Mr. Hunt that the UNDT made an error of fact when it examined whether the Complainant was chosen on competitive basis to the post of Special Assistant on a TJO basis rather than to the alleged P-4 post to manage infrastructure investments.

79. However, we find that this error of fact does not result in a manifestly unreasonable decision. The record shows that the proposed P-4 position in Real Assets/Private Investment was

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<sup>47</sup> *Ibid.*, para. 96(c).

<sup>48</sup> Application, Section VIII, para. 3.

<sup>49</sup> Impugned Judgment, para. 55.

never formalized, and thus never existed.<sup>50</sup> The record also shows that the former RSG did not place the Complainant on a post that did not exist but rather assigned her to functions related to the infrastructure portfolio. In any event, the assignment of functions is within the discretion and legal powers of the manager. A proper selection exercise is immaterial to the question of assignment of functions. Therefore, contrary to Mr. Hunt's claim, the record shows that the Complainant was not chosen on a non-competitive basis for the proposed P-4 position in Real Assets/Private Investment. His argument is, therefore, unsubstantiated and without merit.

*iii. Whether the UNDT erred when it failed to consider that the Complainant was promoted to P-4 in due course, which contradicted her claim that her career had suffered*

80. Mr. Hunt maintains that the Complainant's promotion to a P-4 position in 2020 is proof, or at least a rebuttable presumption, that he had not committed an abuse of power toward her.

81. The Appeals Tribunal finds no merit in this argument. Indeed, the record shows that the Complainant progressed in her professional career sometime after the abuse of power actions attributed to Mr. Hunt. However, for it to be proven that prohibited conduct in the form of an abuse of power occurred, it is not required to establish that the abuse of power succeeded in undermining the professional prospects of the person subject thereto. Rather, it is sufficient to establish that the abuse of power occurred on the required standard of evidence, which the UNDT did in this case. Having correctly found that Mr. Hunt had abused his power toward the Complainant, the Dispute Tribunal was not required to further investigate whether that abuse of power ultimately affected the Complainant's prospects in a negative way. Indeed, although its impact on the career prospects of the person subject to the abuse of power can be an aggravating factor, the abuse of power remains an independent event or set of events that can be investigated on its own, regardless of whether it achieved the desired results. In other words, proof of negative consequences on the career prospects of a targeted individual following an abuse of power is not a condition *sina qua non* for assigning responsibility to the abuser. The abuse of power is in and of itself prohibited conduct. Mr. Hunt's argument cannot, therefore, succeed.

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<sup>50</sup> *Ibid.*, para. 38(s); see also UNDT hearing, 8 July 2024, at 1:06:41 (testimony of the Complainant).

*iv. Whether the UNDT erred when it found that Mr. Hunt had disclosed confidential information to the media*

82. On appeal, Mr. Hunt contends that the framework for engagement with the media was unclear until the new RSG assumed his office. Further, Mr. Hunt submits that there was no evidence that he had effectively conveyed confidential information to the media. The limited conversation he had with the news media reporter is insufficient to uphold the allegation that he leaked confidential information.

83. The Secretary-General submits that the UNDT, based on sufficient evidence available in the record, reached the conclusion that the allegations against Mr. Hunt were proven by clear and convincing evidence.

84. We find that Mr. Hunt's arguments lack merit.

85. We note that Mr. Hunt had initially claimed before the UNDT that no policy existed at the relevant time of events giving guidance on engagement with the media. However, the UNDT found that a framework for engagement with the media had indeed existed at the relevant time of events.<sup>51</sup> The Dispute Tribunal noted that Mr. Hunt himself acknowledged, in cross-examination, that a policy existed but was not very clearly articulated until the new RSG came and made it clearer. Mr. Hunt, after having denied the mere existence of any policy about engagement with the media, cannot now shift the crux of his argument to the clarity of that policy when contesting the impugned Judgment.

86. In relation to Mr. Hunt's claims of absence of proof that he had effectively given the news media reporter any documents, we find that the UNDT made a careful assessment of the evidence on the record and reached a reasonable conclusion.<sup>52</sup>

87. First, we note that in her testimony, M.R. stated that she had suggested to Mr. Hunt and his colleagues that they approach the news media reporter.<sup>53</sup>

88. Second, the correspondence between Mr. Hunt, his colleagues, and the news media reporter constituted sufficient evidence proving that he had disclosed confidential information.

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<sup>51</sup> Impugned Judgment, para. 101.

<sup>52</sup> *Ibid.*, paras. 104 - 120.

<sup>53</sup> See UNDT hearing, 25 June 2024, at 17:52 (testimony of M.R.).

89. In the e-mail exchange from T.B. to Mr. Hunt on 4 and 5 December 2019, T.B. advised that “the [news media] reporter (a young woman) was most focused, on [the Investment Fund transaction] deal and the circumstances around the [United Nations] approval process (...) she would like to talk to you directly, as she had detailed questions that I could not answer (...) I do think you should consider this (...)”.

90. On 6 December 2019, Mr. Hunt wrote to A.R., M.S., and H.T. stating:

I just wanted to make sure this supplemental information, which is not in my memos, gets to the [news media] reporter.

The [former] RSG recused himself on [the Investment Fund] transaction in the May 10th PMC meeting saying he had a conflict of interest because the former head of the World Bank (...) was hired by [the Investment Fund] in February (...)

As mentioned in my memo, we have always required staff and management to agree on any illiquid investment in a ‘dual key’ arrangement. But by proposing this transaction under pressure from Goldman and using inexperienced staff [the Complainant] for due diligence and avoiding my involvement he was effectively approving his own transaction which is a violation of his fiduciary duty as RSG (...)

91. On 11 December 2019, Mr. Hunt wrote to M.R. stating: “I had [a] good off the record chat with the [news media] lady today.”

92. On 12 December 2019, Mr. Hunt wrote to A.R. stating:

The reporter is very interested in doing more profiles on us. She apparently has a copy of the ALM study and our new benchmarks and asset allocation so anything on this issue is fair game. She will work off the record as she did with me.

93. On 21 July 2020, Mr. Hunt sent an e-mail to M.R. stating “[the news media reporter] e-mailed to get a copy of the OIOS audit (she read the blog post). What is the best way to get it to her? I can send it, but I don’t want to implicate you”.

94. Proof beyond reasonable doubt is not required to establish that Mr. Hunt leaked information to the media. Rather, clear and convincing evidence, showing that the facts are highly probable, is sufficient to establish the alleged facts.<sup>54</sup> In the present case, the above evidence shows that Mr. Hunt, in coordination with his colleagues, was covertly communicating with a news media

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<sup>54</sup> *Molari* Judgment, *op. cit.*, para. 30.

reporter on what he stated was the Investment Fund transaction, the approval process, and the former RSG's role. We are satisfied that there was a high probability that Mr. Hunt had indeed leaked this information to the news media reporter.

95. Therefore, we find that the UNDT did not commit an error of fact resulting in a manifestly unreasonable decision when it found on clear and convincing evidence that Mr. Hunt had leaked confidential information to the media.

*v. Whether the UNDT erred in its determination that the facts amounted to misconduct*

96. Mr. Hunt raises the following questions on appeal: (i) did the UNDT err when it found that his engagement with the media was not a protected activity?; (ii) did the UNDT err when it considered his action against the Complainant was harassment rather than substantive criticism of an investment decision?; (iii) did the UNDT err when it found that he engaged in an unauthorized outside activity?

97. We will address each of these contentions separately below.

*i. Whether the UNDT erred when it found that Mr. Hunt's engagement with the media was not a protected activity*

98. In the impugned Judgment, the UNDT examined Mr. Hunt's argument that his disclosure of information to the media was made as a whistleblower. The Dispute Tribunal found that Mr. Hunt's activity of disclosing information to the media, as an entity outside of the established internal mechanisms, was not a protected activity under Section 4 of the PAR Bulletin. The UNDT found that some of the conditions set in the Bulletin to consider such a report of misconduct a protected activity were not met.

99. On appeal, Mr. Hunt maintains that he was recognized as a whistleblower following his report of possible misconduct made to OIOS on 18 July 2019. His subsequent limited communications with the media, as an outside entity, was made under the same status and in the context of the same reasons underlying his initial report. As the UNEO had already recognized his status as a whistleblower and even established acts of retaliation against him, the UNDT should not have reviewed again whether he had that status. In so doing, he argues that the UNDT exceeded its jurisdiction.

100. The Secretary-General rejects Mr. Hunt’s allegations. In particular, he submits that it was Mr. Hunt himself who referred to Section 4 of the PAR Bulletin claiming that reporting possible misconduct to external entities would constitute a protected activity.

101. We find that the UNDT did not err in finding that Mr. Hunt did not engage in a protected activity in reporting to the media.

102. In his application before the UNDT, Mr. Hunt maintained that “as a whistleblower, [his] contact with outside sources to report possible misconduct should constitute a protected activity[] (see [PAR Bulletin], [S]ection 4)”.<sup>55</sup> Mr. Hunt seemed to suggest that as an already-recognized whistleblower, his subsequent report to the media was necessarily a protected activity. This argument reveals a misunderstanding of the PAR Bulletin. A staff member is to be considered a whistleblower if he or she engaged in a protected activity, i.e., a report of possible misconduct or collaborating in investigations or audits related thereto. In other words, it is the engagement in a protected activity that leads to the grant of the status of a whistleblower. However, not every subsequent activity undertaken by a whistleblower is necessarily a protected activity. To be considered as such, the subsequent activity must materially be a protected activity, and be made through the established mechanisms of reporting, or outside these mechanisms when the legal conditions are met. We reiterate that the status of a whistleblower does not give a staff member blanket protection, nor does it constitute an absolute shield against accountability. Even a whistleblower engaging in a protected activity can, and must, be held accountable for his or her subsequent actions and omissions.<sup>56</sup>

103. It follows that it was natural for the UNDT to examine whether Mr. Hunt’s subsequent action, disclosing information to the media, met the legal conditions set under the Bulletin.

104. Section 4 of the PAR Bulletin provides protection from retaliation to individuals who report misconduct *outside* of established internal mechanisms as follows:

Notwithstanding staff regulation 1.2 (i), protection against retaliation will be extended to an individual who reports misconduct to an entity or individual outside of the established internal mechanisms, where the criteria set out in subparagraphs (a), (b) and (c) below are satisfied:

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<sup>55</sup> Application, Section VIII, “Grounds for contesting the administrative decision”, Subheading “Disclosure of Confidential Information”, para. 12.

<sup>56</sup> *O’Brien* Judgment, *op. cit.*, para. 104.



- (a) Such reporting is necessary to avoid:
  - (i) A significant threat to public health and safety; or
  - (ii) Substantive damage to the Organization's operations; or
  - (iii) Violations of national or international law; and
- (b) The use of internal mechanisms is not possible because:
  - (i) At the time the report is made, the individual has grounds to believe that he/she will be subjected to retaliation by the person(s) he/she should report to pursuant to the established internal mechanism; or
  - (ii) It is likely that evidence relating to the misconduct will be concealed or destroyed if the individual reports to the person(s) he/she should report to pursuant to the established internal mechanisms; or
  - (iii) The individual has previously reported the same information through the established internal mechanisms, and the Organization has failed to inform the individual in writing of the status of the matter within six months of such a report; and
- (c) The individual does not accept payment or any other benefit from any party for such a report.

105. The UNDT rightly found that Mr. Hunt failed to prove that his action of reporting the possible misconduct *outside* of the established internal mechanisms was necessary to avoid “(s)ubstantive damage to the Organization’s operations”. The Dispute Tribunal also found that it was not established that Mr. Hunt would have been subjected to retaliation by OIOS or the Assistant Secretary-General for Human Resources Management (i.e., the [persons] he should report to pursuant to the established internal mechanisms) had he made his report to them. It was also established that Mr. Hunt did not wait six months, as required under Section 4(b)(iii), before resorting to external mechanisms. Absent these conditions, the Dispute Tribunal rightly dismissed Mr. Hunt’s argument that his report to the media was a protected activity under the PAR Bulletin. We agree with the UNDT’s finding. It was Mr. Hunt’s responsibility to show how and why he believed that the mismanagement within UNJSPF was a threat that would cause *substantive* damage to the Organization’s operations. Further, there is no proof on the record that Mr. Hunt would have been subjected to retaliation had he reported to OIOS or the Assistant Secretary-General for Human Resources Management, to whom report of possible misconduct should be made as an internal mechanism. We also find that Mr. Hunt’s resort to the reporting mechanism outside of the established internal mechanisms did not respect the six-month waiting period between his initial report through internal mechanisms, that took place on 18 July 2019, and his subsequent report outside of these mechanisms, that happened in early December 2019.

106. This ground of Mr. Hunt's appeal cannot, therefore, succeed.

*ii. Whether the UNDT erred when it considered Mr. Hunt's action against the Complainant harassment rather than a substantive criticism of an investment decision*

107. Mr. Hunt takes issue with the UNDT's finding that he had harassed the Complainant. He submits that the UNDT ignored his contention that disagreement on work performance or on other work-related issues is not prohibited conduct under the relevant Anti-Harassment Bulletin. In his view, the UNDT failed to properly apply the relevant provisions that exclude work-related issues and failed to consider the whole context of irregularities to which he was resisting.

108. The Secretary-General asserts that the UNDT did not err as the Dispute Tribunal was not required to assess every and each argument, and that Mr. Hunt's efforts to discredit the Complainant continued to take place even after the resignation of the former RSG.

109. Section 1.1 of the Anti-Harassment Bulletin reads:

For the purposes of the present bulletin, discrimination, harassment, including sexual harassment, and abuse of authority shall collectively be referred to as "prohibited conduct". Disagreement on work performance or on other work-related issues is normally not considered prohibited conduct and is not dealt with under the provisions of the present bulletin but in the context of performance management.

110. Section 1.3 of the same Bulletin reads: "Harassment is any unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person, when such conduct interferes with work or creates an intimidating, hostile or offensive work environment."

111. The argument that a certain action reflects mere professional disagreements or work-related issues rather than harassment and abuse of power is a common cause. To distinguish harassment from disagreements that stem from professional interactions within the work context, each case should be decided on its own merits.<sup>57</sup>

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<sup>57</sup> *Mihai Nastase v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1373, para. 47. For example, we found in *Theunens* that, "based on the facts of the case", the appellant's "conduct was 'far outside the bounds of normal disagreements or management actions'" (*Reynaud Joseph-Marie Theunens v. Secretary-General of the United Nations*, Judgment No. 2025-UNAT-1512, para. 63). *A contrario*, according to the facts of the case in *Baker Kosmac Okwir*, we found that the actions in

112. Although legitimate motives can constitute a mitigating factor in some cases, such motives may not be enough to exclude the mere existence of harassment and abuse of power. In the same way, the staff member's good intentions to stop what they believe is wrong and to do what they believe is right does not give them blanket permission to engage in all sorts of harassment and abuse of power toward other staff. The staff member's conduct must be reasonable and proportionate in the circumstances and made on objective grounds.

113. To assess whether Mr. Hunt's actions were reasonable, the UNDT took the correct approach in reviewing whether Mr. Hunt's multiple statements about the lack of experience and qualifications of the Complainant were a means of disparagement or an objective disagreement. On this basis, the UNDT found that Mr. Hunt's claims that the Complainant did not have the required competencies and qualifications were without merit, and found his actions "defamatory" both to her professionalism and her integrity.<sup>58</sup> On this basis, the UNDT did not accept Mr. Hunt's claims that these were "work performance" or "other work-related issues" under Section 1.1 of the Anti-Harassment Bulletin.

114. Instead of criticizing the UNDT's reasoning on these points, Mr. Hunt sought to convince this Tribunal that the UNDT ignored the whole context and focused on the issue of whether his statements about the Complainant were correct or justifiably made. To refute his claims, the UNDT counted on the unverified and subjective opinions of the Complainant. Instead, he argues that the UNDT should have considered the abrupt resignation of the former RSG who put the Complainant, who was his Special Assistant, into a position to execute his plans. The UNDT should have also taken into account the changes that happened with the new RSG when the Complainant returned to her former P-3 position. For Mr. Hunt, all of that creates at least a rebuttable presumption that his complaints were well-founded.

115. Mr. Hunt's arguments are misconceived.

116. Firstly, Mr. Hunt testified under oath that he never discussed the Complainant's professional qualifications and investment experience with her, had never seen her personal history profile, and had never interviewed her. Also, the impugned Judgment noted that the

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question were work-related rather than harassment (*Baker Kosmac Okwir v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1232, paras. 56-72).

<sup>58</sup> Impugned Judgment, para. 62.

information provided by the Complainant was not contested by Mr. Hunt. Therefore, Mr. Hunt cannot now contest the UNDT's reliance on these elements that he had not questioned before.

117. Further, the fact that the former RSG had assigned the Complainant to the investment function did not necessarily mean that she did not have the qualifications and experience to undertake the function assigned. In the same manner, the fact that the Complainant had returned to her previous P-3 position does not mean that she did not possess the necessary qualifications to undertake the investment-related tasks assigned to her by the former RSG; the Complainant returned to her former position simply because her role as a Special Assistant was a TJO, which means that at some point in time her occupation of that post would come to an end. Also, the new RSG affirmed before OIOS and the UNDT that the return of the Complainant to her former position was part of a general approach aimed at eliminating the multiple TJOs in the office in accordance with proper human resource management practices, and was not done for personal reasons.<sup>59</sup>

118. Even if Mr. Hunt's claims that mismanagement and a toxic environment existed at UNJSPF which motivated his actions against the Complainant, this does not change the fact that the established facts attributed to him amounted to harassment and abuse of power. It was expected from Mr. Hunt, while discharging his duty of reporting possible misconduct, to uphold the highest standards of efficiency, competence, and integrity in his dealings with the Complainant at all times, especially given his senior position. Therefore, we find that the UNDT did not err when it found that Mr. Hunt's comments about the Complainant were not work-related disagreements but amounted to acts of harassment and abuse of authority.

*iii. Whether the UNDT erred when it found that Mr. Hunt had engaged in an unauthorized outside activity*

119. In the impugned Judgment, the UNDT found that CMRR was a for-profit entity in which Mr. Hunt owned shares, and for which he volunteered by serving in senior administrative and operational positions.

120. Mr. Hunt asserts that his engagement with antique railways was a mere hobby. The fact that the CMRR is structured as a for-profit organization is a reflection of the fact that it must make money from ticket sales to fund its operations. His involvement in CMRR was unremunerated.

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<sup>59</sup> Respondent's Trial Bundle, Summary of OIOS interview with new RSG, p. 1306; see also UNDT hearing, 26 June 2024, at 15:47-16:25 (testimony of new RSG).

His engagement with CMRR was participation in a social activity and cannot be considered prohibited conduct. Finally, Mr. Hunt submits that there is no evidence that any engagement in public interest or social activities was ever determined to be misconduct or sanctioned with dismissal.

121. The Secretary-General holds that Mr. Hunt repeats the same arguments that were already made before the UNDT. He does not critically address the UNDT's findings and contradicts his initial claim that his outside activity was non-profit.

122. The crux of these contentions is whether Mr. Hunt's activities for CMRR fall under Section 5.1 of Administrative Instruction ST/AI/2000/13 (Outside activities), i.e., activities for social or charitable purposes.

123. Section 3.1 provides:

Under staff regulation 1.2 (o), a staff member shall not engage in any outside occupation or employment, whether remunerated or not, without the approval of the Secretary-General. For the purposes of the present instruction, the expression "occupation" shall include the exercise of a profession, whether as an employee or an independent contractor.

124. Further, Section 5.1 reads:

Private non-remunerated activities for social or charitable purposes which have no relation to the staff member's official functions or to the Organization, and take place outside working hours or while the staff member is on leave, may be engaged in at the staff member's discretion. Staff members shall in every instance ensure that the activity is and remains compatible with their status as international civil servants.

125. We dismiss Mr. Hunt's argument that his non-remunerated services for CMRR means that his activity was for social or charitable services. We concede that non-remunerability is a core feature of activities for social and charitable services. However, the absence of remuneration is not sufficient to establish that the activity itself is for social or charitable purposes. We recall that Section 3.1 prohibits all outside activities "whether remunerated or not" without authorization of the Secretary-General. Therefore, the main question is whether Mr. Hunt's activities with CMRR could be reasonably considered as serving social or charitable purposes.

126. We understand that some entities with community service goals could be established as non- or for-profit organizations. However, when an entity is established as a for-profit, the aspects of generation of revenues, profitability, and distribution of dividends become crucial for the entity, regardless of the initial *raison d'être* of its founders. By way of analogy, we also recognize social responsibility of enterprises. However, it cannot be said, without overstressing one's imagination, that social responsibility makes these enterprises entities for social or charitable purposes. It follows that the legal nature of the entity is an important criterion to determine whether the activities undertaken thereunder were for social or charitable purposes.

127. It is undisputed that CMRR is a for-profit entity in which Mr. Hunt participated substantially. It is irrelevant whether CMRR was earning profits or incurring losses. Considering the legal nature of the entity, Mr. Hunt should have sought the Secretary-General's approval to exercise, even on a non-remunerated basis, the top management administrative, financial, and representative roles he had assumed for CMRR. Therefore, we find that the UNDT did not err when it found that Mr. Hunt engaged in outside activities without prior authorization of the Secretary-General.

*Whether the UNDT erred in its determination that the sanction was proportionate*

128. In the impugned Judgment, the UNDT affirmed the proportionality of the sanction imposed on Mr. Hunt of separation from service with compensation in lieu of notice and with termination indemnity.

129. On appeal, Mr. Hunt submits, in a cursory statement, that it is unclear how the relevant factors were weighed or why the UNDT found that separation was warranted. He maintains that no consideration was given to his efforts to fulfil his fiduciary duty to protect the assets of the Pension Fund.

130. The Secretary-General maintains that Mr. Hunt's arguments are broad, unspecific, and do not point to any error on the part of the UNDT. These arguments must, therefore, be dismissed.

131. The role of the UNDT is not to consider the correctness of the choice made by the Administration amongst the various courses of action open to it or to substitute its own decision

for that the Administration.<sup>60</sup> Any disciplinary measure imposed on a staff member must be proportionate to the nature and gravity of the misconduct.<sup>61</sup>

132. The measure imposed on Mr. Hunt was not “blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity”,<sup>62</sup> with no indication that the Secretary-General failed to weigh aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose.<sup>63</sup>

133. The UNDT correctly concluded that the allegations against Mr. Hunt had been established on clear and convincing evidence and constituted misconduct in violation of the relevant Staff Rules and Regulations. Mr. Hunt, as a senior manager, had a duty of care to promote a “harmonious work environment, free of intimidation, hostility, offence and any form of prohibited conduct”,<sup>64</sup> which he failed to do. His actions as established by the facts constituted harassment and an abuse of authority under the applicable Staff Rules and Regulations and, as such, amounted to misconduct. It was further proven on clear and convincing evidence that he leaked confidential information to the media and engaged in unauthorized outside activities without prior authorization of the Secretary-General both of which are prohibited conduct. In the Sanction Letter of 1 May 2023, the Administration identified several aggravating factors, with no mitigating factors, including: Mr. Hunt’s managerial responsibilities; the power disparity between Mr. Hunt and the Complainant; the undue risk for the reputation of the Organization because of the leak of confidential information to the media; the deliberate nature of Mr. Hunt’s actions; the repeated behavior toward the Complainant over an extended period of time; and Mr. Hunt’s multiple violations. Indeed, the seriousness and the compounded nature of the forms of misconduct justified the imposition on Mr. Hunt of the sanction of separation from service with compensation in lieu of notice and with termination indemnity, which is not the most severe disciplinary measure under Staff Rule 10.2. Further, even if we considered the underlying motive of Mr. Hunt’s actions, i.e., to fulfil his fiduciary duty to protect the assets of the Pension Fund, this mitigating factor would

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<sup>60</sup> *Iyad Youssef Zaqout*, Judgment, *op. cit.*, para. 32; *Ladu v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-956, para. 39; *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 40.

<sup>61</sup> Staff Rule 10.3(b).

<sup>62</sup> See *George M’mbetsa Nyawa v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1024, para. 89; *Sall v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-889, para. 41; *Portillo Moya v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-523, para. 21.

<sup>63</sup> *Toukolon v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-407, para. 31.

<sup>64</sup> Section 3.2 of Secretary-General’s Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority).

not outweigh the multiple aggravating factors in his case. The disciplinary measure imposed was, therefore, not unlawful, arbitrary, excessive, abusive, discriminatory or absurd in its severity but was imposed within accepted limits with due regard to the applicable norms and the purpose of discipline. Therefore, we do not find that the UNDT erred when it found that the sanction imposed on Mr. Hunt was proportionate.

*Other contentions*

134. Finally, Mr. Hunt submits that the UNDT erred in law when it failed to draw adverse conclusions from the Administration's refusal to provide the documentation ordered pursuant to the UNDT's Order No. 070 (NY/2024).

135. Mr. Hunt recalls that the UNDT issued Order No. 070 (NY/2024) to the Administration to provide the following documentation, in a redacted form as appropriate: (i) the two Special Reports of OIOS made to the Secretary-General, (ii) the preliminary findings of the OIOS Governance Audit, and (iii) the full testimonies of the Complainant to OIOS in the context of the Governance Audit. The Administration explicitly refused to provide the documentation ordered on the basis that it is OIOS which was the custodian of this documentation and that OIOS objected to such disclosure. Mr. Hunt submits that the Administration had a copy of this documentation, through the Office of the Secretary-General to whom such reports were made. In any event, he claims that the UNDT avoided making any reference in the impugned Judgment on this failure on the part of the Administration and failed to draw adverse conclusions from its refusal to abide by a valid judicial order.

136. The Secretary-General objects to these arguments. He submits that the UNDT itself had held that the Administration's failure to provide the documentation "could result, as appropriate, in adverse findings against [the Secretary-General] when deciding the present case". The UNDT was not under an obligation to draw such negative inferences, and the requested documentation pertained to matters that were not relevant to the questions in dispute and on which the disciplinary decision was made. The UNDT had sufficient basis to uphold the contested decision, and it did.

137. The Appeals Tribunal understands that, by requesting the UNDT to order the Administration to disclose these documents, Mr. Hunt sought to provide proof on the veracity of his claims of mismanagement and the toxic environment at UNJSPF at the relevant time of events.



However, even if we concede that Mr. Hunt's claims were true, this would be immaterial to the establishment of facts attributed to him. It was expected from Mr. Hunt, while discharging his duty of reporting possible misconduct, to respect the current framework of the Organization and to uphold the highest standards of efficiency, competence, and integrity in his dealings with the Complainant. This is even more important given Mr. Hunt's senior position. In any event, these documents have no bearing on the outside activity in which he engaged for several years without prior authorization of the Secretary-General.

138. Without prejudice to the foregoing, the Appeals Tribunal finds it troubling that the Secretary-General expressly refused to comply with the UNDT's Order. We are also troubled that the UNDT remained silent on this refusal and did not draw adverse conclusions against the Secretary-General. If the Secretary-General could not fully comply for any reason, he still had the option to submit the documentation ordered in a redacted form or on an *ex-parte* basis. If the Administration wished reconsideration by the UNDT, it had the option to bring an application to the UNDT or to appeal the Order to the UNAT. It is not, however, an option for a party to simply not comply with an order of one of the Tribunals. The Administration is fortunate that the UNDT did not impose sanctions for this intransigent conduct. The internal justice system cannot operate effectively if parties decide not to comply with either Tribunal's orders and face no consequences. In future, if there is such a blatant or deliberate disregard of a UNDT order or direction and a failure to take proper and lawful steps to alter such an order or direction, it is open to the UNDT to refer for possible action to enforce accountability the non-complying party, even if it is the senior official who (on behalf of the Secretary-General who is the nominal respondent) made the decision not to comply with the Order.

139. For the foregoing reasons, the appeal is dismissed.

**Judgment**

140. Mr. Hunt's appeal is dismissed and Judgment No. UNDT/2024/056 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 27<sup>th</sup> day of June 2025 in New York, United States.

*(Signed)*

Judge Sheha, Presiding

*(Signed)*

Judge Savage

*(Signed)*

Judge Sandhu

Judgment published and entered into the Register on this 14<sup>th</sup> day of August 2025 in New York, United States.

*(Signed)*

Juliet E. Johnson, Registrar