



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

Judgment No. 2025-UNAT-1513

**Mohammed Almoghayer
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Katharine Mary Savage, Presiding Judge Leslie F. Forbang Judge Kanwaldeep Sandhu
Case No.:	2024-1896
Date of Decision:	21 March 2025
Date of Publication:	9 April 2025
Registrar:	Juliet E. Johnson

Counsel for Appellant: Self-represented

Counsel for Respondent: Rupa Mitra

JUDGE KATHARINE MARY SAVAGE, PRESIDING.

1. Mr. Almoghayer, a former employee of the United Nations Institute for Training and Research (UNITAR) has filed an appeal of Judgment No. UNDT/2023/138 (impugned Judgment) rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal).¹
2. In the impugned Judgment, the UNDT rejected Mr. Almoghayer's application, in which he contested the decision of UNITAR to place him on Special Leave Without Pay (SLWOP) following the exhaustion of his leave entitlements and the failure by a donor to transfer the necessary funds for the project he was assigned to manage.
3. For the reasons set forth herein, the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

4. Mr. Almoghayer was offered a temporary appointment as Senior Manager Online Learning and Education, Grade P-6, in the Division for Peace, Peacekeeping Training Program Unit in UNITAR, effective 15 November 2021 and expiring on 13 November 2022. Mr. Almoghayer's appointment was encouraged by the Arab Gulf Programme for Development (AGFUND).²
5. Mr. Almoghayer's appointment letter specified that it was "limited to service with [UNITAR] and to the availability of funds".³
6. On 15 December 2021, UNITAR and AGFUND signed two agreements to establish two projects, the Afghanistan Project and the Financial Inclusion Project, that would be managed by the Division for Peace of UNITAR.
7. On 15 February 2022, UNITAR and AGFUND signed an agreement to establish the Global Partnership Hub (GPH), which AGFUND would fund for a period of three years, including the

¹ *Almoghayer v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/138 (15 December 2023).

² *Ibid.*, para. 3.

³ *Ibid.*, para. 38.

costs of the Chief Executive Officer (CEO) of GPH. AGFUND was to transfer one million dollars to UNITAR within sixty days of signing the agreement.⁴

8. On 1 March 2022, Mr. Almoghayer was transferred to assume the function of CEO of the GPH under the supervision of the Director of the Division of Prosperity (Director/Prosperity).⁵

9. On 10 March 2022, AGFUND welcomed Mr. Almoghayer's appointment and committed to transferring the funds for the first year of the project once they had approved the implementation plan and budget.⁶

10. On 12 April 2022, at the end of the Covid-19 pandemic, the Executive Director of UNITAR (Executive Director/UNITAR) announced that as of 3 May 2022, the UNITAR headquarters would return to full occupancy.⁷

11. By the end of April, UNITAR had not received the first tranche of funds from AGFUND. The Director of Operations for UNITAR and the Director/Prosperity met with Mr. Almoghayer to discuss next steps. The Director/Prosperity asked for Mr. Almoghayer's assistance in approaching AGFUND about using the other AGFUND projects (the Afghanistan Project and the Financial Inclusion Project) to prefinance Mr. Almoghayer's salary until the funds came through for the GPH.⁸

12. On 12 May 2022, AGFUND wrote the following to the Director/Prosperity:⁹

As the CEO was onboarded to provide support for other UNITAR divisions, not directly related to the AGFUND projects, we regret to inform you that AGFUND can't give a retroactive approval for the use of resources for CEO salary for the period prior to 1 June 2022. ... As discussed in our meeting, and given the unsatisfactory implementation of ongoing projects, I hereby confirm AGFUND's commitment to cover CEO full salary using resources of the ongoing projects (financial [inclusion] and Afghanistan) from June 1, 2022 until May 31, 2023.

⁴ Answer, annex 1, para. 7.

⁵ *Ibid.*, para. 6.

⁶ *Ibid.*, para. 7.

⁷ UNDT application, Section VII, para. 4.

⁸ Impugned Judgment, para. 10.

⁹ E-mail dated 12 May 2022 re: Status and reports on the AGFUND/UNITAR ongoing projects.

13. On 16-17 May 2022, Mr. Almoghayer e-mailed the Director/Prosperity about his lack of office space. He stated that he had not had his own office space for six months, that UNITAR had not provided him a laptop or phone, and that he had been forced to have meetings in the public lobby and make phone calls from the stairwell.¹⁰

14. On 18 May 2022, the Executive Director/UNITAR sent an e-mail to the Executive Director of AGFUND (Executive Director/AGFUND) advising that the failure of AGFUND to make the first installment was jeopardizing the GPH. The Executive Director/UNITAR explained that UNITAR was a project-based organization without any core funding, and that human resource costs are recovered from specific projects. He noted that UNITAR had proposed to borrow from pre-existing AGFUND projects to cover the costs of the CEO for the GPH (CEO/GPH), but this had been deemed unacceptable by AGFUND. He further advised that without receipt of funds for GPH, UNITAR would have to “discontinue the current human resource arrangement” for the GPH.¹¹

15. On 20 May 2022, the Director/Prosperity met with Mr. Almoghayer to discuss UNITAR’s communication to AGFUND, particularly as regards the funding for his position of CEO.¹²

16. On 27 May 2022, Mr. Almoghayer requested and was granted one month of certified sick leave until 30 June 2022, which was later extended to 31 July 2022.¹³

17. On 16 June 2022, the Director/Prosperity sent a letter to AGFUND confirming further discussions that had occurred between UNITAR and AGFUND, including that Mr. Almoghayer had been reassigned to be the Senior Project Manager of the Afghanistan and Financial Inclusion projects, and that his salary would be paid from these projects from May 2022.¹⁴

18. On 26 June 2022, the Executive Director/AGFUND advised the Executive Director/UNITAR that the funds in the Afghanistan and Financial Inclusion Projects could not be used for Mr. Almoghayer’s salary.¹⁵

¹⁰ E-mail dated 16 May 2022 re: Office space.

¹¹ Impugned Judgment, para. 12.

¹² *Ibid.*, para. 13.

¹³ *Ibid.*, para. 14.

¹⁴ *Ibid.*, para. 15.

¹⁵ *Ibid.*, para. 17.

19. On 3 July 2022, AGFUND further advised that it would grant “exceptional permission” for funding of the CEO’s salary only as of mid-November 2022.¹⁶

20. On 15 July 2022, the Executive Director/UNITAR advised Mr. Almoghayer that “the donor was not in a position to transfer the necessary funds for [the GHP] in accordance with the agreement signed, and there [was] no other source of funding to cover [his] salary”.¹⁷ The Executive Director/UNITAR decided, in accordance with UNITAR Administrative Circular AC/UNITAR/2019/05 (Recruitment procedure), to place Mr. Almoghayer on SLWOP for the remainder of his temporary appointment (contested decision).

21. On 15 July 2022, by separate memorandum, the Executive Director/UNITAR advised Mr. Almoghayer that he had exhausted all his leave entitlements, and that he would be on SLWOP effective 13 July 2022.¹⁸

22. After his management evaluation request was denied, Mr. Almoghayer filed an application against the contested decision with the UNDT on 25 November 2022.

Impugned Judgment

23. The UNDT first examined whether it was lawful for UNITAR to place Mr. Almoghayer on SLWOP when there was no source of funding for his salary. The UNDT found that Mr. Almoghayer was well-aware of the business model of UNITAR and that his position as CEO/GPH was dependent on external funding.¹⁹ The UNDT held that it was clear from the record that AGFUND delayed transferring the funds and then refused to cover the CEO/GPH salary from other ongoing AGFUND projects.²⁰

24. The UNDT considered, but rejected, Mr. Almoghayer’s argument that rather than placement on SWLOP, he should have been terminated and paid a termination indemnity. The UNDT observed that the relevant regulation, AC/UNITAR/2019/05, provided in paragraphs 9(c) and (f) the following:

¹⁶ *Ibid.*, para. 18.

¹⁷ *Ibid.*, para. 21.

¹⁸ *Ibid.*, para. 20.

¹⁹ *Ibid.*, paras. 36, 40-41.

²⁰ *Ibid.*, para. 45.

c. In the case of non-availability of funds, the appointment can be terminated in accordance with Staff Regulations 9.1 and 9.3 and termination will be paid . . .

...

f. Special Leave without Pay may also be approved for administrative reasons.

25. The UNDT held that UNITAR was not obliged to terminate Mr. Almoghayer's appointment under paragraph 9(c), which used the permissive "can" rather than the mandatory "shall". The UNDT accepted the Administration's argument that Special Leave without Pay was used in case the funding issue with the donor was resolved such that Mr. Almoghayer could have resumed his functions and finished out his contract.²¹ The UNDT concluded that it was a lawful exercise of discretionary authority for UNITAR to have applied paragraph 9(f) of the aforementioned rule.

26. The UNDT held that the scope of its judicial review did not extend to reviewing Mr. Almoghayer's claims that UNITAR's mismanagement of other projects is the reason that AGFUND did not finance the GPH.²²

27. The UNDT considered Mr. Almoghayer's contention that after he had exhausted his sick leave entitlement he should have been placed on special leave with half pay until the Medical Director had determined whether he was entitled to a disability benefit, pursuant to paragraph 3.2 of ST/AI/2005/3 (Sick leave).

28. The UNDT rejected the Administration's argument that as a staff member on a temporary appointment Mr. Almoghayer was not entitled to the protections under the foregoing provision. The UNDT held that although Mr. Almoghayer was not entitled to sick leave with half pay under Staff Rule 6.2(b), that did not mean that he could not qualify for special leave with half pay under paragraph 3.2 of ST/AI/2005/3.²³

29. In any event, the UNDT found that the Administration had already complied with paragraph 3.2 of ST/AI/2005/3, because on 1 June 2022, they sought the advice of the Medical Service as to whether to present Mr. Almoghayer's case to the United Nations Joint Staff Pension Fund for a disability benefit. The medical officer decided on 7 June 2022 not to do so. Hence, by the time Mr. Almoghayer had exhausted his leave entitlements on 12 July 2022, it had already

²¹ *Ibid.*, para. 53.

²² *Ibid.*, para. 56.

²³ *Ibid.*, paras. 71-73.

complied with paragraph 3.2 of ST/AI/2005/3, and so he was not eligible for the special leave with half pay.²⁴

30. The UNDT accepted Mr. Almoghayer's claim that he was not designated a proper workspace and that on at least one occasion he resorted to working from a stairwell.²⁵ The UNDT was satisfied that the Administration was aware of Mr. Almoghayer's poor working conditions and had failed to resolve it efficiently.²⁶ The UNDT thus held that UNITAR had breached its duty of care to Mr. Almoghayer.²⁷

31. Nonetheless, the UNDT found that Mr. Almoghayer had not met his burden of proof to show that he suffered a work-related injury due to not having a designated workspace.²⁸ The one photograph of Mr. Almoghayer sitting in the stairwell did not prove that this was his only option, or that he sat there more than once.²⁹

32. The UNDT noted that the medical certificate that was signed by a physician on 5 October 2022 stated:³⁰

Static Complaints: pain, heaviness, itching, restless right leg with nocturnal cramps and oedema. The patient attributes the complaints to frequent sitting for long periods on a staircase with the laptop on his lap.

Addition: ... Working seated on a staircase on a laptop for longer periods might not be the direct cause of the complaints. However, these working conditions will definitely have supported the development of these complaints and will have made them worse.

33. The UNDT concluded that the medical certificate basically denied that working on the staircase was the direct cause of his injury, at best, it may have aggravated Mr. Almoghayer's injury. The UNDT determined that it was impossible for it to assess whether Mr. Almoghayer suffered a work-related injury, and in any event, this claim should have been posed to the Medical Service.³¹

²⁴ *Ibid.*, paras. 74-75.

²⁵ *Ibid.*, para. 89.

²⁶ *Ibid.*, para. 94.

²⁷ *Ibid.*, para. 95.

²⁸ *Ibid.*, para. 96.

²⁹ *Ibid.*, para. 97.

³⁰ *Ibid.*, para. 99.

³¹ *Ibid.*, paras. 100-101.

34. The UNDT held that Mr. Almoghayer's assertion that the contested decision was ill-motivated or tainted by bias was meritless.³²

35. The UNDT determined that Mr. Almoghayer was not entitled to any remedies for the contested decision, given that the UNDT found that it was lawful.³³

36. Further, the UNDT held that Mr. Almoghayer was not entitled to any moral damages because he had not met his burden of proof regarding the alleged work-related injury.³⁴ The UNDT found that the number of times that he resorted to working in the stairwell was not confirmed, nor was the Organization necessarily responsible for Mr. Almoghayer's choice to sit here, rather than other common areas in the building. Any mental/psychological harm suffered by him in this regard had not been established to the applicable standard.³⁵

37. Mr. Almoghayer filed an appeal of the impugned Judgment on 21 February 2024, to which the Secretary-General answered on 29 April 2024.

Submissions

Mr. Almoghayer's Appeal

38. Mr. Almoghayer submits that after his lateral transfer to the Division for Prosperity on 1 March 2022, and the return-to-office announcement on 12 April 2022 following the Covid-19 pandemic, he was not provided office space, an office phone or laptop. He states that he flagged this with his supervisor, sent multiple reminders to no avail, and he was forced to sit in the hallway or the staircase to do his work. He was embarrassed and humiliated when he was spotted by an official of the Qatar delegation while he was working on the staircase. His lack of essential office resources substantially obstructed his ability to discharge his duties.

39. Mr. Almoghayer submits that after weeks of struggling in the hallway and the staircase, he had to seek medical attention. A medical doctor ordered immediate cessation of his work activities

³² *Ibid.*, para. 109.

³³ *Ibid.*, para. 110.

³⁴ *Ibid.*, para. 114.

³⁵ *Ibid.*, para. 115.

and referred him to a spine specialist. His sick leave was extended through the course of his medical treatment.

40. Mr. Almoghayer submits that the UNDT erred by on the one hand correctly recognizing that he did not have adequate workspace but then denying his claims for moral damages for stress, anxiety and loss of reputation.

41. Mr. Almoghayer submits that his damages include the negative impact on his personality rights, dignity, and psychological, emotional, spiritual and reputational harm. Mr. Almoghayer avers that the impugned Judgment overlooks the UNAT's precedent in *Dia*,³⁶ which acknowledged and compensated for the severe effects of such indignities on an individual's mental and emotional well-being.

42. Mr. Almoghayer argues that the UNDT erred in failing to make the connection between the comprehensive harm caused to him and his lack of adequate office resources to act as CEO. Mr. Almoghayer contends that he submitted to the UNDT medical and psychological reports indicating stress and anxiety directly linked to the infringement of his rights.

43. Mr. Almoghayer submits that the UNDT did not properly consider the medical documents that he had submitted with his application and rejoinder. He contends that the 27 May 2022 certificate indicates his burnout before sick leave, which he says shows the connection between poor working conditions and his injury. He claims that the UNDT erred in not considering this certificate.

44. Mr. Almoghayer avers that the 19 August 2022 medical certificate shows dislocation of his upper cervical spine which is attributed to prolonged laptop use on a staircase. He notes that the 16 September 2022 certificate recommends medical intervention.

45. Mr. Almoghayer submits that the UNDT erred in disregarding the 16 September and 5 October 2022 medical reports that detail back pain, neck pain and leg swelling due to sitting on the stairs.

³⁶ *Dia v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-553.

46. Mr. Almoghayer contends that the UNDT erred in failing to consider the 18 August 2022 medical certificate which referenced lower back pain and a major depressive disorder. That certificate recommended 6-12 months of sick leave.

47. Mr. Almoghayer submits that there was no principled reason why the UNDT dismissed his evidence under oath that he suffered physical pain, emotional distress and anxiety as a result of UNITAR's breach of duty of care.

48. Mr. Almoghayer claims that if the Organization had discharged its duty of care with regard to providing him a workspace then he would not have been compelled to seek medical intervention. He references various UNAT precedents in support of compensation for stress or harm linked to a breach of rights.³⁷

49. Mr. Almoghayer argues that it does not make sense that the UNDT admitted that he could have received a termination indemnity if he had been terminated pursuant to paragraph 9(c) of AC/UNITAR/2019/5, but then inexplicably the UNDT did not award him this relief in the impugned Judgment. Mr. Almoghayer was denied a rightful entitlement even though the UNDT recognized that UNITAR had breached its duty of care to him.

50. Mr. Almoghayer points out that paragraph 9(f) of AC/UNITAR/2019/5 discusses special leave without pay "for administrative reasons". He argues that this was inapplicable to him because UNITAR cited *financial* reasons for its decision. Therefore, paragraph 9(c) applied and a termination indemnity should have been paid to him. This would have given him the financial resources to pursue the medical treatment necessary to correct his work-related back injury.

51. Mr. Almoghayer submits that the UNDT made an error of fact about whether UNITAR was improperly using other AGFUND resources to cover his salary. He queries how was his salary being covered before his lateral transfer to the CEO position? There was no proof that the funding that allowed him to be hired initially by UNITAR had been removed or fell through.

³⁷ *Abubakr v. Secretary-General*, Judgment No. 2012-UNAT-272, *Charles v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-233, *Appellant v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-143.

52. Mr. Almoghayer argues that it was a statement of fact that UNITAR had acted improperly and negligently in managing donor funds. This was established based on a review committee finding by six member states.

53. Mr. Almoghayer seeks leave from the UNAT to introduce additional evidence to rebut the suggestion that the onboarding discussions between him and UNITAR was not at the request of AGFUND.

54. Mr. Almoghayer requests reversal of the impugned Judgment and either (a) payment of a termination indemnity of between six weeks and three months, or (b) compensation equal to what he would have received if he had been placed on certified sick leave at half-pay retroactive to 15 July 2022.

55. Mr. Almoghayer requests assignment to a new contract through which funding was promised by AGFUND.

56. Mr. Almoghayer requests back pay of salary from 15 July 2022, the date of the contested decision, through 13 November 2022, which was the end of his contract.

57. Mr. Almoghayer also requests moral damages in the amount of USD 50,000 for the Administration's failure to treat him with the dignity and respect due to international civil servants, and its effect on his professional image, career, and physical well-being, including stress and anxiety.

The Secretary-General's Answer

58. The Secretary-General submits that the UNDT correctly found that there was no direct link between Mr. Almoghayer's alleged ill health and the lack of a designated workspace.

59. The Secretary-General points out that the multiple e-mails that Mr. Almoghayer claims he sent his supervisor were sent on the same day, 14 minutes apart, and one more the next day. In none of these e-mails did Mr. Almoghayer make reference to experiencing physical discomfort or ill health effects. He complained that he "felt embarrassed" and that the situation made it difficult to "plan and organize". Nothing in these e-mail messages support Mr. Almoghayer's claim that he suffered any injury due to not having a workspace.

60. The Secretary-General submits that the UNDT was not required to expressly discuss these three e-mails. The UNDT clearly articulated its reasons for reaching the conclusion that there was no direct link between the lack of workspace and Mr. Almoghayer's health issues.

61. The Secretary-General highlights that just 10 days after Mr. Almoghayer sent his third e-mail about workspace is when he requested certified sick leave (27 May 2022), citing "burnout". No spinal or back or venal injury was listed on the relevant medical certificate provided by Mr. Almoghayer in support of his certified sick leave.

62. The Secretary-General points out that the medical certificates that Mr. Almoghayer seeks to rely on were from three months or more after he left the UNITAR office.

63. The Secretary-General submits that the UNAT's Judgment in *Dia* is inapposite, because there the UNDT did not properly consider the staff member's claim for moral damages. Here, the UNDT expressly considered Mr. Almoghayer's claim of having a work-related injury and found he had not met his burden of proof.

64. The Secretary-General submits that it was within the UNDT's judicial prerogative to find that the nexus between his injuries and his workplace conditions was not met. The UNDT rightfully concluded that it was not established that Mr. Almoghayer was sitting in the staircase on a regular basis or that he was instructed to do so. The UNDT rightly noted that in the medical certificates it was Mr. Almoghayer who attributed his injury to working from the staircase.

65. The Secretary-General submits that Mr. Almoghayer merely disagrees with the UNDT's determination that he had not established a causal link, but this does not meet his burden on appeal of proving that the UNDT reached a manifestly unreasonable conclusion.

66. The Secretary-General avers that the UNDT correctly concluded that the Administration was not obligated to terminate Mr. Almoghayer's appointment under paragraph 9(c) of AC/UNITAR/2019/05, and that the Administration had a lawful reason to keep him on SLWOP, under paragraph 9(f) of the same instruction, in case the situation with AGFUND was resolved and he could begin working as CEO.

67. The Secretary-General submits that the UNDT rightly found that Mr. Almoghayer's arguments about how UNITAR was to blame for AGFUND not financing the GPH project were not

a proper subject of judicial review. There is no error in the UNDT finding that it was not within its remit to review how UNITAR implemented its projects or managed its budgets.

68. The Secretary-General opposes Mr. Almoghayer's request to introduce additional evidence into the record. The evidence that he seeks to adduce is from 13 October 2021, which is prior to the UNDT proceedings. He has not established that it was unknown to him at that time, and the UNAT should reject the request on this ground alone.

69. The Secretary-General further argues that it is not in the interests of justice to accept this additional evidence, because it relates to the contested fact that Mr. Almoghayer's onboarding was requested by AGFUND, and not to the lawfulness of the contested decision to place him on SLWOP.

70. The Secretary-General requests that the UNAT dismiss the appeal in its entirety.

Considerations

71. When considering the validity of the Administration's exercise of discretion in administrative matters, it is the task of the first instance tribunal to determine if the decision made is legal, rational, procedurally correct, and proportionate. This involves having regard to whether relevant matters were ignored, and irrelevant matters considered, and whether the decision taken was absurd or perverse. It is not the role of the first instance tribunal to consider the correctness of the choice made by the Administration amongst the various courses of action open to it, nor is it its role to substitute its own decision for that of the Administration.

72. In issue in this appeal is whether the UNDT erred in finding that the contested decision of UNITAR to place Mr. Almoghayer on SLWOP rather than terminating his appointment with a termination indemnity was lawful and amounted to a lawful exercise of its discretionary authority.

73. Staff Rule 5.3(f) provides that the Secretary-General may "(i)n exceptional cases ... place a staff member on special leave with full or partial pay or without pay if he or she considers such leave to be in the interest of the Organization".

74. Paragraph 9(a) of the UNITAR Administrative Circular on Recruitment Procedures makes it clear that "*(t)he appointment and promotion of the UNITAR staff members are limited to*

service with the Institute and to the availability of funds".³⁸ The Circular records that UNITAR does not receive any contribution from the United Nations Regular Budget and that because it is entirely self-funded and project-based it offers fixed-term and temporary appointments but not continuing appointments.³⁹ Paragraph 9(c) states that:

In the case of non-availability of funds, the appointment can be terminated in accordance with Staff Regulations 9.1 and 9.3 and termination indemnity will be paid in accordance with the rates and conditions specified in Annex III to the Staff Regulations of the United Nations.

75. However, paragraph 9(e) states that:

In some cases, in case of non-availability of funds and based on strong evidence that funds will become available within a reasonable period, the staff member may apply for and be granted special leave without pay (SLWOP) until such funds reach the UNITAR account.

76. Paragraph 9(f) provides that SLWOP "may also be approved for administrative reasons".

77. The Administration has a duty to act fairly, justly, and transparently in dealing with staff members. An administrative decision to place a staff member on SLWOP has been recognized to have protective benefits, including to ensure that the individual remains a staff of the Organization.⁴⁰ In *Sarah Coleman*,⁴¹ we found that the decision to invoke SLWOP was lawful and reasonable and, likewise, in *Adewusi*,⁴² SLWOP was recognized not to amount to an abuse of authority or a deliberate attempt to harm the staff member concerned.

78. Mr. Almoghayer was aware of the business model of UNITAR and that his position as CEO of the GPH was dependent on external funding. Since AGFUND delayed transferring the funds and then refused to cover the CEO/GPH salary from other ongoing AGFUND projects, there could be no doubt that UNITAR faced serious funding difficulties in relation to the payment of his salary.

79. The UNDT found that UNITAR was not obliged to terminate his appointment under paragraph 9(c), given the use of the permissive "can" rather than the mandatory "shall" in that

³⁸ AC/UNITAR/2019/05 (Recruitment procedures) (emphasis added).

³⁹ *Ibid.*, para. 9(b).

⁴⁰ *Adewusi v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-382, paras. 14-16.

⁴¹ *Sarah Coleman v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1225, para. 41.

⁴² *Adewusi* Judgment, *op. cit.*

paragraph. It accepted that the Administration's reliance on paragraph 9(f) enabled it to attempt to resolve the issue of funding with the donor, which, if successful, would allow Mr. Almoghayer to resume his functions and conclude his contract. It found that UNITAR had acted properly, reasonably and based on valid reasons established by evidence in deciding that it was in the interest of the Organization to place Mr. Almoghayer on SLWOP whilst not performing work for the Organization until the expiry of his temporary appointment so as to ensure that his position with UNITAR was preserved. The evidence supported a conclusion that such decision was legal, rational and proportionate. The UNDT did not err in finding that UNITAR had properly exercised its discretion in relation to this issue, with relevant matters considered, and no indication that the decision taken was absurd or perverse, based on ulterior motives or bias.⁴³ It is not the role of the first instance tribunal to consider the correctness of the choice made by the Administration amongst the various options available to it. The UNDT cannot be faulted in finding that UNITAR exercised its discretion properly, lawfully and reasonably, in the manner required having regard to the material placed before it. The UNDT correctly noted it was not within its remit to review how UNITAR implemented its projects or managed its budgets and that whether UNITAR was to blame for AGFUND not financing the GPH project was not a proper subject of judicial review.

80. Mr. Almoghayer seeks to have additional evidence admitted on appeal. Article 2(5) of the Appeals Tribunal Statute (Statute) provides, in part, that:

In exceptional circumstances, and where the Appeals Tribunal determines that the facts are likely to be established with documentary evidence, ... it may receive such additional evidence if that is in the interest of justice and the efficient and expeditious resolution of the proceedings.

81. The evidence contemplated in Article 2(5) does not include evidence that was known to either party and which could and should have been presented to the UNDT. The evidence that Mr. Almoghayer seeks to have introduced on appeal was known to him when the matter came before the UNDT but it was not presented.⁴⁴ On appeal, he has not shown that exceptional circumstances exist which would warrant the admission of such additional evidence sought, nor has he shown that it is in the interest of justice and the efficient and expeditious resolution of this

⁴³ *Beatriz Fernandez Carrillo v. Secretary-General of the United Nations* Judgment No. 2021-UNAT-1163, para. 27.

⁴⁴ *Symeonides v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-977, paras. 25-26.

matter for the additional evidence to be received on appeal by this Tribunal.⁴⁵ As a consequence, his request is denied.

82. Turning to Mr. Almoghayer's claim that he suffered a work-related injury for which he is entitled to receive compensation, he relies on multiple e-mails sent by him to his supervisor on the same day, 14 minutes apart, with one e-mail sent the next day. Mr. Almoghayer did not indicate in any of these e-mails that he was experiencing physical discomfort or ill health effects but stated that he "felt embarrassed" and that the situation made it difficult to "plan and organize". The e-mail messages therefore do not support his claim that he suffered an injury due to not having a workspace.

83. Ten days after Mr. Almoghayer sent his third e-mail about workspace, he requested certified sick leave on the basis of his "burnout". No spinal or back or venal injury was listed on the relevant medical certificate provided by Mr. Almoghayer in support of his certified sick leave and the medical certificates he relies upon were from three or more months after he left the UNITAR office.

84. The UNDT accepted Mr. Almoghayer's claim that he was not designated a proper workspace and that on at least one occasion he resorted to working from a stairwell. It found that the Administration was aware of his poor working conditions but failed to resolve this efficiently and in this regard had breached its duty of care to Mr. Almoghayer.

85. Despite this, the UNDT found that Mr. Almoghayer had not met his burden of proof to show that he suffered a work-related injury due to not having a designated workspace.⁴⁶ The one photograph of him sitting in the stairwell did not prove that this was his only option, or that he sat there more than once. As a result, no direct link was found to exist between Mr. Almoghayer's alleged ill health and the lack of a designated workspace. He consequently failed to prove that he was entitled to an award of compensation on the basis of an alleged breach of duty of care on the part of UNITAR. It follows that the UNDT's finding that Mr. Almoghayer had not met the burden of proof in relation to his claim of having sustained a work-related injury cannot be faulted. The UNDT found that it was not established that Mr. Almoghayer was sitting in the staircase on a regular basis or that he was instructed to do so and that in none of his medical certificates was his

⁴⁵ *Andreyev v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-501, paras. 25-27.

⁴⁶ Impugned Judgment, para. 96.

injury attributed to working from the staircase. Having regard to the material placed before the UNDT we are satisfied that in reaching this conclusion the UNDT did not err.

86. Mr. Almoghayer contended further that after he had exhausted his sick leave entitlement, he should have been placed on special leave with half pay until the Medical Director had determined whether he was entitled to a disability benefit, pursuant to paragraph 3.2 of the relevant sick leave policy.⁴⁷ The UNDT found that although Mr. Almoghayer was not entitled to sick leave with half pay under Staff Rule 6.2(b), that did not mean that he could not qualify for special leave with half pay under paragraph 3.2 of ST/AI/2005/3.⁴⁸ The UNDT rejected the Administration's argument that as a staff member on a temporary appointment Mr. Almoghayer was not entitled to the protections under the foregoing provision. However, the UNDT found that the Administration had already complied with paragraph 3.2, because on 1 June 2022, the advice of the Medical Service was sought regarding whether to present Mr. Almoghayer's case to the United Nations Joint Staff Pension Fund for a disability benefit. The medical officer decided on 7 June 2022 not to do so. As a result, by the time Mr. Almoghayer had exhausted his leave entitlements on 12 July 2022, the Administration had already complied with paragraph 3.2, and he was not eligible for the special leave with half pay.⁴⁹

87. It follows for these reasons that the UNDT did not err in finding that the contested decision was lawful and that Mr. Almoghayer was not entitled to any remedies arising from it. For a claim for moral damages to succeed harm attributable to the proven illegality must be shown to exist.⁵⁰ Based on the evidence before the UNDT, no such nexus was proved between the illegality committed against Mr. Almoghayer and any harm suffered by him as a result. As this Tribunal has previously emphasized, compensation must be determined following a principled approach and on a case-by-case basis. The UNDT did not commit an error of law or fact in refusing to award Mr. Almoghayer compensation for harm in the form of moral damages given that he had not met his burden of proof or shown there to exist a nexus between the alleged work-related injury and the harm suffered. The number of times that he resorted to working in the stairwell was not proved, nor was UNITAR shown to be responsible for Mr. Almoghayer's choice to sit in the

⁴⁷ ST/AI/2005/3 (Sick leave).

⁴⁸ Impugned Judgment, paras. 71-73.

⁴⁹ *Ibid.*, paras. 74-75.

⁵⁰ *Lilian Ular v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1409, para. 45.

stairwell, rather than other common areas in the building. As a result, any mental or psychological harm suffered by him in this regard was not established to the required standard.

88. For these reasons the request to admit additional evidence on appeal falls to be dismissed, as does the appeal.

Judgment

89. The appeal is dismissed and Judgment No. UNDT/2023/138 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 21st day of March 2025 in Nairobi, Kenya.

(Signed)

Judge Savage, Presiding

(Signed)

Judge Forbang

(Signed)

Judge Sandhu

Judgment published and entered into the Register on this 9th day of April 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar