



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

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Judgment No. 2024-UNAT-1430

**Mauricio Eliecer Heurtematte  
(Respondent/Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Graeme Colgan, Presiding Judge Gao Xiaoli Judge Leslie F. Forbang
Case Nos.:	2023-1785, 2023-1818 & 2023-1833
Date of Decision:	22 March 2024
Date of Publication:	2 May 2024
Registrar:	Juliet E. Johnson

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Counsel for Appellant: Self-represented

Counsel for Secretary-General: Noam Wiener

**JUDGE GRAEME COLGAN, PRESIDING.**

1. This Judgment addresses three related appeals which were consolidated by the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) by Order No. 542 (2023) made on 17 November 2023. The Secretary-General appealed the preliminary Judgment on Liability of the United Nations Dispute Tribunal (UNDT) on claims brought to it by Mauricio Heurtematte.<sup>1</sup> In that Judgment it had found unlawful a decision not to renew Mr. Heurtematte's fixed-term appointment based on an unlawful decision to abolish his post (contested decision).
2. The UNDT subsequently awarded Mr. Heurtematte one year's net base salary plus interest *in lieu* of rescission of the unlawful administrative decision.<sup>2</sup> The UNDT declined to award Mr. Heurtematte damages for harm.
3. The Secretary-General filed an appeal of the Judgment on Remedies. Mr. Heurtematte filed one appeal against both the Judgment on Liability and the Judgment on Remedies.
4. For the reasons set out below, we grant the Secretary-General's appeals, dismiss Mr. Heurtematte's appeal and reverse the Judgments of the UNDT.

**Facts and Procedure**

5. From 2008 until 12 October 2021, Mr. Heurtematte was employed as a motor vehicle driver with UN Women at its Regional Office in Panama.<sup>3</sup> In 2020, his driving duties were severely curtailed by the COVID-19 pandemic during which time there was significantly less, and at times no, need for those duties.<sup>4</sup> UN Women changed to electronic and other online services much of the document and people transfer work previously undertaken by motor vehicle.<sup>5</sup> It closed its Panama office premises and subsequently sold its motor vehicles.<sup>6</sup>

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<sup>1</sup> *Heurtematte v. Secretary-General of the United Nations*, Judgment No. UNDT/2022/131 dated 13 December 2022 (Judgment on Liability).

<sup>2</sup> *Heurtematte v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/045 dated 31 May 2023 (Judgment on Remedies).

<sup>3</sup> Judgment on Liability, para. 4.

<sup>4</sup> *Ibid.*, paras. 6 to 7.

<sup>5</sup> *Ibid.*, paras. 6 to 7.

<sup>6</sup> *Ibid.*, para. 23.

6. This was not merely a response to the pandemic and for its duration. It was a part of a wider organisational re-arrangement of its operations intended to extend beyond the end of the pandemic.<sup>7</sup>

7. During 2020, Mr. Heurtematte suffered significantly from COVID-19 but was kept on the Organization's payroll, no doubt reflecting his long and satisfactory service.

8. On 30 June 2021, however, Mr. Heurtematte was advised formally by letter that his fixed-term appointment would not be renewed after its scheduled expiry on 30 September 2021. The stated reason for this decision was the redundancy of his driving duties because of the online nature of the Regional Office's work which had previously required transport between in-person venues and hence his services. These changes were said to be for at least the "medium term". The letter read materially:<sup>8</sup>

In reference to your fixed-term appointment which expires on 30 September 2021, we confirm that it will not be renewed beyond that date. As advised in a meeting held with you on June 2, the decision is due to the fact that we do not have a physical office, the staff works from home, there has been almost zero movement in the year and a half of the pandemic and the vehicles are in the process of being sold, therefore the driver position has been abolished in the new Regional Office organization.

9. Mr. Heurtematte requested management evaluation of this administrative decision but this was unsuccessful.

10. Mr. Heurtematte then challenged those decisions in the UNDT. He was successful, at least as far as liability and some remedies were concerned.

*The UNDT's Judgments*

11. Despite Mr. Heurtematte not having contested before it the decision not to renew his fixed-term contract, the UNDT allowed this decision to be the subject of his case. The UNDT held that it was "evident from the application that [Mr. Heurtematte] [was] contesting both (a) the abolition of his post and (b) the non-renewal of his fixed-term appointment".<sup>9</sup>

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<sup>7</sup> *Ibid.*, para. 23.

<sup>8</sup> Unofficial translation from Spanish original.

<sup>9</sup> Judgment on Liability, para. 10.

12. The UNDT addressed first the lawfulness of the abolition of post decision. It concluded that while the reasons given for that abolition were, on their face, both apparently lawful and reasonable in all the existing and prospective circumstances, there were serious questions underlying it. These included whether the decision was a genuine organisational restructuring supported by soundly-based facts, and whether UN Women had acted justly, fairly and transparently towards Mr. Heurtematte. The UNDT concluded that the stated reasons for the decision were not supported by the facts claimed by the Secretary-General to have underpinned them.<sup>10</sup>

13. Despite having called for, and been provided with, additional documents evidencing UN Women's decision-making, the UNDT concluded that there was "no proof" of Mr. Heurtematte's post having been abolished. It decided that the Secretary-General had not established a legislative foundation for the scheme that UN Women adopted which might have enabled the Regional Director to have unilaterally declared the staff member's post abolished. The UNDT was also critical of the Secretary-General failing to disclose to it relevant documents despite asserting their existence.<sup>11</sup>

14. The UNDT concluded that Mr. Heurtematte's post had not ever been abolished lawfully. It said that UN Women had, in effect, retained the post to enable it to use the funding for another purpose, that was to pay for an Executive Associate. Further, the Dispute Tribunal inferred that the Administration, without a lawful or budgetary foundation, had allowed itself the opportunity to later hire another driver to Mr. Heurtematte's previous post.<sup>12</sup>

15. It followed that the non-renewal of Mr. Heurtematte's contract, based on the unlawful abolition of his post, was likewise unlawful. Had the post not been abolished, the UNDT inferred that Mr. Heurtematte's contract would have been renewed.<sup>13</sup>

16. In its Judgment on Remedies, the UNDT directed payment of compensation in lieu of one year's net base salary. Its reason for selecting that period was that most of the previous renewals of Mr. Heurtematte's fixed-term contracts had been for one-year periods. The UNDT acknowledged that the expiry of a fixed-term appointment carries no expectation of a renewal of it. However, it set the figure for in-lieu compensation at the equivalent of one year's net base salary

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<sup>10</sup> *Ibid.*, paras. 18, 19 and 33.

<sup>11</sup> *Ibid.*, paras. 25, 29 and 30.

<sup>12</sup> *Ibid.*, paras. 31 and 32.

<sup>13</sup> *Ibid.*, para. 35.

because that would probably have been the duration of a further fixed-term of his employment had the Administration not acted unlawfully.<sup>14</sup>

17. The UNDT declined to award any moral damages for the following reasons. It said that Mr. Heurtematte had failed to establish by evidence a sufficient causative link between the unlawfulness of his non-renewal of contract and the claimed harm to his health (physical and psychological) and to his financial position (a reduced income on an early-taken pension). The UNDT concluded that most of his health issues for which he sought to be compensated had begun as long as one year before he was notified of his impending separation from service.<sup>15</sup>

18. Mr. Heurtematte had claimed that his coronary artery disease for which he was treated surgically, and his subsequent moderate depression, which were well-documented, were caused by the stress and anxiety of his loss of income following his separation from service. The UNDT concluded that there was “no evidence that such conditions stem[med] from the unlawful decision”. The Dispute Tribunal held that the coronary artery disease probably existed before these events of the first notification to him of the abolition of his post and the non-renewal of his contract. In relation to his psychiatric condition, the expert medical evidence of his moderate depression did not attribute this to any event or events and was certified more than a year after his separation from service. In these circumstances, the UNDT held that Mr. Heurtematte had failed to establish the necessary *nexus* (causal link) between the wrong(s) done to him and the harms to, or losses suffered by, him.<sup>16</sup>

19. The UNDT dismissed Mr. Heurtematte’s claim that the wrongful actions of the Secretary-General had forced him to take early retirement, and therefore a lesser pension than that he might otherwise have received had he continued working. It concluded that while he may have opted for early retirement having passed the age of pension eligibility of 55 years, any difference in pension income would have been offset by the compensation of one year’s net base salary already awarded to him.<sup>17</sup>

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<sup>14</sup> Judgment on Remedies, paras. 16 and 29.

<sup>15</sup> *Ibid.*, paras. 21, 27 and 28.

<sup>16</sup> *Ibid.*, paras. 22 to 27.

<sup>17</sup> *Ibid.*, para. 28.

*Appeals*

20. On 13 February 2023, the Secretary-General filed an appeal of the Judgment on Liability, and on 17 March 2023, Mr. Heurtematte filed his answer. This case was registered as Case No. 2023-1785.

21. On 23 June 2023, the Secretary-General filed an appeal against the Judgment on Remedies. Mr. Heurtematte did not file an answer. This case was registered as Case No. 2023-1818.

22. On 31 July 2023, Mr. Heurtematte filed one appeal of both the Judgment on Liability and the Judgment on Remedies. On 28 September 2023, the Secretary-General filed his answer. This appeal was registered as Case No. 2023-1833.

23. By Order No. 542 (2023), the Appeals Tribunal ordered that the appeals filed in Case Nos. 2023-1785, 2023-1818 and 2023-1833 be consolidated for all purposes.

**Submissions**

**The Secretary-General's Appeal**

*UNDT Judgment on Liability*

24. The Secretary-General submits that the UNDT erred in law and fact by finding that the non-renewal of Mr. Heurtematte's appointment was unlawful. Following the reorganisation of the Regional Office and the closure of its physical location, UN Women decided not to renew his appointment because the job that he performed as the Regional Director's driver was no longer needed. UN Women provided ample proof demonstrating its reorganisation plans, the closure of the physical office, the sale of the car that Mr. Heurtematte had used and, consequently, the absence of an operational need for his services. These were reasons not to renew his appointment. UN Women informed Mr. Heurtematte of this decision in writing in a letter dated 30 June 2021, in which it detailed these reasons for the non-renewal.

25. The Secretary-General contends that the UNDT erred both in law and in fact in finding that the process required to abolish the post held by Mr. Heurtematte had not been followed. The UNDT ignored evidence relevant to the non-renewal decision due to the restructuring and the closure of the Regional Office. The UNDT focused solely on the procedure and financial/budgetary

records relating to the abolition of the post, which was a separate decision from the non-renewal decision. The UNDT found erroneously that the evidence did not prove that the Regional Office had indeed reorganised and closed its physical location making Mr. Heurtematte's services operationally unnecessary. It erred further in fact by speculating that the Regional Office intended to hire a new driver in Mr. Heurtematte's place. The UNDT's decision of this issue was pure conjecture and was not based on any evidence in the case file. To the date of those submissions, the Regional Office did not have a dedicated physical location for its personnel to regularly attend, no driver had been hired in Mr. Heurtematte's place and no plan to hire a new driver existed.

26. The Secretary-General says that while UN Women was not able to submit sufficient evidence to satisfy the UNDT that the post held by Mr. Heurtematte had been abolished, ample evidence was submitted to demonstrate that the Regional Office had been reorganised and its physical location in Panama where he had been the driver had closed. The UNDT erred in law by focusing solely on the abolition and by ignoring this overwhelming evidence submitted by UN Women, which proves that the physical location of the Regional Office had indeed closed, that the Regional Office had undergone a reorganisation, and that the function of the driver having been eliminated, Mr. Heurtematte's services were, therefore and ultimately, no longer needed. This evidence provided sufficient support for the decision not to renew Mr. Heurtematte's fixed-term appointment.

27. Finally, the Secretary-General submits that in light of the evidence, the UNDT's conclusion that Mr. Heurtematte's fixed-term appointment should have been renewed despite clear absence of any operational need for his services, is erroneous. The UNDT considered that a decision not to renew a fixed-term appointment of a staff member could only be lawful if the post encumbered by that staff member was abolished. The abolition of a post, however, is not a pre-requisite for a lawful non-renewal of an appointment. In the instant case, the Organization provided three reasons for the contested decision. Two of these reasons, the reorganisation of the Regional Office and the closure of its physical location, were properly supported by evidence. Consequently, the UNDT erred in finding that the non-renewal of Mr. Heurtematte's fixed-term appointment was unlawful.

28. The Secretary-General therefore asks that the UNAT reverse the Judgment on Liability.

*UNDT Judgment on Remedies*

29. The Secretary-General reiterates that because the conclusion of the UNDT's Judgment on Liability was erroneous, the UNDT was also in error to award Mr. Heurtematte compensation

instead of rescission of this decision and, effectively order his reinstatement. The UNAT should also reverse the Judgment on Remedies.

**Mr. Heurtematte's Answer**

*UNDT Judgment on Liability*

30. Mr. Heurtematte contends that the facts reveal that the abolition of his post was not motivated by the reasons proffered by the Secretary-General, but by “harassment and abuses” that he had been subjected to since the arrival of the Regional Director. The reasons given in the 30 June 2021 letter for the non-renewal of his appointment are diametrically opposed to those that were alleged during the appeal process. The contested decision did not entail any consultation process. The Organization failed to act fairly and transparently in its dealing with the staff member.

31. Mr. Heurtematte submits that the Organization failed to demonstrate that his post had indeed been abolished. While the Secretary-General submits that the Organization had given three reasons for the contested decision, and the abolition of a post is not a requirement that must be met before the non-renewal of an appointment, a review of the 30 June 2021 letter reveals that the reasons given at the time were the lack of physical space because staff were telecommuting due to COVID-19, and the vehicles of the Office were in the process of being sold and as a result the position of driver had been abolished. Mr. Heurtematte contends that none of these arguments is supported by strong and indisputable evidence. In reality, upon her arrival, the new Regional Director had “unleashed a sustained persecution” against him and the decision to abolish his post had been taken before the Organization tried to justify it with “uncertain” reasons.

32. Mr. Heurtematte submits that the Secretary-General tries to ignore the fact that he had been exposed to COVID-19 because he continued to do his job as a driver while the health authorities of Panama had already ordered mobility restrictions. This, he submits, placed him “in the imminence of [his] death” and required him to undergo several surgical interventions with serious implications, including open-heart surgery. Mr. Heurtematte also submits that the contested decision disregarded the 13 years of impeccable service he had provided to previous Regional Directors.

33. He asks that the appeal be dismissed and the Judgment on Liability be affirmed.



*UNDT Judgment on Remedies*

34. Mr. Heurtematte did not file an answer to the Secretary-General's appeal of the Judgment on Remedies.

**Mr. Heurtematte's Appeal of Judgments on Liability and Remedies**

35. Mr. Heurtematte submits that the UNDT erred in fact and law by not recognizing the link between the contested decision and the harm caused by it. The UNDT erred in finding that the illnesses, which he claims were caused by the decision not to renew his appointment, probably stemmed from medical conditions that existed before the non-renewal of his appointment. Mr. Heurtematte argues that the UNDT erred by giving too much weight to the 22 December 2022 medical document that states that he had a "history of arterial hypertension and coronary artery disease". That document refers, as medical history, only to events of the previous year as another document from 2019 states that his coronary condition was satisfactory.

36. Mr. Heurtematte further argues that the UNDT should have given greater weight to the report by his cardiologist who wrote, in October 2022, that he was anxious about his economic situation and, consequently, suffered from a moderate depressive episode.

37. Mr. Heurtematte wishes to include with his appeal a document, issued by his physician, which he contends clarifies that his coronary conditions were diagnosed in January 2022.

38. Finally, he contends that the UNDT erred by finding that he was not forced to take early retirement on grounds that his household relied on his income and because at the age of 55, it was almost impossible for him to find a new job and he had no real alternative to doing so.

39. Mr. Heurtematte asks that he be granted the relief he requested before the UNDT.

**The Secretary-General's Answer to Mr. Heurtematte's Appeal**

40. The Secretary-General submits that the UNDT did not err in finding that Mr. Heurtematte's medical condition was probably not caused by the non-renewal of his appointment. While his medical condition is well-recorded, the documentation does not show a connection between his poor health and the decision not to renew his appointment. The documentation before the UNDT and Mr. Heurtematte's own attestations demonstrate that he suffered from a severe case of COVID-19 related illness that harshly affected both his physical

and his mental wellbeing a year before he was informed of the contested decision, and that he had a history of coronary illness.

41. The Secretary-General further submits that the new document, submitted by Mr. Heurtematte without first requesting leave to submit new evidence, should not be admitted into the record at this late stage. This document was written by his doctor after the UNDT Judgment was issued and thus has no relevance or probative value. Notably, the new evidence merely attempts to elaborate further on a medical report that had already been in the record. If he wished to further pursue this point, Mr. Heurtematte should have done so at the appropriate time, and allowed the Secretary-General to address this new evidence at the time when the UNDT was deliberating about when Mr. Heurtematte began exhibiting various medical symptoms. However, even if the new evidence were to be admitted into the record, it does not state that a connection exists between his coronary disease and the contested decision. The new document merely states that Mr. Heurtematte's physician first diagnosed coronary problems in January 2022.

42. Finally, the Secretary-General submits that the UNDT correctly held that Mr. Heurtematte's decision to take early retirement did not render him eligible for additional compensation. His claim that the UNDT erred by finding that he was not forced to take early retirement because his household relied on his income and because at the age of 55 it was almost impossible for him to find a new job, is not apposite. The Organization cannot be held liable for his decision to take early retirement.

### **Considerations**

#### *Mr. Heurtematte's Motion for New Evidence*

43. In view of the decision we reach allowing the Secretary-General's appeal against the UNDT's Judgment on Liability, and because Mr. Heurtematte's proposal to introduce new evidence for the first time on appeal relates to remedies, we do not need to decide the new evidence admissibility question. The proposed new evidence relates to remedies which are now not in contention.

*The Secretary-General's appeal against the Judgment on Liability*

44. We begin by summarising generally the nature of the UNDT's conclusions on liability. First, it held that an abolition of the post of driver may have justified that post's removal and, thereby, the cessation of its incumbent's employment. That was because there was no longer a physical Regional Office; there was an expectation that this would be the position for the medium-term future; and there was no longer a need for collections, deliveries or other physical transfers of documents.

45. Second, however, the UNDT said it needed to be satisfied that this organisational restructuring was the sole and genuine reason, supported by factual evidence, for the post's abolition and Mr. Heurtematte's consequent redundancy in this case. It was not satisfied that this test was met.

46. Third, and independently of the two foregoing elements, the UNDT held it had to be persuaded by evidence that Mr. Heurtematte had been treated fairly, justly and transparently by UN Women. It decided it had not been persuaded of this.

47. Significant in its Judgment was the fact that while purporting to abolish the driver's post, UN Women in fact did not do so, despite Mr. Heurtematte being "let go." While not engaging another driver, at least at the time of the hearing in the UNDT, the Secretary-General used the budgeted funding for this redundant role to fund in part another (and new) role within the Regional Office. Added to this was the UNDT's supposition that UN Women might, at some future time (we infer when the restrictions on personal interactions brought about by the COVID-19 pandemic were lessened or even ceased) again engage a dedicated driver in its Panama offices.

48. Also of significance to the UNDT was the Secretary-General's failure or refusal to produce to it as directed by the UNDT, budgetary and other documentary evidence supporting UN Women's decisions to abolish the post and to not renew Mr. Heurtematte's employment on the expiry of his fixed-term appointment.

49. Despite Mr. Heurtematte having asserted, at least impliedly, in his pleadings that the workplace tension between him and the Regional Director contributed to the latter marking him for redundancy, the Dispute Tribunal did not address that issue at all. Nevertheless, Mr. Heurtematte has sought to pursue it on appeal, albeit faintly. We infer from its silence on

this question that the UNDT found this ground of challenge so unsupported that it was unworthy of comment in its Judgment. We therefore put it aside in our consideration of whether the UNDT erred in fact or law in its decision that Mr. Heurtematte was unfairly, unjustly or opaquely treated by the Regional Director whose decision it was to abolish his post and not to renew his employment.<sup>18</sup>

50. Likewise, Mr. Heurtematte now relies on another ground to support the UNDT's Judgment. That is there had been no consultation with him before the decision was made to abolish his post. However, that issue too was not mentioned at all by the UNDT in its Judgment and was not relied on in its decision favouring Mr. Heurtematte.

51. Mr. Heurtematte also contends that UN Women did not deal with him in a sufficiently sympathetic way after his continuing to attempt to perform his driving role, to the extent that it was still needed during the pandemic at which time his own health had suffered significantly. Mr. Heurtematte contends that UN Women gave insufficient consideration to his 13 prior years of what he describes as "impeccable service to previous [UN Women Regional Directors]".

52. We have considered the evidence of the Secretary-General's justification for the post abolition as it announced this to Mr. Heurtematte at the time. A year and a half's experience of operating during the COVID-19 pandemic both in practice and as an incentive to reorganise how the Regional Office operated meant that the continuation of functions no longer appropriate or needed was at serious risk. People and documents no longer needed to be moved physically around Panama City, or at least as extensively or frequently as they had been previously. The decisions to close the office premises, to use electronic communications, and to sell the vehicles previously used for these tasks were all logically explicable. It might be said that they were belatedly adopting business practices already well established elsewhere and in other fields.

53. In these circumstances it was always going to be difficult to conclude that these were not the real or supportable reasons for the abolition of the driver's post, let alone to establish ulterior and unlawful motives for doing so. We agree with the Secretary-General's submission that the UNDT was wrongly persuaded by its own speculative reasoning that the stated grounds

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<sup>18</sup> These are the antitheses of the words which the UNDT said should have been established in evidence, i.e. "fairly, justly and transparently".

for the post's abolition were not genuine. It gave inadequate weight to the evidence supporting the reasoning set out in its letter to Mr. Heurtematte dated 30 June 2021.

54. A restructuring of an organisation's activities, which may result in the abolition of posts and thereby of a staff member's employment, must be genuine and not a charade or device disguising other motivations to achieve a concealed real purpose. One indication of the absence of such genuineness is if the organisation subsequently retains the post or the activities performed under it, especially if someone else is appointed or transferred to perform those duties of the previously redundant incumbent of it. With one arguable exception, there is no sound evidence of this having occurred despite the UNDT's supposition that it might occur in the future.

55. It appears that the post of driver with UN Women was not formally abolished despite the Secretary-General's advice that it would be. That may be, on its face, neither compliance with the Organization's requirements nor the sort of good faith conduct that it is expected to exhibit towards its staff. Because we have no further information about this from which to make findings, we consider that this apparent omission should be referred under Article 9(5) of the Statute of the Appeals Tribunal to the Executive Director of UN Women for possible action to enforce accountability in relation to this apparent failure. Our orders at the end of this Judgment will include this direction.

56. As at the date of the hearing before the UNDT, no one had been appointed to that formally vacant post and the funding for which appears to have been allocated to another role within the Organization. Even in spite of this failure to do as it had announced it would, was this a sufficient breach to invalidate the decision not to renew Mr. Heurtematte's employment?

57. Even assuming that the abolition of the driver's post was not formally undertaken, we consider that when weighed against the other factors warranting not re-engaging Mr. Heurtematte, the formal non-abolition of the post does not justify setting aside that decision and the subsequent decision not to re-engage Mr. Heurtematte.

58. Given the time that had elapsed since there had last been a car and driver based at the Regional Office in Panama, the ability to be less socially isolated with changes to the pandemic's effects on UN Women's operations there, and the reallocation of the budgeted resources of the driver's post to another role in the Organization, the UNDT's speculation about

the possibility of hiring another driver in the future was erroneous. It could not and should not have supported a conclusion that at the time of the contested administrative decision to abolish Mr. Heurtematte's post, this was not a genuine and properly supportable decision.

59. The case law establishes that even in such circumstances the Administration has a duty to act with moderation, lawfully, rationally, procedurally correctly, proportionately, fairly, justly and transparently. The Organization does not have a completely unfettered discretion to act as it may wish in such circumstances. However, so long as it acts as just described, the Organization has considerable discretion to adjust its governmental or business model without the Tribunals interfering and certainly without them substituting their decisions for those of the Organization which is better placed to make these.<sup>19</sup>

60. We are not persuaded that UN Women acted unlawfully towards Mr. Heurtematte in this redundancy situation. He was kept on the payroll during his unfortunate illness despite a very significant reduction in the need for a driver. He was told openly about the prospective non-renewal of his employment and given reasons four months before that event.

61. Relevant case law also establishes that the reasons proffered for the abolition of a post resulting in the discontinuation of a staff member's employment must be coherent. That is, they must not be irrational, and they must be rationally connected to the purpose for which it was taken. This requires that the UNDT be satisfied by the decision-maker that, as a matter of good administration, there were adequate and coherent reasons for the decision at the time of its making.<sup>20</sup> We are not satisfied that UN Women breached these requirements: the UNDT's conclusion that it did so was erroneous.

62. The reasons given to Mr. Heurtematte formally by letter on 30 June 2021 (and informally almost a month earlier) for the abolition of his post and as are set out in paragraph 8 of this Judgment, were reasonable and factual. The decisions first to abolish the post and, consequent to that, to not renew Mr. Heurtematte's employment, were within the Administration's discretion. The decisions were not affected by such unlawful considerations as we have set out above the existence of which may have invalidated them. The UNDT erred in deciding otherwise.

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<sup>19</sup> See *Michel Raymond Marie Rixen v. Secretary-General of the World Meteorological Organization*, Judgment No. 2023-UNAT-1399, para. 58.

<sup>20</sup> See *Respondent v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1097, para. 44.

63. The UNDT was significantly influenced in its decision to find the contested decision to abolish the post unsupported by evidence, by what it said was the Secretary-General's failure or refusal to produce to it the budgetary and related information which the Secretary-General claimed informed its decisions. The UNDT held that in these circumstances it assumed against the Secretary-General that such information either did not exist or, if it did, was unresponsive of the decision-making. While the UNDT may or may not have been justified in its criticism of the Secretary-General not complying fully and expeditiously with the Dispute Tribunal's directions, that should not have extended to a conclusion, in effect of misleading the UNDT. Although in some cases this might justify such an inference, we do not consider that this was tenable in this case.

64. When one considers the counterfactual (and the practical effect of the UNDT's decision) and asks the rhetorical question what work Mr. Heurtematte would have undertaken for UN Women in Panama without a physical office, without the need for the conveyance of people and documents and without an official vehicle to be driven, the justification for the non-renewal of Mr. Heurtematte's employment is unfortunately obvious.

65. Mr. Heurtematte contends, in support of the UNDT's Judgments, that the real reason for his non-renewal was what he describes as harassment and abuse that he was subjected to by the then newly appointed Regional Director. That was not, however, the basis of the UNDT's Judgment in his favour. Indeed, if the Dispute Tribunal did consider that there was sufficient evidence before it to support such a conclusion, it did not uphold this aspect of Mr. Heurtematte's case before it. There is no mention or analysis of this ground of challenge in its Judgment.

66. We conclude both that the UNDT went too far in reaching its own speculative conclusions why and how UN Women abolished the driver's post and paid insufficient attention to the justification for the reasons advanced by the Administration at the time for that strategy. In doing so, the UNDT erred in law and in fact resulting in a manifestly unreasonable decision.

*The Secretary-General's and Mr. Heurtematte's appeals against the Judgment on Remedies*

67. In view of our decision allowing the appeal against the UNDT's Judgment on Liability, there is no need for us to now consider remedies. Our decision that the abolition of post and

non-renewal decisions were lawful, means that there can be no question of any remedies for Mr. Heurtematte. We will therefore grant the Secretary-General's appeal of the Judgment on Remedies and dismiss Mr. Heurtematte's appeal of the Judgment in Remedies.

68. Unfortunately for Mr. Heurtematte, after a long period of satisfactory service and commitment, his recent suffering from COVID-19 for an extended period and his redundancy being without fault on his part, UN Women was entitled to decide to abolish the post of driver that he held in Panama because it had ceased to be viable in view of the necessary changes made to the Regional Office's operations. He was given advance notice of this outcome, informally four months' and formally three months' notice, before it occurred. The abolition of his post and the absence of any driver positions with the Regional Office in Panama meant that it was regrettably inevitable that when his fixed-term appointment expired on 30 September 2021, this would not be renewed.

*Comment – Appeals against preliminary and final judgments of the UNDT*

69. The Secretary-General filed an appeal against the UNDT's preliminary Judgment on Liability and then a second appeal against its Judgment on Remedies. This was not only unnecessarily repetitive but also wasteful of the Appeals Tribunal's resources. As established case law confirms, appeals should be filed when the UNDT has issued its final substantive judgment which, in this case, was its Judgment on Remedies.<sup>21</sup> The Secretary-General's right to contest the preliminary Judgment on Liability was preserved without the need to file a separate challenge to that Judgment. While we do not dismiss the Secretary-General's appeal against that earlier Judgment on this ground, we encourage parties in this situation to follow the process we have outlined above.

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<sup>21</sup> See *Hunt-Matthes v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-444, para. 23, following *Kasyanov v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-076; see also *Saffir and Ginivan v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-466.



**Judgment**

70. The Secretary-General's appeals are granted, and Mr. Heurtematte's appeal against the Judgment on Remedies is dismissed. Judgment Nos. UNDT/2022/131 and UNDT/2023/045 are hereby reversed. The matter of the formal abolition of the post formerly held by Mr. Heurtematte is referred under Article 9(5) of the Statute of the Appeals Tribunal to the Executive Director of UN Women for possible action to enforce accountability in relation to this apparent failure.

Original and Authoritative Version: English

Decision dated this 22<sup>nd</sup> day of March 2024 in New York, United States.

*(Signed)*

Judge Colgan, Presiding

*(Signed)*

Judge Gao

*(Signed)*

Judge Forbang

Judgment published and entered into the Register on this 2<sup>nd</sup> day of May 2024 in New York, United States.

*(Signed)*

Juliet E. Johnson, Registrar