



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

Judgment No. 2022-UNAT-1266

**Korkut Yavuz
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge John Raymond Murphy Judge Dimitrios Raikos
Case No.:	2021-1591
Date of Decision:	1 July 2022
Date of Publication:	19 August 2022
Registrar:	Weicheng Lin

Counsel for Appellant:	Robbie Leighton, OSLA
Counsel for Respondent:	Rupa Mitra

JUDGE SABINE KNIERIM, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal or UNAT) has before it an appeal by Mr. Korkut Yavuz, a former staff member who served as an Economic Affairs Officer at the P-3 level with the Economic Commission for Europe (ECE) on a fixed-term appointment (FTA). Mr. Yavuz contested before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) the decision to separate him on grounds of performance. On 31 May 2021, the UNDT issued Judgment No. UNDT/2021/062 (Impugned Judgment) finding that Mr. Yavuz's performance was not managed or evaluated in a fair and objective manner and held that the decision not to renew his FTA on the basis of unsatisfactory performance was unlawful. As a remedy, the UNDT ordered rescission of the contested non-renewal decision and reinstatement of Mr. Yavuz in the same position he had previously encumbered. The UNDT also ordered payment of three months' net base salary as in-lieu compensation and rejected Mr. Yavuz's claim for damages for moral harm.

2. Mr. Yavuz now appeals to the Appeals Tribunal with regard only to the remedy ordered and requests the UNAT to vacate the award of three months' in-lieu compensation and instead award 12 months' salary. Mr. Yavuz also requests the UNAT to vacate the UNDT's rejection of moral damages and instead grant him six months' net base salary for moral damages.

3. For the reasons set out below, we partly grant the appeal and modify the UNDT judgment.

Facts and Procedure

4. The facts have been established by the Dispute Tribunal and are not largely contested in this appeal and thus, we set out for way of background a summary of the facts underlying the appeal. Mr. Yavuz took up his role as a P-3 Economic Affairs Officer in the Division of Economic Cooperation and Trade (DECT), ECE in May 2017 and reported to a P-4 as his First Reporting Officer (FRO) and a P-5 as his Second Reporting Officer (SRO). Mr. Yavuz alleged a series of incidents beginning in August 2017, whereby his FRO demonstrated a pattern of aggressive insulting behaviour and the use of demeaning language towards Mr. Yavuz. Mr. Yavuz met with his SRO to discuss the alleged harassment and his SRO suggested the insults were a result of a cultural clash normal at the United Nations. In October 2017, Mr. Yavuz subsequently met with the Executive Officer of ECE and expressed that his FRO and SRO had decided to try to end his

employment. The Executive Officer advised Mr. Yavuz to contact the Staff Coordinating Council, the Ombudsman, the Deputy Executive Secretary (DES), and the Executive Secretary. Mr. Yavuz subsequently contacted the Staff Coordinating Council, the Ombudsman, and the DES.

5. In November 2017, Mr. Yavuz's FRO completed his mid-term performance review and placed him on a Performance Improvement Plan (PIP) implemented from December 2017 to March 2018. Mr. Yavuz provided comments to the PIP's goals, activities, and deadlines. As a result, two deadlines were amended but Mr. Yavuz's other suggestions were rejected as non-negotiable. In December 2017, Mr. Yavuz met with the DES who advised him he was following the situation closely and advised Mr. Yavuz would work for a different supervisor to ensure an objective assessment of his performance. In February 2018, Mr. Yavuz requested his FRO guarantee that his contract would cover the period of the French language class should he enrol, but his FRO declined to provide any assurance. Mr. Yavuz forwarded this e-mail exchange to the Staff Coordinating Council who then forwarded it to the DES. On 2 March 2018, the DES advised the representative of the Staff Coordinating Council as follows:

I have clear understanding with both my [Executive Secretary] and also [Executive Office] that [Mr. Yavuz] will be given a chance to work under another supervisor. However, we will have to deal with it once the period of the PIP ends, as we need to do it by the book and respect the [performance appraisal] process. I actually informally explained this to [Mr. Yavuz] and asked him to wait till the PIP period ends. But of course it is understandable that he is very worried. In my assessment of the situation it is irrelevant whether his current supervisors will fail him on PIP or not. For me there is no evidence of underperformance on his side, rather interpersonal problems and most likely lack of proper management/instruction.

6. The DES indicated in an e-mail of 7 March 2018 to the Staff Coordinating Council that he understood that "[Mr. Yavuz's] supervisors are maltreating [him]". In a further e-mail of 8 March 2018, he stated that "there [was] no intention to terminate [Mr. Yavuz's] contract but to give him an opportunity under another supervisor". Later in March 2018, Mr. Yavuz received a report regarding his PIP performance which indicated shortcomings in the competencies: professionalism, teamwork, and communications, and in the core values: respect for diversity, and his three goals listed in the workplan. In April 2018, the Director, DECT informed Mr. Yavuz that she would act as his FRO and SRO from 11 April onward. She remained his FRO and SRO until her departure from ECE on 30 November 2018.

7. On 28 May 2018, Mr. Yavuz received his performance appraisal (ePAS) for the period from 4 May 2017 until 31 March 2018, with an overall rating of “partially meets expectations” signed by his initial FRO and SRO. Mr. Yavuz initiated a rebuttal process against his 2017-2018 ePAS. The convened Rebuttal Panel met with Mr. Yavuz, his FRO, and his SRO, and with another team member under the FRO’s supervision. While under the Director, DECT’s supervision, Mr. Yavuz performed two tasks for another section and received a positive evaluation. In December 2018, the Director, DECT, who had left ECE in November 2018, provided her appraisal via e-mail to the Executive Officer and stated that Mr. Yavuz “was eager to carry out the assignment and had a pleasant disposition towards work” but “needs more guidance and direction than would normally be required from a P-3 staff member” and that he, when given an “opportunity to work with another section[,] ... finally produced a satisfactory output”.

8. The Rebuttal Panel’s report upheld the performance appraisal of “partially meets expectations” finding that the appraisal procedure was properly followed.

9. Mr. Yavuz’s appointment was subsequently extended to allow him to exhaust his sick leave entitlements after his placement on sick leave. On 31 May 2019, Mr. Yavuz was informed of his separation from service, as further sick leave could not be approved by the United Nations Office at Geneva (UNOG) Medical Service in the absence of a valid medical report. Mr. Yavuz separated from service on 31 May 2019.

Impugned Judgment

10. Mr. Yavuz filed an application with the UNDT on 19 July 2019. On 31 May 2021, the UNDT issued the Impugned Judgment in Mr. Yavuz’s favour holding that the separation on performance grounds was unlawful. The UNDT found evidence of “bias and lack of objectivity in the evaluation of Mr. Yavuz’s performance by the FRO and SRO” further noting that the interpersonal issues between Mr. Yavuz and the FRO and SRO impaired the ability of the FRO and SRO to objectively evaluate his performance. The Rebuttal Panel failed to consider the interpersonal issues in its review and the UNDT found it was contradictory to have Mr. Yavuz change reporting lines only to have his evaluation finalized by his initial FRO and SRO as grounds to justify his separation. The UNDT ordered the separation be rescinded and set in-lieu compensation as three months’ net base salary. It rejected a request for a moral damages award.

Procedure before the Appeals Tribunal

11. On 30 July 2021, Mr. Yavuz filed the instant appeal.
12. On 4 October 2021, the Secretary-General filed his answer.

Submissions**Mr. Yavuz's Appeal**

13. Mr. Yavuz challenges the in-lieu compensation of three months' net base salary ordered by the UNDT and requests instead 12 months' net base salary. In support, Mr. Yavuz argues that the UNDT failed to consider relevant factors evidenced in the case and considered irrelevant factors when setting the alternative compensation, which he argues is an unreasonable amount. The UNDT found that his performance appraisal had been unfair and not objective while clouded by interpersonal issues and found that the Administration failed to ensure he was offered the opportunity to work under different supervision as well as failed to consider his positive assessment from work carried out under a different supervisor. The UNDT did not properly consider these factors when setting compensation. Instead, the UNDT expressly stated they considered the seniority of Mr. Yavuz, his type of contract, and his chances of renewal. The failure of the UNDT to consider the nature of the irregularity and the seriousness of the breaches of his rights and the humiliating treatment to which he was subjected is a correctable error in law. The UNDT failed to consider relevant factors. The UNDT has previously held that it should consider "any consequential prejudice" suffered as a result of an unlawful decision. In the instant case, Mr. Yavuz's career was snuffed out in a little over a year due to the unfair assessment of his performance. The reasons for such separation preclude Mr. Yavuz from re-entering the UN system. The UNDT has found his separation unlawful and yet has not considered its full consequences—namely that Mr. Yavuz is precluded from re-entering the United Nations. The loss of his employment is equally serious regardless of his seniority and thus his seniority is irrelevant.

14. Mr. Yavuz was on a regularly budgeted post with every chance of renewal. It is hard to find a prior UNDT Judgment whereby an unlawfully separated staff member was awarded as little as three months. In *Quatrini*¹ and *Andelic*² alternative compensation was awarded at

¹ *Quatrini v. Secretary-General of the United Nations*, Judgment No. UNDT/2020/053.

six and nine months, respectively, and neither case was marked with as serious a breach and irregularity and prejudice suffered as in Mr. Yavuz's case.

15. Mr. Yavuz also argues that the UNDT erred in fact and in law by not awarding moral damages. The UNDT was provided with three medical reports corresponding exactly to the period immediately after the contested decision. Impact to his health was also corroborated by the Administration's grant of his sick leave during this period. The reports directly address the onset of mental illness caused exactly by the conduct of his FRO and SRO which resulted in the negative performance appraisal and non-renewal decision. The UNDT distinguished between psychological damage caused by the evaluation of his performance and psychological damages caused by the culmination of that process. Mr. Yavuz submits that this represents an overly procedural approach to the award of moral damages and such distinction has no support in law. He provided clear evidence of psychological harm as the result of his treatment by the FRO and SRO in evaluating his performance and these are the individuals who secured his unlawful separation from the Organization. There is sufficient nexus between this evidence of harm and the contested decision to make an award appropriate. There is no concern for duplication of awards as relates to his pending case before the UNDT about harassment, as should he prevail in that second case any award can be moderated accordingly, but if he does not prevail in the second case, no duplication issue arises. It is noteworthy that the Rebuttal Panel did not look into interpersonal issues with Mr. Yavuz and his supervisors saying they had no mandate. The second case before the UNDT is pertaining to the decision not to investigate a complaint of harassment and abuse of authority on the basis that it related to performance evaluation. This is buck passing to preclude any enquiry into Mr. Yavuz's treatment. The UNDT's decision on moral damages mirrors this approach.

The Secretary-General's Answer

16. The Secretary-General requests the appeal be dismissed in its entirety. Mr. Yavuz failed to demonstrate that the UNDT neglected to consider relevant factors and considered irrelevant ones when setting the compensation award. On appeal, Mr. Yavuz cannot rely on unsubstantiated claims of "belittling treatment" that he claims the UNDT failed to consider.

² *Andelic v. Secretary-General of the United Nations*, Judgment No. UNDT/2020/007.

Yet the examples given in his brief were not factually determined by the UNDT and were not part of its determination that the decision was unlawful. Mr. Yavuz cannot now rely on additional alleged unsubstantiated examples solely for demanding an increased in-lieu compensation.

17. Mr. Yavuz has failed to demonstrate that the UNDT should have considered that the facts of his case justified a higher compensation. The UNDT did note that Mr. Yavuz had not been given a chance to work under different supervision and that the Rebuttal Panel did not consider interpersonal issues. Mr. Yavuz claims these are aggravating factors; however, they are the basis of the UNDT's determination that his separation was unlawful and not aggravating factors supporting the severity of the breach. The UNDT is in the best position to assess compensation given its appreciation of the case. Mr. Yavuz has failed to identify errors regarding the seriousness of the breach as found by the UNDT and is now trying to use each cited basis for the UNDT's finding as grounds the UNDT should have found the breach was more severe than it determined.

18. In addition, while Mr. Yavuz argues the UNDT should have taken into account that his career was "snuffed out in a little over a year and a half", there is no expectation of renewal with fixed-term appointments. Renewal of appointments is only speculative.

19. Mr. Yavuz has failed to demonstrate that the UNDT erred in considering "seniority" as one of the factors in deciding the amount of in-lieu compensation. The UNDT was well within its authority to consider both the length of Mr. Yavuz's service as well as the level (about two years at P-3 level).

20. Mr. Yavuz failed to demonstrate that the UNDT erred in not awarding him moral damages. He failed to establish a causal link between the alleged moral harm and the contested decision. The reports provided referred to conditions suffered as a result of the alleged harassment, which is to be addressed by the UNDT in a separate case. Further, the UNDT did not err in its conclusion that there was no evidence presented to substantiate Mr. Yavuz's claim of harm suffered from being on short-term contracts.

Considerations

21. The only issue on appeal is whether the UNDT judgment's orders on in-lieu compensation and compensation for moral harm are free of error.

22. Article 10 of the UNDT Statute provides as follows:

5. As part of its judgement, the Dispute Tribunal may only order one or both of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;

(b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

...

7. The Dispute Tribunal shall not award exemplary or punitive damages.

In-lieu compensation

23. This Tribunal has consistently held that “compensation must be set by the UNDT following a principled approach and on a case by case basis” and that the Appeals Tribunal will not interfere lightly as “[t]he Dispute Tribunal is in the best position to decide on the level of compensation given its appreciation of the case”.³

24. In the present case, the UNDT took into account the specific circumstances of the case, in particular the seniority of Mr. Yavuz, the type of appointment held, and the chance of renewal of the appointment in a position still required by the Administration and set an in-lieu compensation of three months.

25. Mr. Yavuz complains that the UNDT should also have considered the nature of the irregularity and the seriousness of the breaches of his rights and the humiliating treatment to which he was subjected. We do not agree.

³ *Mihai v. Secretary-General of the United Nations*, 2017-UNAT-724, para. 15, *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-691, para. 28, citing *Rantisi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-528, para. 71, and *Solanki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-044, para. 20.

26. In-lieu compensation under Article 10(5) of the UNDT Statute shall be an economic equivalent for the loss of rescission or specific performance the Tribunal has ordered in favor of the staff member. When the Secretary-General chooses not to accept this order, he must pay compensation as an alternative to replace (in-lieu) such rescission or specific performance. Hence, the most important factor to consider in this context is the pecuniary value of such rescission or specific performance for the staff member in question. In case of rescission of a non-renewal decision, it is reasonable for the UNDT to focus on the seniority and type of appointment held by the staff member, and particularly the chance of renewal of this appointment.

27. The nature and degree of the irregularities committed by the Administration, on the other hand, are of no legal relevance for the pecuniary value of the ordered rescission or specific performance. On the contrary, as the UNDT may not award punitive damages according to Article 10(7) of the UNDT Statute, we find the UNDT is not allowed to consider these factors when deciding on the amount of in-lieu compensation.

28. Given the seniority and type of Mr. Yavuz's appointment, and his chance of renewal, the amount of in-lieu compensation of three months set by the UNDT is free of error. Mr. Yavuz had begun his service on 4 May 2017 on a one-year fixed-term appointment. As of June 2018, the appointment was extended on a monthly basis for the purpose of the completion of the rebuttal process concerning his performance evaluation 2017/2018. There is no basis to assume that Mr. Yavuz's appointment would have been renewed (for a whole year). On 17 December 2018, the Director, DECT, UNECE, who had left UNECE since 30 November 2018, provided her appraisal of Mr. Yavuz's performance stating that he "was eager to carry out the assignment and had a pleasant disposition towards work" but "needs more guidance and direction than would normally be required from a P-3 staff member" and that he, when given an "opportunity to work with another section (...) finally produced a satisfactory output".

29. Given that Mr. Yavuz, in consequence of the UNDT's judgment, had no valid performance evaluation for 2017/2018, the Director's 17 December 2018 statement alone is not sufficient to conclude that his appointment would have been renewed (for a whole year). She clearly states that Mr. Yavuz needs more guidance and direction than other P-3 staff members. Therefore, the Administration could have reasonably decided not to renew Mr. Yavuz's appointment or at least only for a short time.

Compensation for moral harm

30. Regarding the alleged moral damage, the UNDT noted that Mr. Yavuz provided medical reports dated 5 April, 2 July and 8 July 2019 describing the conditions suffered by referring to alleged harassment only, but not to the contested non-renewal decision. The UNDT concluded that Mr. Yavuz failed to establish the causal link between the contested decision and the alleged moral damage.

31. Mr. Yavuz, on appeal, criticizes that this is “an overly procedural approach”. He provided clear evidence of psychological harm as the result of his treatment by his FRO and SRO in evaluating his performance. As these are the individuals who secured his unlawful separation from the Organization, there is a sufficient nexus between this evidence of harm and the contested decision.

32. We do not agree. The UNDT correctly applied our constant jurisprudence according to which “compensation for harm shall be supported by three elements: the harm itself; an illegality; and a nexus between both. ... A breach of staff member’s rights, despite its fundamental nature, is thus not sufficient to justify such an entitlement. There must indeed be proven harm stemming directly from the Administration’s illegal act or omission for compensation to be awarded”.⁴

33. We have reviewed the medical reports provided by Mr. Yavuz and agree with the UNDT that they only refer to the alleged harassment by his FRO and SRO but not to the contested administrative decision, the non-renewal. Hence, in this regard, Mr. Yavuz’s appeal must fail.

34. With respect to the alleged moral harm caused by his maintenance on short-term contracts, the UNDT noted that Mr. Yavuz has not provided any evidence to substantiate it, and rejected his claim for compensation in this respect.

35. On appeal, Mr. Yavuz points to his 8 July 2019 medical report which states that he and his wife had to live on one month fixed-term contracts for nine months, and this caused additional anxiety and stress.

⁴ *Kebede v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-874, paras. 20-21.

36. Although the most part of the nine months falls into the time as of June 2018 when Mr. Yavuz's appointment was extended on a monthly basis for the purpose of the completion of the rebuttal process, a short part also falls into the time after the contested non-renewal decision had been issued (on 23 January 2019). At least for this short period of time Mr. Yavuz has demonstrated the necessary direct nexus between the non-renewal decision and his moral harm. We find it appropriate to award USD 2,000 as compensation under Article 9(1)(b) of the UNAT Statute (Article 10(5)(b) of the UNDT Statute).

Judgment

37. Mr. Yavuz's appeal is partly granted, and the UNDT Judgment No. UNDT/2021/062 is modified. The Secretary-General is additionally ordered to pay Mr. Yavuz USD 2,000 as compensation for moral harm. All other aspects of Mr. Yavuz's appeal are dismissed.

Original and Authoritative Version: English

Decision dated this 1st day of July 2022.

(Signed)

Judge Knierim, Presiding
Hamburg, Germany

(Signed)

Judge Murphy
New York, United States

(Signed)

Judge Raikos
New York, United States

Judgment published and entered into the Register on this 19th day of August 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar