



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2025-UNAT-1518

Humphreys Timothy Shumba
(Applicant)

v.

Secretary-General of the United Nations
(Respondent)

JUDGMENT ON APPLICATION FOR INTERPRETATION

Before:	Judge Kanwaldeep Sandhu, Presiding Judge Katharine Mary Savage Judge Leslie F. Forbang
Case No.:	2024-1917
Date of Decision:	21 March 2025
Date of Publication:	{Number, Month} 2025
Registrar:	Juliet E. Johnson

Counsel for Applicant:	Oscar Asima Taulo
Counsel for Respondent:	Noam Wiener

JUDGE KANWALDEEP SANDHU, PRESIDING.

1. Mr. Humphreys Timothy Shumba (Mr. Shumba), a former staff member of the Office of the United Nations Population Fund (UNFPA), contested the decision of the Administration to summarily dismiss him for serious misconduct in accordance with Staff Rule 10.2(a)(ix) for allegedly sexually harassing, abusing, and exploiting a young person.
2. On 7 October 2022, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) issued Judgment No. UNDT/2022/103 (UNDT Judgment),¹ in which it concluded that the disciplinary measure imposed on Mr. Shumba was lawful and dismissed his application.
3. Mr. Shumba lodged an appeal of the UNDT Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal). On 20 November 2023, the Appeals Tribunal issued Judgment No. 2023-UNAT-1384 (UNAT Judgment),² in which it granted Mr. Shumba's appeal and reversed the UNDT Judgment. The UNAT further rescinded the Administration's decision to summarily dismiss Mr. Shumba, ordered the Secretary-General to expunge his name from the relevant registers, including the Clearcheck database, and fixed compensation in lieu of rescission at two years' net base salary.³
4. Mr. Shumba files an application for interpretation of the UNAT Judgment with the Appeals Tribunal.
5. For the reasons set out below, the Appeals Tribunal admits Mr. Shumba's application for interpretation in part.

Facts and Procedure⁴

6. At the time of his dismissal, Mr. Shumba was employed in UNFPA as a Programme Specialist at the NOC grade, step level 10. He was also acting as the Focal Point on the HIV prevention programmes in the UNFPA Malawi Country Office. In his working capacity, Mr. Shumba became acquainted with a Malawian national teenager who worked as a Youth Volunteer for a UNFPA Implementing Partner (the Complainant).

¹ *Shumba v. Secretary-General of the United Nations*, Judgment No. UNDT/2022/103.

² *Humphreys Timothy Shumba v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1384.

³ *Ibid.*, paras. 92-93.

⁴ Summarized from the UNAT Judgment.

7. On 18 February 2020, the Office of Audit and Investigation Services of UNFPA (OAIS) notified Mr. Shumba of allegations of misconduct made against him by the Complainant.

8. On 20 May 2021, Mr. Shumba was informed by letter that the Administration had determined that the allegations made by the Complainant were substantiated and that his actions constituted sexual misconduct in respect of which the disciplinary measure of dismissal was imposed in accordance with Staff Regulation 10.1(a) and Staff Rules 10.1(a) and 10.2(a)(ix).

9. On 26 July 2021, Mr. Shumba filed an application with the Dispute Tribunal contesting the Administration's decision to impose on him the disciplinary measure of dismissal.

UNDT Judgment

10. On 7 October 2022, the Dispute Tribunal issued the impugned Judgment, dismissing Mr. Shumba's application. It determined that the acts attributed to Mr. Shumba had been demonstrated by clear and convincing evidence and amounted to sexual harassment, sexual assault, and abuse of power.⁵ It further held that the sanction imposed by the Administration was proportionate to the offence committed by Mr. Shumba.⁶

UNAT Judgment

11. On 20 November 2023, the Appeals Tribunal issued the UNAT Judgment, in which it concluded that the UNDT committed an error in procedure by not holding an oral hearing and instead relying significantly on hearsay evidence, specifically the OAIS Investigation Report, to corroborate the truth of the events alleged by the Complainant.⁷ The UNAT also found that the UNDT erred on a question of fact in determining that the alleged misconduct had been proven by clear and convincing evidence. It concluded that it was not an instance where the UNDT could have forgone an oral hearing as there were genuine disputes of fact and the evidence in the record did not meet the standard of clear and convincing evidence due to internal inconsistencies in witnesses' statements to the OAIS investigators.⁸

12. The UNAT concluded that, considering the delays in the matter and that the events of the case occurred more than eight years ago, it was more than doubtful that the witnesses would still

⁵ UNDT Judgment, paras. 68-70.

⁶ *Ibid.*, para. 82.

⁷ UNAT Judgment, paras. 69, 71 and 89.

⁸ *Ibid.*, para. 89.

be available. Therefore, it held that it would not be in the interest of justice and would be impracticable to remand the matter to the UNDT to conduct an oral hearing. Consequently, the UNAT granted the appeal and reversed the UNDT Judgment. It further rescinded the Administration's decision to summarily dismiss Mr. Shumba, ordered the Secretary-General to expunge his name from the relevant registers, including the Clearcheck database, and fixed the alternative compensation in lieu of rescission "in an amount equivalent to two years of his net base salary".⁹

13. On 22 December 2023, the Secretary-General paid Mr. Shumba the sum of USD 52,602.35, equivalent to two years' net base salary.

Submissions

Mr. Shumba's Application

14. Mr. Shumba requests that the Appeals Tribunal provide guidance on the meaning and scope of the term "net base salary" used at paragraph 93 of the UNAT Judgment. In particular, he submits that the Administration erred by calculating his compensation of two years' net base salary based on his salary at the time of his dismissal. He argues that the compensation should instead be based on "the net base salary [that] the person occupying [his] position received at the date of the [UNAT] Judgment or the net salary [he] would have received if he had returned to his position".

15. Mr. Shumba contends that the Administration erroneously deducted some entitlements, including "pension contributions, medical scheme benefits and other terminal benefits", from the amount paid to him. He also claims that an incorrect exchange rate was applied to the compensation he received.

The Secretary-General's Comments

16. The Secretary-General requests that the Appeals Tribunal dismiss Mr. Shumba's application for interpretation in its entirety.

17. The Secretary-General submits that Mr. Shumba's application does not fulfill the requirements set out in Appeals Tribunal jurisprudence, which stipulates that "interpretation is only needed to clarify the meaning of a judgment when it leaves reasonable doubts about the will

⁹ *Ibid.*, paras. 90-93.

of the Tribunal or the arguments leading to a decision”.¹⁰ In the present case, the Secretary-General notes that Mr. Shumba is not requesting an interpretation of the UNAT Judgment – which is clear and raises no questions regarding the meaning of the compensation awarded – but is instead challenging the manner in which it has been implemented. However, relying on *Cevat Ozturk*,¹¹ the Secretary-General asserts that such a challenge constitutes a new administrative decision, which cannot be contested through an application for interpretation.

Considerations

18. Article 10(6) of the Appeals Tribunal Statute (Statute) provides that judgments of the Appeals Tribunal “shall be final and without appeal, subject to the provisions of Article 11 of the (...) [S]tatute”.

19. Article 11(3) of the Statute and Article 25 of the Appeals Tribunal Rules of Procedure (Rules) provide that either party may apply to the Appeals Tribunal for an interpretation of the meaning or scope of the judgment. Article 25 of the Rules further states that the Appeals Tribunal “will decide whether to admit the application for interpretation and, if it does so, shall issue its interpretation”.

20. The Appeals Tribunal has previously held that “an application for interpretation will be admitted only if the meaning or scope of a judgment is unclear or ambiguous. Interpretation is only needed to clarify the meaning of a judgment when it leaves reasonable doubts about the will of the Tribunal or the arguments leading to a decision”.¹²

21. In the present case, Mr. Shumba requests interpretation of the Appeals Tribunal’s order directing the Secretary-General to pay him compensation in lieu of rescission in the amount equivalent to two years of his net base salary. He submits that the “net base salary” should be the net base salary of the person occupying his position at the date of the UNAT Judgment or the net salary he would have received had he returned to his position.

¹⁰ *Abbasi v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-315, para. 18.

¹¹ *Cevat Ozturk v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1274, para. 33.

¹² *Margaret Mary Fogarty, Robert Sheffer, Monia Spinardi, Astrid Dispert & Minglee Hoe v. Secretary-General of the International Maritime Organization*, Judgment No. 2021-UNAT-1148, para. 49 (internal footnote omitted).

22. The Secretary-General opines that Mr. Shumba is impermissibly challenging the implementation of the Appeals Tribunal's order by way of an application for interpretation.

23. We disagree. The Appeals Tribunal has previously held that an application for interpretation is the appropriate process to clarify whether the compensation in lieu and the net base salary should be calculated as of the date of the judgment, rather than the date of the staff member's separation from service.¹³

24. Although the Secretary-General did not raise any specific arguments regarding the interpretation of the term "net base salary", he stated that "[s]hould the UNAT wish to, nonetheless, address the substance of [Mr. Shumba]'s challenge of the implementation of the [UNAT] Judgment, the [Secretary-General] respectfully requests to be provided with an opportunity to respond on the merits of [Mr. Shumba]'s claim". However, we find that the Secretary-General had the opportunity to comment on Mr. Shumba's application for interpretation but failed to do so. In the UNAT Judgment, the Appeals Tribunal fixed the alternative compensation in lieu of rescission "an amount equivalent to two years of [Mr. Shumba's] net base salary".¹⁴ The UNAT Judgment did not specify the date upon which the net base salary was to be calculated.

25. As we held in *Azzouni*, "[t]he very purpose of compensation is to place a staff member in the same position he or she would have been in had the Organization complied with its contractual obligations. Accordingly, when calculating the quantum of compensation, it must be set as of the date of the breach of the staff member's contractual rights and not the date of judgment".¹⁵

26. Therefore, in the present case, the net base salary to be paid in accordance with the UNAT Judgment is the net base salary that Mr. Shumba would have earned at the date of the contested decision and his separation from service, namely 20 May 2021.

27. We asked the Secretary-General for clarification on the calculation of the award paid to Mr. Shumba. In response to the Appeals Tribunal's request, the Secretary-General confirmed that the Organization paid Mr. Shumba USD 52,602.35, which represented the net salary based on his salary at the time of his separation from service, minus the appropriate deductions.

¹³ *Azzouni v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-162, paras. 19-24.

¹⁴ UNAT Judgment, para. 93.

¹⁵ *Azzouni* Judgment, *op. cit.*, para. 23.

28. Mr. Shumba also disputes the deductions made for pension contributions and medical scheme benefits. We find that these deductions are in accordance with the purpose of compensation which is to place a staff member in the same position he or she would have been in had the Organization complied with its contractual obligations. This is the rationale for the award being the *net* base salary, which presumes standard deductions from the gross base salary.

29. As for the exchange rate used, we find no basis for this claim, which is not appropriate for an application for interpretation in this instance.

Judgment

30. Mr. Shumba's application for interpretation of Judgment No. 2023-UNAT-1384 is admitted in part. We provide the following interpretation of Judgment No. 2023-UNAT-1384:

The net base salary to be paid in accordance with Judgment No. 2023-UNAT-1384 is the net base salary that Mr. Shumba would have earned at the date of the contested decision and separation from service, namely 20 May 2021.

31. Mr. Shumba's application for interpretation on all remaining issues is not admissible.

Original and Authoritative Version: English

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

(Signed)

Judge Sandhu, Presiding

(Signed)

Judge Savage

(Signed)

Judge Forbang

Judgment published and entered into the Register on this 16th day of April 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar