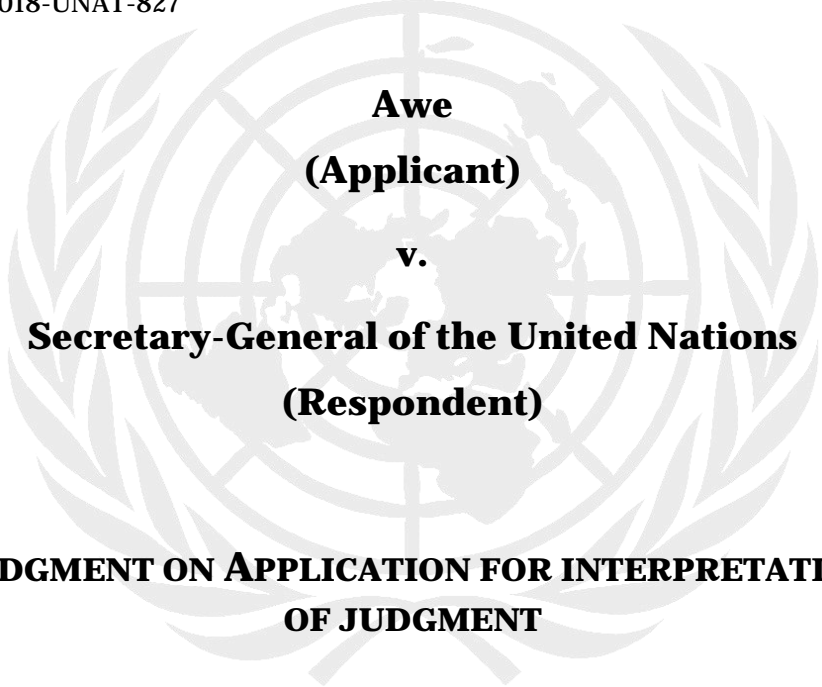




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2018-UNAT-827



**Awe
(Applicant)
v.
Secretary-General of the United Nations
(Respondent)**

**JUDGMENT ON APPLICATION FOR INTERPRETATION
OF JUDGMENT**

Before:	Judge Sabine Knierim, Presiding Judge John Murphy Judge Richard Lussick
Case No.:	2017-1116
Date:	22 March 2018
Registrar:	Weicheng Lin

Counsel for Mr. Awe:	Self-represented
Counsel for Secretary-General:	Rupa Mitra

JUDGE SABINE KNIERIM, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an application for Interpretation of Judgment No. 2017-UNAT-774 rendered by the Appeals Tribunal in the case of *Awe v. Secretary-General of the United Nations* in Vienna on 14 July 2017. Mr. Ekundayo Awe filed this application on 1 October 2017 and the Secretary-General submitted his comments on 3 November 2017.

Facts and Procedure

2. At the time material to this case, Mr. Awe was Chief Resident Auditor of the Office of Internal Oversight Services (OIOS) at the United Nations Assistance Mission for Iraq (UNAMI or the Mission). On 22 January 2014, a Senior Management Team (SMT) meeting took place, which was attended by Mr. Awe, Ms. Yasin (then Chief of Mission Support (CMS)), Mr. Rutgers (UNAMI's Chief of Staff (COS)), and others. Minutes of this meeting were circulated to about 25 staff members, who comprised, among others, members of the management team, section chiefs and administrative assistants.

3. On 3 March 2014, Mr. Awe complained of abuse of authority and harassment on the part of Mr. Rutgers and Ms. Yasin in relation to the 22 January 2014 meeting, under Section 5.11 of Secretary-General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority). On 6 August 2014, a Fact-Finding Panel (FFP) was established pursuant to Section 5.14 of ST/SGB/2008/5 which issued its report in March 2015. As a result of the FFP's findings, a letter of reprimand was placed in Mr. Rutgers' Official Personnel File. With regard to Ms. Yasin, the Special Representative for the Secretary-General (SRSG) referred the matter to the Under-Secretary-General, Department of Field Support (USG/DFS) because Ms. Yasin was no longer assigned to UNAMI. The USG/DFS determined that the complexity of the case required the involvement of an expert trained in dealing with complaints of this nature and on 15 June 2015, the matter was forwarded to the USG of the Department of Peacekeeping Operations (USG/DPKO).

4. After having requested management evaluation without success, Mr. Awe filed two applications to the UNDT. On 1 December 2015, he filed an application challenging the Administration's decision with respect to Mr. Rutgers. On 7 December 2015, he filed a second

application challenging the Administration's actions with respect to the FFP's findings against Ms. Yasin and the failure to afford him an effective remedy.

5. On 18 November 2016, the United Nations Dispute Tribunal (UNDT) in Nairobi issued Judgment No. UNDT/2016/207 in the case concerning Ms. Yasin. The application was dismissed because the UNDT found it "premature since no final administrative decision ha(d) been taken in relation to the complaint against Ms[.] Yasin".¹

6. On the same day, the UNDT issued Judgment No. UNDT/2016/206. The Dispute Tribunal reviewed the manner in which Mr. Awe's complaint of harassment and abuse of authority had been dealt with, within the framework of ST/SGB/2008/5. The UNDT considered that the FFP established that Mr. Awe's allegations were well founded and that the conduct in question amounted to possible misconduct. It held that under the circumstances, the SRSG was required to refer the matter to the Assistant Secretary-General, Office of Human Resources Management (ASG/OHRM) for disciplinary action and his failure to do so constituted an error of procedure which denied Mr. Awe his contractual right to be afforded the benefit and protection against prohibited conduct in accordance with ST/SGB/2008/5.

7. On the issue of compensation, the Dispute Tribunal noted the continuing damage to Mr. Awe's personal and professional standing and reputation as a result of the failure to expunge the derogatory comments from the SMT meeting minutes and in light of Mr. Awe's own complaint of humiliation and disrespectful treatment by the Mission's senior management team, in addition to the delays in the investigation and reporting processes. The UNDT thus concluded that Mr. Awe "suffered damage to his reputation and professional standing exacerbated by the continuing and unacceptable delay in affording him the relief to which he is entitled".²

8. By way of remedy, the UNDT ordered that the Secretary-General:³

a) Remove forthwith from the records any and all of the offending references in the minutes of the SMT meeting on 22 January 2014 **and** to send written confirmation to all recipients of the minutes to inform them of the findings of the Fact[-]Finding Panel that there was no basis to support the damaging comments made against the Applicant.

b) Pay to the Applicant the sum of USD 3,000 for procedural error.

¹ *Awe v. Secretary-General of the United Nations*, Judgment No. UNDT/2016/207, para. 41.

² *Awe v. Secretary-General of the United Nations*, Judgment No. UNDT/2016/206, para. 83.

³ *Ibid.*, para. 85 (original emphasis).

c) Pay to the Applicant the sum of USD 15,000 for harm suffered.

d) The compensation awarded to the Applicant shall be paid within 60 days of this judgment becoming executable. Interest will accrue on the total sum from the date of this judgment at the current US Prime rate until payment. If the total sum is not paid within the 60-day period an additional five per cent shall be added to the US Prime Rate until the date of payment.

9. The Secretary-General appealed the UNDT Judgment on 17 January 2017 on the grounds that the UNDT erred in law by requiring the SRSG to refer for disciplinary action the case of Mr. Rutgers to the ASG/OHRM and by awarding Mr. Awe USD 3,000 as compensation for the lack of such a referral. The Secretary-General submitted that the UNDT also erred in law by ruling that the contents of the minutes of the SMT meeting held at UNAMI on 22 January 2014 had to be retracted in order to fully address Mr. Awe's complaint and by awarding USD 15,000 for stress and moral injury allegedly caused by the remarks at the SMT meeting.

10. On 14 July 2017, the Appeals Tribunal issued Judgment No. 2017-UNAT-774 in which it ordered as follows:⁴

.. The appeal is granted in part; Judgment No. UNDT/2016/206 is vacated, insofar as it awards compensation for procedural error, and modified, insofar as the award of compensation for harm is reduced to USD 5,000. The UNDT's order, set forth in paragraph 85(a) of the impugned Judgment, to remove the offending references in the minutes and to write to all recipients to inform them of the FFP's findings is affirmed.

11. With regard to Mr. Awe's request for disciplinary actions against Mr. Rutgers, the Appeals Tribunal held:⁵

... The UNDT found that the FFP's report clearly and unequivocally established that the allegations made by Mr. Awe were well-founded and that the conduct in question amounted to possible misconduct. The UNDT hence concluded that the non-referral to the ASG/OHRM for disciplinary action was an error of procedure which denied Mr. Awe his contractual right to be afforded the benefit and protection against prohibited conduct in accordance with the applicable legislation, and that Mr. Awe was therefore entitled to an award of compensation for that procedural error.

... Section 5.18(c) of ST/SGB/2008/5 provides that:

If the report indicates that the allegations were well-founded and that the conduct in question amounts to possible misconduct, the responsible official shall refer the

⁴ *Awe v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-774, para. 39.

⁵ *Ibid.*, paras. 27 to 30 (internal footnotes omitted; original emphases).

matter to the Assistant Secretary-General for Human Resources Management for disciplinary action. (...)

... While we agree that the FFP's report established that the allegations were well-founded and that the conduct in question amounted to possible misconduct and, therefore, the matter should have been referred to the ASG/OHRM, we have to consider that any action taken against Mr. Rutgers (managerial or disciplinary) can have only remotely affected Mr. Awe, whose main interest was to mitigate or eliminate the harm caused by the unsubstantiated remarks in the SMT minutes. Besides, there is no provision in the UNDT Statute for an award "for procedural error".

... In view of the above, the Appeals Tribunal grants the appeal in part and vacates the Dispute Tribunal Judgment, insofar as it awards compensation for procedural error.

12. With regard to compensation for harm, the Appeals Tribunal held:⁶

... In the present case, there is no dispute about the FFP's findings, which clearly found that i) there were unsubstantiated and derogatory remarks against Mr. Awe in the presence of others, including the most senior managers in the Mission; ii) the minutes of the SMT meeting in which such remarks had been included were circulated to "a wide circle of individuals"; and, iii) there had been an attempt to have Mr. Awe removed from UNAMI on unsubstantiated grounds. (...).

... The FFP concluded that "regardless of the intent of the concerned parties, such comments had *de facto* a harmful effect/impact" in discrediting Mr. Awe's personal and professional integrity, character and standing among an undetermined number of colleagues, "particularly in such a close environment as Baghdad". Additionally, SRSG Mladenov recognized the "damage caused" to Mr. Awe by the comments made and documented in the SMT minutes.

... In view of the foregoing and also considering the failure to provide prompt and effective redress (the minutes still being valid in the eyes of the participants; the offending statements not having been removed from the minutes; and, the FFP's report not having been circulated), we are satisfied that sufficient evidence was provided to justify the award of compensation for harm to reputation and professional standing in the present case.

... Nevertheless, it does not appear that the UNDT took into account that this harm has a temporary nature, which will not affect the totality of Mr. Awe's career—particularly since the Appeals Tribunal upholds the removal of the offending references from the SMT minutes, with communication to all recipients, as ordered by the UNDT in paragraph 85(a) of its Judgment.

13. On 17 July 2017, Mr. Awe filed an application before the UNDT concerning Ms. Yasin (Case No. NBI/2017/060).

⁶ *Ibid.*, paras. 34 to 37 (internal footnotes omitted).

14. On 1 October 2017, Mr. Awe requested interpretation of Judgment No. 2017-UNAT-774 and the Secretary-General submitted his comments on Mr. Awe's application on 3 November 2017.

Submissions

Mr. Awe's Application

15. Mr. Awe requests that the Appeals Tribunal clarify whether the retraction of the comments regarding Mr. Awe from the SMT meeting minutes was to be sent to those who attended the meeting or whether it was also to be sent to all those who were found to have had the minutes forwarded to them. This clarification is necessary in light of "the Administration's decision to unilaterally refuse to fully comply with the [Appeals Tribunal J]udgment by applying its discretion, in a manner convenient to it, without reverting to [the Appeals Tribunal]". In a different case before the UNDT (Case No. UNDT/NBI/2017/060, *Awe v. Secretary-General of the United Nations*), the Secretary-General inaccurately claims that he complied with this aspect of the Appeals Tribunal's ruling.

16. The Secretary-General did not send the retraction of the comments made regarding Mr. Awe to Ms. Petra Mikulasova, one of the participants in the meeting. In his reply to the above-mentioned case before the UNDT, the Secretary-General explained that the reason for not sending the retraction to Ms. Petra Mikulasova was that she had separated from the Organization. Mr. Awe requests that the Appeals Tribunal clarify its ruling "with respect to the Administration's decision to unilaterally refuse to fully comply with the [Appeals Tribunal] judgment by applying its discretion without reverting to the [Appeals Tribunal]".

17. Mr. Awe requests that the Appeals Tribunal clarify whether the award of USD 5,000 to him was to be made within 60 days of the UNDT judgment becoming executable, with interest accruing in the event of delays after the 60-day period.

18. Finally, Mr. Awe requests that the Appeals Tribunal clarify whether the Appeals Tribunal Judgment relates to allegations against Mr. Rutgers or whether it also covers allegations against Ms. Yasin. The Secretary-General, in his reply to Mr. Awe's application in Case No. UNDT/NBI/2017/060, inaccurately claims that the award of compensation was granted for harm Mr. Awe allegedly suffered with respect to his complaint against both Mr. Rutgers and Ms. Yasin. Mr. Awe contends that Ms. Yasin was not covered by the ruling and that clarification

is necessary “to avoid a situation where the Administration misleads the UNDT as it reviews another matter before it”.

The Secretary-General’s Comments

19. Clarification is not required as to whether the retraction of the comments regarding Mr. Awe was to be sent to those who attended the SMT meeting, or whether it was also to be sent to all those who were found to have had the minutes forwarded to them. Thus far, a retraction has been sent to meeting participants. The Secretary-General confirms that the meeting participants as well as the further recipients of the meeting minutes, including the section chiefs, will be sent the retraction and will be alerted that the FFP found no basis to support the damaging comments made against Mr. Awe, as required by the Appeals Tribunal Judgment.

20. As to Mr. Awe’s request for clarification on whether the retraction should have also been sent to Ms. Petra Mikulasova, the Secretary-General notes that she had separated from the Organization in January 2015. Because Ms. Mikulasova is no longer a staff member, she is no longer subject to the authority of the Secretary-General, and it would not be appropriate to engage her with official business of the Organization. Moreover, given such status, Ms. Mikulasova no longer has the capacity to affect Mr. Awe’s professional or personal status within the Organization.

21. Turning to Mr. Awe’s request that the Appeals Tribunal confirm that the award of USD 5,000 to him was to be made within 60 days of the UNDT judgment becoming executable, the Secretary-General submits that the Appeals Tribunal was clear on this issue. Mr. Awe was to be paid USD 5,000 plus interest calculated at the US prime rate from 18 November 2016 until the date of payment. If payment is not made within 60 days of the issuance of the written Appeals Tribunal Judgment (i.e., by 4 November 2017), additional interest will be payable, calculated as an additional five percent to be added to the US prime rate in effect on 5 September 2017.

22. Finally, no clarification is required on whether the Appeals Tribunal Judgment relates to allegations against Mr. Rutgers or whether it also covers allegations against Ms. Yasin. Even though the case concerning Mr. Rutgers was severed from that concerning Ms. Yasin, the UNDT and the Appeals Tribunal rulings do also relate to Mr. Awe’s application concerning Ms. Yasin.

The monetary award made to Mr. Awe thus addressed any harm suffered by Mr. Awe from the unsubstantiated comments made by both Mr. Rutgers and Ms. Yasin.

23. To the extent that certain grounds overlap with the basis for claims that Mr. Awe now makes before the UNDT with regard to Ms. Yasin, the Secretary-General understands that the USD 5,000 award ultimately addresses certain aspects of Mr. Awe's case concerning Ms. Yasin. This aspect of the Appeals Tribunal Judgment and its application to the case regarding Ms. Yasin that is currently pending before the UNDT is not appropriately addressed in a request for interpretation of the Appeals Tribunal Judgment relating to Mr. Rutgers.

24. The Secretary-General requests that the Appeals Tribunal dismiss Mr. Awe's request for interpretation of the Appeals Tribunal Judgment.

Considerations

25. Under its statutory framework, the Appeals Tribunal has authority to decide on applications for interpretation of a judgment previously issued by the Appeals Tribunal. Article 11(3) of the Appeals Tribunal Statute reads: "Either party may apply to the Appeals Tribunal for an interpretation of the meaning or scope of the judgement."

26. Whether or not such an application for interpretation is admitted lies within the discretion of the Appeals Tribunal. Article 25 Appeals Tribunal Rules of Procedure (Interpretation of judgments) provides:

Either party may apply to the Appeals Tribunal for an interpretation of the meaning or scope of a judgement on a prescribed form. The application for interpretation shall be sent to the other party, who shall have 30 days to submit comments on the application on a prescribed form. The Appeals Tribunal will decide whether to admit the application for interpretation and, if it does so, shall issue its interpretation.

27. Following our jurisprudence, an application for interpretation will be admitted, if the parties disagree on the meaning or scope of a judgment because it is unclear or ambiguous.⁷

⁷ *Fedorchenko v. International Civil Aviation Organization*, Judgment on Correction and Revision No. 2015-UNAT-567, para. 15.

Whether the retraction of the comments regarding Mr. Awe from the SMT meeting minutes was to be sent to those who attended the meeting or whether it was also to be sent to all those who were found to have had the minutes forwarded to them

28. We do not admit Mr. Awe's application on this point because there is no unclarity or ambiguity in our Judgment on this point. By affirming the UNDT's order "to remove the offending references in the minutes and to write to all recipients to inform them of the FFP's findings"⁸ we clearly and unambiguously stated that such a retraction has to be sent to everybody who received the minutes.

Whether a corrected version of the minutes was to be sent to Ms. Petra Mikulasova, a former staff member

29. As neither in the UNDT's order nor in our Judgment there is any exception or restriction to the effect that the SMT meeting minutes should not be forwarded to former staff members (*i.e.* only recipients still working for the Organization), it is clear that the order includes Ms. Mikulasova who participated in the meeting. Since Ms. Mikulasova was "a recipient" of the minutes of the 22 January 2014 meeting, the Secretary-General is obliged under our Judgment No. 2017-UNAT-774 to inform her accordingly although she is no longer a staff member. However, as the Secretary-General has a different understanding and contends that Ms. Mikulasova, as a former staff member, does not fall under the scope of the Appeals Tribunal's order, we accept Mr. Awe's application and render our interpretation to the parties.

30. We note, further, that, as Ms. Mikulasova separated from the Organization in January 2015, the Secretary-General could and should have already raised his argument during the proceedings before the UNDT.

Whether the award of USD 5,000 is payable within 60 days of the UNDT judgment becoming executable, with interest accruing in the event of delayed execution

31. We find Mr. Awe's application on this point not admissible. In Judgment No. 2017-UNAT-774, we only modified the amount of compensation but did not address any time limits for execution or payable interest in case of delayed execution. It is thus clear that the UNDT's order with respect to these issues was left completely untouched by the

⁸ *Awe v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-774, para. 39.

Appeals Tribunal Judgment and we will not render an interpretation of the UNDT judgment. Furthermore, the Secretary-General contends that interest should be calculated at the US prime rate from 18 November 2016, the date of issuance of the UNDT judgment, until the date of payment; and if payment is not made within 60 days of the issuance of the written Appeals Tribunal Judgment (*i.e.*, by 4 November 2017), additional interest should be payable, calculated as an additional five percent to be added to the US prime rate in effect on 5 September 2017. The Secretary-General's interpretation is favorable to Mr. Awe and lies well within our consistent jurisprudence.⁹

Whether the Appeals Tribunal Judgment only relates to allegations against the COS Mr. Rutgers or whether it also covers allegations against the CMS Ms. Yasin

32. We admit Mr. Awe's application on this point. The parties disagree about the meaning and scope of our Judgment, and there might indeed be some unclarity as Mr. Awe filed separate applications, two concerning CMS Ms. Yasin and one concerning COS Mr. Rutgers.

33. As to the question of whether Mr. Awe can request disciplinary actions against the staff members involved in the incidents concerning the 22 January 2014 meeting and its minutes it becomes clear from paragraphs 27 to 30 that the Appeals Tribunal Judgment only relates to the allegations against Mr. Rutgers. However, the reasoning given in this Judgment will also apply to the question of whether Mr. Awe can request disciplinary actions against Ms. Yasin or compensation for procedural errors in case such actions have not been taken.

34. Finally, turning to the question of whether the compensation awarded in Judgment No. 2017-UNAT-774 only covers the wrongdoing of Mr. Rutgers or it also covers the wrongdoing of Ms. Yasin, Mr. Awe has to acknowledge that we did not award compensation for the wrongdoing of a specific staff member but for Mr. Awe's loss of reputation and professional standing in connection with the 22 January 2014 meeting and its minutes and the fact that no remedy had been offered for a substantial period of time.

⁹ *Shkurtaj v. Secretary-General of the United Nations*, Judgment on Application for Interpretation No. 2013-UNAT-322, paras. 14 to 17; *Mmata v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-092, paras. 35 and 38; and *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-059, para. 17.

Judgment

35. The application for interpretation of Judgment No. 2017-UNAT-774 is admitted in part. We offer the following interpretation of Judgment No. 2017-UNAT-774:
36. The Secretary-General is ordered to send a corrected version of the meeting minutes and of the FFP's findings to all the recipients of the 22 January 2014 meeting minutes, including Ms. Mikulasova.
37. Judgment No. 2017-UNAT-774 does not address the question of whether Mr. Awe can request disciplinary actions against Ms. Yasin or whether he can claim compensation for procedural errors in case such actions have not been undertaken. These issues are the subject of Mr. Awe's application to the UNDT, Case No. NBI/2017/060.
38. Judgment No. 2017-UNAT-774 finally settles Mr. Awe's claims for compensation for loss of reputation and professional standing with regard to the 22 January 2014 meeting and its minutes including any actions and wrongdoings by Ms. Yasin.
39. Mr. Awe's application for interpretation on all remaining issues is not admissible.

Original and Authoritative Version: English

Dated this 22nd day of March 2018 in Amman, Jordan.

(Signed)

Judge Knierim, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Lussick

Entered in the Register on this 23rd day of May 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar