



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

Judgment No. 2022-UNAT-1257

**Alex Lucchini
(Applicant)**

v.

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

**JUDGMENT
ON APPLICATION FOR INTERPRETATION**

| | |
|----------------------|--|
| Before: | Judge Dimitrios Raikos, Presiding Judge Kanwaldeep Sandhu Judge Martha Halfeld |
| Case No.: | 2021-1606 |
| Date of Decision: | 1 July 2022 |
| Date of Publication: | 15 August 2022 |
| Registrar: | Weicheng Lin |

Counsel for Applicant: George G. Irving

Counsel for Secretary-General: Rupa Mitra

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. Mr. Alex Lucchini filed an application with the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) challenging the administrative decision to separate him from service following disciplinary proceedings, with compensation *in lieu* of notice and without termination indemnity. By Judgment No. UNDT/2020/090, the UNDT granted Mr. Lucchini's application in part, rescinding the administrative decision and setting *in lieu* compensation equivalent to remuneration payable for the time remaining on his fixed-term appointment. The UNDT also awarded an additional 10 months' net base salary in moral damages for loss of salary and for proven medical difficulties that he faced while on administrative leave without pay (ALWOP).

2. The Secretary-General filed an appeal and Mr. Lucchini filed a cross-appeal. By Judgment No. 2021-UNAT-1121 dated 25 June 2021, the United Nations Appeals Tribunal (Appeals Tribunal) dismissed the Secretary-General's appeal and granted the cross-appeal to a limited extent, modifying the order of the UNDT by an order rescinding the contested decision and setting *in lieu* compensation in an amount equivalent to two years' net base pay.

3. Mr. Lucchini has filed an application for interpretation seeking confirmation that UNAT's ruling increased the amount of *in lieu* compensation from 10 to 24 months' net base pay and that the UNDT's award of moral damages in the amount of 10 months' net base pay, remained unmodified.

4. For the reasons given below, we dismiss the application.

Facts and Procedure

5. Mr. Lucchini was employed by the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) as a Security Officer on a fixed-term appointment (FTA) at the FS-4 level in Bamako. He was separated from service following disciplinary proceedings, which were initiated after a Malian woman (the Complainant) filed a report with the police in Mali that Mr. Lucchini had raped her. The report of rape has not been pursued by the police in Mali. However, the report led to an investigation by the Investigations Division of the Office of Internal Oversight Services (OIOS) and the Special Investigations Unit (SIU) at MINUSMA, which culminated in Mr. Lucchini's dismissal.

6. On 25 January 2018, during the course of the OIOS investigation, Mr. Lucchini was placed on ALWOP pending completion of the disciplinary process on allegations of sexual intercourse without consent.

7. On 13 June 2018, the Assistant Secretary-General, Office of Human Resources Management (ASG/OHRM) informed Mr. Lucchini of the allegations of misconduct against him. Mr. Lucchini was alleged to have had sexual relations with the Complainant “who he was aware was about to lose her job as an independent contractor with MINUSMA and to whom he had indicated that he might aid in finding employment”. On 5 October 2018, the ASG/OHRM informed Mr. Lucchini of the decision to impose the sanction of separation.

8. On 21 December 2018, Mr. Lucchini filed an application with the UNDT challenging the decision to separate him from service. In its Judgment issued on 19 June 2020, the UNDT held that sexual exploitation had not been proven and the imposition of separation as a sanction was not justified. The UNDT ordered rescission of the contested decision and set *in lieu* compensation equivalent to remuneration payable for the time remaining on Mr. Lucchini’s FTA, being 10 months’ net base salary. Additionally, even though it found Mr. Lucchini’s claim for repayment of salary while on ALWOP to be irreceivable, as he had not sought timely management evaluation of that decision, it awarded an additional 10 months’ net base salary in moral damages for loss of salary and medical expenses.

9. Mr. Lucchini filed an appeal, and Mr. Lucchini cross-appealed. On 25 June 2021, the Appeals Tribunal issued Judgment No. 2021-UNAT-1121. The Appeals Tribunal dismissed the Secretary-General’s appeal finding that the UNDT did not err in concluding that there was no clear and convincing evidence of sexual exploitation, any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes or an inappropriate promise or exchange of money, employment, goods or services for sex.

10. As to the cross-appeal, the Appeals Tribunal found that once the UNDT concluded that the separation of Mr. Lucchini was unreasonable and illegal, it was permitted to order rescission of the contested decision, the practical effect of which would be his retrospective reinstatement with full benefits to 5 October 2018. Given Mr. Lucchini’s contract situation, the UNDT held that an order for reinstatement of this duration was not practical and then assumed compensation *in lieu* had to be considered. UNAT held that in so doing, the UNDT erred. In cases where the UNDT prefers not to award reinstatement or re-employment for

whatever reason, it may award compensation for harm (not compensation *in lieu*) in terms of Article 10(5)(b) of the UNDT Statute.

11. UNAT found that since Mr. Lucchini had been the “victim of a substantial injustice arising from a perhaps over-zealous investigation by the OIOS”,¹ he had lost his employment, his reputation had been unjustifiably sullied and his future employment prospects in the security field had been harmed. In addition, he lost eight months’ pay while on ALWOP. UNAT considered that fairness arguably required payment of back pay to January 2018 and since it was unlikely that the Secretary-General would elect to give effect to a rescission order, “an order of compensation *in lieu* equivalent to 42 [sic.] months’ net base salary would not be beyond reasonable bounds”.² Against that, UNAT considered that Mr. Lucchini had only 10 months left on his FTA and that he might have also mitigated his harm through other employment. UNAT furthermore held that the UNDT erred by treating pecuniary harm (loss of salary and medical expenses during ALWOP) as a form of moral damages. UNAT concluded:³

... An adequate award of compensation *in lieu* will compensate Mr. Lucchini for his other losses. The evident unfairness of the termination in this case justifies payment of the maxim compensation *in lieu* equivalent of two years’ net base salary. The cross-appeal must accordingly be upheld, and the order of the UNDT modified to that extent.

...

... The appeal of the Secretary-General is dismissed. The cross-appeal is upheld to the limited extent that the order of the UNDT is modified by an order rescinding the contested decision and setting an amount of compensation (*in lieu*) equivalent to two years’ net base pay that the Secretary-General may elect to pay as an alternative to the rescission of the contested administrative decision. ...

57. On 10 September 2021, Mr. Lucchini filed an application for interpretation of Judgment No. 2021-UNAT-1121, and the Secretary-General filed comments on 18 October 2021.

¹ Impugned Judgment, para. 62.

² *Ibid.*

³ *Ibid.*, paras. 64-65.

Submissions

Mr. Lucchini's Application for Interpretation

58. Mr. Lucchini interprets the Judgment as having rejected the Secretary-General's appeal, including his challenge to the payment of moral damages, and as having made a limited finding on his cross-appeal increasing the amount of *in lieu* compensation from 10 to 24 months. However, the amount he was paid by the Organization corresponded to only 24 months net base pay plus interest. On inquiry, the Organization maintained that it was only required to pay 24 months net base pay plus interest.

59. Given the differing interpretations of UNAT's rulings by the parties, Mr. Lucchini asks that UNAT confirm that the UNDT's award for moral damages, based upon the claim supported by evidence of protracted emotional distress with medical complications, harm to *dignitas* and career expectations caused by the unwarranted disciplinary decision, remains unmodified.

The Secretary-General's Comments

60. Mr. Lucchini interprets the UNAT Judgment to indicate that UNAT confirmed the UNDT's award of compensation for moral damages, in addition to increasing the amount of *in lieu* compensation from 10 months to 24 months. However, the UNDT based its award of 10 months' net base salary as moral damages solely on Mr. Lucchini's loss of salary and on his medical expenses. UNAT clearly held that the UNDT erred by treating pecuniary harm (loss of salary and medical expenses during ALWOP) as a form of moral damages and indicated that an adequate award of compensation *in lieu* will compensate him for his other losses. UNAT thus increased the amount of compensation *in lieu* to address Mr. Lucchini's loss of salary and medical expenses. UNAT ordered payment of the increased amount of compensation *in lieu* (of two years' net base salary) but did not include the original award of compensation for moral harm that had been ordered in the UNDT Judgment. Such payment, had it been included, would have been redundant under UNAT's reasoning.

61. The Respondent requests that UNAT reject the application for interpretation in its entirety.

Considerations

62. In Judgment No. 2021-UNAT-1121, the Appeals Tribunal dismissed the Secretary-General's appeal and upheld Mr. Lucchini's cross-appeal in part. Consequently, the Appeals Tribunal modified the order of the UNDT in Judgment No. UNDT/2020/090 as follows:⁴

... The cross-appeal is upheld to the limited extent that the order of the UNDT is modified by an order rescinding the contested decision and setting an amount of compensation (*in lieu*) equivalent to two years' net base pay that the Secretary-General may elect to pay as an alternative to the rescission of the contested administrative decision. 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.

12. The parties disagree on whether the UNAT confirmed the UNDT's award of compensation for moral damages, in addition to increasing the amount of *in lieu* compensation from 10 months to 24 months, or ordered payment of the increased amount of compensation *in lieu* (of two years' net base salary) but did not include the original award of compensation for moral harm that had been ordered in the UNDT Judgment.

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

14. Whether or not such an application for interpretation is admitted lies within the discretion of the Appeals Tribunal. Article 25 of the Appeals Tribunal Rules of Procedure (Interpretation of judgements) provides, in part: "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."

⁴ Impugned Judgment, para. 65.

15. 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.⁵

16. An application seeking review of a final judgment rendered by the Appeals Tribunal can only succeed if it fulfils the strict and exceptional criteria established under Article 11 of its Statute. Mr. Lucchini's application does not come within the criteria set forth in these statutory provisions. He requests the Appeals Tribunal to take the first of the above referenced interpretative approach, namely that we confirmed the UNDT's award of compensation for moral damages, in addition to increasing the amount of *in lieu* compensation from 10 months to 24 months. In this regard, Mr. Lucchini interprets our Judgment as having rejected the Secretary-General's appeal, including his challenge to the payment of moral damages, and as having made a limited finding on his cross-appeal increasing the amount of *in lieu* compensation from 10 to 24 months.

17. However, as we clearly stated in our Judgment:⁶

... [T]he UNDT erred by treating pecuniary harm (loss of salary and medical expenses during ALWOP) as a form of moral damages.

... An adequate award of compensation *in lieu* will compensate Mr. Lucchini for his other losses. The evident unfairness of the termination in this case justifies payment of the maxim compensation *in lieu* equivalent of two years' net base salary. The cross-appeal must accordingly be upheld, and the order of the UNDT modified to that extent.

18. Consequently, in the operative part of the Appeals Tribunal's Judgment, which follows and is elucidated through said reasoning, we increased the amount of compensation *in lieu* to address Mr. Lucchini's loss of salary and medical expenses, while, obviously, we did not maintain the original award of compensation for moral harm that had been ordered by the UNDT.

19. In the premises, the application for interpretation falls to be rejected.

⁵ *Newland v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-910, para. 18; *Awe v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-827, para. 27.

⁶ Impugned Judgment, paras. 63-64.

Judgment

63. Mr. Lucchini's application for interpretation is dismissed.

Original and Authoritative Version: English

Decision dated this 1st day of July 2022 in New York, United States.

(Signed)

Judge Raikos, Presiding

(Signed)

Judge Sandhu

(Signed)

Judge Halfeld

Published and entered into the Register on this 15th day of August 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar