



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

Judgment No. 2022-UNAT-1228

**Sarah Coleman
(Appellant)**

v.

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

Judgment

Before: Judge Dimitrios Raikos, Presiding
Judge Sabine Knierim
Judge Martha Halfeld

Case No.: 2021-1545

Date: 18 March 2022

Registrar: Weicheng Lin

Counsel for Appellant: Edward Patrick Flaherty
Counsel for Respondent: Francisca Lagos Pola

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. Before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), Ms. Sarah Coleman, a former staff member of the United Nations Children’s Fund (UNICEF) contested the decision to uphold the determination of the Office of Internal Audit and Investigations (OIAI) that Ms. Coleman’s supervisor did not engage in harassment and abuse of authority against her. In Judgment No. UNDT/2021/016, the UNDT granted the application and remanded the case to OIAI, UNICEF, for a renewed assessment of Ms. Coleman’s complaint undertaken in compliance with the applicable procedure. The UNDT rejected Ms. Coleman’s request for compensation for moral harm.

2. Ms. Coleman has filed an appeal against the UNDT Judgment asking that the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) reverse the UNDT findings that the failure to answer Ms. Coleman’s repeated requests for information about her case did not amount to a procedural violation; that Ms. Coleman had failed to provide proof of bias or prejudice; that she was not entitled to moral damages; and that UNAT order compensation for the procedural error committed by the Organization.

3. For the reasons set out below, we dismiss the appeal and affirm the UNDT Judgment.

Facts and Procedure

4. Ms. Coleman joined the Pakistan Country Office of UNICEF (UNICEF PCO) in September 2014 as Chief of the Child Protection Section, at the P-5 level. She held a fixed-term appointment that expired on 30 September 2018. The Government of Pakistan granted visas to Ms. Coleman for the following periods: 8 September 2014 to 7 September 2015; 15 October 2015 to 13 December 2015; and 28 January 2016 to 11 October 2017. Ms. Coleman was also issued with a Ministry of Foreign Affairs (MOFA) accreditation card that was last renewed for the period from 4 August 2015 to 30 September 2016.

5. In October 2017, while Ms. Coleman was in the United Kingdom, her place of residence, she personally approached the Pakistan High Commissioner in London and obtained an assignment visa for another three months, namely from 13 October 2017 to 12 January 2018, for her to return to Islamabad. She returned to Pakistan on 19 October 2017.

6. On 16 January 2018, the MOFA in Islamabad informed the UNICEF PCO that it would not renew Ms. Coleman's accreditation card and expressly requested that she be advised to leave Pakistan on expiry of her visa. An exit visa was approved, and she left Pakistan on 9 February 2018.

7. On 5 March 2018, Ms. Coleman filed a complaint with OIAI alleging that her supervisor, the former Deputy Representative, PCO, UNICEF, had engaged in harassment, abuse of authority and unethical behaviour against her.

8. By memorandum dated 17 July 2019, the Chief of Investigations, OIAI, informed the Director, Division of Human Resources (DHR), UNICEF, that the complaint had been reviewed and that there was no evidence supporting Ms. Coleman's allegations. As a result, the Chief of Investigations, OIAI considered the case closed.

9. By e-mail dated 19 July 2019, the Chief, Policy and Administrative Law, DHR, UNICEF, informed Ms. Coleman that OIAI found no evidence to substantiate harassment or abuse of authority, that the difficulties with the Pakistani authorities had been triggered by her failure to renew her MOFA accreditation card in accordance with protocol, which was her responsibility and that PCO, UNICEF had made every effort to remedy the situation.

10. The Director, DHR, UNICEF, determined, based on the above, that OIAI's findings did not warrant administrative or disciplinary action against Ms. Coleman's supervisor and that no further action would be undertaken.

11. On 26 July 2019, Ms. Coleman requested management evaluation of the conclusion of the Director, DHR, UNICEF. On 9 September 2019, the Deputy Executive Director, Management, UNICEF, upheld the contested decision.

12. On 6 December 2019, Ms. Coleman filed an application before the UNDT.

13. By Order No. 128 (GVA/2020) of 9 December 2020, the UNDT ordered the Secretary-General *inter alia* to submit additional documents relevant to the consideration of the case. It also ordered Ms. Coleman *inter alia* to elaborate further on her claim for moral damages and on her request for a hearing.

14. On 21 December 2020, the parties complied with Order No. 128 (GVA/2020) and Ms. Coleman withdrew her request for a hearing.

15. On 2 March 2021, the UNDT issued Judgment No. UNDT/2021/016. The UNDT found that the application was receivable since Ms. Coleman was not contesting the outcome of the management evaluation but instead the decision by the Director, DHR, UNICEF not to take further action. On the merits, the UNDT noted that Ms. Coleman had not been interviewed by OIAI in accordance with the required procedure and that the procedural irregularity of not interviewing her not only constituted a serious breach of the applicable legal framework but also violated her due process rights. The UNDT, therefore, found that the contested decision was unlawful. The UNDT further found that the 16-month period that it took OIAI to complete the investigation, without even interviewing Ms. Coleman, was unreasonable. The UNDT however held that Ms. Coleman's allegations of improper motives were unsubstantiated and that the timing of OIAI investigator's responses to her requests did not constitute a procedural irregularity. The UNDT granted the application and remanded the case to OIAI for a renewed assessment of Ms. Coleman's complaint in compliance with the applicable procedure. The UNDT rejected Ms. Coleman's request for moral damages because it found no nexus between illegality and alleged harm.

16. Ms. Coleman filed an appeal of the Judgment on 12 April 2021. The Secretary-General filed his answer on 14 June 2021.

Submissions

Ms. Coleman's Appeal

17. The UNDT erred in law and fact warranting a review of the UNDT Judgment. The UNDT incorrectly found that OIAI's failure to respond to Ms. Coleman's inquiries about her complaint did not constitute a procedural violation. Ms. Coleman filed her complaint with OIAI on 5 March 2018. Between May 2018 and April 2019, she sent ten e-mails to the OIAI investigator inquiring about the status of her complaint. The investigator only answered her e-mails on 6 November 2018 and 2 May 2019. In the 6 November 2018 e-mail, the investigator apologized for the delay and advised that Ms. Coleman had addressed her e-mails to the hotline, and that the Outlook feature had filtered them out, which had since been corrected. The UNDT accepted the investigator's explanation as credible and determined that the failure

of the OIAI investigator to timely reply to Ms. Coleman's multiple requests for information on the assessment of her complaint was not a procedural irregularity.

18. The UNDT failed to consider that, following the investigator's 6 November 2018 e-mail - after the investigator had supposedly taken care of the e-mail issue - Ms. Coleman wrote her four more times spanning a period of four months asking for updates, on 14 January 2019, 26 February 2019, 26 March 2019, and 30 April 2019. Even if there had been legitimate problems with the Outlook system initially, the investigator did not respond to Ms. Coleman's additional e-mails until 2 May 2019 after the supposed e-mail issue had been cleared up, thus breaching the duty of care to a staff member. The UNDT's failure to fully assess the facts has resulted in error. UNAT should find that the OIAI's failure to respond to Ms. Coleman's multiple inquiries resulted in procedural irregularity, entitling her to her requested redress.

19. The UNDT erred in finding that there was no evidence of bias and prejudice. In her application before the UNDT, Ms. Coleman alleged that the Deputy Executive Director's failure to follow procedural requirements with regard to the length of time OIAI took to complete its investigation and its failure to interview her were caused by bias and prejudice. Prejudice can be inferred where there has been a failure to follow procedural requirements. Even though normally the applicant has the burden of proof to show that a decision was ill-motivated, as pointed out by the UNDT in its Judgment, the jurisprudence does not require an applicant to provide such evidence when procedural requirements have not been met.

20. A review of the procedural irregularities committed in the present case shows that the Organization thought so little of Ms. Coleman's complaint (or Ms. Coleman herself) that it did not even care to interview her as per its own rules and protocols or provide her with any updates until after she had sent multiple requests for information. Moreover, it took sixteen months to perform a preliminary review of her case, indicating that it had put it on the back burner at best. The procedural errors themselves provide the evidence needed to show prejudice and bias. Because the UNDT erred in finding that there was no proof of ill-will or prejudice, UNAT should overturn the UNDT's findings and award the requested redress.

21. The UNDT erred in law in determining that Ms. Coleman was not entitled to any remedies. While, for an award of moral damages, an applicant may normally be required to show a nexus between the harm itself and the illegality, such showing is not required in the face of procedural violations, as in the present case. The UNDT failed to consider UNAT's holdings in *Nyakossi*

that the UNDT may order compensation to a staff member for the violation of the staff member's legal rights under Article 10(5)(b) of the Statute; and compensation may be awarded for actual pecuniary or economic loss, non-pecuniary damage, procedural violations, stress, and moral injury.¹

22. In this case, the UNDT determined that there were two procedural violations: Ms. Coleman was not interviewed in violation of the Organization's own regulatory framework and there was undue delay with regard to OIAI's completion of its fact-finding investigation (and, if the UNAT agrees with Ms. Coleman's arguments herein, the investigator's failure to respond to the Appellant's queries also constituted a procedural irregularity). Therefore, according to UNAT's own jurisprudence, Ms. Coleman is entitled to the remedies sought. The UNDT incorrectly determined that Ms. Coleman was not entitled to damages. UNAT should overturn that portion of the Judgment and order the redress Ms. Coleman has requested.

23. Ms. Coleman asks that UNAT reverse the findings of Judgment No. UNDT/2021/016 that OIAI's failure to answer her repeated requests for information about her case did not amount to a procedural violation, that she provided no proof of bias or prejudice, and that she was not entitled to moral damages. She further requests that the UNAT award compensation in the amount of USD 50,000 for the procedural error committed by the Organization, plus interest on all amounts awarded to her at the rate of five percent per annum, from the date of the appeal through the date all redress has been paid in full.

The Secretary-General's Answer

24. Ms. Coleman has failed to establish any error by the UNDT warranting the reversal of the Judgment. With the exception of her submissions on moral damages, Ms. Coleman's arguments are not receivable. UNAT has ruled on several occasions that a party in whose favour a case is decided cannot appeal the Judgment. In this case, Ms. Coleman is the prevailing party in the Judgment before the UNDT, and her submissions are not receivable. While the UNDT held that Ms. Coleman's allegations of improper motives were unsubstantiated and that the timing of the OIAI investigator's responses to her requests did not constitute a procedural irregularity, the UNDT ruled in favour of Ms. Coleman. Indeed, it concluded that the contested decision was unlawful because Ms. Coleman had not been interviewed, and, consequently, ordered that the case be remanded to OIAI, UNICEF, for a renewed assessment of her complaint. As the party in whose

¹ *Nyakossi v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-254, para. 18.

favour the case has been decided, her submissions, with the exceptions of those on moral damages, are purely academic or theoretical. Even if the UNDT had found that the lack of a timely response of her complaints to the OIAI investigator had constituted another procedural irregularity or that there was evidence to substantiate her allegations of improper motives, the final outcome would have been, as it currently is, favourable to Ms. Coleman.

25. UNAT has consistently held that an appeal is not an opportunity for the parties to reargue their case. It is not sufficient for an appellant to state that he or she disagrees with the outcome of the case or repeat the arguments submitted before the UNDT. On appeal, Ms. Coleman has mainly repeated the arguments that were raised before the UNDT. As such, Ms. Coleman has failed to satisfy the requirements of Article 2(1) of the UNAT Statute. In light of the foregoing, Ms. Coleman's arguments that the UNDT erred in finding that UNICEF's failure to respond to her inquiries did not constitute a procedural error, and that the contested decision was not tainted by bias and prejudice, are not receivable, and should be dismissed.

26. Ms. Coleman has also failed to establish that the UNDT erred in denying her request for moral damages. Contrary to Ms. Coleman's contention, there is no UNAT precedent that states that in cases of procedural violations, there does not need to be a showing of harm or a link between an unlawful decision and the harm caused. On the contrary, UNAT has held that procedural violations *per se* do not entitle applicants to compensation and that harm needs to be shown. Moreover, Ms. Coleman did not submit any evidence in support of an award for compensation. As correctly noted by the UNDT, the evidence submitted by Ms. Coleman before the UNDT related to alleged injuries that she may have suffered as a result of the alleged harassment from her supervisor. It did not relate to the contested decision (i.e., the decision not to take further action). Currently, the case has been remanded back to OIAI, UNICEF for a renewed assessment of Ms. Coleman's complaint against her supervisor, which includes interviewing her. Accordingly, whether she was harassed by her supervisor and, whether, as a result of that alleged harassment, she suffered any harm, is yet to be determined.

27. The issue at hand, however, is whether the decision not to take further action caused Ms. Coleman harm and warranted an award for moral damages. Article 10(5)(b) of the UNDT Statute provides that the UNDT may order compensation for harm if there is evidence of harm. Furthermore, UNAT has held that the Organization can only be ordered to pay compensation to a staff member if he or she has suffered a direct and certain injury, and that the burden of proving moral damage lies with the applicant. In the present case, Ms. Coleman did not

submit any evidence showing that she was harmed by the decision not to take further action. Her submissions on appeal, therefore, should be dismissed.

28. The Secretary-General requests that UNAT affirm the Judgment and dismiss the appeal.

Considerations

29. On appeal, the Appellant contends that the UNDT made errors of fact and law warranting the reversal of the Judgment. Specifically, she submits that the UNDT erred in finding that (i) UNICEF's failure to respond to her inquiries on the status of her complaint did not constitute a procedural error, (ii) the contested decision was not tainted by bias and prejudice, and (iii) she was not entitled to compensation.

Receivability of the appeal

30. At the outset, the Appeals Tribunal will address the issue of receivability of the appeal, raised by the Secretary-General in the answer to the appeal. He asserts that, with the exception of the Appellant's submissions on moral damages, her submissions are not receivable and should be dismissed because she is the party in whose favour the case was decided. Even if the UNDT had found that the lack of a timely response to her complaints to the OIAI investigator had constituted another procedural irregularity or if it had found that there was evidence to substantiate her allegations of improper motives, the final outcome would have been, as it currently is, favourable to the Appellant.

31. It is our settled jurisprudence that a party may not file an appeal against a judgment concerning a claim in which that party's position has prevailed. This is to say that, ordinarily, an appeal is not receivable if it is filed by the party which prevailed in the first instance proceedings. Mere disagreements with the reasoning of the judgment are not enough to sustain an appeal even though the party prevailed. In *Sefraoui*, this Tribunal held that a party in whose favour a case has been decided is not permitted to appeal against the judgment on legal or academic grounds.² The rule is, however, not absolute. There are circumstances in which the appeal, even though filed by the prevailing party at first instance, is receivable.³ And of course, a party may succeed on questions of liability and yet still appeal against the remedies granted. A party may also succeed on some questions of liability but fail on others, which

² *Sefraoui v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-048, para. 18.

³ See *Kozul-Wright v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-843, para. 44 ff.

failure affects questions of remedy, and so may appeal against those failed liability findings.⁴ However, the Appellant's case does not fall within any of these categories.

32. We take note that this is an issue that concerns the receivability of the specific grounds of appeal, a part of it, and not that of the appeal as a whole. In this context, the Appeals Tribunal takes stock of the UNDT's relevant order and remedial intervention in the present case, namely its conclusion that the contested decision was unlawful because the Appellant had not been interviewed and its order that the case be remanded to OIAI, UNICEF, for a renewed assessment of the Appellant's complaint, -by which it impliedly annulled, as being procedurally flawed, the Administration's decision to uphold the OIAI's determination that the Appellant's supervisor did not engage in harassment and abuse of authority against her.

33. This procedural flaw constituted a sufficient ground for the UNDT to establish the unlawfulness of the challenged administrative decision and exercise its remedial power and, thus, there was no need for it to address each and every challenge raised by the staff member in her application. In these circumstances, the specific grounds of appeal under (i) and (ii) are devoid of any practicality as, even if they were to be accepted by the Appeals Tribunal as legally and factually true, this would not lead to a different ruling having an actual, real effect in terms of the validity of the contested administrative decision, which had already been found procedurally unlawful on account of another ground and the matter had been remanded to the Administration for anew consideration.

34. Moreover, the Appellant's specific grounds of possible errors in the UNDT Judgment, referring also to procedural shortcomings of the contested administrative decision, could not impact the amount of compensation awarded, nor does she claim so, or links their demonstration to her challenge to the amount awarded, which could possibly justify the receivability of this part of her appeal. Hence, the Appellant would not derive any specific benefit from their acceptance (*moyens inopérants*). Consequently, we find merit in the Secretary-General's contention that these grounds of appeal are inadmissible and need not be considered on their merits.

35. Be that as it may, we have considered the evidence on record and found that the UNDT was correct in finding that the Appellant has not discharged, as per the Appeals Tribunal's set jurisprudential standards, her burden to substantiate her claims of improper motives of the

⁴ *Yasmina Laasri v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1122, para. 52.

impugned administrative decision, and that the failure of the OIAI investigators to timely reply to the Appellant's multiple requests for information on the assessment of her complaint was not, of itself, a procedural irregularity. There is no authority for the proposition that the Administration was under a legal obligation to satisfy the Appellant's requests at this early stage of the investigation into her complaints of improper motives.

Merits of the case

Whether the UNDT erred in denying the Appellant's request for moral damages

36. Article 10 of the UNDT Statute provides in relevant part:

5. As part of its judgement, the Dispute Tribunal may only order one or both of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;

(b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

37. It is established jurisprudence that the Dispute Tribunal has authority to order compensation to a staff member for violation of the staff member's legal rights under Article 10(5)(b) of the Statute. Compensation may be awarded for actual pecuniary or economic loss, non-pecuniary damage, procedural violations, stress, and moral injury.⁵ However, not every violation of a staff member's legal rights or due process rights will necessarily lead to an award of compensation. Where the staff member does not show the procedural defect "had any impact on him, his circumstances or his entitlements, and that he suffered no adverse consequences" or harm from the procedural defect, compensation should not be awarded.⁶

⁵ *Nyakossi op. cit.*, Judgment No. 2012-UNAT-254, para. 18.

⁶ *Ibid.*, para. 19.

38. Further, as per the Appeals Tribunal’s jurisprudence, compensation for harm shall be supported by three elements: the harm itself; an illegality; and a nexus between both.⁷ It is not enough to demonstrate an illegality to obtain compensation; the claimant bears the burden of proof to establish the existence of negative consequences, able to be considered damages, resulting from the illegality on a cause-effect lien. If one of these three elements is not established, compensation cannot be awarded. Our case law requires that the harm be shown to be directly caused by the administrative decision in question. If these other two elements of the notion of responsibility are not justified, the illegality can be declared but compensation cannot be awarded.⁸

39. In its Judgment on the merits, the UNDT found that the evidence submitted by the Appellant in support of her claim for moral damages, namely the e-mail from the Stress Counselor dated 27 April 2020, was not supportive of the damage alleged because such evidence related to the alleged harassment the Appellant had suffered from her supervisor and was not related to any harm she may have suffered as a result of the contested administrative decision not to take further action on her claim of harassment or by the undue delay in the investigation process. The UNDT noted further that whether the Appellant was the victim of prohibited conduct remained to be determined - in view of the fact that it had remanded the case to the Administration for a renewed assessment of the Appellant’s complaint of harassment and abuse of authority - and the Tribunal could not award compensation for harm that had not been caused by the contested decision.

40. The Appellant submits that the UNDT erred in law by finding that she was not entitled to compensation. By citing the Appeals Tribunal’s Judgment in *Nyakossi*,⁹ she specifically alleges that the UNDT failed to consider established jurisprudence on awards for damages which provides that when there are procedural violations, as was found in the present case, an applicant is not required to make a showing of “the harm itself, an illegality, and a nexus between both”.

⁷ *Boubacar Dieng v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1118, para. 68; *Kebede v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-874, para. 20; *Sirhan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-860, para. 19.

⁸ *Boubacar Dieng*, *op. cit.*, para. 68.

⁹ *Nyakossi*, *op. cit.*, para. 18.

41. In response, the Secretary-General rejects the Appellant's above arguments as unsound. Further, the Secretary-General argues that the Appellant has not provided evidence of any harm.

42. We agree with the Secretary-General and find that the Appellant's arguments are misplaced. Our consistent jurisprudence clearly shows that it is incumbent on the claimant to prove the elements of his/her alleged harm irrespective of its specific cause and nature, i.e., whether it comes to pecuniary or non-pecuniary harm, on account of substantive or procedural violations etc. Notably, in terms of moral damages, as it is in the present case, we have consistently held that an entitlement to moral damages may arise where there is evidence produced to the Tribunal, predominantly by way of a medical or psychological report of harm, stress or anxiety caused to the employee, which can be directly linked, or reasonably attributed, to a breach of his or her substantive or procedural rights and where the Tribunal is satisfied that the stress, harm or anxiety is such as to merit a compensatory award.¹⁰

43. Consequently, we find no reasons to differ from the conclusion drawn by the UNDT, since the findings of fact made by the UNDT can only be disturbed under Article 2(1)(e) of the Appeals Tribunal Statute, when there is an error of fact resulting in a manifestly unreasonable decision, which is not the case here. We have noted the Appellant's submissions challenging the UNDT finding, but submissions are not evidence. The Appellant fails to point to any relevant evidence which the UNDT overlooked in coming to its decision. It is clear from the UNDT Judgment that the evidence before it (the e-mail from the Stress Counselor) was not capable of supporting her claim for moral damages in terms of the specific illegality found by the UNDT.

44. Having said that, however, we also take note that the determination on the issue of the Appellant's claim for moral damages on account of the harassment and abuse of authority she had allegedly suffered did not come under the purview of the UNDT Judge's findings and holdings under challenge which referred exclusively to the harm the Appellant had allegedly suffered as a result of the contested administrative decision not to take further action on her claim of harassment or by the undue delay in the investigation process. In this context, the UNDT in a clear and straightforward manner reserved the determination on the issue whether the Appellant was the victim of prohibited conduct to be made at a later stage in view of the fact

¹⁰ *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. 31; *Nyakossi op. cit.*, paras. 18-19.

that it had remanded the case to the Administration for a renewed assessment of the Appellant's complaint of harassment and abuse of authority, and therefore the UNDT expressly held that it was not in a position to award compensation for harm that had not been caused by the contested decision. As a result, the scope of our review on appeal will not go further such as to determine the issue of the Appellant's claim for moral damages on account of the harassment and abuse of authority she had allegedly suffered as this matter has not been addressed by the UNDT and is still pending before the Administration per the UNDT's relevant unassailable holding.

45. In all the circumstances of the case, the appeal falls to be dismissed.

Judgment

46. The appeal is dismissed and Judgment No. UNDT/2021/016 is affirmed.

Original and Authoritative Version: English

Dated this 18th day of March 2022.

(Signed)

Judge Raikos, Presiding
Athens, Greece

(Signed)

Judge Knierim
Hamburg, Germany

(Signed)

Judge Halfeld
Juiz de Fora, Brazil

Entered in the Register on this 18th day of May 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar