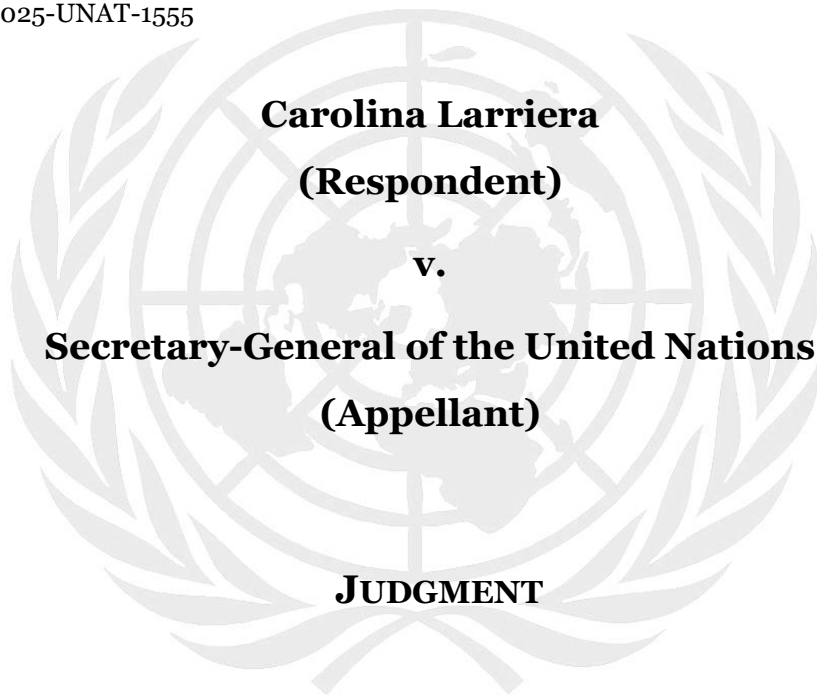




UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2025-UNAT-1555



**Carolina Larriera
(Respondent)**

v.

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

JUDGMENT

Before:	Judge Katharine Mary Savage, Presiding Judge Graeme Colgan Judge Kanwaldeep Sandhu
Case No.:	2024-1970
Date of Decision:	27 June 2025
Date of Publication:	29 July 2025
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Noam Wiener
Counsel for Respondent:	George G. Irving

JUDGE KATHARINE MARY SAVAGE, PRESIDING.

1. The Secretary-General of the United Nations has filed an appeal of Judgment No. UNDT/2024/069 (impugned Judgment) rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) on 30 September 2024.¹
2. In the impugned Judgment, the UNDT granted an application filed by Ms. Carolina Larriera, a former staff member of the United Nations, and consequently rescinded the contested decision of the Secretary-General, and ordered the payment to her of compensation under Appendix D of the Staff Regulations and Rules with no deduction for pension benefits paid to third parties, as well as interest at the US Prime Rate from the date on which compensation was due to the date of payment.
3. For the reasons set forth herein, the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) grants the appeal and reverses the impugned Judgment.

Facts and Procedure

4. On 19 August 2003, Mr. Sergio Vieira de Mello, a Brazilian national, the then United Nations High Commissioner for Human Rights and Special Representative of the Secretary-General in Iraq, was killed in a bomb attack at the United Nations headquarters in Baghdad, Iraq. Ms. Larriera was at the scene of the bombing and survived with injuries.
5. At the time of his death, Mr. Vieira de Mello remained married to Ms. Annie Vieira de Mello under French law, although he been separated from her for twenty years. In January 2003, he initiated divorce proceedings against Ms. Vieira de Mello in France. On 23 May 2003, a French court issued an order allowing the parties to live separately and authorized them to file an application for divorce. The court did not dissolve their marriage. Less than three months following the order, Mr. Vieira de Mello was killed in the bomb attack.
6. Prior to his death, Ms. Larriera was in a stable domestic partnership with Mr. Vieira de Mello. She had lived with him for two and a half years and had accompanied him to Iraq.

¹ *Larriera v. Secretary-General of the United Nations*, Judgment No. UNDT/2024/069.

7. Effective 20 August 2003, the Organization began to pay Ms. Vieira de Mello a widow's compensation under Appendix D and a surviving spouse's benefit from the United Nations Joint Staff Pension Fund (UNJSPF).

8. On 17 May 2018, Ms. Larriera requested a widow's benefit from the UNJSPF as a surviving spouse of Mr. Vieira de Mello. This followed a judgment of the Ninth Family Court of the Capital District, Rio de Janeiro, Brazil, issued in December 2016 in which it was found that at the time of Mr. Vieira de Mello's death, he and Ms. Larriera were in a "stable union" which had equal standing of a marriage under Brazilian law.

9. On 1 June 2018, Ms. Larriera also filed an Appendix D claim for compensation as a widow arguing that, as one of the two widows of Mr. Vieira de Mello, she should receive half of the compensation awarded under Appendix D. In doing so, Ms. Larriera relied on the judgment issued by the Brazilian court.

10. On 3 December 2018, the UNJSPF rejected Ms. Larriera's request for a widow's benefit on the ground that she had not met the requirements of Article 34 of the UNJSPF Regulations.

11. From October 2019, Ms. Larriera challenged the UNJSPF decision through the judicial review process. Ultimately, the Appeals Tribunal upheld the UNJSPF decision in *Larriera v. United Nations Joint Staff Pension Board (Larriera I)*.²

12. On 12 November 2019, the Advisory Board on Compensation Claims (ABCC) rejected Ms. Larriera's request for Appendix D benefits. The ABCC decision was based on its choice of law analysis which determined that French law, rather than Brazilian law, was the law that should be applied to determine Mr. Vieira de Mello's marital status.

13. On 2 April 2020 Ms. Larriera filed an application before the UNDT, challenging the ABCC's decision to reject her claim for compensation under Appendix D, as a surviving spouse of Mr. Vieira de Mello.

14. On 21 September 2021, the UNDT dismissed Ms. Larriera's challenge against the ABCC's decision, finding it not receivable *ratione materiae*.³

² Judgment No. 2020-UNAT-1004.

³ *Larriera v. Secretary-General of the United Nations*, Judgment No. UNDT/2021/110.

15. Ms. Larriera appealed against Judgment No. UNDT/2021/110 to the Appeals Tribunal. On 28 October 2022, this Tribunal in *Larriera v. Secretary-General of the United Nations (Larriera II)*⁴ reversed the latter UNDT Judgment and held that Ms. Larriera was entitled to compensation under Appendix D. This Tribunal ruled that, unlike in *Larriera I* which related to Ms. Larriera's entitlements under the UNJSPF Regulations, under the Staff Regulations and Rules, of which Appendix D was a part, the law of Brazil as Mr. Vieira de Mello's national state was to be the law determining his marital or domestic partnership status as at the date of his death for Appendix D purposes.

16. On 10 February 2023, Ms. Larriera wrote to the ABCC following up on her request for Appendix D compensation. On 31 March 2023, her Appendix D claim was presented to the ABCC at its 533rd meeting. On 10 May 2023, the ABCC Secretary informed Ms. Larriera of the Controller's decision to award her compensation under Appendix D as a surviving spouse of Mr. Vieira de Mello.

17. On 8 December 2023, the Acting Secretary of the ABCC informed Ms. Larriera that, in accordance with Article 10.2(b)(ii) of the former Appendix D, she was eligible to receive compensation as a widow starting on 1 January 2024 at an annual rate of USD 16,660.68 or USD 1,388.39 per month, as well as a retroactive payment of USD 82,359.51 for the period from 1 June 2018 to 31 December 2023. Ms. Larriera was informed that the annual Appendix D compensation payable in connection with the death of Mr. Vieira de Mello would be divided equally between her and Ms. Vieira de Mello.

18. In response to Ms. Larriera's enquiry regarding the calculations, on 20 December 2023, the Acting Secretary of the ABCC informed her that after the deduction of pension benefits per Article 4.1 of Appendix D and application of cost-of-living adjustments, the monthly spousal benefit payable in connection with the death of the late Mr. Vieira de Mello was USD 2,776.78, and Ms. Larriera would be eligible for USD 1,388.39 ($2,776.78 \div 2$) as of January 2024.

19. On 19 January 2024, Ms. Larriera requested management evaluation of the ABCC decision. She challenged the decision to reduce her entitlement for compensation under Appendix D, arguing that subtraction of the total UNJSPF benefit, to which she was not entitled, from the total Appendix D compensation was unfair and penalized her.

⁴ *Carolina Larriera v. Secretary-General of the United Nations*, Judgment 2022-UNAT-1271, para. 31.

20. On 23 February 2024, the Management Advice and Evaluation Section issued its decision and upheld the contested decision.

21. On 16 April 2024, Ms. Larriera filed an application before the UNDT contesting the ABCC decision. The Secretary-General opposed the application on the basis that the contested decision was legal, rational and procedurally fair.

Impugned Judgment

22. In the impugned Judgment, the UNDT recognised that the death in service of Mr. Vieira de Mello occurred in 2003, which was before the entry into force in 2018 of the current version of Appendix D. It therefore found that the earlier version of Appendix D applied in the matter.⁵ As a result, where there is more than one surviving spouse, both surviving spouses receive compensation under Appendix D and benefits from the UNJSPF.

23. The UNDT determined that the Administration must therefore subtract the UNJSPF benefit from the Appendix D compensation to which each spouse is entitled. It noted that only Ms. Vieira de Mello is eligible for both UNJSPF benefits and Appendix D compensation, while Ms. Larriera is eligible for Appendix D compensation only. However, the Administration subtracted the total UNJSPF benefit from the total Appendix D compensation and then divided the remaining Appendix D compensation equally between the surviving spouses.

24. Under Appendix D, in the UNDT's view, the amount of the total compensation is to be split between the multiple surviving spouses, with equality between the spouses and with each spouse having an autonomous right to compensation.⁶ The UNDT continued that Appendix D provides that the amount paid under the UNJSPF Regulations be deducted from the amount to which Ms. Vieira de Mello is entitled under Appendix D and not from that to which Ms. Larriera is entitled.⁷ It therefore ordered that Ms. Larriera be paid the full amount due to her without deduction, plus interest at the US Prime Rate from the date on which compensation was due to her.

⁵ Impugned Judgment, para. 42.

⁶ *Ibid.*, para. 58.

⁷ *Ibid.*, paras. 63-66.

25. The Secretary-General filed an appeal of the impugned Judgment on 3 December 2024, to which Ms. Larriera answered on 30 January 2025.

Submissions

The Secretary-General's Appeal

26. The Secretary-General seeks that the impugned Judgment be vacated on the basis that the UNDT relied upon the wrong version of Appendix D, citing from Article 3.4 of the 2018 version of Appendix D, which the UNDT itself held is not applicable to the instant case.⁸

27. The Secretary-General submits that the UNDT erred on a question of law by holding that Article 4.1 of Appendix D distinguishes between the position of a staff member and other persons entitled to compensation, and that, by extension, the entitlement of survivors for compensation is unrelated to the entitlement of the deceased staff member for compensation in the case of service-related death.

28. The Secretary-General contends that even if Article 3.4 of the 2018 version of Appendix D was applicable, it does not support the UNDT's finding. This is so in that Article 3.4 of the 2018 version of Appendix D states that:

In the event of a service-incurred death of a staff member, the United Nations shall pay the compensation provided below to the staff member's spouse or other eligible dependant(s), provided that the total annual compensation payment shall not exceed 75 per cent of the last pensionable remuneration of the deceased staff member.

29. The Secretary-General submits that the entitlement of the survivor is not an inherited benefit. The entitlements of survivors are ascribed in Appendix D solely on what the entitlement of the deceased staff member would have been.⁹ The UNDT therefore erred on a question of law by holding that the entitlement of the deceased staff member is not relevant to the determination

⁸ *Ibid.*, para. 42.

⁹ See, e.g., Appendix D, Article 10.2(b) setting the compensation to the widow of a deceased staff member at two-fifths of the staff member's pensionable remuneration; Article 10.2(c) setting the compensation to the dependent children of a deceased staff member at one-third of the staff member's compensation under the provisions of Article 11.1(c) of Appendix D; Article 4.1(b) which sets the maximum compensation payable under Appendix D at the final pensionable remuneration of the staff member plus the annual dependency allowances to which the staff member was entitled at the date of the cessation of his employment.

of the surviving widow's compensation when the decision of this Tribunal in *Larriera II* did not find as much.

30. The Secretary-General points out that Article 4 of Appendix D supplements other forms of compensation granted in connection with the deceased staff member's service with the Organization. The UNDT erred in holding that Ms. Larriera has a right to receive compensation under Appendix D without regard to the requirement that UNJSPF surviving-spouse benefits be deducted from this compensation. The UNDT's conclusion creates contradictions in the structure and regulatory framework of Appendix D, and is, therefore, erroneous. Consequently, the Secretary-General seeks that the appeal succeeds with the impugned Judgment reversed.

Ms. Larriera's Answer

31. Ms. Larriera opposes the appeal contending that on 10 May 2023 she was recognised as Mr. Vieira de Mello's widow and a surviving spouse by the ABCC. On 8 December 2023, the ABCC informed her that "in accordance with Article 10.2(b)(ii) of the former Appendix D, the annual spousal benefit payable in connection with the death benefit of the late Mr. Sergio Vieira de Mello will be divided equally among yourself and Mrs. de Mello". It was not paid equally.

32. Ms. Larriera states that on 9 January 2024, the Chief of the UNJSPF Legal Office informed her that in spite of the fact that she was now recognized as a widow of Mr. Vieira de Mello, the UNJSPF would not reconsider its decision denying her a widow's pension benefit.

33. Ms. Larriera contends that the plain meaning of Article 4.1 of Appendix D entails that the ABCC benefit be reduced by any amount paid to the person entitled to a benefit under the rules of the UNJSPF. This is so in that the obvious purpose is to prevent a duplication of the survivor's benefit payable to any survivor. The intent of compensation under Appendix D is to supplement benefits awarded under the UNJSPF Regulations. Logic and fundamental fairness suggest that it is wrong to deduct theoretical amounts that are not actually being paid to the survivor.

34. Ms. Larriera points out that Ms. Vieira de Mello receives USD 56,605 per annum in pension benefits, which together with the Appendix D entitlement she receives, is far in excess of the amount currently being paid to Ms. Larriera under Appendix D.

35. Ms. Larriera states that the UNDT made no error in law in distinguishing the entitlements of the staff member and his beneficiaries under the UNJSPF Regulations from those of the

survivors under the Appendix D rules and in concluding that it was logical to apply reductions in compensation under Article 4 to individuals rather than classes of beneficiaries. Simply put, she argues that a deduction should not be made for a payment she never received, and the Secretary-General has demonstrated no error in the UNDT's drawing this conclusion.

36. Ms. Larriera submits that references to the 2018 version of Appendix D, when the Organisation implemented the claim, merely underscore the reasonableness of the UNDT's interpretation with respect to how the benefit was calculated.

37. Ms. Larriera contends that the Secretary-General seeks to draw an adverse conclusion from his obscure and confused analysis of the impugned Judgment and its analysis of survivors' benefits when in reality the only issue is the reasonableness of the Secretary-General's *ad hoc* interpretation aimed at alleged cost savings at the expense of earned entitlements of staff members or their survivors.

38. Ms. Larriera accepts that the amount of the annual ABCC entitlement would remain USD 89,926.40 but that the Secretary-General's interpretation has led to Ms. Larriera receiving only USD 1,388 per month while the other beneficiary receives some USD 6,105 per month in survivor's benefits.

39. Ms. Larriera submits that the purpose of compensation is to place the person in the same position he/she would have been in, had the Organization complied with its contractual obligations.¹⁰ Ms. Larriera states that she has endured seven years of litigation and expense in addition to the long judicial process in the Brazilian courts and that the fair consideration afforded by the UNDT in its judicial review of the contested decision should now be respected.

40. Ms. Larriera submits that the Secretary-General has committed an abuse of process by engaging in a frivolous appeal in this case, further prolonging her stress and uncertainty and that this warrants payment of legal costs in the amount of USD 10,000 plus interest on her delayed payments and compensation for moral damages and delays in the maximum amount of two years' net base pay based on Mr. Vieira de Mello's final salary.

¹⁰ Ms. Larriera refers to *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-059 and *Iannelli v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-093.

Considerations

41. Appendix D to the Staff Rules contains the rules governing compensation in the event of death, injury or illness in the course of the performance of official duties for or on behalf of the United Nations.¹¹

42. In *Larriera I*, we recognized that the entitlement to a death benefit under Appendix D of the Staff Rules must have been an entitlement in force as at the date of death of the staff member.¹² Any subsequent amendment to such an Appendix D entitlement will only apply should such amendment have retroactive effect.

43. The amendments to Appendix D which were made subsequent to the death of Mr. Vieira de Mello applied from the date of their promulgation and did not have retroactive effect.¹³ It follows that the version of Appendix D in force at the time of Mr. Vieira de Mello's death in 2003 was ST/SGB/Staff Rules/Appendix D/Rev.1 (Rules Governing Compensation in the Event of Death, Injury or Illness Attributable to the Performance of Official Duties on Behalf of the United Nations), which was issued on 1 January 1966 and subsequently amended.¹⁴ The relevant text for the purposes of this case dates to 1966.

44. Article 10.2(b) of the relevant version of Appendix D provides that:¹⁵

There shall be paid to the deceased staff member's widow (or disabled widower) an annual compensation until death or remarriage equal to two-fifths of the staff member's final annual pensionable remuneration, provided that:

(...)

(ii) if the deceased staff member leaves more than one widow, the annual compensation payable under this paragraph shall be divided equally among the widows. (...)

¹¹ *Dahan v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-861, para. 20. See also, *James v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-600, para. 25; *Wamalala v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-300, paras. 25-27.

¹² *Larriera I* Judgment, para. 29.

¹³ ST/SGB/2018/1 (Staff Regulations and Rules of the United Nations), Appendix D, Article 6.1, Transitional Measures: (...)

(b) For claims filed for incidents that occurred prior to the entry into force of the present revised rules, the previously applicable rules will be applied.

¹⁴ Appendix D was further amended in 1976 (ST/SGB/Staff Rules/Appendix D/Rev.1/Amend.1) and in 1993 (ST/SGB/Staff Rules/Appendix D/Rev.1/Amend.3).

¹⁵ All references to Appendix D hereafter are to the 1966 text.

45. Article 4.1(a) of Appendix D further provides that:

Subject to the provisions of paragraph (b) of this article, there shall be deducted from compensation payable under article[] 10.2 (...) of these rules the amount of all benefits paid to the staff member or to persons entitled through him under the Regulations of the Joint Staff Pension Fund (...) provided that such benefits have become payable as a result of the same death, injury or illness which gave rise to the entitlement to compensation under these rules.

46. Article 4.1(b) of Appendix D also provides that:

Deductions made under paragraph (a) above shall in no case have the effect of reducing the compensation otherwise payable under article[] 10.2 (...) to less than 10 per cent thereof, provided always that the total annual amount payable both under these articles and under the Regulations of the Joint Staff Pension Fund do not exceed the final pensionable remuneration of the staff member plus the annual dependency allowances to which he was entitled at the date of the cessation of his employment.

47. Under Article 2(1) of the UNAT Statute, this Tribunal is competent to hear and pass judgment on an appeal against the decision of the UNDT in which it is asserted that the Dispute Tribunal has:

- (a) Exceeded its jurisdiction or competence;
- (b) Failed to exercise jurisdiction vested in it;
- (c) Erred on a question of law;
- (d) Committed an error in procedure, such as to affect the decision of the case; or
- (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

48. In addition to issues of jurisdiction, this Tribunal is therefore only competent to determine whether an error of law, error of procedure such as to affect the decision of the case, or an error of fact where it has led to a manifestly unreasonable decision has occurred in decisions affecting the parties.¹⁶

49. There can be no dispute that the UNDT cited the correct version of Articles 4.1 and 10.2¹⁷ but it erred in using the new Article 3.4 from ST/SGB/2018/1/Rev.2 as an interpretative tool, when the analogous article from 1966 had undergone significant amendment in the intervening years.¹⁸

¹⁶ *Lee v. Secretary General of the United Nations*, Judgment No. 2021-UNAT-1170, para. 35.

¹⁷ Impugned Judgment, paras. 43-44.

¹⁸ *Ibid.*, para. 55.

In so doing, the UNDT committed an error of law; moreover, there was no need to go beyond the plain text of Article 4.1(a), which in our view is sufficiently clear.

50. It was in failing to interpret the relevant provisions of the 1966 version of Appendix D properly and with due care, having regard to the relevant principles of interpretation, that the UNDT committed a further and more consequential error of law for current purposes. Having regard to the language used in the 1966 version of Appendix D, considered in context, it is clear that in terms of Article 10.2(b), if the deceased staff member leaves more than one widow, the annual compensation payable at a rate of two-fifths of a deceased staff member's annual salary is to be divided equally among the widows of the deceased. The amount of *all benefits* paid to the staff member *or to persons entitled through him*¹⁹ under the UNJSPF Regulations are, in accordance with Article 4.1(a), to be deducted from the Appendix D compensation, provided that this does not reduce the compensation payable under Article 10.2 to less than 10 per cent of the total annual amount payable, both under Appendix D and the UNJSPF Regulations, where such total annual amount does not exceed the final pensionable remuneration of the staff member plus the annual dependency allowances to which he was entitled at the date of the cessation of his employment.

51. From this it is clear that:

- (a) widows are eligible to receive compensation at a rate of two-fifths of a deceased staff member's annual salary;
- (b) if the deceased staff member is survived by more than one widow, the compensation shall be split evenly between the widows;
- (c) all pension benefits paid through the staff member's UNJSPF entitlement shall be deducted from the compensation paid under Appendix D; and
- (d) this deduction shall not reduce the amount of Appendix D compensation otherwise payable to less than 10 per cent of what the compensation would have been before the deduction.

52. In issue in this matter is whether Appendix D requires that all pension benefits received by Ms. Vieira de Mello must be deducted from the full amount of the compensation paid under Appendix D to both Ms. Larriera and Ms. Vieira de Mello as the widows of Mr. Vieira de Mello, or

¹⁹ Emphases added.

whether the pension benefits are deductible only from the amount of compensation paid under Appendix D to Ms. Vieira de Mello.

53. The process of interpretation is the process of attributing meaning to the words used in a document or a provision within a document. This requires that regard is had to the context of the provision within the document as a whole and the circumstances which surrounded its coming into existence. The language used must be considered with regard to the ordinary rules of grammar and syntax, the context, the apparent purpose to which the provision is directed and the material known to those responsible for its production. Where more than one meaning is possible, each possibility must be weighed in the light of all these factors. The process of interpretation is an objective and not a subjective process, with a sensible meaning preferred to one that leads to results that are not sensible or undermine the apparent purpose of the document. Where the language used is plain and causes no interpretative difficulties, the language of the text must be interpreted on its own reading and does not require further investigation.²⁰

54. The language used in Article 4.1(a) of Appendix D is clear. It states plainly that “the amount of *all* benefits paid to the staff member or to persons entitled through him under the Regulations of the Joint Staff Pension Fund”²¹ are to be deducted from compensation payable under the Article. This is subject to two provisos: the first that such benefits must have become payable as a result of the same death, injury or illness which gave rise to the entitlement to compensation; and the second as set out in Article 4.1(b) in relation to minimum and maximum amounts payable.

55. From a plain reading of the provisions, considered in context and with due regard to the language of the text, it is apparent that it is all benefits paid by the UNJSPF that must be deducted under Article 4.1(a) from the total compensation payable to the two widows of Mr. Vieira de Mello. Such an interpretation accords with the clear and express language of the relevant provisions and the context in which such provisions appear. We are not satisfied that more than one meaning is attributable to Article 4.1(a) or the other provisions of Appendix D, nor that our interpretation of the provisions is not sensible or undermines the apparent purpose of Appendix D in any way. No support is found in the text for an interpretation that the benefits paid by the UNJSPF are to be deducted only against the compensation payable to one of the widows. This is so even if, as are the facts in this appeal, only one of the widows receives payment of the pension benefit. In the nature

²⁰ *Scott v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-225, para. 28. See also *De Aguirre v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-705, paras. 43-45.

²¹ Emphasis added.

of the objective process of interpretation, we recognize that such an interpretation may lead to a harsh or even prejudicial result for a party, but this does not in itself require that a different interpretation be reached without due regard to the relevant principles which apply.

56. For these reasons, the appeal must be upheld and the Judgment of the UNDT reversed.

Judgment

59. The Secretary-General's appeal is granted and Judgment No. UNDT/2024/069 is hereby reversed.

Original and Authoritative Version: English

Decision dated this 27th day of June 2025 in New York, United States.

(Signed)

Judge Savage, Presiding

(Signed)

Judge Colgan

(Signed)

Judge Sandhu

Judgment published and entered into the Register on this 29th day of July 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar