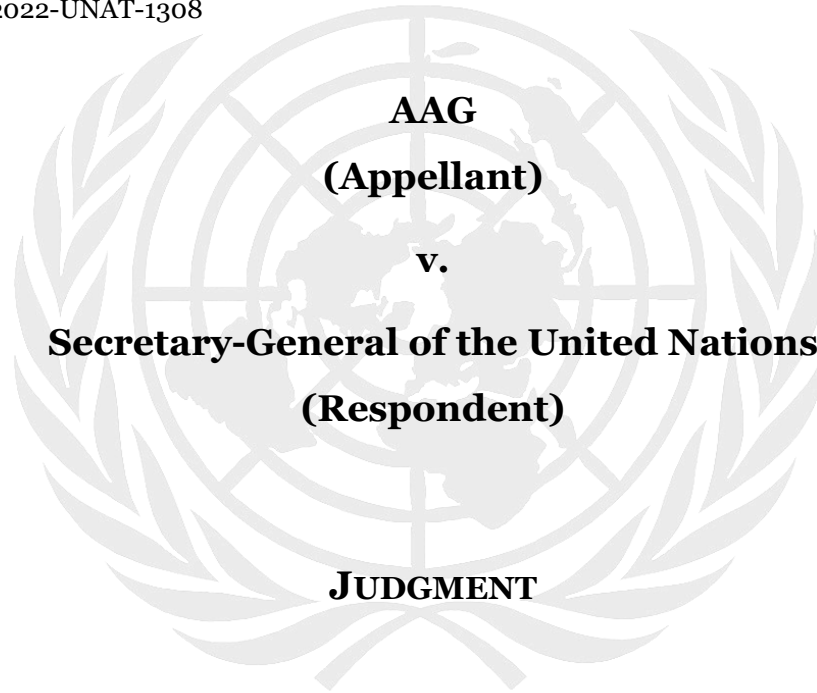




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2022-UNAT-1308



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| Before:              | Judge Martha Halfeld, Presiding<br>Judge Dimitrios Raikos<br>Judge Kanwaldeep Sandhu |
| Case No.:            | 2022-1646                                                                            |
| Date of Decision:    | 28 October 2022                                                                      |
| Date of Publication: | 30 December 2022                                                                     |
| Registrar:           | Juliet Johnson                                                                       |

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|-------------------------|--------------------|
| Counsel for Appellant:  | Monika Ona Bileris |
| Counsel for Respondent: | Amanda Stoltz      |

**JUDGE MARTHA HALFELD, PRESIDING.**

1. Before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), Appellant (AAG)<sup>1</sup> contested the decision to reassign her from her post of Chief of Central Service with the United Nations Global Service Centre (UNGSC) in Brindisi to the position of Chief of Section, Logistics, Transportation and Movement Integrated Control Center (TMICC), at the Regional Service Centre Entebbe (RSCE). She also contested the decision to place her on Special Leave with Full Pay (SLWFP) from 2 October to 31 October 2020 pending management evaluation of her challenge to her reassignment from her post in Brindisi.

2. By Judgment No. UNDT/2021/142 (the impugned Judgment),<sup>2</sup> the UNDT concluded that Appellant's reassignment was lawful, given the concerns about the risks to Appellant's personal security, and that her new post was commensurate with her skills and competencies. In addition, the Dispute Tribunal determined that the brief placement of Appellant on SLWFP was legal and reasonable under the circumstances.

3. Appellant lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).

4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

**Facts and Procedure**

5. AAG currently serves as the Chief of Logistics, TMICC, at Grade P-5, at the RSCE. She has worked in various capacities for the United Nations since February 2007.

6. At the start of the relevant period, AAG was the Chief of Central Service with UNGSC in Brindisi, also at Grade P-5. In 2017, AAG and some other management-level staff received threatening messages, purportedly in response to a Civilian Staffing Review in Brindisi. Appellant and one other staff member, who was serving as Deputy Director of Mission Support and Principal Logistics Officer, received an envelope containing a bullet.

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<sup>1</sup> The Appeals Tribunal has assigned Appellant an acronym – AAG – to preserve anonymity in this case.

<sup>2</sup> *Applicant v. Secretary-General of the United Nations*, Judgment No. UNDT/2021/142.

7. The United Nations Department of Safety and Security (UNDSS) conducted a Personal Security Risk Assessment (PSRA) for Appellant and the other staff member who received a bullet. UNDSS and the host country authorities recommended that the staff members relocate, and in September 2018, they moved to Valencia, Spain on a temporary basis. The other staff member later telecommuted from his home country, the Netherlands, until he separated from the Organization at the end of his temporary appointment in January 2019.

8. The Administration relocated Appellant to the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), Kinshasa, where she served first as Chief, Operations Resource Management, Grade D-1, and subsequently, following a competitive process, was appointed temporarily to Chief, Operations Resource Management, Grade D-1 on 15 January 2019. Although this temporary assignment was set to expire on 20 June 2020, it was extended until 31 August 2020 in order to find a solution to her situation.

9. During this period, Appellant retained a lien on her position in Brindisi. She also reported additional threats. On 6 July 2019, she received a vulgar and threatening e-mail that she “must stay in the jungle,” which she forwarded to the Acting Director, UNGSC.<sup>3</sup> On 24 May 2020, in responding to a questionnaire from the Chief Security Officer for the UNGSC, she indicated that she continued to receive anonymous threats after she left Brindisi.<sup>4</sup> Appellant also confidentially conveyed to the Director, UNGSC that she had received e-mail threats through June 2020.<sup>5</sup>

10. On 19 June 2020, UNDSS completed a second PSRA which concluded that the risk to Appellant remained high, and recommended reassigning her from Brindisi as the “most practical and effective option,” or allow her to return if certain mitigation measures were implemented. The report concluded that “termination of [Appellant’s] work for UNGSC would yield better results”.<sup>6</sup>

11. On 3 August 2020, Appellant had a virtual meeting with the Assistant Secretary-General for Supply Chain Management (ASG-SCM) and the Director, UNSGSC to discuss next steps. The ASG advised her that the risk was too high for her to return to Brindisi and that together with the

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<sup>3</sup> E-mail from AAG to Acting Director, UNGSC; Subject: FW: Bitch without breast, you must stay in the jungle (8 July 2019).

<sup>4</sup> E-mail exchanges between Chief Security Officer, UNGSC and AAG; Subject: PSRA – requesting information (22 and 24 May 2020).

<sup>5</sup> E-mail exchanges with Director, UNGSC; Subject: Re: [draft] Confidential: Updated Security Risk Assessment for Ms. [AAG] (1 and 13 July 2020).

<sup>6</sup> UNDSS, Ms. [AAG] – Personal Security Risk Assessment (19 June 2020), p. 5.

Director of UNGSC, they believed that Appellant would be suitable for the post of Chief of Logistics, TMICC in Entebbe given her skill set.<sup>7</sup>

12. On 10 August 2020, Appellant followed-up by e-mail to convey her concerns that the proposed role at the TMICC would “effectively be a career regression”. In reply, ASG-SCM reiterated that the UNDSS risk assessment “indicate[d] that security risks associated with a return to Brindisi are unacceptably high” and “for [her] safety” they had “examined options to laterally re-assign [her] to a post suitable with [her] experience and skill set,” and that Appellant’s own descriptions of her experiences showed how she would “bring added value to the post”.<sup>8</sup>

13. On 18 August 2020, UNGSC formally requested the lateral reassignment of Appellant, which was approved that same day.<sup>9</sup>

14. On 27 August 2020, she was advised that her reassignment would be effective on 1 September 2020, and that an UMOJA notification would be forthcoming.<sup>10</sup>

15. On 31 August 2020, Appellant received a Personnel Action form notifying her of the reassignment.<sup>11</sup>

16. On 31 August 2010, Appellant requested management evaluation of the reassignment decision. She also filed an application with the Dispute Tribunal for suspension of the implementation of the decision pending the result of the management evaluation.

17. On 1 September 2020, the Dispute Tribunal granted her application and suspended the contested decision.<sup>12</sup>

18. On 1 October 2020, pending the outcome of management evaluation, Appellant was placed on Special Leave with Full Pay (SLWFP).

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<sup>7</sup> Minutes of Meeting btw ASG Saunders and Ms [AAG] Amended 25 October 2021 (Date of meeting: 3 August 2020).

<sup>8</sup> E-mail exchanges between ASG Saunders and AAG; Subject: Follow up to our discussion (10-11 August 2020).

<sup>9</sup> Letter from Director, UNGSC to USG for Operational Support; Subject: Lateral Reassignment of [AAG], P-5 Senior Administrative officer from UNGSC ... to RSCE ... For Approval (18 August 2020).

<sup>10</sup> E-mail from Chief Human Resources Officer, UNGSC to AAG; Subject: Follow-up (August 27, 2020).

<sup>11</sup> Personnel Action notice (effective 1 September 2020).

<sup>12</sup> [AAG] v. *Secretary-General of the United Nations*, Order on an Application for Suspension of Action Pending Management Evaluation, Order No. 165 (NBI/2020).

19. On 30 October 2020, the Management Evaluation Unit (MEU) issued its decision upholding the contested reassignment decision.
20. On 1 November 2020, Appellant was placed in the post of Chief of Logistics, TMICC.
21. On 23 November 2020, Appellant filed an application with the Dispute Tribunal contesting the reassignment decision. She sought rescission of the decision, a return to her post in Brindisi or similar placement, and moral and actual damages.
22. On 23 November 2020, Appellant also filed an application with the Dispute Tribunal challenging the decision to place her on SLWFP.
23. On 2 December 2020, the MEU rendered its decision on her request for review of the SLWFP, concluding that this was a legitimate measure aimed at maintaining the status quo.
24. On 26 January 2021, the Dispute Tribunal granted the joint motion of the parties to consolidate the two cases before it.

*UNDT Judgment*

25. In her submissions to the Dispute Tribunal, Appellant alleged that the Organization had abused its authority in failing to return her to Brindisi and reassigning her to the TMICC post in Entebbe. She claimed that the decision was tainted by procedural and substantive irregularities, motivated by personal prejudice and bias, and that she was not treated with respect and dignity, including by her placement on SLWFP.
26. Respondent submitted that the Secretary-General acted within his broad discretion to reassign Appellant to Entebbe to lower the risk to her personal security, and that this position was at the same level and grade and commensurate with her skills and competencies. Respondent further rejected the notion that the decision was malicious, arguing that it was reasonable and taken in accordance with the Organization's duty of care to Appellant to protect her from security risks.
27. On 30 November 2021, UNDT rendered the impugned Judgment, denying both of Appellant's applications. The Dispute Tribunal concluded that the Secretary-General had properly exercised his discretion to reassign Appellant in light of the assessments that there was a high risk

to Appellant's personal safety in Brindisi.<sup>13</sup> In addition, the UNDT rejected Appellant's claims that the threats against her were not adequately investigated and noted that the investigation followed the relevant UN policy manual. The UNDT also pointed to the active cooperation of the Italian authorities in this investigation and their support of the recommendation that [Appellant] be reassigned.<sup>14</sup> The Dispute Tribunal found that Appellant, and the other staff member who received the bullet in an envelope, had been treated in the same way in terms of their transfer out of Brindisi.<sup>15</sup>

28. The UNDT also found Appellant's claims that there were no further threats to her after the initial incident to be lacking in merit, particularly since Appellant had reported additional threats herself in July 2019 and June 2020.<sup>16</sup>

29. With regard to Appellant's reassignment to the particular role in the TMICC, the UNDT rejected her arguments that she did not have the necessary professional experience to carry out these duties. The UNDT found that she possessed the requisite experience in the three main areas of focus for the TMICC position.<sup>17</sup> The Dispute Tribunal also found that she had been adequately consulted about various options, and that Appellant had rejected the possibility of staying in MONUSCO, moving to the United Nations Support Office in Somalia, or resuming her Brindisi duties under a telecommuting arrangement. The UNDT also concluded that Appellant had a substantive consultation about the opportunity with TMICC.<sup>18</sup> Appellant's disagreement with this reassignment was not sufficient, in the Dispute Tribunal's view, to preclude its implementation.<sup>19</sup>

30. The UNDT rejected Appellant's argument that the reassignment to the TMICC in Entebbe was part of an orchestrated plan to oust her from UNGSC, opining that mere assertions or innuendo were insufficient to establish ill-motive on the part of the Administration.<sup>20</sup>

31. On Appellant's pleas with respect to the SLWFP, the UNDT held that the decision to place her on SLWFP pending management evaluation was legal and reasonable. Because the Dispute Tribunal had suspended her reassignment to Entebbe, and Appellant had already checked

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<sup>13</sup> Impugned Judgment, para. 45.

<sup>14</sup> *Ibid.*, paras. 47-48.

<sup>15</sup> *Ibid.*, para. 53.

<sup>16</sup> *Ibid.*, paras. 50-51.

<sup>17</sup> *Ibid.*, para. 55.

<sup>18</sup> *Ibid.*, para. 59.

<sup>19</sup> *Ibid.*, para. 60.

<sup>20</sup> *Ibid.*, paras. 56-57.

out of MONUSCO, the Tribunal found that SLWFP was the only viable option to maintain the status quo pending the outcome from MEU.<sup>21</sup>

32. The Dispute Tribunal observed that, in accordance with UNAT jurisprudence, it is permissible to place a staff member on SLWFP in between assignments. Given that Staff Rule 11.2(d) allows 45 days for management evaluation, the UNDT concluded that placing Applicant on SLWFP for two months was reasonable while they awaited the MEU recommendation. The Dispute Tribunal also determined that Appellant had not suffered any harm as she received full salary and all benefits during this two-month period.<sup>22</sup>

33. The UNDT concluded that there was sufficient evidence in the record to rule on the matter and rejected Appellant's request for a hearing. The UNDT dismissed the applications on 17 November 2021.

34. On 10 January 2022, Appellant filed an appeal of the impugned Judgment with the Appeals Tribunal, to which the Secretary-General responded on 14 March 2022.

### **Submissions**

#### **Appellant's Appeal**

35. Appellant argues that the impugned Judgment should be vacated because the UNDT failed to actually adjudicate her case. Appellant states that the UNDT copied the Respondent's submissions into the impugned Judgment and did not undertake its own independent analysis. Appellant requests that UNAT either vacate the impugned Judgment and grant her relief, or remand to the Dispute Tribunal for actual consideration of her case.

36. Appellant does not argue any errors of law, rather she submits that UNAT should overturn the impugned Judgment because UNDT committed numerous errors of fact which rendered the impugned Judgment manifestly unreasonable.

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<sup>21</sup> *Ibid.*, paras. 66-67.

<sup>22</sup> *Ibid.*, paras. 70-71.

37. Firstly, with regards to the reassignment decision, Appellant submits that the UNDT ignored many facts. She claims that the UNDT ignored that the threats to Appellant's safety were "stale" and faults the Administration for not implementing alternative recommendations in the second PSRA to address her situation.

38. Appellant claims that the UNDT failed to analyze whether the TMICC post was suitable for her and reiterates that she was never consulted or given sufficient notice about this reassignment. She argues that the UNDT mischaracterizes the nature of the meetings and degree of consultation that Appellant had with the UNGSC Director and the ASG/DoS about the various options on the table.

39. Appellant maintains that the Administration failed to adequately investigate the threats made against her over the course of two years. She further repeats that there was no reason, at the conclusion of the second PSRA, that she could not have returned to her post in Brindisi but worked remotely.

40. Appellant characterizes the UNDT's finding that she and the other staff member who received the bullet in the envelope were treated the same as "simply false".

41. Appellant states that the UNDT ignored her evidence of ill-motive, including that the Administration allowed a different person to replace her in Brindisi and then work remotely, that the Administration reassigned her to a post for which she was not rostered, that the Administration removed her from her post while allowing the other staff member who received the death threat to telecommute, and that the Administration refused to consider her for any of the 30 other posts that she applied to for which she was rostered.

42. Appellant argues that the UNDT misunderstood her reference to career regression inherent in the TMICC post, and that she had no objection to working in Africa, but that her point was that the return to technical work, rather than managerial work, was a step backwards.

43. Secondly, with regards to her placement on SLWFP, Appellant claims that the UNDT made mistakes of fact that rendered the decision unlawful. She states that the Dispute Tribunal's conclusion that this was reasonable fails because she was never informed about the length of the leave, except through UMOJA notifications.



44. She further disputes the UNDT's finding that the SLWFP did not cause her any harm, contending that this decision fed the rumor mill that Appellant was unfit for service.

**The Secretary-General's Answer**

45. The Secretary-General responds that the UNDT correctly concluded that the reassignment decision was lawful as it was within the discretion of the Administration to weigh security and operational concerns when deciding where to assign a staff member. Even if it was not the only way to lower the risk to Appellant's safety, the UNDT did not err in finding that the decision was properly motivated, taken in accordance with mandatory procedures, and that Appellant was reassigned to a post commensurate with her grade, level, skills, and experience.

46. The Secretary-General observes that Appellant's arguments are largely repetitions of arguments that she made before the UNDT, and that Appellant failed to explain how the supposed errors of fact resulted in a manifestly unreasonable decision so as to bring her appeal of the impugned Judgment within the jurisdiction of the UNAT.

47. The Secretary-General submits that the UNDT did not err in finding that the TMICC position was appropriate for Appellant, given that her suitability was supported by her PHP and her own cover letter for a role in the same job family but at the D-1 level. The Secretary-General maintains that the record supports the UNDT finding that Appellant did not want to work in Entebbe because it was in an area where she worked previously, but in any event, argues that a reassignment is not rendered unlawful because it does not enrich or progress a staff member's career.

48. The Secretary-General states that the UNDT's finding that Appellant was consulted about the TMICC post is fully supported by the record. He suggests that Appellant seems to believe that she had to give her consent to the reassignment, which is inaccurate as a matter of law.

49. The Secretary-General submits that the UNDT made no error when it concluded that Appellant failed to meet her burden that the reassignment was motivated by bad faith, and Appellant has done no more than repeat these allegations again.

50. The Secretary-General argues that Appellant's claim that there were no ongoing threats to her at the time of the reassignment decision are meritless, as the UNDT correctly found. Moreover, even if there were no new threats, that would not render the reassignment decision unlawful.

51. As to Appellant's argument that she should have been allowed to resume her post in Brindisi but work remotely, the Secretary-General urges this Tribunal to reject this argument given that it is raised for the first time on appeal. Moreover, the UNDT was tasked with reviewing the lawfulness of the reassignment decision – and not whether there were alternative options that might have been better in Appellant's view.

52. The Secretary-General submits that the UNDT correctly concluded that Appellant's arguments about the Administration's investigation and the timing of the PSRAs were not only baseless, but her repetition of these allegations does not establish an error of fact.

53. The Secretary-General maintains that the record of the treatment of Appellant *vis-a-vis* the other staff member who was threatened does not provide evidence of ill-motive, as the UNDT correctly held. Moreover, her allegations of insufficient notice of the reassignment are not supported by the evidence, but even if they were, this would not establish malicious intent.

54. In sum, the Secretary-General argues that the UNDT correctly found that Appellant's claims of improper motive and abuse of authority were unsubstantiated, and her appeal should be dismissed.

55. With regards to Appellant's placement on SLWFP, the Secretary-General argues that the UNDT correctly determined that this decision was made fully in accordance with the discretion afforded the Organization under Staff Rule 5.3(f), and that it was reasonable not to reassign Appellant during the short period of time needed for the completion of management evaluation. Moreover, the Secretary-General contends that there was no error by UNDT in its determination that the length of time she was on SLWFP was reasonable. Lastly, Appellant's complaints that she was not adequately notified of the exact length of the SLWFP are irrelevant.

56. The Secretary-General submits that the UNDT correctly found that Appellant was not harmed given that she was on full pay and benefits, and she produced no evidence to establish any harm from being on SLWFP.

57. Lastly, the Secretary-General argues that the mere fact that the UNDT found Respondent's pleadings to be more persuasive than Appellant's submissions, does not mean that the UNDT failed to adjudicate the case.

### **Considerations**

#### *Preliminary matter*

58. AAG raised on appeal a preliminary matter which concerns the "undisguised favoritism" by the UNDT towards the Respondent "through its wholesale insertion of (the) Respondent's pleadings as its own Judgment". In essence, AAG is dissatisfied with the fact that the UNDT might have repeated some or most of the Respondent's arguments and language in its Judgment.

59. As a general rule, there is a judicial presumption of integrity and impartiality that the Judge has done his/her task as sworn to do. A party seeking to set aside a judicial decision owing to the fact that the reasons in the judgment incorporated portions of the submissions of the parties bears the burden of showing that this presumption is rebutted. Moreover, the threshold for rebutting the presumption of judicial integrity and impartiality is high, as it requires cogent evidence. The question is therefore whether the evidence presented by a party challenging the judgment convinces the reviewing court that a reasonable person would conclude that the Judge did not perform his/her sworn duty to review and consider the evidence with an open mind.

60. While it is perfectly lawful for a judgment to agree with some or all of a party's contentions and/or arguments, it is recommended that a court or tribunal use its own language. However, even if there were some reliance on the Respondent's contentions in the UNDT Judgment, this would not be sufficient to undermine the Dispute Tribunal's considerations or determinations.

61. The key purposes of the considerations in a judgment are to: i) allow the parties to understand the reasons behind the tribunal's determinations, so that they could possibly challenge them on appeal; ii) persuade the parties of the correctness of the tribunal's reasoning, so as to convince them to accept the judgment and possibly not file an appeal. These two purposes were achieved in the present case, with AAG having decided to challenge the Judgment by introducing the present appeal. Despite the rather unprofessional language used in the appeal, it is clear that AAG does not agree with the UNDT Judgment. However, to cast aspersions on a tribunal just because the judgment does not satisfy a party's interest is improper.<sup>23</sup> The Appellant's unsubstantiated allegations of bias are hence rejected.

*Scope of the appeal*

62. The main issues for consideration and determination in the initial application before the UNDT were to assess whether the contested decisions were lawful. They comprised i) the decision to reassign AAG from the post of Chief/CS with the UNGSC in Brindisi, Italy, to the position of Chief of Section, Logistics, TMICC, RSCE, Entebbe, Uganda, as of 1 September 2020; and ii) the decision to place AAG on SLWFP pending management evaluation of the former decision.

63. Although the UNDT dismissed both applications, AAG's appeal does not seem to relate directly to the main determination in the UNDT Judgment, that is, the *reassignment*. Indeed, the remedy claimed in the appeal does not aim for the rescission of the reassignment, but the "placement into a P-5 or D-1 post commensurate with (AAG)'s skills, training, qualifications, and experience for which she has applied and been rostered".<sup>24</sup> However, the placement into such a post "for which she has applied and been rostered" was not the subject of the initial application, nor does the Appeals Tribunal have any knowledge of any non-selection of AAG to any other post having been contested, neither internally by means of management evaluation, nor by a formal application to the UNDT. In the section of the appeal form concerning the "relief claimed", AAG also made no reference to the dismissal of her claim relating to the SLWFP.

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<sup>23</sup> *Thiombiano v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-978, para. 29.

<sup>24</sup> The appeal also claims compensation in lieu, moral damages and "actual damages", as well as interest, "other redress as the UNAT deems fair and necessary". Alternatively, AAG requests that the case be remanded for the UNDT to be heard by a different Judge.

64. Only through a generous interpretation favouring AAG can the Appeals Tribunal consider that the relief claimed *indirectly* relates to the reassignment, since her placement into another P-5 or D-1 post would only be possible if the reassignment was rescinded. AAG's appeal hence suffers from a legal defect from the outset, as it tries to broaden the scope of the initial application to the UNDT, which was limited to contesting the reassignment, whereas the appeal goes beyond the reassignment, with requests for placement into a new P-5 or D-1 post. For this reason alone, the appeal could be dismissed on receivability grounds.

65. Despite the above and in the interests of justice, the Appeals Tribunal will examine the merits of the appeal, given the particular circumstances of the case and that the brief accompanying the appeal asserts that the UNDT erred when it found that the contested decisions were lawful.

*Merits of the appeal*

66. AAG has worked for the Organization since February 2007 in different locations: the Democratic Republic of Congo, Lebanon, New York, Mali, Brindisi, Valencia, and currently Uganda. While working in Brindisi, she and other management-level staff received threatening messages including an envelope containing a bullet. A PSRA was then undertaken by the UNDSS, leading to the conclusion that AAG's risk level was high and therefore her relocation was recommended in September 2018.<sup>25</sup>

67. The Administration then reassigned AAG to Valencia, Spain, in September 2018, and subsequently to MONUSCO, the Democratic Republic of Congo, during which she retained a lien on her position in Brindisi. Her stay in MONUSCO, initially for three months from 1 October 2018, was further extended after she applied for a position there, until 31 August 2020.

68. In her appeal, AAG did not challenge the earlier decisions to reassign her to any of the previous posts, neither to Valencia, nor to MONUSCO. These reassignments and relocations had been implemented as *temporary mitigation measures* following the recommendation by the UNDSS concerning her security. What AAG challenges in the present case is the decision to *permanently* reassign her from her position as Chief/CS, UNGSC, in Brindisi, Italy, to the position of Chief of Logistics, TMICC, RSCE, Uganda. She argues that the reassignment was

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<sup>25</sup> Impugned judgment, paras. 11-14 and 17.

unlawful because: i) the TMICC position in Entebbe was not suitable for her and would result in a regression in her career; ii) the security reason for not returning her to her post in Brindisi was outdated and not contemporaneous with the contested decision; iii) she was treated differently from the other staff member who had also received a death threat, since he was allowed to work at his own post remotely from his home country, whereas she was removed from her post.

69. Given the circumstances of the case, the Appeals Tribunal finds that the UNDT correctly determined that the measures taken by the Organization ensured AAG's safety.<sup>26</sup> In this regard, Staff Regulation 1.2(c) establishes a duty of care of the Organization towards its staff members. It stipulates the authority of the Secretary-General to assign staff members to any of the activities or offices of the United Nations. In exercising this authority, the Secretary-General should seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them.

70. The duty of care must be exercised with reasonable discretion, necessary for the managerial process to run, manage and operate the Organization. The Appeals Tribunal has repeatedly held that when judging the validity of the Secretary-General's exercise of discretion in administrative matters, as in the case of a reassignment, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The UNDT can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. However, it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Dispute Tribunal to substitute its own decision for that of the Secretary-General.<sup>27</sup>

71. AAG maintains that she lacks the experience to perform in a technical post such as the Chief of Logistics, TMICC, since she had been acting purely in managerial and administrative functions since 2016. In this respect, the UNDT found that, despite AAG's claim that she lacked professional experience in supply chain and logistics as required by the TMICC post in Entebbe, her PHP and cover letter for the D-1 Chief of Service, Supply Chain Management

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<sup>26</sup> *Ibid.*, para. 56.

<sup>27</sup> *Said v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-500, para. 40; *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 40.

position in the UNGSC confirmed that she had over 31 years of experience working within the United Nations system in different capacities dealing with logistics, administration and supply chain management. The Applicant's PHP further indicated that she possessed experience in the three main logistical areas for the TMICC post in Entebbe, namely, support to movement of goods and personnel in the region, management of the section's performance, and building partnerships. In the view of the UNDT, the TMICC position in Entebbe was therefore commensurate with AAG's stated skills and competencies.<sup>28</sup>

72. The Appeals Tribunal has reviewed the evidence relied upon by the UNDT and has no reason to differ from its conclusions. The cover letter of the PHP written by AAG indeed indicates that she has "extensive exposure at senior level in logistics operations, supply chain management, asset and inventory management", including "integrated supply chain, logistics support and asset management".<sup>29</sup> Furthermore, in an e-mail dated 10 August 2020 following up on the discussion about the options to laterally reassign AAG to a post suitable with her experience and skill set, she stated having "significant administrative and logistics/support experience (more than 31 years), including across a range of duty stations and Mission activities".<sup>30</sup>

73. Moreover, despite AAG's contentions and the preliminary UNDT Order suspending the decision to reassign her pending management evaluation, the Appeals Tribunal notes that there were persistent threats to her presence in Brindisi, even while she was no longer in Brindisi, but serving in MONUSCO. AAG herself indeed forwarded to the Acting Director, UNGSC, a new offensive and threatening e-mail she had received on 8 July 2019.<sup>31</sup> Also, the e-mail 1 July 2020 reveals that AAG had shared having received new threats by e-mail a few weeks before.<sup>32</sup>

74. The first PSRA dated 29 August 2018 reveals the following history of events at the time:

Over the last two years, the United Nations Global Service Centre (UNGSC) has undergone numerous transformational changes. In mid-2017, UNGSC was subject to a Civilian Staffing Review, and the months leading up to the Review saw a heightened

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<sup>28</sup> Impugned judgment, para. 55.

<sup>29</sup> Personal History Profile for [AAG], pg. 1 (printed on 16 July 2020).

<sup>30</sup> E-mail from AAG to ASG Saunders; Subject: Follow up to our discussion (10 August 2020).

<sup>31</sup> E-mail from AAG to Acting Director, UNGSC; Subject: FW: Bitch without breast, you must stay in the jungle (8 July 2019).

<sup>32</sup> E-mail from Director, UNGSC; Subject: Re: [draft] Confidential: Updated Security Risk Assessment for [AAG] (1 July 2020).

level of anxiety among staff at large, given the uncertainty associated with the outcome of this process. Staff concerns were compounded by the ongoing discussions surrounding the Global Service Delivery Model and the possible relocation of the Master Data Management function away from Brindisi. All of these events contributed to growing anxiety and concern from the workforce that significant personnel cuts would be experienced.

Although no jobs have been lost, various internal changes have resulted in the reprofiling and reclassification of a small number of positions, and consequently, increased anxiety amongst staff at large and particularly in the Supply Chain Service.

As a possible result of this, some individuals in management have received a substantial number of anonymous, threatening correspondence alleging deceit, incompetence, misconduct and abuse of authority. All such allegations have been appropriately referred. As of today, none of the organizational changes or initiatives have resulted in any job losses at the UNGSC and the heightened levels of anxiety experienced during 2017 have largely dissipated, leaving only a few, localized staff-related issues at the UNGSC.

Ms. (AAG), Chief Central Service, as part of the Senior Management Team has been privy to the organizational changes and decisions that may involve personnel changes. Since her arrival in Brindisi in September 2016, she has routinely received an escalation of personally directed threats.

(AAG) has been threatened in the following manner: letters, suspicious objects on her office desk, “hang-ups” and FACETIME calls, faeces on her vehicle, and being followed by a suspicious individual. The latest threat on or about 17 August 2018 was a letter addressed to her containing an ammunition round / bullet.

The threatening correspondence and actions have been escalating over the past few months and are clearly becoming more threatening, with the real potential for bodily harm. More specifically, the pattern analysis of these threats over time has shown a propensity for escalation; the messages are now bolder, and threaten personal harm. Whether or not these actions are intended only to intimidate or harass, the explicit threat suggested by a bullet sent through the mail must be taken very seriously (an organized crime message). The predictive analysis leads to the recommendation that (AAG) is in danger and should not be in the Brindisi area until such threats have been mitigated.

The Italian authorities are taking the threats seriously and have launched an official investigation. The Office of Internal Oversight Services has the correspondence above mentioned and plan to launch an investigation in parallel.<sup>33</sup>

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<sup>33</sup> Personal Security Risk Assessment for [AAG] (29 August 2018), pp. 3-4.



75. This first PSRA reached the conclusion that the security risk for AAG was high and therefore the final recommendation was that AAG should not operate or reside in the Brindisi area until further notice. Specifically, the PSRA noted that “(b)ased on the pattern analysis of past threats and incidents, the predictive analysis leans to a continued escalation of threats. The safety and welfare of (AAG) is in question. Both local Italian authorities and Base authorities should be notified and consulted to assist in the risk mitigation of the growing threats. Additionally, due to the recent threat and the connotations that such a threat in Italy manifests, it would be prudent for (AAG) not to operate or reside in the Brindisi area until further notice, to reduce her visibility and opportunities for personal targeting by the person/s who is/are sending these threats”.<sup>34</sup>

76. The second PSRA, dated 19 June 2020, revealed that the threats continued during the time AAG was in her temporary reassignment in MONUSCO. Specifically, it described the background and the situation as follows:

(AAG) is currently on a temporary assignment in MONUSCO (Congo). She was initially requested by MONUSCO for a period of three months commencing from late September/early October 2018. Subsequently, she was selected on a temporary assignment (following a competitive, temporary job opening) from January 2019. It was a competitive opportunity for which (AAG) was selected. Her temporary assignment ends on 30 June 2020 and she is expected return to her post at UNGSC Brindisi by 01 July 2020. She has not made any arrangements for a residence in Brindisi. She is planning to stay alone at the duty station.

There have been direct threats made against (AAG) associated with her employment at UNGSC, during her work at UNGSC Brindisi as well as after she left UNGSC for MONUSCO. (...)

During the period September 2016 - July 2019, (AAG) routinely received personally directed threats from unknown individual(s). Whether or not these actions were intended only to intimidate or harass, the explicit threat suggested by a bullet sent through the mail in August 2018 was taken very seriously. The overall security risk level for (AAG) was assessed as HIGH. The predictive analysis lead to the recommendation that (AAG) was in danger and should not be in the Brindisi area until such threats were mitigated. In September 2018, as a mitigation measure, (AAG) was temporary (for two weeks) moved to UNICTF Valencia, Spain.

The Italian authorities conducted an investigation while the OIOS conducted an investigation in parallel. The investigations have not discovered any perpetrator of the threats. On 19 May 2020, OIOS informed that, a) “The local Italian law enforcement

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<sup>34</sup> *Ibid.*, pp. 5-6.

authorities have inquired as best they can into the bullet that was posted to (AAG) but no leads identifying the person/s responsible for the mailing have been discovered”; b) “OIOS conducted a survey of some 222 UNGSC staff during January 2020 but no information was gleaned that would help to identify the person/s responsible for the offensive writings and/or threats against (AAG)”; c) “The OIOS investigation remains open pending the receipt of any information that helps identify the subject/s responsible for the reported unsatisfactory conduct”.

There were no reports on further information or occurrences with regard to the threats while (AAG) has been working in MONUSCO, but one threatening email from an autonomous individual on 06 July 2019. There is an evidence to suggest that, by any means, the perpetrator(s) has not intended to give up and want to continue their intimidation campaign against (AAG), threatening to assault her with a firearm if she returns to UNGSC Brindisi. Notwithstanding the perpetrator's identity remains unknown and no other specific information available regarding the time and place of a possible attack, it has been assessed that perpetrator(s) remain, with their intent and capabilities to resume targeting (AAG) upon her return to UNGSC Brindisi.<sup>35</sup>

77. This second PSRA contained final remarks considering the entire situation since the first events:

(...) Staff members are not specifically targeted as a result of their employment at the UN. All risks associated with crime in the country are on LOW level. (AAG) is targeted, however, due to her employment at the UN, while holding the Senior Management position in UNGSC. The specific threats against (AAG) manifested since September 2016 (beginning of her appointment as the Chief Central Service at UNGSC Brindisi) maintain their potential to get materialized in the form of an adverse event, specifically, to cause her death or injury. The analysis of past threats reveals their persistence and continued escalation. The perpetrator(s) remain unknown, i.e. they may be either outsiders, insiders or the both (if a group).

It has been assessed that the present risk for (AAG) has not changed since the previous PSRA, given her intention to return to UNGSC Brindisi. It remains HIGH. This updated PSRA maintains the recommendations outlined in the previous PSRA.

The security risk may be significantly lowered by way of reducing (AAG)'s exposure to the extant threats to the minimum. The most practical and effective option would be keeping (AAG) away from the duty station. However, resuming her work at UNGSC, even remotely (which could be a reasonable option given the current working arrangements related to COVID-19 outbreak response), won't eliminate the underlying reasons of the threats associated with her position at UNGSC. As such, they are likely to continue. It is anticipated that this measure would remove the target from the

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<sup>35</sup> UNDSS, Ms. [AAG] – Personal Security Risk Assessment (19 June 2020), pp. 1-2.

perpetrator(s) and possibly reduce the risk of physical harm to MEDIUM/LOW. It is assessed, therefore, that the termination of (AAG)'s work for UNGSC would yield better results – LOW risk (Option 1).

In case a decision is made that (AAG) returns to UNGSC Brindisi (Option 2), prevention and mitigation solutions both on the UN premises and outside should apply.

The following measures are recommended to be taken on the UN premises:

- a) Request ItAF to review their alert level in view of implementing screening of all persons and vehicles entering the base (including body, luggage).
- b) Implement RFID access control system for Building 254 (where (AAG)'s office located) and for the office.
- c) A CCTV camera to be installed in the corridor near the office, specifically to cover the entrance.
- d) Assign a UN Security Assistant to (AAG)'s office.
- e) UN Security to provide escort for (AAG) between the premises and residence.
- f) (AAG)'s official mobile phone number not to be broadcasted to UN personnel, but the office number only. Otherwise, the mobile phone number should be kept 'hidden'. Limited number of senior managers should be informed of these arrangements.

It is assessed that (AAG) would be more vulnerable to an attack outside the UN premises. This is mostly due to the apparent exposure, lack of physical barriers as well as limited involvement and resources of the law enforcement in protection operations of individuals in Italy. The Host Authorities (State Police) may offer increasing, as much as practical, surveillance and patrolling in the area of (AAG)'s residence.

Additional measures are recommended to (AAG):

- a) UN Security in conjunction with the Police to assist (AAG) to choose a residence, conduct residential security survey. Specific recommendations: apartment, first floor and above, fenced compound/ condominium, intercom at the entrance, reinforced entrance door, SRF on windows, CCTV (monitored by private security), burglar alarm/panic button, parking inside.
- b) Ensure that the residential security measures for Italy as well as those specific described above are implemented before (AAG) moves in.
- c) Consider hiring private security for the residence.
- d) Keep low profile, minimize person to person contact as practical as possible.
- e) Minimize movements out of residence and to be escorted by private security when going out.

f) Install an emergency button widget on her mobile phone's lock screen that she can tap in case she needs help.

g) Request changing the UN email address.

h) Apply telecommuting modality (work from home) as long as possible.

It is assessed that the proposed security measures would not reduce the security risk, i.e. it would remain HIGH.

(AAG) should be briefed on the PSRA outcomes and recommendations.<sup>36</sup>

78. The PSRA then presented two options as risk management strategies, considering that the risk at the time was high. In the first option, if AAG did not return to resume her work at UNGSC Brindisi, the projected risk would be “low”. In the second option, if AAG returned to resume her work at UNGSC Brindisi, the projected risk would remain “high”.

79. In light of the above, the Appeals Tribunal cannot agree with AAG’s contention based on the preliminary UNDT Order that the measures to attenuate the risk to medium or low if AAG was to return to UNGSC Brindisi were neither difficult to implement nor costly.<sup>37</sup> Apart from the fact that such measures would not have conformed to the main recommendation of UNDSS, that is, “that the termination of (AAG)’s work for UNGSC would yield better results”, they could not have eliminated or substantially reduced the risk to AAG’s personal security, which would still remain “high” particularly outside the United Nations premises. The UNDT hence did not err when it found that the contested decision was taken to protect AAG and was in the interest of the Organization.<sup>38</sup> Furthermore, the UNDT correctly found that “consultation does not mean that the staff member must consent to the reassignment”<sup>39</sup>, especially when the Administration performs its duty of care towards a staff member whose personal security risk is considered to be “high”.

80. AAG seems to regret the fact that she was not allowed to continue working from her post in Brindisi remotely and that this would have been good grounds not to be permanently reassigned to another post. In her appeal, AAG points out that she was on certified sick leave from 30 November 2020 (shortly after her permanent reassignment) until 4 January 2022, and she then began working as the Chief of Logistics, TMICC in Entebbe on a part-time basis, *remotely*. For AAG, this fact supposedly demonstrates that she could have been allowed to

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<sup>36</sup> *Ibid.*, pgs. 5-6.

<sup>37</sup> See AAG Order No. 165 NBI/2020, *op. cit.*, superseded by the impugned Judgment.

<sup>38</sup> Impugned judgment, para. 72.

<sup>39</sup> *Ibid.*, para. 57.

resume working at Brindisi remotely. However, this new claim is entirely inconsistent with her prior refusal to consider working remotely. AAG had previously declined the alternative of remote work at Brindisi straightaway when this was offered to her during the consultation process in 2020.<sup>40</sup> At the time, AAG claimed that “telecommuting with 6 (hours’) difference is not an option due to the nature of the CCS functions”. Her current claim relating to the possibility of her performing the role in Brindisi but working remotely is thus undermined by her own prior statements.

81. Likewise, AAG’s arguments of an alleged difference in treatment from the other staff member who received a bullet in an envelope and of ulterior motives are unconvincing. AAG has not been able to demonstrate any error in the UNDT’s finding that both staff members were temporarily moved from Brindisi to Valencia, Spain, as a temporary mitigation measure in September 2018. Also, the other staff member later telecommuted from his home country until his separation from the Organization, as early as January 2019, the same month that AAG applied for, and was appointed to, a D-1 post in MONUSCO.

82. In summation, the Appeals Tribunal is of the view that, after having spent two years outside her original duty station in Brindisi, during which time AAG had encumbered a D-1 position for which she had applied, AAG initially enquired about her return to her original position in Brindisi in May 2020.<sup>41</sup> A second risk assessment in anticipation of her return to Brindisi was then conducted on 19 June 2020 (around two years after the first PSRA), with the conclusion that the risk to her remained high.<sup>42</sup> Subsequently, a consultation to discuss her situation took place between the Organization and AAG, which included at least two meetings on 13 July and 3 August 2020, during which various courses of action were explored, including: i) extension of her temporary appointment in MONUSCO; ii) reassignment to an alternative position at UNSOS in Somalia; or iii) resumption of her duties in UNGSC, Brindisi, under a telecommuting arrangement, all of which were rejected by AAG. She also anticipated encountering a toxic environment had she resumed work in Brindisi then. AAG further stated

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<sup>40</sup> Impugned judgment, para. 59. See also E-mail from AAG to Director, UNGSC; Subject: Fwd: Meeting (15 July 2020).

<sup>41</sup> Impugned judgment, paras. 14-15.

<sup>42</sup> *Ibid.*, paras. 17 and 49.

that she was “not interested in staying in MONUSCO or in taking up the position in UNSOS given her long permanence in Africa and her health condition”.<sup>43</sup>

83. Hence, AAG’s contention that she was given extremely short notice of only one day before the effective date of the permanent reassignment became effective, and that she was not involved in any discussions is without any merit. Owing to the ordinary routine of its tasks, the Administration could not wait indefinitely for the risk to AAG to diminish before having another staff member fulfil the tasks of the post in Brindisi. Moreover, the evidence in the record shows that there was an extensive discussion regarding AAG’s possible return to Brindisi and the possible courses of action offered to her, both by means of video conferences (on 13 July and 3 August 2020) and exchange of numerous e-mails before the final decision to relocate her to the current position as Chief of Logistics, TMICC in Entebbe was made on 27 August 2020.

84. AAG further raises the issue of not having been selected for any of the 30 or more other posts she had applied for, which she perceives as a signal that the Administration had no intention of placing her in any position other than the TMICC post at Entebbe. However, given that the scope of the present application does not deal with non-selection to specific posts, the Appeals Tribunal cannot assess this matter. On another note, AAG’s contention that there was a significant delay in investigating the threats (which had started as early as November 2016, but the Organization only investigated in 2018), apart from falling outside the scope of her applications to the UNDT which are limited to the reassignment and the SLWFP, has no bearing on the outcome of the case and is, moreover, unfounded. The first PSRA referenced above reveals that, although there was previous threatening correspondence, the general level of anxiety in her workplace in Brindisi had remained the same in 2017 until the letter containing the bullet was addressed to AAG on 17 August 2018. The first PSRA concluded on 29 August 2018, which indicates a prompt investigation by the Administration to this serious threat.

85. In light of the above, the UNDT correctly held that the contested decision was lawful. The Organization was best placed in this instance to understand the legitimate managerial needs at these various posts, to evaluate the security risks to staff, and enjoyed a margin of appreciation in making this reassignment. Managerial decisions should be sustained provided they are free

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<sup>43</sup> *Ibid.*, paras. 59 and 60. See also E-mail exchanges with Director, UNGSC; Subject: Re: [draft] Confidential: Updated Security Risk Assessment for Ms. [AAG] (1 and 13 July 2020).

from invidious or improper motivations and are based upon the exercise of reason and proper judgment. AAG has failed to establish that the contested decision was tainted by improper motives or in any way unlawful. The undisputed facts sufficiently demonstrate that there was a rational connection between the information available to the manager, the reasons given for the contested decision and the purpose for which the decisions were taken. Moreover, AAG also acknowledged that the TMICC post is at the same grade and level as her previous one in Brindisi.

86. Finally, with regard to the SLWFP, AAG argues that she was never informed of how long this would last and only knew about it or its extension through an automatic message from UMOJA. AAG's arguments are groundless, as is her reliance on the UNDT Order No. 165 (NBI/2020) issued on 1<sup>st</sup> September 2020 which considered the reassignment unlawful. As discussed above, the UNDT Order, being only a *prima facie* appreciation of the facts and suspension of the reassignment decision pending management evaluation, was no longer effective following the issuance of the management evaluation decision itself. Moreover, the Order was granted as requested, that is, "pending management evaluation", which was the duration of the SLWFP "until further notice" communicated to her by means of the e-mail dated 2 October 2020.<sup>44</sup>

87. AAG has therefore failed to establish any error in the UNDT Judgment. The appeal, accordingly, fails in its totality.

88. Having said the above, the Appeals Tribunal is sympathetic to AAG's circumstances and plight.<sup>45</sup> While the contested decision is lawful and there is no remedy that this Appeals Tribunal can provide which could address her concerns, the parties have the ability to come to an informal resolution outside the scope of the appeal.<sup>46</sup>

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<sup>44</sup> E-mail from Chief Human Resources Officer, UNGSC to AAG (10 February 2020).

<sup>45</sup> See, e.g., Sick Leave Certification Request – Mental Health (30/08/2021), OIOS Memorandum; Subject: Closure notice on threats to staff members at the United Nations Global Service Centre at Brindisi, Italy (30 November 2020).

<sup>46</sup> AAG had responded "Yes" to the question as to whether she would be amenable to the Administration's efforts to an informal resolution for her grievance when she filed her request for management evaluation.

**Judgment**

89. AAG's appeal is dismissed, and Judgment No. UNDT/2021/142 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 28<sup>th</sup> day of October 2022 in New York, United States.

*(Signed)*

Judge Halfeld, Presiding

*(Signed)*

Judge Raikos

*(Signed)*

Judge Sandhu

Judgment published and entered into the Register on this 30<sup>th</sup> day of December 2022 in New York, United States.

*(Signed)*

Juliet Johnson, Registrar