



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2024-UNAT-1491

Djekosse Miantoloum
(Appellant)

v.

Secretary-General of the United Nations
(Respondent)

JUDGMENT

Before:	Judge Nassib G. Ziadé, Presiding Judge Leslie F. Forbang Judge Abdelmohsen Sheha
Case No.:	2023-1858
Date of Decision:	25 October 2024
Date of publication:	3 December 2024
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Jean-Michel Olaka et Mog-nan Kembetiade
Counsel for Respondent:	Angélique Trouche

JUDGE NASSIB G. ZIADÉ, PRESIDING.

1. On 10 January 2022, Mr. Djekosse Miantoloum (Mr. Miantoloum) filed an application with the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) contesting the decision of the Administration of the United Nations Children's Fund (UNICEF) to impose on him the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity for misconduct (contested decision).
2. By Judgment No. UNDT/2023/078 of 26 July 2023 (impugned Judgment),¹ the Dispute Tribunal affirmed the legality of the sanction imposed on Mr. Miantoloum and rejected his application.
3. Mr. Miantoloum 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

5. Mr. Miantoloum joined Doctors Without Borders (DWB) on 13 March 2016 as a volunteer employed as Logistics Coordinator for a mission in Uganda.
6. On 23 August 2017, DWB informed Mr. Miantoloum of the early termination of his volunteering agreement following a technical evaluation that "revealed misconduct in the accomplishment of the mission".² Mr. Miantoloum left DWB on 20 September 2017.
7. On 31 December 2017, Mr. Miantoloum started working for UNICEF in Niger as Logistics Specialist at the P-3 level.
8. On 9 April 2018, the Chief of Mission of DWB-Uganda informed Mr. Miantoloum in writing that following an investigation conducted after he left his position as Logistics Coordinator, some extremely serious irregularities had been discovered within the mission to which he had been assigned. In the letter, Mr. Miantoloum was also invited to an interview to present his version of

¹ *Miantoloum v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/078.

² UNDT application Annex 1, Letter from the Chief of Mission DWB-Uganda to Mr. Miantoloum dated 23 August 2017.

events. Mr. Miantoloum did not attend the interview, but nonetheless responded in writing to the allegations made against him.³

9. On 17 July 2018, the Deputy Director-General of DWB-France informed Mr. Miantoloum in writing about the findings of the investigation which had confirmed the existence of large-scale fraud:⁴

Following your mission in Uganda, which ran from March 2016 to September 2017, an audit has brought to light serious irregularities in the management of the resources [of] DWB.

The investigation, conducted by an external auditor over several months in early 2018, has led us to confirm the existence of large-scale fraud. Indeed, although you denied any involvement in the fraud in an [e-mail] received by the Ethics Unit on 7 May 2018, the fact remains that, as Logistics Coordinator of the mission during that period, you were responsible for the selection and validation of suppliers, as well as for the validation of payments. We consider, therefore, that you bear significant responsibility in that situation and believe that, given the findings of the investigation, such a level of fraud could not have taken place without your involvement.

10. In the letter, DWB also notified Mr. Miantoloum that owing to his gross misconduct, “the decision [had] been made to no longer collaborate with [him] and (...) to make the decision applicable across the DWB movement (all sections) and its entities (Epicentre, DWB logistics, among others)”.⁵ In the letter, Mr. Miantoloum had also been informed that he could appeal the decision within no more than two months, which he did on 13 September 2018.⁶

11. On 15 October 2018, the President of DWB-France rejected Mr. Miantoloum’s appeal in writing and affirmed the decision by DWB to no longer collaborate with him.⁷

12. On 23 November 2019, Mr. Miantoloum applied to UNICEF for the position of Supply Chain Specialist at the P-3 level in the Democratic Republic of the Congo (DRC). On his electronic application form, to the question “Have you ever been disciplined for misconduct by an employer or professional association to which you belonged?”, Mr. Miantoloum replied in the negative.⁸ That question was preceded by the following notation: “Please answer the below questions, to the

³ Impugned Judgment, para. 6.

⁴ Letter dated 17 July 2018 from the Deputy Director-General DWB-France to Mr. Miantoloum.

⁵ *Ibid.*

⁶ Impugned Judgment, para. 8.

⁷ *Ibid.*, para. 9.

⁸ UNDT reply Annex R/1B, documents annexed to the investigations report of the Office of Internal Audit and Investigations dated 12 August 2021.

best of your knowledge. Please note that affirmative answers might not necessarily preclude employment with UNICEF; you will have an opportunity to explain. Incorrect, misleading or dishonest answers will likely preclude further employment with UNICEF”.⁹ By submitting his application form, Mr. Miantoloum accepted the notice appearing at the end of the form and stipulating that: “By clicking I agree, I certify that the statements made and information provided by me in my profile are true, complete and correct to the best of my knowledge and belief. Clicking I agree confirms that I understand that any misrepresentation or material omission made in my profile renders me ineligible for hire and may lead to termination or dismissal if already hired”.¹⁰

13. On 31 January 2020, the Chief of Mission of DWB-Niger sent an e-mail to Mr. Miantoloum and UNICEF thanking them for their collaboration in the activities of DWB in 2018 and 2019.¹¹

14. On 17 February 2020, Mr. Miantoloum was selected for the position of Supply Chain Specialist in DRC, taking up his position on 2 March 2020.¹²

15. On 10 October 2020, the Office of Internal Audit and Investigations of UNICEF was alerted to possible misconduct by Mr. Miantoloum. More specifically, it had been reported that Mr. Miantoloum had allegedly not declared on his application form for the position of Supply Chain Specialist in DRC that he had been the subject of an internal investigation by his former employer, DWB, following which he had been dismissed.¹³

16. On 3 May 2021, Mr. Miantoloum was informed that the Office of Internal Audit and Investigations had been informed of potential misconduct which it was investigating. As part of that investigation, Mr. Miantoloum was questioned on 18 May 2021 to provide his version of events.¹⁴

17. On 22 July 2021, Mr. Miantoloum applied to UNICEF for the position of Supply Chain Manager at the P-4 level in Denmark. On his electronic application form, to the question “Have you ever been disciplined for sexual misconduct, or any other form of misconduct, by an employer or professional association to which you belonged?”, Mr. Miantoloum once again replied in the

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ UNDT reply Annex 3, E-mail of 31 January 2020 from the Chief of Mission DWB-Niger to UNICEF.

¹² Impugned Judgment, para. 12.

¹³ UNDT response Annex R/1A, investigations report of the Office of Internal Audit and Investigations dated 12 August 2021, paras. 1-2.

¹⁴ *Ibid.*, paras. 17-18.

negative.¹⁵ That question was preceded by an identical notation to the one stipulated on his application form of 23 November 2019, which read as follows: “Please answer the below questions, to the best of your knowledge. Please note that affirmative answers might not necessarily preclude employment with UNICEF; you will have an opportunity to explain. Incorrect, misleading or dishonest answers will likely preclude further employment with UNICEF”.¹⁶ By submitting his application form, Mr. Miantoloum once again accepted the notice appearing at the end of the form and stipulating that: “By clicking I agree, I certify that the statements made and information provided by me in my profile are true, complete and correct to the best of my knowledge and belief. Clicking I agree confirms that I understand that any misrepresentation or material omission made in my profile renders me ineligible for hire and may lead to termination or dismissal if already hired”.¹⁷

18. On 12 August 2021, the Office of Internal Audit and Investigations transmitted its investigation report to the Deputy Executive Director, Management of UNICEF. It also concluded that Mr. Miantoloum had engaged in misconduct by failing to declare on his application form of November 2019 that he had been the subject of an internal investigation by his former employer, DWB.¹⁸

19. On 16 September 2021, the Deputy Executive Director, Management of UNICEF notified Mr. Miantoloum that disciplinary proceedings were being initiated against him for making false statements on his application forms of 23 November 2019 and 22 July 2021, by indicating that he had never been disciplined by one of his former employers.¹⁹ Mr. Miantoloum was also invited to respond to the allegations, which he did on 28 September 2021.

20. On 18 October 2021, the Deputy Director-General for Management sent a letter to Mr. Miantoloum informing him that the allegations of misconduct made against him had been established in a clear and convincing manner and amounted to misconduct, in violation of Staff Regulation 1.2(b) as well as Staff Rule 1.5(a), warranting the imposition of the disciplinary

¹⁵ UNDT reply Annex R/1B, documents annexed to the investigations report of the Office of Internal Audit and Investigations dated 12 August 2021.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ UNDT response Annex R/1A, investigations report of the Office of Internal Audit and Investigations dated 12 August 2021, paras. 3 and 45.

¹⁹ UNDT response Annex R/2, Letter dated 16 September 2021 from the Deputy Director-General, Management to Mr. Miantoloum.

measure of separation from service with compensation in lieu of notice and with termination indemnity for misconduct.²⁰

21. On 10 January 2022, Mr. Miantoloum filed an application with UNDT challenging the contested decision.

Impugned Judgment

22. On 26 July 2023, the Dispute Tribunal rejected Mr. Miantoloum's application. The UNDT found that the facts in the case were clear and that it had been established that:²¹

(...) UNICEF terminated his contract early because on two of his separate applications to UNICEF, [Mr. Miantoloum] had falsely declared that he had not been disciplined for misconduct by an employer or a professional association, whereas in fact, on 7 July 2018, he had been disciplined by [DWB]-France.

23. Recalling that the obligation of a staff member to declare whether he or she has been disciplined by an employer is meant to protect "the interests of the administration by making it aware of any situation that could cause it prejudice or make it inadvisable to hire (...)", the UNDT determined that that obligation consequently applied to "all facts pertaining to the employment relationship, even when the issue is not formally one of a disciplinary sanction".²²

24. In that case, the UNDT stressed the particularly serious nature of Mr. Miantoloum's conduct, which involved large-scale fraud resulting in the theft of car parts with attempt to smuggle.²³ The UNDT also noted that Mr. Miantoloum's conduct was so serious that it had even led DWB, via a letter dated 17 July 2018, to ban him from collaborating with the Organization in the future, a ban that applied to all branches of the movement.²⁴

25. In that context, the UNDT concluded that the DWB letter dated 17 July 2018 was "punishment for misconduct in violation of duties in [the performance] of a work activity" and that, consequently, Mr. Miantoloum had the obligation to declare it on his application forms.²⁵

²⁰ Letter dated 18 October 2021 from the Deputy Director-General, Management to Mr. Miantoloum.

²¹ Impugned Judgment, para. 41.

²² *Ibid.*, paras. 54-55.

²³ *Ibid.*, para. 47.

²⁴ *Ibid.*, para. 48.

²⁵ *Ibid.*, para. 51.

26. According to the UNDT, the fact that UNICEF did not immediately discover Mr. Miantoloum's false statements during the recruitment processes for which he had submitted an application was of no significance.²⁶

27. The UNDT also determined that the e-mail of 31 January 2020 from the Chief of Mission of DWB-Niger thanking Mr. Miantoloum for his collaboration in the activities of DWB in 2018 and 2019 was not relevant to the case at bar, which pertained only to his false statements and not the quality of his services rendered at UNICEF. The UNDT also rejected his argument that that "testimony of good collaboration (...) automatically rescind[ed] the letter of non-collaboration"²⁷ of 17 July 2018, pointing out that at the time of his hiring at UNICEF, he was unaware of the existence of that letter of appreciation and could therefore not reasonably believe that "the punishment was in essence revoked".²⁸

28. Concerning the proportionality of the disciplinary measure imposed, the Dispute Tribunal, relying on *Rajan*,²⁹ concluded that the sanction was proportional to the nature and gravity of Mr. Miantoloum's misconduct, and observed that the sanction imposed on Mr. Miantoloum was not the most severe of the measures available to UNICEF.³⁰

29. The UNDT considered that since the positions for which Mr. Miantoloum had applied came with responsibilities similar to those which he had had in his position at DWB, "the failure to declare the para disciplinary measures imposed on him in the past and the reasons for those measures [was] highly [relevant]".³¹

30. The UNDT rejected Mr. Miantoloum's argument that his cooperation in the investigation was a mitigating circumstance, concluding rather that his false statements had already been discovered and that, consequently, he was not in a position to deny them. However, the UNDT pointed out that the Administration had correctly determined that the full admission of the facts by Mr. Miantoloum as well as his behaviour during the investigation were mitigating circumstances.³²

²⁶ *Ibid.*, para. 50.

²⁷ *Ibid.*, para. 29.

²⁸ *Ibid.*, para. 56.

²⁹ *Rajan v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-781, paras. 37-40.

³⁰ Impugned Judgment, para. 62.

³¹ *Ibid.*, para. 59.

³² *Ibid.*, paras. 57 and 60.

31. Lastly, the UNDT found that Mr. Miantoloum had been afforded fair and equitable treatment.³³

Procedure before the Appeals Tribunal

32. On 24 September 2023, Mr. Miantoloum filed an appeal against the impugned Judgment before the Appeals Tribunal, to which the Secretary-General responded on 1 December 2023.

Submissions

Mr. Miantoloum's Appeal

33. Mr. Miantoloum requests the Appeals Tribunal to rescind the impugned Judgment as well as the contested decision. He also requests the Appeals Tribunal to order the payment of damages proportionate to his lost salary and benefits as well as a lumpsum amount of USD 500,000 for related damages. Mr. Miantoloum requests an official letter of apology from UNICEF owing to the false accusations of theft made against him, the reimbursement of security expenses for October and November 2021, as well as additional damages of USD 200,000 for lack of “medical insurance coverage when [he] was abandoned in [DRC]”.

34. Mr. Miantoloum further requests that oral proceedings be held to “give him the opportunity to express himself at a hearing with the strength of arguments, because the law is on [his] side”.

35. First, relying on French law, Mr. Miantoloum submits that the DWB letter of 17 July 2018 is not a disciplinary measure because he was no longer working for that Organization when the letter was issued. Consequently, in the absence of an employee-employer relationship between him and DWB, Mr. Miantoloum maintains that the letter could not be categorized as a disciplinary measure taken by an employer against an employee. He adds that he had answered the questions on the application forms to the best of his knowledge, as explicitly required by the said forms.³⁴

³³ *Ibid.*, para. 63.

³⁴ UNDT reply Annex R/1B, documents annexed to the investigations report of the Office of Internal Audit and Investigations dated 12 August 2021.

36. Mr. Miantoloum further contends that the letter of 17 July 2018 was unfounded and was the result of reprisal. In this connection, he maintains that he had become “the animal to be put down, in the eyes of DWB” for having denounced situations of racism within the Organization.

37. Second, Mr. Miantoloum asserts that the UNDT committed various errors during the proceedings that might have affected the impugned Judgment. Mr. Miantoloum maintains first that the UNDT failed to rule on his psychological condition at the time of the investigation, even though it had raised that element in its final conclusions. More specifically, he maintains that he was psychologically incapable of being questioned by the Office of Internal Audit and Investigations. He also criticizes UNICEF for not taking the necessary measures to determine his incapacity. Mr. Miantoloum also challenges the fact that the UNDT did not rule on the security expenses he incurred in October and November 2021 and for which UNICEF did not reimburse him, despite his many claims to that end.

38. Third, Mr. Miantoloum submits that the UNDT erred in indicating that he had not been dismissed.³⁵ Similarly, he maintains that the UNDT erred in categorizing the position for which he had applied in July 2021 as “Directeur de la chaîne d’approvisionnement”, when the position was that of “Supply Chain Manager”.³⁶ He considers that error to be one of “poor translation”. Mr. Miantoloum also contends that the UNDT made an inaccurate allegation when it indicated that he had been involved in an “attempt to (...) smuggle [car parts] into his country of origin, Chad”, noting that his country did not share a border with Uganda.³⁷

39. Fourth, Mr. Miantoloum submits that the UNDT failed to consider the fact that he had been unduly denied his right to a lawyer during the proceedings instituted by the Office of Internal Audit and Investigations.

40. Last, Mr. Miantoloum notes that he rendered loyal services to UNICEF for more than three years and that his performance evaluations were always positive. He fears that the impugned Judgment could destroy his career and compromise his children’s education.

³⁵ Impugned Judgment, para. 62.

³⁶ *Ibid.*, para. 16.

³⁷ *Ibid.*, para. 47.

The Secretary-General's Answer

41. The Secretary-General requests that the Appeals Tribunal dismiss the appeal and affirm the impugned Judgment. The Secretary-General also requests that the Appeals Tribunal reject the request for an oral hearing before the Appeals Tribunal, since Mr. Miantoloum has not demonstrated that a hearing would contribute to an expeditious and fair resolution of the present case.

42. The Secretary-General submits that the UNDT correctly concluded as to the legality of the contested decision.

43. The Secretary-General maintains that Mr. Miantoloum had not been able to establish the type of error that would warrant a reversal of the impugned Judgment.

44. The Secretary-General observes that some of the arguments raised by Mr. Miantoloum are based on new pieces of evidence that are not receivable before the Appeals Tribunal. He also submits that seven of the pieces of evidence submitted by Mr. Miantoloum, namely those appearing in annexes 1 to 3 and 6 to 9 of the appeal, constitute new evidence that had not been submitted previously to the UNDT. However, according to Article 10(1) of the Rules of Procedure of the Appeals Tribunal, a prior request for submission of additional documentary evidence should have been filed prior to the production of that new evidence, which Mr. Miantoloum had failed to do, making the evidence not receivable. In any event, the Secretary-General adds that the evidence presented does not meet the requirements of Article 2(5) of the Statute of the Appeals Tribunal, Article 10(1) of the Rules of Procedure of the Appeals Tribunal and the settled jurisprudence of the Appeals Tribunal,³⁸ since Mr. Miantoloum did not show any exceptional circumstance or present a reason to justify the late admission of that evidence, which was available or could have been available to him at the time of the filing of his application with the UNDT.

45. The Secretary-General further submits that Mr. Miantoloum's arguments are without merit. In this regard, the Secretary-General notes that the decision by Mr. Miantoloum not to declare that he had been the subject of an internal investigation at DWB and that he had been

³⁸ *Symeonides v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-977, paras. 24-26; *Mbok v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-824, para. 37; *Chhikara v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-723, para. 27; *Shakir v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-056, para. 1.

banned from working for that Organization in the future directly violates Article 101 of the Charter of the United Nations, Staff Regulation 1.2(b) and Staff Rule 1.5(a).

46. The Secretary-General notes that Mr. Miantoloum's argument that the DWB letter of 17 July 2018 is not a disciplinary measure because he was no longer working for DWB at the time of its issuance does not show any error in analysis by the UNDT. On the contrary, in so doing, Mr. Miantoloum is repeating the same argument presented to the Dispute Tribunal to express his disagreement with the impugned Judgment. However, the Secretary-General observes that merely repeating arguments that have already been presented is not sufficient for setting aside the conclusions of the UNDT.³⁹

47. In this connection, the Secretary-General also maintains that Mr. Miantoloum has not succeeded in demonstrating the relevance of reliance on French law in the case at bar.

48. The Secretary-General also alleges that "the [UNDT] had no choice but to reject [Mr. Miantoloum's] argument, upon noting that the [l]etter of non-collaboration from DWB indicated serious misconduct by [Mr. Miantoloum] leading to the sanction of him no longer being able to work for DWB", especially since DWB subsequently confirmed to UNICEF that the measure imposed was a disciplinary sanction.⁴⁰

49. As for Mr. Miantoloum's argument that he answered the questions on the application forms to the best of his knowledge, the Secretary-General maintains that this is a new argument that is not receivable at the appeal stage.⁴¹ The Secretary-General also maintains that the argument is without merit, because Mr. Miantoloum knew that he had been banned from working with DWB and nonetheless intentionally failed to disclose that information on his application forms.

³⁹ *Ray Steven Millan v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1330, para. 99; *Widmark J. Valme v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1261, para. 47.

⁴⁰ UNDT reply Annex R/1B, documents annexed to the investigations report of the Office of Internal Audit and Investigations dated 12 August 2021.

⁴¹ *Marius Mihail Russo-Got v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1100, para. 49; *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, para. 37.

50. The Secretary-General submits that Mr. Miantoloum's argument that he was a victim of reprisal by DWB for having denounced racist conduct within the Organization is without merit.

51. The Secretary-General further observes that, in the impugned Judgment, the UNDT had properly reviewed the action taken by DWB in the letter of 17 July 2018 in order to determine whether it was a disciplinary measure which Mr. Miantoloum had to disclose on his application forms.

52. As for the fact that the UNDT did not rule on Mr. Miantoloum's psychological condition, the Secretary-General recalls that the UNDT is under no obligation to address each and every argument presented by a party, especially when an argument is unfounded.⁴² The Secretary-General also notes that as Mr. Miantoloum did not present any evidence about his psychological condition or in respect of the security fees which were allegedly owed to him, his arguments to that effect are without merit.

53. The Secretary-General observes that the fact that the Dispute Tribunal indicated that Mr. Miantoloum had not been dismissed or that it categorized the position for which Mr. Miantoloum had applied in July 2021 as "Directeur de la chaîne d'approvisionnement" were possible (translation) errors that have no effect on the validity of the impugned Judgment.

54. The Secretary-General also notes that under the applicable legislative framework, staff members of UNICEF are not entitled to the presence of legal counsel during an interview with the Office of Internal Audit and Investigations.⁴³

55. Last, the Secretary-General observes that it is Mr. Miantoloum himself, not UNICEF, who has destroyed his career through his misconduct, and that in the present case, the disciplinary measure imposed was in no way arbitrary or irrational.

⁴² *Emma Reilly v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1309, para. 111; *Gabriel Vincent Branglidor v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1234, para. 62.

⁴³ Paragraphs 30.3, 36 and 53 of the UNICEF POLICY/DHR/2020/001 dated 7 May 2020 (UNICEF Policy on the Disciplinary Process and Measures).

Consideration*On the request for an oral hearing*

56. Mr. Miantoloum requests an oral hearing be held to “give him an opportunity to express himself at a hearing with the force of arguments, because the law is on [his] side”. To address this request, it is imperative to revisit the provisions of the Appeal Tribunal Statute and Rules of Procedure.

57. Article 8(3) of the Statute of the Appeals Tribunal states that “[t]he judges assigned to a case will determine whether to hold oral proceedings”, and Article 18(1) of the Rules of Procedure of the Appeals Tribunal stipulates that judges may decide to hold oral hearings “if such hearings would assist in the expeditious and fair disposal of the case”. It follows that the decision to hold oral hearings is a power accorded to the Tribunal in the interests of justice and expeditious resolution of the case. Before ruling on the question, the Appeals Tribunal must therefore assess the impact of an oral hearing on the appellant’s rights.

58. The evidence in the case shows that the questions on which Mr. Miantoloum’s rights turn are questions of law which can only be determined by the Appeals Tribunal. The questions of fact, on the other hand, are clear and the parties have no major disagreements about them.

59. An oral hearing to give Mr. Miantoloum the opportunity to express himself can therefore not be useful. On the contrary, they could run counter to the imperatives of expediting the proceedings without in any way clarifying the questions to be decided. For these reasons, the Appeals Tribunal, under the powers granted by the above-mentioned Articles, decides to reject Mr. Miantoloum’s request for an oral hearing.

On the question of knowing whether the Appeals Tribunal can admit the additional documentary evidence submitted by Mr. Miantoloum

60. Mr. Miantoloum attached to his appeal documentary evidence (annexes 1 to 3 and 6 to 9) which he had not previously requested to submit.

61. To decide whether it can admit the evidence, the Appeals Tribunal recalls that both its Statute⁴⁴ and its Rules of Procedure⁴⁵ allow it in exceptional circumstances to admit new evidence if the party concerned did not have prior knowledge of the evidence and was therefore unable to present it to the Dispute Tribunal in a timely manner.

62. However, a review of the evidence submitted by Mr. Miantoloum shows that it all predated the filing of his application with the UNDT and that it should have been submitted to the Dispute Tribunal.

63. In fact, annex 1 is a mission attestation dated 20 September 2017; annexes 2 and 3 are employment attestations dated 5 August 2019 and 20 October 2021, respectively; annex 6 is an extract of the Universal Declaration of Human Rights of 1948 (Articles 1 and 2); annex 7 is a medical questionnaire dated 18 February 2020; annex 8 is Mr. Miantoloum's medical record dated 27 November 2021; and annex 9 is a request for expense reimbursement dated 2 November 2021.

64. In the light of the foregoing, and in the absence of any exceptional circumstance, the Tribunal decides not to admit the additional documentary evidence submitted by Mr. Miantoloum.

65. As a secondary matter, the Tribunal adds that even if the additional evidence had been receivable, its lack of relevance would not have changed the findings of the Tribunal.

On the question of knowing whether the Dispute Tribunal erred in concluding that the disciplinary measure imposed on Mr. Miantoloum was lawful

66. To impugn the legality of the disciplinary measure imposed on him by UNICEF for failure to fulfil the obligation to declare prior disciplinary measures on his recruitment form, Mr. Miantoloum asserts that the DWB letter of 17 July 2018, sent at a time when he was no longer working for that Organization, could not be considered a disciplinary measure. It should be noted that he had presented this same argument to the Dispute Tribunal, which had rejected it.

⁴⁴ Article 2(5) of the statute of the Appeals Tribunal.

⁴⁵ Article 10(1) of the Rules of Procedure of the Appeals Tribunal.

67. It would be useful to recall in this regard the settled jurisprudence of the Appeals Tribunal, according to which the appeal is not an instance for an appellant to repeat arguments that did not succeed before the UNDT.

68. This position was clearly set out in *Gonzalo Ramos*, where the Appeals Tribunal said:⁴⁶

(...) [A] party cannot merely repeat on appeal arguments that did not succeed before the UNDT. (...) [T]he Appeals Tribunal is not an instance for a party to reargue the case without identifying the defects and demonstrating on which grounds an impugned UNDT judgment is erroneous.

69. Even assuming that the argument raised once again by Mr. Miantoloum had been admissible, it would not have led the Appeals Tribunal to reverse the impugned Judgment. The question before the Appeals Tribunal in this regard is whether the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity for misconduct was lawful.

70. To determine the legality of that measure, the Appeals Tribunal has to verify whether the UNDT erred on a question of law⁴⁷ or whether it erred on a question of fact, leading to a manifestly unreasonable judgment.⁴⁸

71. It should be recalled that, in the texts concerning the recruitment of staff at the United Nations and their status, a great deal of importance is accorded to integrity, honesty and probity in the recruitment process as well as in the performance of duties by recruited staff members.

72. Pursuant to Article 101(3) of the Charter of the United Nations, “[t]he paramount consideration in the employment (...) shall be the necessity of securing the highest standards of efficiency, competence, and integrity”. Meanwhile, Staff Regulation 1.2(b) provides that:

Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status.

⁴⁶ *Gonzalo Ramos v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1256, para. 41.

⁴⁷ Article 2(1)(c) of the Statute of the Appeals Tribunal.

⁴⁸ Article 2(1)(e) of the Statute of the Appeals Tribunal.

73. Given the importance accorded to the above-mentioned qualities, it was normal for Staff Rule 1.5 to require staff members to “supply [...] relevant information [...] for the purpose of determining their status” and that “staff members shall be held personally accountable for the accuracy and completeness of the information they provide.”

74. It was also normal for these provisions to be reflected on the electronic application form, with the following notation:

Clicking I agree confirms that I understand that any misrepresentation or material omission made in my profile renders me ineligible for hire and may lead to termination or dismissal if already hired.

75. Based on the above, we should now examine Mr. Miantoloum’s allegations that the DWB decision of 17 July 2018 to ban him from collaborating with the Organization in the future was not a disciplinary measure and so he did not necessarily have to disclose it on his recruitment forms.

76. To support this allegation, Mr. Miantoloum claims that, as at 17 July 2018, his employment relationship had been terminated and that the letter could therefore not be considered a disciplinary measure.

77. Faced with this argument, the Tribunal believes that it is important to define what a disciplinary measure is before addressing the question of whether there was an obligation to declare.

On the concept of disciplinary measure

78. Any measure that notifies workers of allegations of misconduct against them with regard to their employment contract and that is designed to sanction them is a disciplinary measure. Consequently, it is of little relevance whether the measure is taken during the term of the employment contract or after its termination, provided that the aim of the measure is to assess and possibly sanction conduct that is deemed wrongful during the period of employment.

79. For the Tribunal, there is no doubt that the DWB letter of 17 July 2018 informing Mr. Miantoloum that the decision had been made to no longer collaborate with him was, as noted by the UNDT, “punishment for misconduct in violation of duties in [the performance] of

a work activity”.⁴⁹ The letter was therefore a disciplinary measure, even if it was sent to Mr. Miantoloum after the termination of his employment contract.

80. The Tribunal also finds that through its early termination on 23 August 2017 of the volunteering agreement signed with Mr. Miantoloum, DWB had taken a disciplinary measure on the ground of failures by Mr. Miantoloum in the fulfilment of his mission. However, the measure was taken on 23 August 2017, hence on a date when the agreement was still in force and reflected, in the words of Mr. Miantoloum, an employee-employer relationship.

On Mr. Miantoloum’s allegations of having answered to the best of his knowledge

81. The Tribunal has just established above that Mr. Miantoloum’s employer, DWB, had indeed taken disciplinary measures against him, within the meaning of the questions posed on the UNICEF application forms, and that he failed to mention those measures in his responses. In so doing, Mr. Miantoloum provided erroneous responses on two occasions.

82. In addition, it was expressly mentioned on the forms that any incorrect, misleading or dishonest answers will likely preclude further employment with UNICEF. Mr. Miantoloum also agreed that any false statement or material omission would make him ineligible for recruitment or could lead to his dismissal. Given that Mr. Miantoloum’s answers were at the very least incorrect, it is of no relevance whether he answered to the best of his knowledge or whether he knowingly tried to conceal the existence of that disciplinary measure. In the case at bar, given the serious nature of the acts which DWB alleges were committed by Mr. Miantoloum, the nature of the disciplinary measure banning him from conducting any transaction with DWB, as well as the recent date of the measure, it is irremissible that Mr. Miantoloum did not answer the question on the form in the affirmative. Indeed, it seems highly unlikely that Mr. Miantoloum forgot about the existence of the disciplinary measure taken against him.

83. In the light of the foregoing, the Appeals Tribunal finds that the UNDT had correctly determined that the disciplinary measure imposed on Mr. Miantoloum was lawful.

⁴⁹ Impugned Judgment, para. 51.

On the question of knowing whether the Dispute Tribunal erred in ignoring some of Mr. Miantoloum's arguments and claims

84. Mr. Miantoloum also claims that the UNDT failed to rule on his psychological condition at the time of the investigation, even though it raised that point in its final conclusions. He also contests the fact that the UNDT did not rule on the security fees he incurred in October and November 2021 and for which he had not been reimbursed by UNICEF.

85. In response to these claims, the Tribunal recalls its settled jurisprudence that the UNDT is not obliged to address each and every argument or claim made by any party, particularly when the Tribunal determines that an argument or claim is, as in the present case, unfounded.

86. This is the conclusion that can be drawn from the judgment of the Tribunal in *Abu Jarbou*, where it stated that: "It is not necessary for any court (...) to address each and every claim made by a litigant, especially when a claim has no merit".⁵⁰ Likewise, in *Gabriel Vincent Branglidor*, the Tribunal declared that: "[T]he UNDT does not have to respond to each and every argument of a party (...)".⁵¹

87. In the light of the foregoing, the Appeals Tribunal finds that the UNDT did not err by ignoring the above-mentioned claims of Mr. Miantoloum, particularly since the claims appeared fanciful or at the very least unfounded.

On the question of knowing whether Mr. Miantoloum was afforded fair and equitable treatment during the investigation and disciplinary proceedings

88. Mr. Miantoloum maintains that the UNDT failed to consider the fact that he had been unduly denied his right to counsel during the proceedings initiated by the Office of Internal Audit and Investigations.

89. Before recalling its established jurisprudence on the question, the Tribunal deems it useful to examine the provisions of the UNICEF Policy on the Disciplinary Process and

⁵⁰ *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.

⁵¹ Judgment in *Gabriel Vincent Branglidor*, *op. cit.*, para. 62.

Measures,⁵² paragraph 30.3 of which states: “Interviewees are not entitled to the presence of legal counsel during an interview”.

90. This perfectly clear provision has been applied in several cases. For example, in *Akello*, the Tribunal said:⁵³

(...) Furthermore, we have held in *Powell* that at the preliminary investigation stage, only limited due process rights apply.

...

We thus find that the UNDT erred in law in concluding that there was a right to be apprised of the assistance of counsel during the investigation stage.

91. Likewise, in *Powell*, the Tribunal stated that:⁵⁴

Obviously, all of the due process rights provided in former Staff Rule 110.4 and ST/AI/371 cannot apply during the preliminary investigation because they would hinder it.

92. From the foregoing, it seems clear that the staff member does not have any right to be assisted by counsel at the preliminary investigation stage prior to the disciplinary proceedings.

93. Moreover, in *Akello*, cited above, the Appeals Tribunal found that the UNDT had erred by finding that the staff member had a right to the assistance of counsel during the preliminary investigation phase.

94. For these reasons, the Appeals Tribunal finds that Mr. Miantoloum’s claim to have the right to counsel during the proceedings brought by the Office of Internal Audit and Investigations is unfounded and must be denied.

On the claim for damages

95. Mr. Miantoloum requests that the Tribunal order the payment of damages proportionate to the salary and benefits lost as well as an additional amount of USD 500,000.

⁵² UNICEF POLICY/DHR/2020/001 dated 7 May 2020.

⁵³ *Akello v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-336, paras. 36 and 38.

⁵⁴ *Powell v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-295, para. 23.

This request must be denied in line with the settled jurisprudence of the Tribunal that, in the absence of illegality, no compensation can be awarded.

96. On this matter, the judgment of the Tribunal in *Makeen* is instructive:⁵⁵

Since it has been established by clear and convincing evidence that the disciplinary measure imposed on Mr. Makeen is lawful, there is hence no illegality warranting any compensation.

97. Likewise, in *Yolla Kamel Kanbar*, the Tribunal stated that:⁵⁶

(...) Since no illegality was found, there is no justification for the award of any compensation.

98. For these reasons, Mr. Miantoloum's claim for damages must be denied.

⁵⁵ *Hassan Makeen v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1461, para. 74.

⁵⁶ *Yolla Kamel Kanbar v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1082, para. 45.

Judgment

99. Mr. Miantoloum's appeal is dismissed and Judgment No. UNDT/2023/078 is affirmed.

Original and Authoritative Version: French

Decision dated this 25th day of October 2024 in New York, United States.

(Signed)

Judge Ziadé, Presiding

(Signed)

Judge Forbang

(Signed)

Judge Sheha

Judgment published and entered into the Register on this 3rd day of December 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar