



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

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Judgment No. 2023-UNAT-1346

**Angioli Rolli**  
**(Respondent/Appellant on Cross-Appeal)**  
**v.**  
**Secretary-General**  
**of the World Meteorological Organization**  
**(Appellant/Respondent on Cross-Appeal)**

**JUDGMENT**

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Before:	Judge Graeme Colgan, Presiding Judge John Raymond Murphy Judge Dimitrios Raikos
Case No.:	2022-1690
Date of Decision:	24 March 2023
Date of Publication:	11 May 2023
Registrar:	Juliet Johnson

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Counsel for Secretary-General: Daniel Trup

Counsel for Mr. Rolli: Robbie Leighton

**JUDGE GRAEME COLGAN, PRESIDING.**

1. Both parties have appealed the Judgment on Relief, Judgment No. UNDT/2022/025, issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) on 17 March 2022 in *Rolli v. Secretary-General of the World Meteorological Organization*. By Judgment No. UNDT/2021/154 (Liability Judgment), the UNDT had previously concluded that Angioli Rolli had been dismissed unlawfully by WMO. There was and is no appeal against that Judgment. In its subsequent Judgment on Relief, the UNDT awarded Mr. Rolli the remedy of rescission of the decision to dismiss him, and specific performance. Alternatively, and at the election of the WMO, the UNDT ordered compensation for lost remuneration, pension contributions, education allowances, and compensation for lost taxation benefits, but together amounting to no more than two years' net base salary.

2. For the reasons set out below, we dismiss the Secretary-General's appeal. Mr. Rolli's cross-appeal is allowed in part and the remedies granted by the UNDT are varied in part.

**Facts and Procedure**

3. Because there is no appeal against the UNDT's Judgment on Liability, we can set out succinctly the relevant and now uncontroversial facts.

4. Following a long and successful managerial career with international organizations including, from 2012 with WMO, Mr. Rolli was dismissed summarily on 9 May 2018. Arising out of his communications with an Audit Committee about a report which found irregularities in formulation of rules governing the conduct of a business programme, the Secretary-General of WMO summarily dismissed Mr. Rolli, without investigation, interview or any of the other required due process steps being taken. Mr. Rolli engaged a privately retained lawyer to advise and represent him in challenging this decision as he had been invited to by the Organization. Unlike in relation to United Nations' employment, there was no in-house representational body able to undertake this function for Mr. Rolli at that time.

5. After preliminary litigation, the UNDT delivered its Judgment on 16 December 2021 finding that Mr. Rolli had been dismissed unlawfully. This decision was reached on procedural (lack of due process) grounds and did not examine the merits of the WMO Secretary-General's decision to dismiss Mr. Rolli.
6. On 17 March 2022 the UNDT delivered its Judgment on Relief.
7. The WMO Secretary-General filed an appeal on 13 May 2022, and Mr. Rolli filed his answer on 15 July 2022.
8. On 15 July 2022, Mr. Rolli filed a cross-appeal, and the WMO Secretary-General filed his answer to the cross-appeal on 9 September 2022.

### **Submissions**

#### **The WMO Secretary-General's Appeal**

9. The Secretary-General of the WMO submits that the UNDT erred in law and exceeded its jurisdiction in ordering restoration of pension and education allowance to Mr. Rolli. The order for restoration is an act of specific performance requiring the Organization to undertake a number of activities, including liaising with the United Nations Joint Staff Pension Fund (UNJSPF or the Fund), identifying and requesting them to undertake the actuarial cost estimate of the various pension contributions implications that the Organization would eventually have to pay, depending on the benefits Mr. Rolli elected to receive. Such payments made to the UNJSPF would exceed the two years' net base salary awarded by the UNDT. In addition, the Organization would have to pay back the monies paid to him as part of his withdrawal settlement, having not accrued the necessary five years of contributory service. In the case of the education grant restoration, this would mean the submission of school fees and the calculation of the educational award, taking into account admissible and non-admissible expenses for the affected years.
10. The Secretary-General submits that such specific performance cannot be included as part of in-lieu compensation. In-lieu compensation is an alternative to specific performance. It must be an award of a set monetary value fixed by the UNDT in a judgment. In this case, the UNDT awarded Mr. Rolli a maximum of two years' net-based salary. Specific

performance in the guise of restoration of both Mr. Rolli's pension and education grant cannot be an addition to this in-lieu compensation.

11. The Secretary-General of the WMO further contends that the UNDT erred in law and exceeded its jurisdiction in awarding legal expenses to Mr. Rolli on the unique basis that these costs were incurred as a result of the Organization's action of unlawfully separating him. However, under UNAT jurisprudence, such legal expenses may only be payable in instances in which there is evidence of "manifest abuse of the appeal process", which as judged by the UNDT was not the case here. The UNDT has expanded unlawfully the basis upon which such legal fees may be payable. The basis of the decision to grant such a payment was predicated on the UNDT's determination that such damages fall within the realm of compensation payable under Article 10(5)(a) and 10(5)(b) of the UNDT Statute. However, Article 10(5)(a) and 10(5)(b) of the UNDT Statute do not provide a jurisdictional basis upon which to award legal costs.

12. The Secretary-General requests that the UNDT Judgment on Relief be rescinded with respect to the orders relating to restoration of pension and education allowance as well as the award for damages in relation to legal expenses.

### **Mr. Rolli's Answer to the Secretary-General's Appeal**

13. Mr. Rolli contends that the UNDT did not err in law by ordering restoration of pension benefits, thereby seeking to place Mr. Rolli in the position that he would have been in but for the unlawful termination. In this instance, a significant loss for Mr. Rolli was that he was separated three and a half months prior to his pension rights vesting with a consequently disproportionate financial loss to him because of the timing of his termination.

14. Mr. Rolli submits that the UNDT did not err in calculating in-lieu compensation under Article 10(5)(a), in part, on the basis of projected earnings he would have received but for the contested decision. This is the rationale for the two-year cap contained in Article 10(5)(b). However, the loss of Mr. Rolli's pension entitlement accrued essentially overnight as the result of his not being employed to the end of August 2018 and thereby reaching five years' service with the WMO. This acute financial loss is not associated with length of service but instead the vagaries of when Mr. Rolli was separated. It follows that the correction of this loss should not factor into the two-year cap applied by the UNDT. Thus, the award of specific

performance with regards to reinstating pension benefits complies with UNAT jurisprudence, the UNDT Statute and the interests of justice.

15. Should UNAT find that the UNDT did err, an order for payment of the Organization's contributions accrued to the date of separation plus the Organization's and staff member's contributions for the period of projected onward employment, comes closer to restoring Mr. Rolli to the circumstances that would have accrued but for the contested decision. An award of compensation in this amount goes some way to returning Mr. Rolli to the situation that would have accrued but for the contested decision. The variation sought by the Secretary-General acts to ignore this relevant negative impact of the unlawful termination decision.

16. Mr. Rolli submits that the UNDT appropriately identified education grant as something that, but for the unlawful termination decision, Mr. Rolli would have received. This allowance again is not tied to the period of Mr. Rolli's projected onward service after the contested decision but instead to the costs incurred for the schooling of his children. Application of the cap on compensation as established under Article 10(5)(b) to this loss is, therefore, not in the interests of justice. The UNDT did not err in law by ordering specific performance regarding the reinstatement of education allowance for the period of projected onward service after the contested decision.

17. Further, or alternatively, Mr. Rolli avers the award of the UNDT may be viewed as one of simple financial compensation. Mr. Rolli identified a CHF (Swiss Franc) value for the loss of education grant through the provision of bills for education costs during the relevant period. By ordering the restoration of education allowances for the prescribed period, the UNDT has simply indicated that the WMO should calculate the CHF value of the compensation itself rather than the UNDT applying the WMO rules on education grant to the bills provided by Mr. Rolli. The Tribunals routinely indicate an amount of compensation by reference to the rules of an organization rather than the provision of a lump sum amount, e.g., by ordering a period of net base pay as an amount of compensation. The order to reinstate education allowance over a specific period merely left determination of the dollar (or CHF) amount to the WMO in accordance with its rules.

18. Mr. Rolli further asserts that the UNDT did not err in awarding compensation for legal costs incurred. Mr. Rolli was subjected to unnecessary litigation in light of the WMO's institutional failure to establish a neutral first instance process in compliance with the

agreement entered into by the WMO and UNAT. As a direct consequence, Mr. Rolli was subjected to a protracted Joint Appeals Board (JAB) process resulting in a nullity and a UNAT process that returned him to the position he had been in immediately following separation. During both these procedures he had no access to free legal representation. Thus, due to the failings of the Organization, Mr. Rolli incurred significant legal costs without progressing his case.

19. Contrary to the Secretary-General's assertion, Article 10(5)(b) does not relate exclusively to moral harm; it relates to both pecuniary and non-pecuniary damages. The UNDT appropriately indicated that the test as to whether a pecuniary loss may be compensated as alternative (Article 10(5)(a)) compensation or pecuniary (Article 10(5)(b)) compensation is identical and would be "determined here together". Furthermore, while the Secretary-General alleges that the UNDT failed to identify whether compensation was for legal costs accrued under Article 10(5)(a) or Article 10(5), the UNDT accurately identified compensation could be awarded under either. Thus, to the extent this represents an error it is one making no difference to the outcome of the decision.

20. Mr. Rolli asks that, subject to his cross-appeal, the UNAT affirm the UNDT Judgment.

### **Mr. Rolli's Cross-Appeal**

21. Mr. Rolli's cross-appeal is comprehensive. He submits that the UNDT erred in fact and law in finding exceptional circumstances did not exist justifying an award above the two-year cap. There has not been a single other case in the history of the formal justice system where a staff member has been summarily dismissed for misconduct without even an investigation having been conducted to establish the facts for which they were dismissed. The level of disregard to Mr. Rolli's due process exhibited by the Organization is not only exceptional but apparently unique. Mr. Rolli had risen through his career to the D-2 level where he performed for years with excellent evaluations. Overnight this career was brought to an end without any enquiry into the facts and without Mr. Rolli being offered any opportunity to respond or defend himself. The decision to summarily dismiss Mr. Rolli contained obvious misrepresentations with the Secretary-General of the WMO claiming to be unaware that Mr. Rolli communicated with the Audit Committee despite having been informed he would do so both orally and in writing and thus inviting the conclusion he acted in bad faith.

22. Mr. Rolli contends that throughout the proceedings, the Secretary-General has continued to abuse due process engaging in clandestine communications with the JAB only discovered upon order of disclosure from the UNAT. Furthermore, the WMO Secretary-General's justification for the contested decision has morphed since it was taken with the Secretary-General of the WMO attacking Mr. Rolli's performance despite no negative evaluation ever having occurred, raising issues with recruitment processes not addressed in the dismissal letter, providing to the UNDT minutes of meetings never advanced in the years of litigation prior and even altering his own account regarding the discussion about Mr. Rolli's contact with the Audit Committee to latterly make the false claim, never previously advanced, that he had instructed Mr. Rolli not to do so.

23. Mr. Rolli submits that thereafter he was subject to an unusually long first stage appeals mechanism, in relation to which he incurred significant legal costs. That WMO first stage appeals mechanism was found not to conform with WMO's obligations under the agreement with the UNAT. The failure to provide an appropriate appeals mechanism compounded the WMO Secretary-General's prior disregard to due process. Mr. Rolli provided evidence of significant reputational harm caused by the decision to summarily dismiss a senior staff member "from one day to the next without cause". This included 130 applications for employment with the United Nations even below his level for which he was not called for interview and a specific recruitment process where ongoing litigation was cited as a basis not to approve his selection.

24. Mr. Rolli avers that when determining if the circumstances of the case were exceptional, the UNDT failed to consider the extent of breaches of Mr. Rolli's due process rights, the abuse of power in dismissing him "from one day to the next" with no right of reply, the degree of procedural error and the nature of irregularity. Instead, the UNDT only considered "that the harm suffered by the Applicant in the present case [was not] so exceptional that it justifies a compensation award higher than two years' net base salary of the Applicant". The UNDT failed to consider any other element than harm, in particular that no other employing entity in the internal justice system had ever summarily dismissed a staff member without investigation. The failure to consider these relevant elements of the case represents an error in law and failure to exercise jurisdiction.

25. Furthermore, Mr. Rolli submits that the UNDT erred in fact and law leading to a manifestly unreasonable decision when calculating projected post decision employment. Regarding the process by which the WMO came to terminate Mr. Rolli's employment, the UNDT acknowledged the fact that it was impossible to predict what the outcome might have been had due process been followed. Notwithstanding the UNDT Judge chose to hypothesize that the circumstances leading

to Mr. Rolli's separation would have inevitably led to his separation by non-renewal in August 2019. Thus, the UNDT assumed that proper due process would have resulted in exactly the same conclusions regarding Mr. Rolli's culpability. This despite the UNDT's finding in its former Judgment that there was no way to know what the outcome of such a process might have been. The UNDT's contrary findings as to the likely outcome of a proper process represent an error of fact and law leading to a manifestly unreasonable decision.

26. Mr. Rolli states that the UNDT also erred in fact leading to the manifestly unreasonable conclusion that Mr. Rolli would not have been selected for the D-2 post available from December 2019. First the UNDT failed to find that Mr. Rolli would have been considered for a post at the level at which he served and for which he was eminently qualified in view of his skills and experiences. Further, the UNDT found that Mr. Rolli had not established any right to transfer to the D-2 position. This argument was raised for the first time by the Organization in closing submissions. However, had Mr. Rolli received the usual two-year extension in August 2019 any separation in December 2019 would have been by termination, meaning a right to transfer to any suitable available vacant post would have accrued.

27. Mr. Rolli alleges that the UNDT erred in fact leading to a manifestly unreasonable decision regarding alternative compensation by misstating Mr. Rolli's level suggesting he was a D-1 when he was in fact at all times a D-2 level staff member. The UNDT repeatedly referenced the "nature and level" of Mr. Rolli's post as relevant to the calculation of alternative compensation. The failure of the UNDT to appreciate Mr. Rolli's actual level also meant it did not appreciate the extent to which he had taken a more junior position with his subsequent employer, the International Centre for Migration Policy Development (ICMPD). This error in fact has led to a manifestly unreasonable calculation of damages for reputational harm.

28. Mr. Rolli argues that the UNDT erred in fact and law resulting in a manifestly unreasonable decision when calculating alternative compensation. Alternative compensation and financial loss ought to be treated under separate heads of damage. Here the UNDT's sole consideration of alternative compensation was the actual financial impact that the unlawful contested decision had on Mr. Rolli's situation. The UNDT weighed the projected post decision employment against the earnings received during this period, resulting in a quantum of damages that reflected exclusively the UNDT's calculation of lost income. Furthermore, mitigation of loss is not relevant to the calculation of alternative compensation. The fact that Mr. Rolli was able to secure employment at a lower level following the decision is irrelevant to the calculation of alternative compensation. The



UNDT erred in law by discounting the amount ordered in alternative compensation by the figure of earnings received during the period of projected post decision employment.

29. Further, or in the alternative, Mr. Rolli submits the UNDT erred in fact and law, reaching a manifestly unreasonable decision, by factoring in inappropriate elements of Mr. Rolli's pay during the projected period of post decision employment. Mr. Rolli received 10,000 Euros as "Relocation Allowance" and Euros 17,990 as "Installation Allowance" which the UNDT included as relevant earnings towards the figure to be deducted from salary over the projected period of post decision employment. These payments were specifically provided in order to facilitate the Appellant's move from Geneva to Vienna. This was a move only made necessary by the contested decision, the sums were used in facilitating that move and cannot properly be considered "income" relevant to the calculation of his economic loss. To deduct these sums from the projected post decision employment earnings creates a manifestly unreasonable award.

30. Mr. Rolli submits that the UNDT erred in fact and law by failing to identify that circumstances existed justifying an award of costs. At the time of Mr. Rolli's dismissal, the WMO offered only one first instance recourse mechanism that being the JAB, with a possibility to further appeal to the UNAT directly. UNAT found that the JAB process to which Mr. Rolli was subjected and in relation to which he incurred legal costs, did not meet the standard of the agreement entered into by the WMO and remanded to the JAB and then to the UNDT. Mr. Rolli incurred costs in being represented before these bodies in proceedings which were entirely futile. Considering whether this represented a manifest abuse of process, the UNDT erred in finding that the WMO bore no responsibility for the shortcomings in the JAB process. Those shortcomings meant Mr. Rolli incurred legal costs both for the JAB proceedings and the UNAT appeal required to return the case to its starting point. The Secretary-General's failure to provide an appropriate first instance review mechanism conforming to the agreement with the UNAT represents a manifest abuse of process for which Mr. Rolli incurred significant legal costs.

31. Alternatively, the UNDT erred in fact and law leading to a manifestly unreasonable decision by failing to compensate Mr. Rolli for the full amount of his financial loss through legal costs. While the UNDT found that Mr. Rolli was to be placed in the position he would have been in had the breach never occurred, it awarded USD 3,000 (approximately 2,850 CHF). Mr. Rolli had provided evidence of legal costs associated with the JAB and UNAT proceedings totaling 21,257 CHF. The UNDT set compensation for financial loss at a little under 15 per cent of the financial loss incurred. This is an error in law, fact and failure to exercise jurisdiction.

32. Mr. Rolli claims that the UNDT erred in fact and law by not granting in-lieu compensation for a tax-free car on the basis that “no implication is stated for 2018 and 2019 as a replacement is only granted every fourth year”. However, Mr. Rolli had bought his previous vehicle in 2014 thus was due to purchase a new vehicle in the 2018 period identified as relevant to compensation. He could not have been on notice that it was necessary to demonstrate purchase of a new vehicle during an arbitrary period of projected future employment decided upon only in the Judgment. The UNDT did not seek any clarification regarding this head of damages and yet advanced on an assumption that Mr. Rolli’s claim was not well founded.

33. Mr. Rolli asks that the UNAT amend the UNDT Judgment by confirming that exceptional circumstances justified an award in excess of two years’ net base salary and an award of compensation taking account of the exceptional nature of his summary dismissal and irregularities involved. Mr. Rolli requests that the UNDT’s finding regarding projected post decision employment be overturned providing for an award of alternative compensation in excess of two years’ net base salary. He requests that the UNDT decision to reduce compensation in line with earnings from his employment with ICMPS be reversed; that he be awarded costs as sought or in the alternative compensation for financial loss incurred instructing private counsel which corresponds to the actual cost incurred; and compensation in relation to financial loss associated with the loss of a tax free vehicle.

### **The WMO Secretary-General’s Answer to Mr. Rolli’s Cross-Appeal**

34. The WMO Secretary-General’s answer to Mr. Rolli’s cross-appeal is correspondingly and appropriately comprehensive. He submits that the UNDT did not err in finding no exceptional circumstances to justify an award in excess of the two-year net-based salary limit. In support of his appeal, Mr. Rolli references facts that have not been established by the UNDT as evidence to substantiate his elevated claim. The UNDT Judgment did not assess the factual evidence presented pursuant to the established framework for reviewing decisions regarding misconduct, but limited itself to due process violations alone. No hearing or indeed any examination or cross-examination as to the veracity of either side’s claim took place and as such, the Secretary-General asks that the UNAT ignore many of the so-called facts that Mr. Rolli now seeks to introduce in his cross-appeal to justify an elevated award of compensation.

35. The Secretary-General contends that Mr. Rolli had the opportunity to ask the UNDT to make findings of fact in this case but instead advocated that the UNDT determine the matter solely on due process violations and submitted arguments on relief in relation to this element alone. Consequently, the Secretary-General of the WMO refutes Mr. Rolli's suggestions as follows: a) The contention that the decision to summarily dismiss Mr. Rolli contained obvious misrepresentations by the Secretary-General regarding the Audit Committee, is unfounded, and the decision to refuse his request to contact the Audit Committee was made by the Secretary-General in a one-to-one meeting with him on 20 April 2018; b) the assertion that the Secretary-General continued to abuse due process engaging in clandestine communications with the JAB is unfounded and the UNDT did not make such a determination; c) Mr. Rolli's allegation that the Secretary-General altered his own accounts regarding his discussions about Mr. Rolli's contact with the Audit Committee is unfounded and indeed the Organization has remained consistent with respect to its position on the facts of this case throughout.

36. The Secretary-General submits that the UNDT, in its separate and extensive Judgment on Relief, undertook a thorough review of all the heads of damages that had been claimed by Mr. Rolli. It correctly concluded that the harm suffered by Mr. Rolli was not so exceptional that it justified a compensation award in excess of the two years' net-base salary. Essentially the UNDT concluded that all the heads of damages that flowed from the breach and outlined by the Appellant could be included within the two-year cap on compensation. While the UNDT determined that there was no duty to consider mitigation of loss in the calculation of damages, it applied the principled approach that a nexus must exist between the harm and the illegality that occurred. Since Mr. Rolli was able to secure two high profile positions subsequent to his employment with WMO, any associated reputational harm would be reduced. Indeed, Mr. Rolli's net-base salary at ICMPD almost equaled his net-base salary at WMO.

37. The Secretary-General contends that based on the UNDT's factual findings, it did not err when setting compensation to a maximum of two-years' net-based salary. The UNDT essentially determined, correctly, that the heads of damages articulated by Mr. Rolli failed to rebut the presumption of the two-year ceiling for compensation imposed by Article 10(5)(b) of the UNDT Statute. Instead of proving a negative, the Secretary-General submits that it is sufficient for the UNDT to have reviewed all the heads of damages put forward Mr. Rolli and consider what the appropriate amount of compensation should be, which is what the UNDT did.

38. The Secretary-General submits that the UNDT did not err in fact and in law when calculating projected post-employment. In 2019/2020 the Organization underwent major institutional reform both in its services it provides to its member states and crucially with respect to the structure of the Secretariat. As part of this reorganization, Mr. Rolli's post of D-2 Director of Resource Management was abolished in December 2019. As WMO is a small scientific organization consisting during the relevant period of approximately 316 staff, the only post that Mr. Rolli might have applied for in the new organisation was Director of Governance Services. The UNDT correctly determined that this new post was substantially broader and deeper than [Mr. Rolli's previous position. Based on the evidential material presented by Mr. Rolli of his previous work experience, including submissions of his resume, the UNDT correctly concluded that it was unlikely that he would have assumed this new position, considering the need to retain knowledge in relation to publishing and managing language services. Clearly, issues regarding Mr. Rolli's previous performance, which had been raised by the Secretary-General, would have made the likelihood of Mr. Rolli obtaining this post even more remote.

39. The Secretary-General of the WMO contend that the UNDT's mischaracterization of Mr. Rolli's level did not lead to a manifestly unreasonable decision. Whilst accepting that the UNDT erred in referencing the correct level of Mr. Rolli's post at WMO in its Judgment on Relief, this is merely typographical error as opposed to having any actual impact in the case at hand. In that regard, the following should be considered. First, throughout the proceedings both parties in their submissions to the UNDT referenced the fact that Mr. Rolli held a D-2 position within WMO; second, Mr. Rolli obtained employment within six months of separation from WMO as Director of ICMPD. While Mr. Rolli contends that such a post represented a "junior position", he has failed to address whether there were differences between categories of Director within that Organization, and indeed, his salary at ICMPD was comparable with that of his net-base salary with WMO; and third, Mr. Rolli failed prior to his cross-appeal to seek a correction or interpretation of Judgment to highlight this error in relation to the correct grade designation or seek clarification as to what, if any, impact this typographical error had on the UNDT reasoning.

40. The Secretary-General of the WMO submit that the UNDT did not err in fact or in law when calculating the compensation. The Dispute Tribunal calculated an award of damages based on his fixed-term appointment, which was due to expire on 31 August 2019. Since there was no legitimate expectation of renewal and taking into account the reorganization and abolition of his post, any calculation was predicated on the remaining part of Mr. Rolli's contractual term. As to

Mr. Rolli's argument that the UNDT in some way factored in Relocation Allowance and Installation Allowance to restrict compensation, the Secretary-General does not agree with this interpretation of the UNDT Judgment. The UNDT merely highlighted that Mr. Rolli's earnings were not relevant for the period 9 May 2018 to 31 August 2019 as, but for the dismissal, he would have continued working at WMO for the remainder of his existing contract.

41. It is important to note that the institutional failings of the JAB identified by UNAT related only to the first-tier appeals process and were remedied within three months. At the same time, as enunciated in established jurisprudence, a staff member does not have a right to free legal assistance in the pursuit of his or her claim. The Secretary-General submits that such institutional deficiencies with respect to the first-tier appeals process and the absence of free legal assistance cannot be considered as a manifest abuse of the process specifically directed against Mr. Rolli. Indeed, the subsequent action taken by the Secretary-General to rectify these institutional deficiencies in relation to the first-tier appeals process and indeed in the provision of free legal assistance benefited all current and former staff members including Mr. Rolli.

42. The Secretary-General of the WMO claims that the UNDT did not err in not awarding in-lieu compensation for a duty-free car. From a compensatory perspective it is unclear under which heading such damages could be claimed. First, there is no case law that justifies a speculative award of a fictitious car that Mr. Rolli might have chosen to buy had he remained in continuous employment with WMO and having decided at some point in the future that it was time to replace his old vehicle. Second, the right to purchase a duty-free vehicle is a privilege afforded by the Swiss authorities under the Host Country Agreement and not provided to Mr. Rolli by the Organization as part of his terms and conditions of appointment or remuneration package. Third, during the proceedings, while required to provide submissions on all associated claims under separate submissions directed by the UNDT, Mr. Rolli failed to provide specific details regarding the duty-free car despite providing copious evidence in relation to other suggested losses.

43. The Secretary-General asks that UNAT reject in their entirety Mr. Rolli's submissions on his cross-appeal and retain the UNDT Judgment with respect to limiting the award of compensation to the maximum of two-years' net-base salary.

## Considerations

### *Appeal Considerations Generally*

44. There is no doubt that the UNDT was entitled in law to award remedies in the sense that it was within its jurisdictional competence having determined that Mr. Rolli's dismissal was unlawful. The essential question on appeal is whether it erred in doing so in all the circumstances, not only in the amounts it did but in some cases whether it should have granted particular remedies at all.

45. We start with the statutory provision allowing the UNDT to award remedies in such circumstances. Article 10(5)-(7) of the UNDT Statute provides:

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.

6. Where the Dispute Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against that party.

7. The Dispute Tribunal shall not award exemplary or punitive damages.

46. The UNDT awarded the remedy of rescission of the decision to dismiss Mr. Rolli. While its Judgment also says that it ordered specific performance, it did not say of what and how specific performance was to be effected. In any event, the remedies of rescission and specific performance in Article 10(5)(a) appear to be alternatives and not cumulative. The UNDT also addressed the required default remedy set out in Article 10(5)(a) above. That is, it directed payment of an amount of monetary compensation by the Organization if the Secretary-General elected not to comply with the rescission order which, in effect, was to both reinstate the staff member and to compensate him for lost remuneration. We are unaware what the Secretary-General elected, or whether any

election has ever been made, in respect of Mr. Rolli. Given the expiry of his contract the elimination of Mr. Rolli's role before his case came in front of the UNDT, we assume that the Secretary-General elected to pay compensation.

47. The remedies granted were, in the UNDT's words:

- a. The contested decision is rescinded;
- b. As *in lieu* compensation under art. 10.5(a) of the Dispute Tribunal's Statute, the Applicant shall be awarded the following:
  - i. Full salary, including net-base salary and post adjustment, with regular deductions from 10 May 2018 to 31 August 2019;
  - ii. Pension contributions to be restored retroactively from 10 May 2018 to 31 August 2019;
  - iii. Right to education allowances to be restored from 10 May 2018 to 31 August 2019;
  - iv. CHF1,093.47 in 2019 for "annual tax";
  - v. CHF2,524.67 in 2018 and CHF2,885.33 in 2019 for "fuel card";
  - vi. CHF291.67 in 2018 and CHF333.33 in 2019 for "VAT Exemption";
  - vii. USD3,000 for legal expenses;
- c. From the *in lieu* compensation amount is to be deducted EUR92,451.50 plus EUR200 (the Applicant's actual income from salaries from 10 May 2018 until 31 August 2019);
- d. The Applicant is awarded two months of net-base salary in compensation under art. 10.5(b) of the Dispute Tribunal's Statute;
- e. The aggregated compensation amount is not to exceed two years' net base salary of the Applicant;
- f. The compensation amount shall bear interest at the United States of America prime rate with effect from the date this Judgment becomes executable until payment of said compensation. An additional five per cent shall be applied to the United States prime rate 60 days from the date this Judgment becomes executable.

48. There is one error in the UNDT's assessment of Mr. Rolli's probably ongoing work with the WMO that affects most of the remedies we examine which we should therefore deal with first. The Dispute Tribunal set the end point for its calculations as being 31 August 2019 which was the date of the expiry of Mr. Rolli's employment agreement, reasoning that he had no legitimate expectation of renewal or extension of this. However, only four months later, on

31 December 2019, the role that Mr. Rolli had previously occupied at the WMO, was abolished altogether. It is probable that by or before 31 August this role abolition would have been in prospect. Had Mr. Rolli not been dismissed wrongfully as he was, he would probably have continued to occupy that position for those additional four months, whether by extension or renewal of his employment. It is difficult to imagine that anyone else would have had the skills and experience to perform this function for that relatively short period, or that other arrangements than continuing his incumbency would have been made by the WMO.

49. In these circumstances, 31 August 2019 was the wrong date for the calculation of compensatory remedies and 31 December 2019 is to be substituted therefor.

*The Secretary-General's Appeal Considerations*

50. The Secretary-General's appeal points are confined to three elements of the compensation ordered by the UNDT. They are, first, the directed restoration of pension rights; second, the direction to compensate for loss of an education allowance for Mr. Rolli's children; third and finally, the compensation ordered as a contribution to his legal expenses incurred before representation by the Office of Staff Legal Assistance (OSLA) was available to him.

51. As to Mr. Rolli's pension entitlements, the UNDT concluded that because his separation from service occurred five months before the achievement of his fifth year of membership of the Fund, his full entitlements did not vest. In the UNDT, the Organization did not contest the loss of pension compensation claim or its factual basis. The UNDT reinstated the Organization's contributions and Mr. Rolli's benefits for the period 10 May 2018 to 31 August 2019, effectively allowing him to be treated as having had continuous service and having contributed to the Pension Fund beyond the five-year anniversary of his membership.

52. The UNDT's order in this regard was simply: "Pension contributions to be restored retroactively from 16 May 2018 to 31 August 2019". This appears to address "contributions" of which there were two types, Mr. Rolli's own and the Organization's as the employer. We are unaware what Mr. Rolli may have done with this compensatory remedy although it seems clear that if he had wished to continue to have pension rights, either as a paid-out beneficiary or an on-going member of the scheme, he would have needed to advise the UNJSPF of this matter and perhaps also seek its agreement to reinstate him as a member of the Fund. We do not, however, speculate on that outcome to this compensatory remedy.



53. We have already concluded that Mr. Rolli could have been expected to have continued to work until 31 December 2019 had he not been dismissed, so that the period for calculating his pension entitlements will need to be adjusted to that extent of four additional months.

54. Because of the paucity of detail in the UNDT's Judgment about Mr. Rolli's pension situation and what it would have been had he continued to work for the WMO until 31 December 2019 as we have decided would have been probable, we have drawn such conclusions as we are able to from the evidence to attempt to clarify this. Upon passing his five years' service mark before 31 December 2019, Mr. Rolli would also have attained the age of 55 years entitling him to take early retirement. In these circumstances he would have been able to choose between three options then open to him. The first was a deferred retirement benefit. The second was an Early Retirement Benefit under Article 29(e) commuting up to one third of his benefit to a cash lump sum with the balance being paid as a reduced monthly pension for life. The lump sum would have equated to his own contributions to the Fund plus compound interest earned on these. Third, he would have been entitled to have elected a Withdrawal Settlement under Article 31(b)(ii).

55. Beyond setting out these options, we do not know which Mr. Rolli may have elected.

56. Those choices are to be compared to his position having been dismissed on 9 May 2018 as he was only entitled to a Withdrawal Settlement under Article 31(b)(ii).

57. The complexities of that position, the choices open to Mr. Rolli and the absence of any information about both what he elected to do upon his dismissal and what he would have elected to do had he remained with the WMO until 31 December 2019, mean that the most just compensatory award that the UNDT should have made and that we now make for pension entitlement losses is as follows. Mr. Rolli is to have a sum representing what would have been the WMO's contributions to Mr. Rolli's Pension Fund for the period 9 May 2018 to 31 December 2019 plus 10 per cent of that sum.

58. As to the education allowance compensation, the UNDT concluded that had Mr. Rolli not been separated from service as and when he was, he would have continued to receive an educational allowance for his dependent children. It allowed a payment representing what would have been paid to him for the same period of approximately 15.5 months as was used by the UNDT in the other compensation calculations, that is for the period 10 May 2018 to 31 August 2019. We

can discern no error in the UNDT's compensatory order in this regard, except that, for reasons set out in relation to other remedies, the end date of this period should now also be 31 December 2019.

59. Whatever the outcome, precise calculation of this education allowance compensation will require some work to be done by the WMO, albeit perhaps less than as for the pension calculations. That does not make the order one for specific performance, if that is what the Secretary-General is suggesting. Rather it is the consequence of implementing in practice an order for compensation in which the Appeals Tribunal has given sufficient guidance for the parties to agree upon the precise amount directed to be paid. The compensation should be based on what would have been continued to have been paid by Mr. Rolli had he not been summarily and wrongfully dismissed and had his qualifying children continued their schooling in these circumstances.

60. Finally, in justification for ordering a contribution to his legal expenses of USD3,000, the UNDT concluded that Mr. Rolli had no alternative, if he was to be professionally advised and represented before the JAB, but to engage private counsel. It considered that his doing so was a consequence of what was subsequently decided had been the Organization's manifestly unlawful treatment of Mr. Rolli. It was a reasonable decision on his part that he should not be unrepresented professionally in the process of his challenge to that treatment. The WMO did not have an in-house staff legal assistance facility funded by the Organization, as do others and in particular in the United Nations. Nor do WMO staff have recourse to local national jurisdictions to resolve their employment disputes. The UNDT concluded that Mr. Rolli's expenditure on legal services was plainly a necessary financial consequence (loss) attributable to the wrongful decision that he contested. The UNDT did not err in reaching that conclusion.

61. However, the UNDT having been informed that Mr. Rolli's legal costs before he could obtain the services of OSLA at no cost to himself amounted to approximately CHF (Swiss francs) 21,000, the UNDT awarded him USD3,000 without explanation as to how it reached this significantly lower figure in another currency. It was, in any event, a modest contribution to the claimed actual costs.

62. Our decision of the legal costs' compensation issue (as did the UNDT's) addresses only that period before the services of OSLA were available potentially to Mr. Rolli, that is leading up to and before the JAB. Without engaging private legal advice and representation at his own cost, Mr. Rolli had no alternative but to attempt to do so himself. Had the Organization not acted unlawfully towards him, he would have had no need to engage private counsel and incur the costs of doing so.

His loss attributable to the Organization's unlawful action was the cost to him of representation. There was a sufficient nexus between that illegality and his loss to make that loss compensable. We emphasize that this is not an order for costs in the litigation before the UNDT or before the UNAT: rather it is compensation for loss attributable to the Organization's unlawful acts or omissions. We consider that such an order will be rare: it was only the unusual circumstances of Mr. Rolli having no staff legal assistance available to him that caused him to incur that cost. Where OSLA or an equivalent service is available to staff members, such losses will not need to be incurred in other cases. Privately retained counsel will still be a choice for staff members, but they cannot expect to be reimbursed for such expenses where a viable alternative representation service exists at no cost to them. It appears that the WMO staff now have OSLA assistance available to them.

63. We do not understand that there was any contest about the sum paid by Mr. Rolli to his lawyers: the Secretary-General's only challenge was and is to his liability to pay any of these costs. In these circumstances and accepting that they were incurred as a loss attributable to his unlawful dismissal, we have concluded that the UNDT erred in law in not indemnifying Mr. Rolli in that sum of CHF21,000 and direct that he be paid that as an element of his Article 10(5)(b) compensation.

64. We should say, also and out of deference to the Secretary-General's submissions on this point, that the WMO's failure to establish an internal appeals' system that complied with the requirements of the UNAT's Statute was not, as Mr. Rolli submits, an abuse of its power which should be reflected in costs awarded against it. Rather, we perceive this to have been an error by the WMO shared with other like organizations at the time, a failure to consider and apply correctly the statutory requirement of neutrality of its first instance appellate body. This has now been corrected. Nevertheless, our decision to allow these legal costs turns not on whether there has been an abuse of the litigation process by the WMO but rather on the fact that Mr. Rolli incurred these costs as a consequence of the WMO's unlawful dismissal of him. What we have compensated for are not costs in this litigation before the UNDT and which is now before us on appeal. An award of costs in this litigation could only be made if there had been an abuse of process in this litigation and there has been none.

65. Each of these remedies (pension, education and legal expenses) was based on an analysis of what remuneration or benefits Mr. Rolli would probably have received had he not been dismissed, or losses that he incurred attributable to that illegality that he would not otherwise have incurred. Except as noted and corrected in this Judgment, we can detect no error in the UNDT's factual findings and conclusions of law in this regard and we therefore dismiss the WMO's appeal.

*Mr. Rolli's Cross-Appeal Considerations*

66. We turn now to Mr. Rolli's cross-appeal. As the summary of submissions indicates, this is a wide-ranging and substantial challenge to the adequacy of the UNDT Judgment.

67. While at the end of this Judgment we decline one element of compensation claimed by Mr. Rolli, we uphold his cross-appeal in some other respects but also need to alter the statutory basis for the confirmed and amended compensatory amounts ordered by us.

68. The UNDT made orders under Article 10(5)(a) for both rescission of the decision to dismiss Mr. Rolli and for specific performance, although it did not define what contractual obligations were the subject of these two orders. By the time the case got before the UNDT, however, not only had his fixed-term agreement expired but his WMO role had been abolished. As the UNDT accepted, there was no position to which Mr. Rolli would probably be able, or could, return. Rescission of the decision to dismiss him would have had the effect not only of deeming in law that it did not take place or take effect, but also of reinstating him to his former role with reinstatement of his lost and ongoing remuneration and other benefits. That would have been a valuable remedy for Mr. Rolli had there been a job to go back to, but there was not. It thus became an empty or illusory remedy. Not only was an order for rescission under Article 10(5)(a) arguably pointless in these circumstances, but unless an order for rescission or specific performance had been made, the UNDT could not order *in lieu* compensation under that same sub-Article (a).

69. In these circumstances, compensation had to fall under Article 10(5)(b) and be for harm caused to him by the Secretary-General's unlawful decision. The harms he suffered included the loss of his remuneration and benefits (education and pension entitlements), as well as those specific losses also provided for as a result of his ceasing to be based in Switzerland which are not challenged or otherwise in issue in this appeal. The UNDT also awarded Mr. Rolli a sum equivalent to two months' remuneration for the non-economic (moral) consequences of the wrong done to him by the Secretary-General. The relative modesty of this award was influenced no doubt by Mr. Rolli having been fortunate in obtaining alternative employment about six months after his dismissal, albeit after numerous rejections of his applications for other positions.

70. Next, we address the (correct) point that the UNDT wrongly recorded in its Judgment Mr. Rolli as having held a D-1 role with the WMO rather than the correct D-2 rank which was not only more senior but attracted a higher salary. We conclude that this error of fact will not affect materially the calculations of compensation for him which must be assessed at the higher D-2 rate where that is applicable. However, we must also deal with the consequence of this error subsequently in our assessment of the moral damage compensation award which is a separate head of Mr. Rolli's cross-appeal.

71. Because of the very economical expression of the UNDT's award for pension loss, we have had to attempt to ascertain and clarify what it should have provided in this respect. We have done so by reference to the UNJSPF Regulations and Rules. In his circumstances, Mr. Rolli is entitled to an additional payment depending on his years of service which are to be calculated to 31 December 2019. Having been dismissed when he was, we calculate that he is entitled to his own contributions plus 10 per cent per additional year of service after five years of service. His compensable loss is to be calculated by reference to the payments that he and the WMO would have contributed to the Fund had he remained in employment for that now extended period to 31 December 2019.

72. Except as to relocation expenses' reimbursement, there can be no challenge to the UNDT's reduction from its compensation awards for loss of remuneration to allow for replacement earnings received by Mr. Rolli following his dismissal. That is a consequence of our conclusion that his compensatory remedies fall under Article 10(5)(b). Therefore, we do no more than note that these, and any additional earnings received by him in the period to 31 December 2019 (but less any relocation expenses reimbursed), should likewise be deducted from his net award for remuneration loss from the WMO.

73. Because the precise figures have not been provided to us, it is possible, as the Secretary-General argues, that together these compensation awards exceed two years' net base salary of Mr. Rolli. If that is so, however, we are satisfied that his, and his dismissal's circumstances, were exceptional, thereby justifying exceeding this cap. The UNDT erred in determining otherwise and, this error being one of fact, we have concluded also that it created a manifestly unreasonable decision by the UNDT in this regard.

74. We begin, however, by declining to apply some of the considerations Mr. Rolli wishes to be taken into account to establish a higher-than-ceiling figure. He seeks to rely on what he says are the merits of his actions for which he was dismissed. However, the UNDT did not determine these, either way. There is no evidential basis as would be necessary to find, as Mr. Rolli wishes us to, that the Secretary-General's substantive decision to dismiss him summarily for serious misconduct has been examined and determined by the Tribunals to have been seriously flawed.

75. Nevertheless, as required by the Statute, we need to give our reasons for so concluding that grounds exist for exceeding the two-year cap. The UNDT concluded that Mr. Rolli's was a case of summary dismissal without any semblance of due process, or what is also called natural justice. Without determining the merits of his reasons for doing as he did and for which he was summarily dismissed, Mr. Rolli was attempting to act as what is sometimes called a "whistleblower", someone who attempts to disclose institutional or personal wrongdoing within an organization but concerned that this will not otherwise come to light or be acted on appropriately. By doing as it did to Mr. Rolli, and in the way his case was addressed by the UNDT, there may have been no independent examination of and resolution to his concerns. In these circumstances, Mr. Rolli left, and was seen by others with whom he had worked to have been dismissed and to have left WMO peremptorily after what can only be assessed as having been an unblemished record of service. The suddenness of his departure left him with no opportunity to plan for a career transition and although he did obtain alternative employment, that was only after about six months and elsewhere than his WMO location.

76. In addition, Mr. Rolli submits that the extraordinarily high number of alternative positions he applied for unsuccessfully following his dismissal and before he secured one (no fewer than 130) is telling. That is not only as to the distress and anxiety that he suffered, but also that it is probable that his unjustifiably sullied reputation at the WMO played a part in at least some, perhaps many, of those rejections. It is hard to disagree with that analysis.

77. These unusual factors together, constitute exceptional circumstances justifying, if necessary, exceeding the two-year compensation cap.

78. The UNDT Statute (Article 10(7)) prohibits the UNDT (or the UNAT on appeal) from awarding punitive or exemplary damages to mark judicial disapproval of egregious conduct towards a staff member and we have borne this prohibition in mind in deciding this cross-appeal.

Nevertheless, it is also well recognized that egregious treatment of a staff member can aggravate the effects of the injustice of dismissal on the staff member concerned. If that is so, on the evidence, then this may justify a greater than normal or usual award of compensation to reflect the exceptionally damaging effects on the staff member.

79. It is very uncommon for an international civil servant, especially one of such seniority and standing as was Mr. Rolli, to be dismissed summarily without any real semblance of due process or natural justice where this was required to be followed by the employing organization. The harm wrought by such a summary dismissal without substantive justification but also with no opportunity to respond to the serious allegations made against him, affected Mr. Rolli significantly. These factors together warrant his compensation exceeding a total two-year net base salary limitation if indeed the awards we have directed exceed this ceiling.

80. These circumstances, combined with the uncertainty created by the UNDT's error about the seniority of the role he held at the WMO and its modest compensatory figure for moral damage, warrant increasing that from two to three months' net base salary.

81. In rejecting this ground of Mr. Rolli's cross-appeal, we should explain why his subsequent earnings must be deducted from the compensation for lost remuneration. As we have held earlier in this Judgment, this compensation cannot be payable under Article 10(5)(a) because it would have been futile for Mr. Rolli had we endorsed the UNDT's order under that sub-article. That is because of the abolition of his post before his case came before the UNDT. The award must therefore be made as one of a loss incurred by him under Article 10(5)(b) in which case it must allow for other earnings received in mitigation of that loss.

82. Mr. Rolli is on safer ground, however, with his submission that the UNDT erred by not deducting from the sum of EUR 92,451.50 which it assessed as his post-dismissal earnings to be deducted, a part of these that Mr. Rolli says constituted relocation and installation allowances (EUR 10,000 and EUR 17,990, respectively). These had been paid to him by his new employer to enable him and his family to relocate from Geneva to Vienna where he took up his new position. Because the UNDT did not address this expressly, we consider the fairest way to do so is to not include these allowances in the calculation of post-dismissal earnings. The payment of this adjusted remedy will, however, be conditional either upon evidence of these reimbursing payments having been put in evidence before the UNDT or, if not, upon Mr. Rolli presenting to the WMO documentation supporting the payment of this sum for those purposes.

83. Turning finally to Mr. Rolli's claim to compensation for loss of tax credit on the acquisition of a motor vehicle, it appears that this is a benefit of diplomatic immunity bestowed by the government of Switzerland. As we understand the benefit, if a person with diplomatic immunity purchases a vehicle in Switzerland, a form of tax on the purchase price is not payable so long as the purchase is made more than four years after any previously qualifying purchase.

84. Irrespective of Mr. Rolli's entitlement to claim this loss, it failed in the UNDT for want of proof of the amount of his loss and must fail before us for the same reason. There was no evidence of the actual or likely purchase of a vehicle, the cost of such vehicle, the tax that might have been saved or associated details that might have established a loss. The UNDT did not err in rejecting this claim in the circumstances. This ground of Mr. Rolli's appeal is dismissed.



**Judgment**

85. The Secretary-General's appeal is dismissed. Mr. Rolli's cross-appeal is allowed in part. The following are the remedies payable to Mr. Rolli in the form allowed by the UNDT, but as amended by this appeal:

Pursuant to Article 10(5)(b) of the UNDT Statute Mr. Rolli is awarded the following compensation for harm:

- a. Full salary, including net-base salary and post adjustment, with regular deductions from 10 May 2018 to 31 December 2019;
- b. A sum representing what would have been the WMO's contributions to Mr. Rolli's Pension Fund for the period 9 May 2018 to 31 December 2019 plus 10 per cent of that sum;
- c. Education allowances from 10 May 2018 to 31 December 2019;
- d. The following amounts representing specific monetary losses as assessed by the UNDT;
  - i. CHF1,093.47 in 2019 for "annual tax";
  - ii. CHF2,524.67 in 2018 and CHF2,885.33 in 2019 for "fuel card";
  - iii. CHF291.67 in 2018 and CHF333.33 in 2019 for "VAT Exemption";
  - iv. CHF 21,000 for legal expenses;
- e. Subject to (f) below, from the foregoing compensation amounts is to be deducted EUR92,451.50 plus EUR200 (but adjusted upwards from the foregoing figures awarded by the UNDT to reflect additional earnings if Mr. Rolli earned more in paid employment between 1 August and 31 December 2019) representing the sum of the Applicant's actual income from 10 May 2018 until 31 December 2019);
- f. If either Mr. Rolli did so to the UNDT or, if not, upon providing to the WMO documentary proof of payment to him by his new employer of the sum of EUR 27,990 is to be deducted from the sum of EUR 92,451.50 referred to in subpara. (e) of these Orders;
- g. Mr. Rolli is awarded three months of net-base salary in compensation for other (non-economic consequences) of his unlawful termination of service;
- h. The net compensation amount payable to Mr. Rolli shall bear interest at the United States of America prime rate with effect from the date of this Judgment until payment of the said compensation. An additional five per cent shall be applied to the United States prime rate 60 days from the date this Judgment becomes executable.

Original and Authoritative Version: English

Decision dated this 24<sup>th</sup> day of March 2023.

*(Signed)*

Judge Colgan, Presiding

*(Signed)*

Judge Murphy

*(Signed)*

Judge Raikos

Judgment published and entered into the Register on this 11<sup>th</sup> day of May 2023 in New York, United States.

*(Signed)*

Juliet Johnson, Registrar