



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

Judgment No. 2022-UNAT-1309

**Emma Reilly
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Dimitrios Raikos, Presiding Judge Graeme Colgan Judge Martha Halfeld
Case No.:	2021-1610
Date of Decision:	28 October 2022
Date of Publication:	30 December 2022
Registrar:	Juliet Johnson

Counsel for Appellant: Robbie Leighton

Counsel for Respondent: Noam Wiener

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. Before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), Ms. Emma Reilly, a Human Rights Officer in the Office of the High Commissioner for Human Rights (OHCHR and High Commissioner, respectively), contested the “[o]ngoing workplace harassment based on protected activity for reporting and objecting to wrongdoing by management”, including the decision to conclude an investigation of harassment only with managerial actions; and the “[v]iolation of staff member privacy rights and defamation of character”, including the related decision to state that her claims were found unsubstantiated in a press release.¹

2. By Judgment No. UNDT/2021/093 dated 30 July 2021, the UNDT partially granted the application and remanded the case back to the fact-finding panel for the sole purpose of interviewing the former Chief, Human Resources, OHCHR (Mr. V). The UNDT also granted Ms. Reilly compensation for moral damages in the amount of USD 3,000.

3. Ms. Reilly has filed an appeal.

4. For the reasons given below, we grant the appeal in part and remand the issues relating to specific elements of Ms. Reilly’s complaint of harassment and abuse of authority to the UNDT.

Facts and Procedure

The harassment complaint

5. Ms. Reilly started work with OHCHR at the P-3 level, in the Human Rights Council and Treaty Mechanism Division (HRCTMD), Human Rights Council Branch, in 2012.

6. From September to December 2013, she was on a temporary assignment with the Thematic Engagement, Special Procedures and Right to Development Division (TESPRDD).

7. From January to March 2014, she was on a temporary assignment with TESPRDD, Development and Economic and Social Issues Branch (DESIB), and from April to December 2014, on another temporary assignment with TESPRDD, DESIB.

¹ *Reilly v. Secretary-General of the United Nations*, Judgment No. UNDT/2021/093, para. 1.

8. From 6 January to March 2015, Ms. Reilly was on a new temporary assignment with TESPRDD, DESIB, Human Rights and Economic and Social Issues Section. From 15 April 2015 to 31 July 2015, namely during the 2015-2016 performance cycle, Ms. Reilly worked under the supervision of the Chief, Millennium Development Goals Section (MDGS), DESIB, who was her First Reporting Officer (FRO), and of the Chief, DESIB, who was her Second Reporting Officer (SRO), on a three and a half months' temporary assignment at the P-4 level.

9. From August 2015 to 31 October 2015, Ms. Reilly went on another P-4 level three-month assignment with the Methodology, Education and Training Section, TESPRDD, DESIB, under the supervision of a Human Rights Officer.

10. Ms. Reilly was on official mission in Guinea from November to 1 December 2015.

11. On 29 May 2015, Ms. Reilly wrote an e-mail to the Chief, Human Resources Management Service, United Nations Office at Geneva (UNOG), for the attention of the Central Review Body, to highlight alleged irregularities with the recruitment under vacancy announcement number 15-HRI-OHCHR-40485-R-Geneva (R) (Vacancy 40485), which she was encumbering on a temporary basis and to which she had applied. She received no response. She also reported the matter to the then Acting Chief of Office, Executive Office of the High Commissioner, by e-mail of 29 July 2015.

12. On 1 September 2015, Ms. Reilly requested management evaluation with respect to the above-mentioned recruitment exercise. She also filed with the UNDT an application for suspension of action in that respect. The vacancy announcement in question was withdrawn the next day. Ms. Reilly claims that, from that point, she was subjected to an increasingly hostile working environment in DESIB and, eventually, refused an extension of her temporary appointment in that section.

13. On 20 July 2016, Ms. Reilly filed a complaint of harassment and abuse of authority under Secretary-General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) against her FRO and her SRO. Said FRO and SRO had only supervised Ms. Reilly for a period of three and a half months although their names were in the performance evaluation record for the whole 2015-2016 evaluation cycle. According to the Administration, the designation of the FRO in question for the entire performance cycle, despite having only effectively supervised her for a limited time, was the result of extensive

discussions with Ms. Reilly, who objected to have a Human Rights Officer at the P-4 level as her FRO.

14. Ms. Reilly alleged in her complaint that following her request for management evaluation in connection with what she alleged to be an irregular recruitment in relation to Vacancy 40485, her FRO and SRO retaliated against her by: a. Requiring retroactive changes to her work plan and her FRO, failing to conduct a mid-point review and refusing her requests to clarify her terms of reference; b. Cancelling a temporary post against which Ms. Reilly had been selected as soon as her name was associated with the post; and c. Creating and encouraging a hostile working environment, notably by permitting Ms. Reilly's exclusion from meetings concerning topics included in her terms of reference and making *ad hominem* and gender-based personal attacks.

15. On 28 August 2016, Ms. Reilly was informed that a fact-finding panel would be appointed to review her complaint. The Panel was appointed on 2 September 2016 by the High Commissioner, and consisted of the Chief, Monitoring Evaluation, Risk Management and Statistical Verification Division, Division of Conference Management, UNOG (Chief ME) (Mr. L), and the Chief, Governance and Administration, Information and Communication Technology Services, UNOG (Chief GA).

16. The Panel contacted Ms. Reilly on 6 September 2016. On the same day, Ms. Reilly objected to the composition of the Panel to the Chief, Programme Support and Management Services (PSMS), OHCHR, on the ground that one of its members, namely the Chief ME reported to the Director, Division of Conference Management, UNOG (Ms. V), who was the spouse of Mr. V, and who had specifically been referred to in her complaint.

17. Ms. Reilly was informed on the same date that the Panel would be maintained as Ms. V would not be involved in the investigation nor have access to the complaint. She was also informed that Mr. V, who was not the subject of the investigation, had retired from the Organization on 31 August 2016 and that, therefore, it was determined that there could be no actual or perceived conflict of interest. The Panel interviewed nine persons, including the subjects of the allegations and Ms. Reilly, who was interviewed twice. After the Panel interviewed Ms. Reilly for the first time on 13 September 2016, she reiterated her concern that the spouse of Mr. V was the SRO of one of the Panel members. That member informed Ms. Reilly on 19 September 2016 that the Panel would be maintained.

18. The Panel submitted its report to the High Commissioner on 6 December 2016 (investigation report). Ms. Reilly, her FRO and her SRO were informed on 5 January 2017, by memorandum dated 30 December 2016, of the High Commissioner's decision to close Ms. Reilly's complaint with only managerial actions aimed at reminding Ms. Reilly's FRO and SRO of their duty to ensure the proper and timely application of the performance management framework envisioned in ST/AI/2010/5.

The press release

19. In 2015 and 2016, Ms. Reilly made requests for protection from retaliation to the Ethics Office under Secretary-General's Bulletin ST/SGB/2005/21 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations). She alleged retaliation by the Chief, Human Rights Council Branch, OHCHR, her FRO, her SRO, and Mr. V following reports of misconduct she had made between March 2013 and July 2016.

20. By memorandum dated 7 October 2016, the Ethics Office determined that Ms. Reilly had engaged in some protected activities but that there was no *prima facie* case that the protected activities were a contributing factor in causing the alleged retaliatory acts. However, the Director, Ethics Office, agreed on 13 October 2016, to reopen Ms. Reilly's request for protection.

21. On 19 January 2017, a journalist e-mailed Ms. Reilly claiming to have Ethics Office documents regarding her submission to the Ethics Office about i) a disclosure, dating to 2013, that OHCHR had allegedly provided to the Chinese delegation names of human rights defenders planning to travel to attend the Human Rights Council, and ii) allegations that a senior manager had accepted favours with financial value from the Moroccan ambassador, as well as disclosure of alleged corrupt recruitment exercises, including the one contested by Ms. Reilly.

22. Ms. Reilly immediately informed the Ethics Office as well as the Communications Department of OHCHR and requested an investigation by the Office of Internal Oversight Services (OIOS). Ms. Reilly expressly raised her concerns with the Ethics Office that her name may appear in the press and asked whether she could be authorised to speak to the press.

23. On 1 February 2017, the "Inner City Press and Blog" published the above-mentioned 7 October 2016 confidential memorandum from the Ethics Office referencing allegations raised by Ms. Reilly to the Ethics Office and OIOS concerning the provision of names of Chinese Human Rights defenders by OHCHR to the Chinese government. The article also mentioned that

Ms. Reilly had suffered from retaliation at OHCHR. A similar article was also published on the same day on the website of the Government Accountability Project (GAP).

24. On 2 February 2017, OHCHR published a press release concerning the practice of providing names of human rights defenders to the Chinese delegation. The press release also referenced the two above articles where Ms. Reilly was named and stated: “She has made allegations against various managers. These have been taken seriously, leading to two separate independent investigations that have been carried out to determine whether or not there is any substance to her allegations. In both instances, the claims made by the staff member were found to be unsubstantiated.”

25. On 20 February 2017, Ms. Reilly formally requested correction of the press release, *inter alia*, in light of the alleged impact on her professional situation and chances of promotion.

26. On 4 March 2017, Ms. Reilly requested management evaluation of the decision to close her harassment complaint and to issue the press release.

27. On 14 March 2017, the High Commissioner informed Ms. Reilly that he would not retract or correct the press release.

28. The Under-Secretary-General for Management responded to Ms. Reilly’s request for management evaluation by letter of 11 May 2017, upholding the decision to close Ms. Reilly’s complaint with managerial action, and finding that her request with respect to the press release was not receivable *ratione materiae*.

Proceedings before the UNDT and Judgment

29. On 17 July 2017, Ms. Reilly who was then represented by counsel, filed the application contesting “[o]ngoing workplace harassment based on protected activity for reporting and objecting to wrongdoing by management’, including the decision to conclude an investigation of harassment only with managerial actions; and ... ‘[v]iolation of staff member privacy rights and defamation of character’, including the related decision to state that her claims were found unsubstantiated in a press release”.²

² *Ibid.*

30. The Administration submitted its reply on 15 September 2017, after having been granted an extension of time by the UNDT. The reply contained three annexes submitted *ex parte*, namely the investigation report and the letters sent to the FRO and SRO by the High Commissioner following the investigation. These annexes were subsequently released to Ms. Reilly on an under-seal basis, together with the witness statements annexed to this report.

31. On 13 April 2019, Ms. Reilly provided particulars of the allegations she made in her complaint, together with a revised list of annexes as directed by Order No. 22 (GVA/2019) of 5 April 2019. On 15 April 2019, the Administration filed a list of annexes to the investigation report, asking the UNDT to identify which ones the Administration was obliged to provide to comply with Order No. 22 (GVA/2019), where the UNDT had directed him to file the annexes to the investigation report, on an *ex parte* basis. The Administration also objected and raised concerns to the full investigation report being shared with Ms. Reilly, even in a redacted form.

32. By e-mail of 16 April 2019, Ms. Reilly informed the UNDT Registry that her Counsel had withdrawn from the case, at her request, and that she would be self-represented from then on. On 29 April 2019, Ms. Reilly responded to the Administration's submissions of 15 April 2019 and submitted additional evidence. The UNDT held a case management discussion (CMD) on 16 May 2019 to prepare for the hearing on the merits.

33. On 24 May 2019, the Administration submitted additional documents concerning the appointment of the Panel and the drafting of the press release and made submissions on the issues identified by the UNDT at the CMD.

34. A hearing on the merits was held before Judge Downing on 11 and 12 June 2019, where evidence was heard from three witnesses, i.e. the Chief ME as a member of the investigation panel; the Chief GA, as member of the investigation panel; and Ms. Reilly. On 12 June 2019, a small portion of the hearing was conducted in Ms. Reilly's absence during which time the Administration revealed information for "counsel's eyes only" about the OIOS conclusions following its investigation regarding Ms. Reilly's complaint against Mr. T. While counsel was permitted to view the documents, he was not permitted to retain a copy, and the UNDT ordered that Ms. Reilly should not be informed of the contents of the document nor discussions that had taken place during that part of the hearing.

35. Additionally, the evidence provided by Ms. Reilly's civil partner in Case No. UNDT/GVA/2018/099 was included in the record of the case, pursuant to Order No. 43 (GVA/2019).

36. The UNDT was scheduled to hear Ms. Reilly's treating physician in Case No. UNDT/GVA/2019/099 and to include his testimony in the present case. A summons had been issued in this respect on 28 May 2019 at his request, transmitted through counsel for Ms. Reilly. However, Ms. Reilly's treating physician refused to appear on the ground that he did not receive a summons directly from the UNDT by registered mail and with sufficient notice. Consequently, he was not heard.

37. On 13 June 2019, Ms. Reilly submitted additional medical evidence and a witness statement, which were already available in Case No. UNDT/GVA/2019/099.

38. On 21 June 2019, the Administration also submitted additional evidence related to the drafting of the press release as directed by the UNDT during the hearing.

39. On 10 July 2019, in Decision 73/408C, the General Assembly appointed four new half-time judges. In accordance with General Assembly Resolution 73/276 of 7 January 2019 (Administration of justice at the United Nations), the mandate of the *ad litem* judges of the Dispute Tribunal, including that of Judge Downing, the Judge initially assigned to the case, came to an end effective 10 July 2019. The case was reassigned to Judge Bravo on 12 July 2019.

40. By Order No. 55 (GVA/2019) of 17 July 2019, Judge Bravo informed the parties that she was inclined to undertake a review of the documents and written submissions filed by the parties and to listen to the audio recordings of the hearing, before deciding as to whether she was in a position to decide on the matter. She invited the parties to raise any objection they may have to her listening to the audio-recordings of the hearing by 2 August 2019. On 29 July 2019, the Administration indicated that it had no objection to Judge Bravo listening to the audio-recordings. On 30 July 2019, Ms. Reilly *inter alia* objected to the reassignment of the case to Judge Bravo. She nevertheless informed the UNDT that if the case was eventually to remain with Judge Bravo, she would have no objection to her listening to the audio recordings of the hearing.

41. On 5 August 2019, the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) informed the Dispute Tribunal that Ms. Reilly had appealed *inter alia* Order No. 55 (GVA/2019). Proceedings before the UNDT were suspended pending adjudication of Ms. Reilly's appeal.

In December 2019, the Appeals Tribunal published Judgment No. 2019-UNAT-975 dismissing Ms. Reilly's appeal and affirming Order No. 55 (GVA/2019). The proceedings before the UNDT thus resumed.

42. By Order No. 82 (GVA/2020) of 27 July 2020, the UNDT ordered the parties *inter alia* to file closing submissions by 27 August 2020 on specific points. On 29 July 2020, Ms. Reilly appealed Judgment No. UNDT/2020/097, issued on 24 June 2020 in relation to Case No. UNDT/GVA/2018/099, requesting *inter alia* that her matters be remanded to the UNDT for consideration by a Judge other than Judge Bravo. On 9 August 2020, she filed a "Motion to submit further evidence, for access to all evidence on record, for disclosure of evidence by the Respondent, and for extension of time limit for closing submissions".

43. By Order No. 88 (GVA/2020) of 19 August 2020, the UNDT suspended proceedings pending the outcome of Ms. Reilly's appeal against Judgment No. UNDT/2020/097. In May 2021, by Judgment No. 2021-UNAT-1079, UNAT dismissed Ms. Reilly's appeal and affirmed Judgment No. UNDT/2020/097.

44. By Order No. 109 (GVA/2021) of 14 June 2021, the UNDT addressed *inter alia* Ms. Reilly's motion of 9 August 2020. It found that the case was fully informed and decided to close the pleadings and to adjudicate the matter on the papers before it.

45. On 30 July 2021, the UNDT issued Judgment No. UNDT/2021/093. The UNDT found that the first part of the press release, which addressed OHCHR's policy on the release of the names of individuals slated to participate in OHCHR meetings, was not a reviewable administrative decision. The UNDT held that the second part of the press release, in which OHCHR addressed the allegations made by Ms. Reilly (which the UNDT considered to be the ST/SGB/2008/5 investigation and the "investigation" into her retaliation complaint) did constitute a reviewable administrative decision but found that there was no evidence of any reputational harm exclusively emerging from it and no liability on the part of the Organization. The UNDT further found that the panel had erred by not seeking to interview Mr. V, but had otherwise adequately executed its mandate to investigate Ms. Reilly's allegations. The UNDT partially granted the application and remanded the case back to the fact-finding panel for the sole purpose of interviewing Mr. V. The UNDT also granted Ms. Reilly compensation for moral damages in the amount of USD 3,000. The UNDT rejected all other claims and remedies.

46. On 28 September 2021, Ms. Reilly's counsel filed an appeal of the Judgment with UNAT. That same day, counsel also filed a motion seeking leave to file additional pleadings to address additional evidence, on grounds that the evidence was highly relevant to the case and that in order to comply with the UNDT Order not to disclose the content of the evidence to Ms. Reilly, yet to represent her interests before the UNAT, he found it necessary to prepare an appeal brief shared with Ms. Reilly that makes no reference to this material as well as an additional pleading, which would not be shared with Ms. Reilly, addressing the content of the evidence.

47. On 25 October 2021, UNAT issued Order No. 429 (2021) dismissing the motion on grounds that counsel had no standing to file a submission on behalf of his client without his client's consent to the content of the filing. UNAT ordered that counsel refile one consolidated appeal brief, accessible to his client, which should address how this particular issue impacted her argument on the evidence and procedure before the UNDT and his capacity to represent his client given Ms. Reilly's inability to know or be completely aware of the contents of the relevant evidence and arguments pertaining to that evidence.

48. On 8 November 2021, counsel for Ms. Reilly filed a consolidated appeal that exceeded the page limits set forth in the UNAT Rules of Procedure. Following the advice of the UNAT Registry, on 15 November 2021, he filed a motion requesting leave to file an appeal that exceeds the page limits set forth in the Rules of Procedure. By Order No. 433 (2021) dated 6 December 2021, UNAT granted the motion, allowing each party to file a 17-page brief. On 7 December 2021, the UNAT Registry transmitted the appeal to the Administration which filed its answer on 7 February 2022.

Submissions

Ms. Reilly's Appeal

49. The UNDT erred in finding that the first part of the press release was not reviewable. The UNDT should have found that the entire press release was related to her terms of appointment because the purpose of the press release was to defame her. OHCHR misrepresented whether it had disclosed information to the Government of China with the express purpose of negatively reflecting on Ms. Reilly, who following the publications by GAP and ICP, had become known for her allegations regarding the OHCHR practice at the time regarding human rights defenders

appearing before the Human Rights Council. Essentially, the last paragraph of the press release depicts Ms. Reilly as a serial complainer whose allegations have no substance. The misrepresentation was important evidence as to the motive for the last paragraph, and during hearings Judge Downing admitted into evidence a witness statement from one of the individuals, whose name was given to the Chinese Permanent Mission in March 2013, testifying to the falsity of the press release regarding the policy. The UNDT erred in law by excluding this relevant evidence from its review.

50. The UNDT erred by finding that Ms. Reilly's reputation was not harmed because her name and actions had already been made known by the GAP and ICP publications. However, because the GAP and ICP publications described her positively, they did not harm her reputation, while the press release described her negatively, and therefore damaged her reputation. Furthermore, the UNDT erred in finding that the press release did not breach her right to confidentiality. Contrary to the holding of the UNDT, the administrative issuances that address investigations emphasize the necessity to maintain the confidentiality of materials related to investigations.

51. The UNDT erred in fact, law and failed to exercise its jurisdiction by not reviewing the accuracy of the last paragraph of the press release by reference to the second investigation. This allowed for the manifestly unreasonable finding that "both investigations" found complaints "unsubstantiated" was accurate. The press release was inaccurate when it stated that two investigations, which had been undertaken pursuant to Ms. Reilly's complaints, had determined that her complaints were unsubstantiated. The second investigation referred to in the press release determined that the allegations she had made were substantiated. The parties agreed on the issue of which investigations were referenced in the press release. Despite this issue being clear and significant argument and evidence having been heard, the UNDT inexplicably chose to ignore that investigation and its conclusions.

52. During the hearing of Ms. Reilly's case a small portion of the hearing was conducted in her absence during which time the Administration revealed information about the OIOS conclusions following this second investigation. The parties had agreed this issue was relevant to the question of whether the press release was accurate in stating that her allegation was "unsubstantiated". At the Administration's suggestion, Ms. Reilly agreed to the material being disclosed to her counsel only and arguments regarding that material being heard *in camera* with Ms. Reilly not present. Ms. Reilly's agreement to this modality of disclosure was expressly on the basis that her counsel would be permitted to advance arguments regarding that material. This was agreed by the

Administration and the UNDT. Ms. Reilly continues to consent to her counsel making arguments regarding that material even if she cannot be aware of the nature of such and is concerned that this material appears now to have been essentially excluded from proceedings as the result of her consent to a disclosure modality proposed by the Administration on completely different terms.

53. Ms. Reilly requests that, given the ruling that her counsel cannot advance arguments on appeal regarding this material, that the material be disclosed on an “under seal” basis. Ms. Reilly notes that no issue was taken with disclosing the investigation report concerning her ST/SGB/2008/5 complaint on this basis and considers it arbitrary that a different modality is required for the investigation report regarding her second complaint. Given that OHCHR chose to address the outcome of this investigation in a press release concerning Ms. Reilly it should not be available to them to at once argue that the press release was accurate, while at the same time not disclosing in a usable fashion what conclusions were drawn by OIOS in relation to that material.

54. While the investigation report should be dispositive of the issue as to whether Ms. Reilly’s second complaint was found “unsubstantiated” it remains clear, as agreed between the parties, that the investigation referenced in the press release were the ST/SGB/2008/5 one and her separate complaint. The fact that a whole separate hearing was required to address the outcome of her second complaint demonstrates that the investigation referenced in the press release was the one into her second complaint. It would be impossible for the press release to have referenced Ms. Reilly’s Ethics Office request as that request did not result in an investigation and it had not been closed at the time of the press release. In choosing to interpret the press release as referencing the Ethics Office request when it speaks of two investigations the UNDT ignored all evidence and arguments by both parties during the proceedings, the express contemporaneous words of one of those drafting the press release, as well as the evidence and *in camera* hearing where the parties discussed the outcome of the second complaint. The Judgment ignored the relevance of the investigation into Ms. Reilly’s second complaint which represents an error of law and fact resulting in a manifestly unreasonable decision.

55. The UNDT erred in law in finding investigative findings are no longer confidential after the investigation report has been finalized. Ms. Reilly cited Section 3 of ST/SGB/2005/21, Section 10.1 of ST/AI/2017/1, Section 5.2 of ST/SGB/2008/5 and OHCHR’s own SOP on confidential documents to demonstrate that information regarding her complaints of misconduct

was confidential and should not have been included in the press release. The UNDT's conclusion that following the completion of an investigation report findings are no longer confidential is unfounded and runs clearly contrary to the UNDT's own decision to disclose information concerning the investigation report into Ms. Reilly's second complaint on a "for counsel's eyes only" basis discussed in an *in camera* hearing with Ms. Reilly excluded.

56. The UNDT erred in law and failed to exercise its jurisdiction by not addressing the allegation of conflict of interest on the part of Mr. V and erred in fact leading to a manifestly unreasonable decision by concluding he was not involved in the treatment of Ms. Reilly's ST/SGB/2008/5 complaint. The UNDT also erred in finding no conflict of interest on the part of Mr. L, and by stating that it had been demonstrated that he was not within the reporting lines of the Chief ME, the spouse of Mr. V. In fact, it was established by documentary evidence and Mr. L's own sworn testimony that the Chief ME was his SRO. Mr. L breached due process by not interviewing the husband of his SRO during the investigation. This meets the test for conflict of interest. Mr. L concluded no conflict existed relying on the determination of the Administration, and more specifically Mr. W, a named witness in the complaint. Ms. Reilly further alleged conflict of interest deriving from Mr. V's involvement prior to the investigation. Mr. V was named in the complaint by title and the office he headed was referenced 14 times. Yet, he was tasked to take action on the complaint. Contrary to the findings of the UNDT, Mr. V was contacted by the UNOG Legal Department regarding the Panel composition. Mr. V's response indicates a conversation took place with the UNOG Legal Department in which it was decided to contact Mr. L.

57. The UNDT erred in fact and law in evaluating the investigation regarding the recruitment against Vacancy 40485. The Panel did not adequately question the witnesses it interviewed about the recruitment process for Vacancy 40485 and, therefore, did not make adequate findings about that process. Mr. D created an "administrative fiction" by employing Ms. W against a different post from the one whose functions she performed specifically to render her eligible for recruitment on a fixed-term basis. Mr. D's evidence to the Panel was that Ms. W worked as a maternity cover until the return of the post's incumbent. The maternity cover was for exactly the post advertised on an FTA basis for which Ms. W should not have been eligible. The evidence of Mr. D was that Ms. Reilly did not perform the functions of the maternity cover, but that Ms. W did. Investigators did not ask Mr. D a single question regarding the post against which Ms. W was recruited, thus effectively failing to investigate this issue.

58. The UNDT erred in law and failed to exercise its jurisdiction by holding that Ms. Reilly did not provide sufficient evidence to the Panel, or to the UNDT, to support her allegations regarding the cancellation of the temporary vacancy, exclusion from meetings, verbal harassment, or bad faith related to her performance evaluation when these issues fell squarely in the scope of review of the UNDT case.

59. Ms. Reilly asks that UNAT grant her appeal and vacate the UNDT Judgment. In case of a remand, she asks that the remand be made to a judge other than Judge Bravo. With respect to the press release, Ms. Reilly asks that the UNDT order that a correction of the public record be broadcast to the same individuals with whom the original defamatory press release had been shared. Noting that defamatory public statements regarding a staff member cause compensable harm, Ms. Reilly seeks an order for compensation commensurate with that in *Maslei*, being six months' net base pay. In support of her request, she has provided medical reports. She also points to evidence she and her partner gave regarding the extent of that harm. As to her ST/SGB/2008/5 complaint, she requests an order for the investigative findings to be vacated and the complaint to be re-investigated by an alternative panel. Ms. Reilly notes the similarity between her case and that of *Belkhabbaz* where USD 10,000 was deemed appropriate compensation. She requests a commensurate order.

The Secretary-General's Answer

60. The UNDT correctly held that the Panel's findings were well-founded and that its procedures were sound, but for not having sought to interview one additional witness. The UNDT's review of the Panel's investigation was conducted in accordance with UNAT precedent. The UNDT reviewed the Panel's investigation, including the documents that had been made available to it and the interviews that it had conducted. The UNDT examined whether the Panel had conducted the investigation in accordance with the procedures set forth in ST/SGB/2008/5, whether it had properly addressed the allegations in the complaint, and whether its findings were based on the evidence that it had gathered. The UNDT concluded that, apart from the failure to interview Mr. V, the Panel's investigation complied with ST/SGB/2008/5.

61. There is no merit to Ms. Reilly's contention that Mr. L could not act impartially and independently as a panel member because his SRO, Ms. V, was married to Mr. V. The UNDT found that the evidence did not support Ms. Reilly's contention that Mr. V was involved in the selection of the Panel or the formulation of its terms of reference, determined that Mr. V had retired before

the investigation commenced, and observed that Ms. V was not within Mr. L's reporting lines. While Ms. Reilly argues that the UNDT's reasoning is flawed because Ms. V was Mr. L's SRO and because Mr. V was consulted as to possible candidates for the Panel, the most important fact remains that Mr. V was not the subject of the investigation. Mr. V was, at most, a witness, and not a target of the investigation. The UNDT was, therefore, correct to hold that the mere fact that Mr. L's SRO, who was not, herself, involved in the investigation, was married to a potential witness who was not a subject of the investigation, was not enough to create a conflict of interest or invalidate the findings of the investigation.

62. Moreover, the UNDT also correctly found that the Panel adequately addressed Ms. Reilly's allegations related to Vacancy 40485. Ms. Reilly's claim that the Panel did not adequately question the witnesses it interviewed about the recruitment process for Vacancy 40485 and, therefore, did not make adequate findings about that process is misplaced because the recruitment process for Vacancy 40485 was outside the scope of the Panel's investigation. The scope of the Panel's investigation was the alleged retaliation Ms. Reilly had claimed to have suffered following the cancellation of the recruitment process. While the recruitment process to Vacancy 40485 formed the background to the complaint, it was not the conduct of Ms. Reilly's FRO and SRO in that recruitment process that was the subject of the Panel's investigation, but rather the conduct of those individuals with respect to the cancellation of that recruitment process.

63. The UNDT correctly found that Ms. Reilly did not provide evidence to support her allegations regarding the cancellation of the temporary vacancy, exclusion from meetings, verbal harassment, or bad faith related to her performance evaluation. The UNDT addressed a group of allegations made by Ms. Reilly by holding that she did not provide sufficient evidence to the Panel, or to the UNDT, to support these allegations. Thus, the UNDT dismissed, altogether for lack of evidence, Ms. Reilly's claim that the temporary vacancy had been cancelled because of her candidacy, rather than because of funding, as claimed by the Administration. Similarly, the UNDT dismissed Ms. Reilly's argument that the Panel did not adequately investigate her claim that she had been excluded from work meetings and subject to verbal abuse as a form of harassment, and that the irregularity regarding her performance evaluation had been in bad faith, finding that the Panel had adequately addressed Ms. Reilly's allegations.

64. There is no merit to Ms. Reilly's claim that the UNDT failed to exercise its jurisdiction by not addressing each of her claims separately. The UNDT clearly found that the Panel had interviewed relevant individuals based on relevant documentation. It also clearly held, in

accordance with UNAT jurisprudence, that where Ms. Reilly had provided no grounds for her allegations, the Panel was not under an obligation to engage in a fishing expedition on her behalf. The UNDT properly reviewed the work of the Panel and came to the reasonable conclusion that the Panel had properly conducted its investigation. The UNDT, therefore, correctly held that the Panel's findings were well-founded and that its procedures were sound, but for not having sought to interview one additional witness.

65. The UNDT correctly denied the remedies requested by Ms. Reilly regarding the press release. Ms. Reilly's arguments that her reputation was not harmed by the GAP and ICP publications which described her positively, while the press release described her negatively and therefore damaged her reputation, that the press release breached her right to confidentiality, and that the press release was inaccurate when it stated that two investigations, which had been undertaken pursuant to Ms. Reilly's complaints, had determined that those complaints were unsubstantiated, are misplaced because they fail to address the context in which the press release was issued. When Ms. Reilly argues that the UNDT erred by finding that the publication of her name by GAP and ICP could not have damaged her reputation because GAP and ICP covered the story positively, she is attempting to argue that she is entitled to positive coverage that portrays OHCHR in a negative manner, but that any comment by OHCHR that questions the negative assertions made against it is unlawful and defamatory towards her.

66. Ms. Reilly attempts to strip the press release of its highly relevant context in a similar way when she argues that OHCHR breached confidentiality obligations when it was noted in the press release that the investigations into complaints by a staff member were unsubstantiated. Section 5.2 of ST/SGB/2008/5 provides that confidentiality should be preserved to the "maximum extent possible". The maintenance of confidentiality to the maximum extent possible, after the information had already been made public by ICP and GAP, was exactly the way the press release was crafted, balancing OHCHR's needs to promptly inform the public in response to extremely serious allegations, and the requirement to protect the confidentiality of the investigations. As correctly noted by the UNDT, the responsibility for publicity Ms. Reilly had received lay with GAP and ICP. Furthermore, the argument that the press release revealed confidential information that she would have preferred to keep private is contrary to her conduct on social media, where she continues to post extensive details of this dispute.

67. Finally, the second investigation failed to find sufficient evidence of the central and most serious allegation of a conflict of interest or collusion between the staff member and the ambassador of a Member State, as Ms. Reilly had alleged. The second investigation did conclude that, nevertheless, the staff member had not requested authorization to engage in outside activities. This inaccuracy does not serve, however, to support the argument that the press release damaged Ms. Reilly's reputation or breached the Organization's confidentiality obligations. A press release cannot be expected to maintain the level of precision of a court submission. Thus, the UNDT correctly found that the press release did not cause Ms. Reilly undue reputational harm.

68. The UNDT correctly found that Ms. Reilly's claims regarding the first part of the press release were not receivable because that part of the press release did not address her terms of appointment. Ms. Reilly's argument that the UNDT should have found that the entire press release was related to her terms of appointment because the purpose of the press release was to defame her is unfounded. The press release was not about Ms. Reilly, it was about OHCHR's good name and about promptly setting the public record straight in light of the misleading publications by GAP and ICP. The first part of the press release was aimed at rebuilding the confidence of individuals who worked with OHCHR and of Member States that collaborated with OHCHR. For this reason, the UNDT correctly held that the first part of the press release, which addressed OHCHR practices regarding the confirmation to various Member States, including China, of accreditation of delegates of non-governmental organizations attending meetings of the Human Rights Council, had no bearing on Ms. Reilly's terms of appointment. In view of the foregoing, the UNDT correctly denied the remedies requested by Ms. Reilly regarding the press release.

69. The UNDT did not commit any errors in procedure, such as to affect the decision of the case. The UNDT had authority not to hear additional witnesses or arguments. Ms. Reilly challenges Order No. 109 (GVA/2021), in which the Judge Bravo held that the case was fully briefed, and that upon review of the documentation, the examination of the witnesses during the hearings, and the parties' concluding oral arguments, the UNDT was ready to issue its judgment. Ms. Reilly has contested Judge Bravo's assignment to her cases multiple times, claiming that Judge Bravo could not adjudicate her cases because of alleged conflicts of interest. The UNAT had the opportunity to hear Ms. Reilly's allegations that the procedure was flawed as a consequence of

Judge Bravo's appointment twice already.³ Both times, the UNAT rejected Ms. Reilly's arguments, and she should be collaterally estopped from raising them *de novo*.

70. Moreover, as a consequence of her numerous allegations of conflicts of interest, the UNDT had to suspend the proceedings multiple times and could only continue after the confirmation that Judge Bravo did not have a conflict of interest. In Order No. 82 (GVA/2020), the UNDT instructed the parties to submit their closing statements in writing. However, after the last time the proceedings were suspended, this time for nine months, following Ms. Reilly's appeal of Judgment No. UNDT/2020/097, the UNDT reconsidered Order No. 82 (GVA/2020), and taking into account the long delays, it determined that it could adjudicate the case based on the evidence before it, including the recordings of the parties' concluding oral arguments. As to Ms. Reilly's contention that the UNDT violated her due process rights when it decided that the recordings of the oral arguments and the written documentation were sufficient for the adjudication of the case and when it consequently did not allow her to submit additional pleadings in writing, she should be estopped from making such arguments, as she previously argued in response to the UNDT Order No. 73 (GVA/2020) that the UNDT should not hold any more hearings or hear any additional evidence.

71. Finally, UNAT affords the UNDT broad discretion in the management of the hearings before it. In the instant case, the UNDT was extensively briefed on the dispute. The Joint Bundle of documents submitted by the parties comprised 166 annexes, spanning 830 pages. The evidence comprises of 13 hours of recordings of hearings. In the course of the proceedings, the UNDT issued 24 orders on case management and the parties themselves filed dozens of interlocutory submissions. Considering this mass of evidence and pleadings, and considering the delays created by Ms. Reilly's repeated attempts to remove Judge Bravo from the adjudication of her case, it was within the UNDT's discretion to decide that the fair and expeditious resolution of the case justified adjudicating the case based on the material already before it.

72. The UNDT did not violate Ms. Reilly's procedural rights by requesting the Administration to comment on her request to be added as co-counsel. Ms. Reilly provides no explanation as to why the order by the UNDT requesting the Administration to comment exceeded the UNDT's mandate to manage its cases, or why it was a violation of due process rights. Absent any such

³ Ms. Reilly has made two separate motions to the UNDT President requesting to recuse Judge Bravo from the case, has filed an interlocutory appeal contesting UNDT Order No. 55 (GVA/2019), and has filed a collateral appeal of Judgment No. UNDT/2020/097 in which she, again, appealed the decision not to recuse Judge Bravo.

explanation her arguments on this matter must fail. Furthermore, it was properly within the UNDT's discretion not to disclose to Ms. Reilly the conclusions of the second investigation. During the hearing that took place on 12 June 2019, the UNDT instructed that the report on the second investigation be disclosed to Ms. Reilly's counsel, but not to Ms. Reilly. She claims that because the results of the second investigation were mentioned in the press release, she had the right to receive materials related to that investigation. However, Ms. Reilly has no right to receive confidential materials related to reports of alleged misconduct by other staff members. Ms. Reilly's counsel was made privy of the conclusions of the second investigation at an *in camera* hearing before the UNDT. The UNDT thereby reconciled in its discretion, competing imperatives of fairness and of the judicial process and confidentiality of the investigative process.

73. The Secretary-General asks that UNAT dismiss the appeal in its entirety.

Considerations

74. The issue before the Appeals Tribunal is whether the UNDT erred: i. When it denied the remedies requested by Ms. Reilly regarding the press release; and ii. When it held that the Administration's way of handling Ms. Reilly's complaint of harassment was lawful and its relative findings were well-founded, but for not having sought to interview one additional witness. The Appeals Tribunal will examine these matters in turn.

Whether the UNDT erred by denying the remedies requested by Ms. Reilly regarding the press release

75. Article 2(1)(a) of the UNDT Statute confers jurisdiction upon the UNDT to hear and pass judgment on an application to appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent Regulations and Rules and all relevant administrative issuances in force at the time of the alleged non-compliance.

76. Thus, a statutory burden is placed upon an applicant to establish that the administrative decision in issue was in non-compliance with the terms of his or her appointment or contract of employment. Such a burden cannot be met where the applicant

fails to identify an administrative decision capable of being reviewed, that is, a specific decision which has a direct and adverse impact on the applicant's contractual rights.⁴

77. We recall our settled jurisprudence that an appealable administrative decision is a decision whereby its key characteristic is the capacity to produce direct legal consequences affecting a staff member's terms and conditions of appointment. Further, the date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine.⁵

78. As the former Administrative Tribunal held in *Andronov*:⁶

... There is no dispute as to what an “administrative decision” is. It is acceptable by all administrative law systems, that an “administrative decision” is a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences. They are not necessarily written, as otherwise the legal protection of the employees would risk being weakened in instances where the Administration takes decisions without resorting to written formalities. These unwritten decisions are commonly referred to, within administrative law systems, as *implied* administrative decisions.

79. Deciding what is and what is not a decision of an administrative nature may be difficult and must be done on a case-by-case basis and will depend on the circumstances, taking into account the variety and different contexts of decision-making in the Organization. The nature of the decision, the legal framework under which the decision was made, and the consequences of the decision are key determinants of whether the decision in question is an administrative decision. What matters is not so much the functionary who takes the decision as the nature of

⁴ *Haydar v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-821, para. 13, citing *Selim v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-581, *Reid v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-419, *Obino v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-405, and *Planas v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-049.

⁵ *Erik Kennes v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1073, para. 40; *Larriera v. United Nations Joint Staff Pension Board*, Judgment No. 2020-UNAT-1004, para. 29; *Olowo-Okello v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-967, para. 31; *Farzin v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-917, para. 36.

⁶ Former Administrative Tribunal Judgment No. 1157, *Andronov* (2003), para. V.

the function performed or the power exercised. The question is whether the task itself is administrative or not.⁷

80. Coming to the material facts of the case, in order to give some context to the events that led to the present dispute, it is common cause that OHCHR issued a press release in response to allegations by GAP and ICP that OHCHR had endangered the lives of Chinese human rights defenders who attended the Human Rights Council in Geneva in March 2013, and that in relation to this matter, it had subjected a staff member to reprisals.

81. Ms. Reilly argued before the UNDT that the press release had caused her reputational harm by divulging confidential private information, namely the fact that she had made the complaints, and by casting her in a negative light as an individual who made false allegations.

82. At first, in the course of reviewing the nature of the contested decision, the UNDT made a reference to our Judgment in *Hamad*, taking note that it is settled case law of the Appeals Tribunal that the UNDT can only review administrative decisions, i.e., unilateral decisions “taken by the Administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order”.⁸

83. Next, the Dispute Tribunal, at paragraphs 68 and 72 of its Judgment, found that “[r]egardless of the source of the information published by Inner City Press and GAP, the Tribunal’s view is that, as matter of principle, the decision to issue a press release in response to publications falls within the discretion of the Organization and is a managerial prerogative”, and that “[j]udicial review of the exercise of administrative discretion in relation to the issuance of a press release implies the necessity to encompass the applicable legal framework, and to evaluate whether this discretionary power was exercised in a blatantly abusive or irrational way”.

⁷ *Erik Kennes, op. cit.*, para. 41; *Olowo-Okello, op. cit.*, para. 32; *Lloret Alcañiz et al. v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-840, para. 62; *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, para. 50.

⁸ Impugned Judgment, para. 63, citing *Hamad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2012-UNAT-269.

84. Then, the UNDT proceeded to assess if the content of the press release had impacted Ms. Reilly's rights and her terms of employment, which included all pertinent Regulations and Rules and all relevant administrative issuances in force at the time of the alleged non-compliance.

85. In this context, the UNDT held that in the United Nations legal system there is duty of care towards its employees, as a general principle applicable to international organizations and recognised by the jurisprudence, which also imposes on the Organization a duty of respect and preservation of staff members' reputation and character. Accordingly, the UNDT embarked on a thorough analysis of the specific United Nations legal setting and the parameters of said duty of care including confidentiality and privacy rights of staff members.

86. From a factual perspective, the UNDT examined the second part of the press release, namely its final paragraph, which stated that two separate investigations had been carried out in relation to a staff member's allegations against various managers, and that both investigations found that the allegations were unsubstantiated.⁹ The UNDT held that in and of itself, the press release was issued as a response to the GAP and the Inner City Press (ICP) articles, and because the press release did not mention Ms. Reilly by her name, specific functions, professional level, or category, nor did it provide any details in relation to her employment status except for the mention that she "remains employed by the organization on full pay [status]", the press release did not violate her privacy.

87. Further, the UNDT distinguished the present case from the one in *Goodwin*¹⁰, invoked by Ms. Reilly, in which the staff member saw his name disclosed into the public domain and associated with an audit related to fraud, corruption and mismanagement. Ms. Reilly, on the other hand, was never associated with an audit or investigation of misconduct, nor was she mentioned in a detrimental way. Additionally, the UNDT underlined that the evidence on file did not show that Ms. Reilly suffered any reputational harm exclusively emerging from the

⁹ The last paragraph of the press release reads as follows: "GAP and the Inner City Press also refer to a staff member at the UN Human Rights Office in relation to this case, who they assert is a whistle-blower and who they allege suffered reprisals at the hands of the Office. In fact, the staff member has never faced reprisals. The staff member has had her contracts renewed and remains employed by the organization on full pay. She has made allegations against various managers. These have been taken seriously, leading to two separate independent investigations that have been carried out to determine whether or not there is any substance to her allegations. In both instances, the claims made by the staff member were found to be unsubstantiated."

¹⁰ *Goodwin v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-467.

press release, and that if any harm had been suffered, it originated from the early articles published by GAP and ICP.

88. The UNDT eventually held that the findings of the investigation were no longer confidential once the investigation had concluded without the imposition of disciplinary measures and after the subjects of the investigation had been informed of its conclusion. It further inferred from the evidence that Ms. Reilly herself had no issues with public exposure of her case. The UNDT did find that the press release was inaccurate on one single point: while the press release had stated that the allegations made by a staff member were not substantiated, the Panel did find Ms. Reilly's allegations that her supervisors did not properly conduct her performance evaluation were substantiated. However, the UNDT noted that this inaccuracy was minor because the Panel did not find that Ms. Reilly's allegations against her supervisors amounted to harassment or abuse of authority.

89. In her submissions in this appeal, Ms. Reilly takes issue with the Dispute Tribunal's approach and maintains, *inter alia*, that it erred in finding that her reputation was not harmed because her name and actions were already made known by the GAP and ICP publications. She claims that because the GAP and ICP publications described her positively, they did not harm her reputation, while the press release described her negatively, and therefore damaged her reputation. She argues further that the UNDT erred in finding that the press release did not breach her right to confidentiality and that contrary to the holding of the UNDT, the administrative issuances that address investigations emphasize the necessity to maintain the confidentiality of materials related to investigations. Finally, Ms. Reilly submits that the press release was inaccurate when it stated that two investigations, which had been undertaken pursuant to her complaints, had determined that those complaints were unsubstantiated.

90. We have gone through the record of the case, examined the grounds of appeal and the Respondent's answer, and we hold that the UNDT did not err in its approach of the disputed legal and factual issues of the case at bar and said findings. It is the considered view of this Tribunal that, under the specific circumstances of the case at bar, as established by the UNDT, and the overall assessment of the content of said press release, the UNDT correctly applied the test set out in our pertinent jurisprudence and arrived at the correct conclusion that the press release had not produced direct adverse legal consequences affecting Ms. Reilly's terms and conditions of employment and that it was a reasonable and thus lawful exercise of the Administration's discretion.

91. Notably, we agree with and endorse the UNDT's holding that, regardless of the source of the information published by ICP and GAP, the decision to issue a press release in response to publications falls within the discretion of the Organization and is a managerial prerogative and that the specific part of it which concerned the issue of the provision of names of Chinese human rights activists to the Chinese government fell outside the scope of its judicial review due to the general nature of its content and to the fact that it embodied a managerial strategy to respond to what the Organization has perceived as being "damaging" of its own image. Under these circumstances, that part of the press release did not have a tangible individual direct impact on Ms. Reilly and consequently it was not an administrative decision subject to judicial review per Article 2(1)(a) of the UNDT Statute. Put another way, the press release was not about Ms. Reilly, but about OHCHR's good name and about promptly setting the public record straight in light of the publications by GAP and ICP. Thus, the first part of the press release obviously was aimed at rebuilding the confidence of individuals who worked with OHCHR and of Member States that collaborated with OHCHR and as such it had no bearing on Ms. Reilly's employment status, as the Secretary-General correctly argues.

92. Indeed, Ms. Reilly is a United Nations staff member who has a general interest in the legality of the Administration's behaviour, i.e., its actions or inactions. However, this general interest of hers does not permit her to file an application for judicial review before the UNDT. In particular, a staff member's concern with legality of administrative action is not regarded as an interest that is worth protecting in itself. Judicial review applications should be restricted to persons with direct and sufficient interest and should not be turned into *actio popularis* which allow any person to bring an action to judicially review the legality of the Administration's behaviour. Every litigant who approaches the tribunals must come forward not only with clean hands but with clean mind, clean heart and with clean objective. Therefore, Ms. Reilly must be able to point to something beyond mere concern with legality.

93. Per the relevant legal framework, namely the UNDT Statute and Rules of Procedure, as interpreted and applied by the Appeals Tribunal in the jurisprudence cited above, the threshold for instituting an application for judicial review is for the applicant to show, *inter alia*, that the object of his/her challenge is an administrative decision capable of being reviewed, that is, a specific decision which has a direct and adverse impact on the applicant's contractual rights. Under this proviso, the applicant justifies a sufficient interest in an application in order to be allowed access to the temple of justice. This would enable the Tribunal to assess the level of

grievance against what is being challenged and to sieve out hopeless or censorious applications. In the present case, Ms. Reilly has failed to do so. As the UNDT correctly held, per the evidence on file, “it is neither possible to establish a causal link nor to assess the impact of that part of the press release in the employment status of [Ms.Reilly], which is a condition *sine qua non* of judicial review of any administrative decision”.¹¹

94. That said, we find no reasons to differ from the UNDT’s final conclusions. The Dispute Tribunal has broad discretion under Article 18(1) of its Rules of Procedure to determine the admissibility of any evidence and the weight to be attached to such evidence. The findings of fact made by the UNDT can only be disturbed under Article 2(1)(e) of the Appeals Tribunal Statute when there is an error of fact resulting in a manifestly unreasonable decision, which is not the case here. This Tribunal is mindful that the Judge hearing the case had an appreciation of all the issues for determination and the evidence before it.¹² We are satisfied that the UNDT’s conclusion is consistent with the evidence. Ms. Reilly has not put forward any persuasive grounds to warrant interference by the Appeals Tribunal.

95. We hold the same view with respect to the UNDT’s further findings, detailed in its Judgment and referenced to above, about the impact of the last paragraph of the press release on Ms. Reilly’s employment status, namely that it did not breach confidentiality of the investigations related to her complaints and it was not defamatory of her. In this regard, we agree with the Secretary-General that the maintenance of confidentiality to the maximum extent possible, after the information had already been made public by ICP and GAP, was exactly the way the press release was crafted, balancing between OHCHR’s needs to promptly inform the public in response to extremely serious allegations and the requirement to protect the confidentiality of the investigations. OHCHR properly minimized Ms. Reilly’s exposure by not providing any more information about her, without even naming her, than was necessary to sufficiently respond to and refute the substance of the allegations put forth publicly by GAP and ICP. Under these same circumstances and balancing criteria, the issuance of the press release as a whole was a reasonable and hence lawful exercise of the Administration’s relevant discretion. Consequently, the appeal does not succeed on these grounds.

¹¹ Impugned Judgment, para. 78.

¹² *Kacan v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-582, para. 25, citing *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-546, para. 35, in turn citing *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123.

Whether the UNDT erred in holding that the way in which the Administration handled Ms. Reilly's complaints of harassment and abuse of authority, made under ST/SGB/2008/5, was lawful

Applicable legal framework

96. Concerning the prohibition of discrimination, harassment, including sexual harassment, and abuse of authority, Section 2.1 of ST/SGB/2008/5 provides that “every staff member has the right to be treated with dignity and respect, and to work in an environment free from discrimination, harassment and abuse”. Section 2.2 adds that “[t]he Organization has the duty to take all appropriate measures towards ensuring a harmonious work environment, and to protect its staff from exposure to any form of prohibited conduct, through preventive measures and the provision of effective remedies when prevention has failed”. Section 5.3 of ST/SGB/2008/5 establishes that “[m]anagers and supervisors have the duty to take prompt and concrete action in response to reports and allegations of prohibited conduct. Failure to take action may be considered a breach of duty and result in administrative action and/or the institution of disciplinary proceedings.”

97. Sections 5.14 and 5.15 of ST/SGB/2008/5 provide:

... Upon receipt of a formal complaint or report, the responsible official will promptly review the complaint or report to assess whether it appears to have been made in good faith and whether there are sufficient grounds to warrant a formal fact-finding investigation. If that is the case, the responsible office shall promptly appoint a panel of at least two individuals from the department, office or mission concerned who have been trained in investigating allegations of prohibited conduct or, if necessary, from the Office of Human Resources Management roster.

... At the beginning of the fact-finding investigation, the panel shall inform the alleged offender of the nature of the allegation(s) against him or her. In order to preserve the integrity of the process, information that may undermine the conduct of the fact-finding investigation or result in intimidation or retaliation shall not be disclosed to the alleged offender at that point. This may include the names of witnesses or particular details of incidents. All persons interviewed in the course of the investigation shall be reminded of the policy introduced by [Secretary-General's Bulletin] ST/SGB/2005/21 [(Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations)].

98. ST/SGB/2008/5 then sets out the informal and formal proceedings that must take place and, in Section 5.17, the final report of those proceedings is referred to as follows:

... The officials appointed to conduct the fact-finding investigation shall prepare a detailed report, giving a full account of the facts that they have ascertained in the process and attaching documentary evidence ... This report shall be submitted to the responsible official normally no later than three months from the date of submission of the formal complaint or report.

99. Section 5.18(a)-(c) provides for the possible courses of action, one of which the responsible official shall take:¹³

... If the report indicates that no prohibited conduct took place, the responsible official will close the case and so inform the alleged offender and the aggrieved individual ...;

... If the report indicates that there was a factual basis for the allegations but that, while not sufficient to justify the institution of disciplinary proceedings, the facts would warrant managerial action, the responsible official shall decide on the type of managerial action to be taken, inform the staff member concerned, and make arrangements for the implementation of any follow-up measures that may be necessary. Managerial action may include mandatory training, reprimand, a change of functions or responsibilities, counselling or other appropriate corrective measures. The responsible official shall inform the aggrieved individual of the outcome of the investigation and of the action taken;

... If the report indicates that the allegations were well-founded and that the conduct in question amounts to possible misconduct, the responsible official shall refer the matter to the Assistant Secretary-General for Human Resources Management for disciplinary action and may recommend suspension during disciplinary proceedings, depending on the nature and gravity of the conduct in question. The Assistant Secretary-General for Human Resources Management will proceed in accordance with the applicable disciplinary procedures and will also inform the aggrieved individual of the outcome of the investigation and of the action taken.

100. A final option is established in Section 5.19: “Should the report indicate that the allegations of prohibited conduct were unfounded and based on malicious intent, the Assistant Secretary-General for Human Resources Management shall decide whether disciplinary or other appropriate action should be initiated against the person who made the complaint or report.”

¹³ Internal footnote omitted.

101. As a general principle, the instigation of disciplinary charges against a staff member is the privilege of the Organization itself, and it is not legally possible to compel the Administration to take disciplinary action. The Administration has a degree of discretion as to how to conduct a review and assessment of a complaint and whether to undertake an investigation regarding all or some of the allegations.¹⁴ Only in particular situations (i.e., in a case of a serious and reasonable accusation) does a staff member have a right to an investigation against another staff member which may be subject to judicial review under Article 2(1)(a) of the UNDT Statute and Article 2 of the Appeals Tribunal Statute (Statute).¹⁵ However, the Administration's discretion can also be confined in the opposite direction. There are situations where the only possible and lawful decision of the Administration is to deny a staff member's request to undertake a fact-finding investigation against another staff member.¹⁶

102. On appeal, Ms. Reilly submits that the impugned Judgment is in error because the UNDT (i) should have found that Mr. L, who was a member of the Panel, could not act impartially and independently because his SRO, Ms. V, was married to Mr. V; (ii) should have found that the Panel did not adequately address her allegations regarding the recruitment for Vacancy 40485; and (iii) failed to address her argument that the Panel did not adequately investigate her complaint regarding the cancellation of the temporary vacancy, her alleged exclusion from meetings, her allegation that she was subject to *ad hominem* attacks, and the alleged bad faith on the part of her FRO and SRO, which she claimed had manifested in their failure to conduct a mid-year review as part of her performance evaluation.

103. In this case, the UNDT reviewed the Panel's investigation, including the documents that had been made available to it and the interviews that it had conducted. The UNDT examined whether the Panel had conducted the investigation in accordance with the procedures set forth in ST/SGB/2008/5, whether it had properly addressed the allegations in Ms. Reilly's complaint, and whether its findings were based on the evidence that it had

¹⁴ *Auda v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-787, para. 30; *Nadeau v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-733/Corr.1, para. 33, citing *Benfield-Laporte v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-505, para. 38, *Oummih v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-518/Corr.1, para. 31, and *Abboud v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-100, para. 34.

¹⁵ *Auda*, *op. cit.*, para. 30; *Nadeau* Judgment *op. cit.*, para. 33, citing *Nwuke v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-099, para. 40.

¹⁶ *Nadeau v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-733/Corr.1, para. 33.

gathered. The UNDT concluded that, apart from the failure to interview Mr. V, the Panel's investigation complied with ST/SGB/2008/5.

104. In terms of Mr. L's membership in the Panel and its allegedly negative impact on the impartiality of the Panel's investigation and findings, the UNDT found that, with the exception of Mr. V, the Panel properly interviewed all relevant witnesses, took into consideration the relevant documentary evidence, and properly arrived at the factual findings included in the report it had submitted at the conclusion of its investigation. Further, the UNDT held that the allegation that Mr. L had a conflict of interest was not supported by the evidence; Mr. V was not involved in the selection of the Panel or the formulation of its terms of reference. It was the High Commissioner who had formally appointed the Panel members by memorandum dated 2 September 2016. Mr. V had retired before the investigation commenced, and, finally, it had been demonstrated that the Chief ME was not within the reporting lines of the spouse of Mr. V.¹⁷

105. Ms. Reilly contends that the UNDT's findings and reasoning are flawed because there was a reporting line between Mr. L and Ms. V, who was Mr. L's SRO and because Mr. V had been consulted as to possible candidates for the Panel.

106. We do not find merit in these allegations. The established evidence does not support a reasonable apprehension of partiality or conflict of interest on the part of Mr. L. The Dispute Tribunal correctly reviewed these allegations regarding the fairness of the investigation and held they were unsupportable and provided reasons for its findings as alluded to earlier. There is no indication that it erred in this analysis. In addition, as the Administration correctly argues, the most important fact was that Mr. V was not the subject of the investigation. The scope of the investigation had been, to a great degree, framed by Ms. Reilly herself, who had named the individuals who allegedly were responsible for harassing her. It is irrefutable that Ms. Reilly, at no stage during the formation of the Panel or its investigation, had claimed that Mr. V was responsible for any wrongdoing. Thus, Mr. V was, at most, a witness, and not a target of the investigation. On appeal, Ms. Reilly repeats arguments already considered by the Dispute Tribunal and fails to show how the Dispute Tribunal erred in its holdings.

¹⁷ Impugned Judgment, paras. 143-148.

107. Next, Ms. Reilly asserts that the UNDT erred in law and fact in evaluating the investigation regarding recruitment against Vacancy 40485. In this context, she argues that the Panel had not adequately questioned the witnesses it interviewed about the recruitment process for Vacancy 40485 and, therefore, had not made adequate findings about that process. Ms. Reilly claims further that the UNDT erred in law and fact and failed to exercise jurisdiction in evaluating the propriety of the investigation of her complaint of harassment and abuse of authority. Specifically, Ms. Reilly argues that pursuant to her request for a management evaluation regarding the recruitment for Vacancy 40485 and its subsequent cancellation, she had been made the subject of retaliation in three ways: (a) the failure by her supervisors to conduct a performance evaluation; (b) the cancellation of a temporary vacancy to which she had applied; and (c) the creation of a hostile working environment. She finally raises a variety of challenges to the correctness and fairness of the UNDT's general approach and management of her case. In this respect she submits, *inter alia*, that the UNDT erred in its assessment of evidence as well as when it reversed its position and sought no further submissions in Order No. 109 (GVA/2021). She says it breached her due process rights when it decided that the recordings of the oral arguments and the written documentation were sufficient for the adjudication of the case and when it sought comments from the Administration on her choice of legal representation.

108. With regard to the allegations related to the recruitment against Vacancy 40485, the UNDT, following a thorough and careful analysis of the investigation report and of the witnesses' statements on record, held that the Panel had properly addressed Ms. Reilly's allegation, by examining this matter under the topic of "adverse actions related to performance matters", and interviewing not only Ms. Reilly but also the two subjects of the complaint who had been involved in that recruitment process, and had made sufficient findings on the recruitment exercise for Vacancy 40485.¹⁸ We find nothing in the appeal submissions to persuade us that the Dispute Tribunal erred in so concluding and accordingly, the Dispute Tribunal's finding on that score is upheld.

109. The UNDT addressed the rest of Ms. Reilly's allegations by holding that she had not provided sufficient evidence to the Panel, or to the UNDT, to support these allegations. Thus, the UNDT dismissed, altogether for lack of evidence, Ms. Reilly's assertions that the temporary vacancy had been cancelled because of her candidacy, rather than because of funding, as

¹⁸ *Ibid.*, paras. 152 to 160.

claimed by the Administration, that she had been excluded from work meetings and subjected to verbal abuse as a form of harassment, and that the irregularity regarding her performance evaluation had been in bad faith.

110. Specifically, in this context, under the respective headings “Lack of consideration of relevant documents” and “Failure to hear additional witnesses and ask them relevant questions”, the UNDT opined as follows:¹⁹

Lack of consideration of relevant documents

... The Applicant takes issue with the fact that the Panel did not take relevant documents into consideration and failed to present them to witnesses.

... It is incumbent on the Applicant to clearly allege and identify what those documents were and what their relevance to the case was. The Applicant, however, did not do so before the Tribunal.

... The Tribunal recalls that it cannot decide on a case based solely on general arguments and without a clear identification of the documents allowing for a critical assessment of their relevance. Consequently, the burden of proof that impinges on the Applicant is not satisfied and the allegation cannot be entertained.

Failure to hear additional witnesses and ask them relevant questions

... The Applicant takes issue with the fact that the Panel members failed to make relevant questions to witnesses who were not called to testify and also claims that one witness could have testified about the “discontinuation of funding” for the post that the Applicant encumbered. Finally, she also alleges that the Chief, Human Rights Economic and Social Issues Section, OHCHR, had to be interviewed on that matter too.

... The Tribunal recalls the scope of judicial review in the present case (see para. 60 above). Therefore, it will not address matters related to the funding of the Applicant’s post nor any other matters that fall outside the defined scope of review. Consequently, the Tribunal will not take the Applicant’s arguments in this regard into consideration for the adjudication of the case.

111. In response to these grounds of appeal, the Secretary-General points to the Appeals Tribunal’s jurisprudence that “[i]t is not necessary for any court, whether a trial or appellate court, to address each and every claim made by a litigant, especially when a claim has no merit”²⁰, as an authority for his proposition that the UNDT has considered all evidence

¹⁹ Impugned Judgment, paras. 161 to 165.

²⁰ *Al-Ashi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-838, para. 26, citing *Abu Jarbou v.*

relevant to the issues before it. He argues that the mandate of the UNDT is to determine whether the Panel reasonably based its conclusions on the evidence. In this respect, the UNDT clearly found that the Panel had interviewed relevant individuals based on relevant documentation. It also clearly held, in accordance with UNAT jurisprudence, that where Ms. Reilly had provided no grounds for her allegations, the Panel was not under an obligation to engage in a fishing expedition on her behalf. In the Secretary-General's view, the UNDT properly reviewed the work of the Panel, and found that Ms. Reilly had not provided sufficient evidence to support her allegations, and, thus, came to the reasonable conclusion that the Panel had properly conducted its investigation.

112. We agree, on principle, with the Secretary-General and repeat that the UNDT has broad discretion to determine case management issues, including the admissibility of any evidence and the weight to be attached to such evidence.²¹ Our jurisprudence has consistently held that the Appeals Tribunal will not lightly interfere with the broad discretion conferred on the first instance tribunal in the management of its cases to enable cases to be judged fairly and expeditiously and for dispensation of justice. We will intervene only in clear cases of denial of due process of law affecting a party's right to produce evidence.²²

113. In the instant case, the UNDT had to handle impressively voluminous trial material. As indicated by the Secretary-General, the Joint Bundle of documents submitted by the parties comprised, *inter alia*, about 166 annexes and also many hours of recordings of hearings, including examinations, cross-examinations, oral arguments, and case management hearings. In the course of the proceedings, the UNDT issued 24 orders on case management and other related issues, some *proprio motu*, some in response to submissions by the parties. The parties themselves filed dozens of interlocutory submissions, either in the form of motions, or in response to the UNDT's orders. Considering this mass of evidence and pleadings, the Appeals Tribunal finds no error in the UNDT's exercise of discretion to decide that the fair and

Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, Judgment No. 2013-UNAT-292, para. 47.

²¹ *Abdeljalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-960, para. 43; *Lemonnier v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-762, para. 37, citing *Ljungdell v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-265, para. 26.

²² *Mohammad Yahya Al Othman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2022-UNAT-1196, para. 90; *Abdeljalil, op. cit.*, para. 43; *Uwais v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-675, para. 27, citing *Wu v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-597, paras. 34 and 35.

expeditious resolution of the case justified reversing Order No. 82 (GVA/2020) by holding in Order No. 109 (GVA/2021) that the pleadings were closed and that the UNDT was ready to issue its judgment and adjudicate the case based on the material already before it. Hence, Ms. Reilly's appeal fails on this ground alone. We also find no merit in Ms. Reilly's allegation that the UNDT's request for the Respondent's comments on her choice of legal representation constituted per se a violation of her due process rights.

114. That said, however, the Appeals Tribunal finds that the UNDT did not handle in a procedurally proper and lawful way the remaining elements of Ms. Reilly's complaint of harassment and abuse of authority, which are recorded below.

115. Arguably, in her application to the UNDT, Ms. Reilly had raised a series of arguments regarding different elements of her complaint which, *inter alia*, related to: i. a post in a different section where she had been recommended for a temporary position for which funding was withdrawn allegedly immediately upon her name being associated with the position. Ms. Reilly claimed that she had been asked about this in an interview and named two relevant witnesses, and advanced, further, the argument that the investigation report did not record a decision not to investigate and that it stated it had not been corroborated; ii. her exclusion from meetings of the three-person team she worked with on topics included in her terms of reference, for which she provided specific examples including meetings to plan a visit of the Irish Ambassador, a meeting directly with him, and meetings with FES as well as more general team meetings; and iii. a failure of the Panel to properly investigate her complaint about "*ad hominem attacks*" against her and that performance evaluation was conducted in bad faith in retaliation for her MER challenge of recruitment.

116. These are quite distinct issues which should have been dealt with by the UNDT. In this respect, we recall that, per our settled case-law, the UNDT is competent under its jurisdiction to determine if there was a proper investigation in terms of ST/SGB/2008/5 and to review whether any administrative decision arising from the process was in compliance with the terms of the aggrieved individual's terms of contract. It is, however, not clothed with jurisdiction to itself conduct *ab initio* an investigation of a harassment complaint.²³

²³ *Sergio Baltazar Arvizú Trevino v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1231, para. 84; *Argyrou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-969, para. 38; *Dawas v. Commissioner-General of the United Nations Relief and*

117. As we held in *Mashhour*:²⁴

It is clear that the UNDT is not clothed with jurisdiction to investigate harassment complaints under Article 2 of the UNDT Statute. However, for the purpose of determining if the impugned administrative decisions were improperly motivated, it is within the competence of the UNDT to examine allegations of harassment. This is different from a *de novo* investigation into a complaint of harassment.

118. However, as evident, on the face of the impugned Judgment, the UNDT failed to do so and abide by the set standards of our jurisprudence. Notably, the Appeals Tribunal holds that the UNDT did not give careful and fair consideration to Ms. Reilly's above-mentioned allegations. In fact, the UNDT did not embark on an analysis of Ms. Reilly's said arguments. Effectively, Ms. Reilly's allegations appear to have been rejected under cover of paragraphs 161 to 165 of the impugned Judgment which rejected in a generic manner her challenge to the impugned administrative decision on these specific issues. The first instance Judge did not even make a separate passing reference to Ms. Reilly's specific claims in this paragraph or elsewhere. She just vaguely noted that "[the UNDT] cannot decide on a case based solely on general arguments and without a clear identification of the documents allowing for a critical assessment of their relevance" and that "it will not address matters related to the funding of the Applicant's post nor any other matters that fall outside the defined scope of review".²⁵

119. Even assuming *arguendo* that these UNDT rulings referred to said specific allegations of Ms. Reilly, the UNDT's approach to these distinct allegations made by Ms. Reilly was erroneous. The UNDT fell short of exercising its competence to judicially determine, under Article 2(1)(a) of its Statute, the lawfulness of the contested administrative decision on this score from the relevant procedural and substantive perspectives pleaded by Ms. Reilly in the way refined in our Judgment in *Belkhabbaz*²⁶, to wit on grounds of legality, reasonableness and procedural fairness or due process.

120. Thus, the UNDT should have determined whether there had been a proper and lawful investigation by the Panel into these elements of Ms. Reilly's allegation of harassment and abuse of authority, i.e. by examining for example whether the Panel had complied with its duty

Works Agency for Palestine Refugees in the Near East, Judgment No. 2016-UNAT-612, para. 21; *Mashhour v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-483, para. 45.

²⁴ *Mashhour*, *op. cit.*, para. 45.

²⁵ Impugned Judgment, paras. 163 and 165.

²⁶ *Belkhabbaz v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-873.

to interview relevant witnesses in terms of Section 5.16 of ST/SGB/2008/5, and drawn its own reasoned conclusions from the investigation report and the evidence on file, whether there had been irregularities such as the failure of the Administration to address the specific harassment complaints, and whether the specific incidents indicated in Ms. Reilly's complaint could be reasonably characterized as breaches of the Organization's policies and regulations, meriting a finding of abuse of power and harassment, as the UNDT properly did with regard to Ms. Reilly's allegations related to the recruitment for Vacancy 40485. Finally, the UNDT should have weighed the evidence with a view to determining whether the findings of the Administration on these specific issues were supported by the available evidence, namely that there was a rational connection between the information before the responsible official and the contested decision that there was no prohibited conduct requiring further action.

121. In view of the foregoing, the appeal succeeds on this ground. Since the specific allegations made by Ms. Reilly required factual findings in order to ascertain whether they were meritorious or not and this was not done, we are remanding these discrete issues to the UNDT, pursuant to Articles 2(4)(b) and 2(6) of our Statute.

The Quantum of the Moral Damages Award

122. Per our jurisprudence, an entitlement to moral damages may arise where there is evidence produced to the Tribunal by way of a medical or psychological report of harm, stress or anxiety caused to the employee, which can be directly linked, or reasonably attributed, to a breach of his or her substantive or procedural rights and where the Tribunal is satisfied that the stress, harm or anxiety is such as to merit a compensatory award.²⁷

123. 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".²⁸

²⁷ *Asariotis v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-309, para. 36.

²⁸ *Boubacar Dieng v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1118, para. 75; *Ho v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-791, para. 31; *Mihai v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-724, para. 15; *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-691, para. 28, citing *Rantisi* Judgment, *op. cit.*, para. 71.

124. In the instant case, the UNDT awarded Ms. Reilly compensation for non-pecuniary (moral damages) in the amount of USD 3,000 as a result of the harm she “ha[d] suffered, at least between 2015 and 2017, from stress and anxiety due to the situation she faced in her work environment as a consequence of the way in which her complaint for harassment was handled and the inaccuracies in the press release”.²⁹ The Dispute Tribunal assessed the testimony of Ms. Reilly’s partner and the medical certificates she had filed, as well as all evidence available to the UNDT, in the present case and in Case No. UNDT/GVA/2018/099 (*Reilly*), showing that she had been on certified sick leave for a significant period of time. Ms. Reilly argues this compensation is insufficient and requests it be increased by considering similar cases, like *Belkhabbaz*, where USD 10,000 was deemed appropriate compensation.

125. We hold that the UNDT did not commit any error of law in its assessment of the compensation award for stress and anxiety, which is evidenced in the relevant medical certificate and the evidentiary material on file, and we find it to be fair and reasonable. Having regard to all the matters of which the UNDT was apprised in the present case, we do not find that it erred in law or fact in its assessment of the moral damages to be awarded for stress and anxiety. Ms. Reilly has not demonstrated any error of law or manifestly unreasonable factual findings on the part of the Dispute Tribunal. In such circumstances, the Appeals Tribunal gives deference to the UNDT in the exercise of its discretion and will not lightly disturb the quantum of damages.³⁰

126. In addition, we reject Ms. Reilly’s argument that the award in the present case should be compared with awards in similar cases and that the UNDT erred by failing to do so. The criterion for an award of moral damages is the degree of injury suffered by the individual staff member as a result of the unlawful decision. That the type of unlawful decision is the same as in a number of other cases does not establish that the degree of moral damage must be similar in each case. The assessment of an award of moral damages is made on a case-by-case basis according to the discretion of the tribunal.³¹

²⁹ Impugned Judgment, para. 175.

³⁰ *Ho, op. cit.*, para. 34; *Maslei v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-637, para. 31; *Leclercq v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-429, para. 22, citing *Sprauten v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-219.

³¹ *Boubacar Dieng v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1118, para. 80; *Ho, op. cit.*, para. 35; *Maslei, op. cit.*, para. 32; *Faraj v. Commissioner-General of the*

127. Therefore, this ground of appeal falls to be dismissed.

Judgment

128. The appeal succeeds, in part. We hereby reverse Judgment No. UNDT/2021/093 insofar as it rejected Ms. Reilly's application relating to the specific elements of her complaint of harassment and abuse of authority, referred to in paragraph 115 of our reasoning. We remand these issues to another UNDT Judge for reconsideration including, if appropriate, any compensation. The remainder of the Judgment is affirmed.

Original and Authoritative Version: English

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

(Signed)

Judge Raikos, Presiding

(Signed)

Judge Colgan

(Signed)

Judge Halfeld

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

(Signed)

Juliet Johnson, Registrar

United Nations Relief and Works Agency for Palestine Refugees in the Near East, Judgment No. 2015-UNAT-587, para. 27, citing Appleton v. Secretary-General of the United Nations, Judgment No. 2013-UNAT-347/Corr. 1 and cites therein, and para. 30.