



**Before:** Judge Agnieszka Klonowiecka-Milart

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

SALEH

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for the Applicant:**  
Self-represented

**Counsel for the Respondent:**  
Romy Batrouni, AAS/ALD/OHR, UN Secretariat  
Jacob van de Velden, AAS/ALD/OHR, UN Secretariat

## **INTRODUCTION AND PROCEDURAL HISTORY**

1. The Applicant is a former staff member of the United Nations Interim Force in Lebanon (“UNIFIL”). He filed an application with the United Nations Dispute Tribunal (“UNDT/the Tribunal”) in Nairobi on 7 May 2020 to contest the decision by the Under-Secretary-General for Management Strategy, Policy and Compliance (“USG/DMSPC”) to impose on him the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity, in accordance with staff rule 10.2(a)(viii).<sup>1</sup>

2. The Respondent filed a reply on 5 June 2020.

3. The case was assigned to the undersigned Judge on 10 March 2021.

4. At a case management discussion (“CMD”) on 19 May 2021, the Applicant confirmed his admission to having made unauthentic claims for reimbursement of dental care expenses, which, in fact, had not been incurred by him. The parties agreed to the Tribunal’s assessment that the case could be decided on the basis of the documents in the record without a hearing. Submissions were only invited in relation to the Applicant’s assertion, at Section VIII, para. 6 of his application and during the CMD, that one of the impugned claims, which he had submitted on 11 April 2016 was, in actuality, a genuine claim pertaining to the treatment of his wife, who had also been insured under the same plan.

5. After an exchange of submissions, on 14 June 2021, the Tribunal informed the parties that the pleadings were closed and that it would proceed to judgment.

6. Since the Tribunal did not hold a hearing, the facts that led to the imposition of the disciplinary measure were garnered from the documentary evidence submitted by the parties and explanations provided by the Applicant during the 19 May 2021 CMD.

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<sup>1</sup> Application, annex 2.

## **BACKGROUND**

7. On 13 October 2018, the Applicant submitted a claim to Cigna for reimbursement of dental charges. On 15 October 2018, Cigna requested that the Applicant submit panoramic X-rays/orthopantomograms (“OPGs”) for the treatment claimed.<sup>2</sup> Between 18 October and 8 November 2018, Cigna and the Applicant communicated about the submission of original OPGs for the treatment received.<sup>3</sup>

8. In December 2018, the Cigna Investigation Unit informed the Applicant that if he did not provide the correct OPGs by 14 January 2019, he would have to refund USD2,144 relating to “dental irregularities”.<sup>4</sup> In a 15 February 2019 response, the Applicant admitted that there was “a difference between the services claimed in the past and the X-RAY” and that “one of the previous dental claims back in June 2017, was for a relative of [his] who was in need for the dental services and could not afford it”. He explained that this was not fraud but rather “a mistake” and he was willing to accept their “judgment”.<sup>5</sup>

9. On 21 March 2019, Cigna informed the Applicant that two invoices from Dr. RFB, dated 9 April 2016 and 29 June 2017, and one invoice from Dr. MM, dated 4 February 2018, had been examined by their dental consultant who had concluded that the irreversible treatments described on the invoices had not occurred as they did not show on the OPGs that he had submitted. Consequently, Cigna demanded reimbursement of USD2,144 for payments made based on these three invoices.<sup>6</sup> The Applicant reimbursed Cigna the USD2,144 on 13 April 2019.<sup>7</sup>

10. Cigna forwarded a fraud report to the Office of Internal Oversight Services (“OIOS”) implicating the Applicant on 19 March 2019.<sup>8</sup> After a preliminary

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<sup>2</sup> Reply, annex R/2, pp. 96 & 97.

<sup>3</sup> Reply, annex R/2, pp. 93 to 96.

<sup>4</sup> Reply, annex R/2, p. 88.

<sup>5</sup> Reply, annex R/2, p. 86.

<sup>6</sup> Reply, annex R/2, p. 80.

<sup>7</sup> Reply, annex R/2, pp. 77 - 79.

<sup>8</sup> Reply, annex R/2, p. 18.

assessment, OIOS referred the matter to UNIFIL on 11 April 2019 for investigation.<sup>9</sup> On 13 May 2019, the Regional Conduct and Discipline Section (“RCDS”) referred the allegations against the Applicant to the UNIFIL Special Investigations Unit (“SIU”) for investigation.<sup>10</sup> The SIU investigators conducted an investigation between 13 May and 10 June 2019 and finalized their report on 11 June 2019.<sup>11</sup>

11. During the Applicant’s interview with SIU on 27 May 2019, he stated that the dental treatments provided on 9 April 2016, 29 June 2017 and 4 February 2018 were provided to his relatives but he had submitted claims to Cigna for these treatments because his relatives needed assistance. He considered the claims to be “humanitarian assistance” to his relatives.<sup>12</sup>

12. Based on the findings in the investigation report, UNIFIL recommended that the matter be referred to the Office of Human Resources (“OHR”) for further action.<sup>13</sup>

13. The Applicant was placed on administrative leave with pay (“ALWP”) effective 16 October 2019.<sup>14</sup> He received allegations of misconduct from OHR on 16 December 2019<sup>15</sup>, which alleged that between 2016 and 2018, he had submitted false information in support of claims for reimbursement for dental expenses to the medical insurance plan (“MIP”) provider, Cigna.<sup>16</sup> He was informed that if the facts were established, his conduct would constitute a violation of staff regulations 1.2(b) and 1.2(q) and section 10.1 of ST/AI/2015/3 (Medical insurance plan for locally recruited staff at designated duty stations away from Headquarters)<sup>17</sup>. The Applicant was granted one month to provide comments on the allegations of misconduct and informed of his right to avail himself of the assistance of legal counsel.<sup>18</sup> On the same day, the

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<sup>9</sup> Reply, annex R/2, p. 17.

<sup>10</sup> Reply, annex R/2, pp. 11 & 14.

<sup>11</sup> Reply, annex R/2, p. 11.

<sup>12</sup> Application, annex 3.

<sup>13</sup> Reply, annex R/1.

<sup>14</sup> Reply, annex R/3.

<sup>15</sup> Reply, annex R/5.

<sup>16</sup> Reply, annex R/4.

<sup>17</sup> For a definition and example of a fraudulent act, see ST/IC/2016/25 (Anti-fraud and anti-corruption framework of the United Nations Secretariat).

<sup>18</sup> Reply, annex R/4.

Applicant was placed on administrative leave without pay (“ALWOP”).<sup>19</sup>

14. In a response dated 15 January 2020, the Applicant: (a) admitted to misusing the health insurance plan but attributed his conduct to a need to assist sick family members who were in dire financial circumstances; (b) apologized for his “misjudgments”; (c) undertook to not misuse the MIP again; and (d) denied having an agreement with the two dentists. The Applicant requested that the following be taken into consideration as mitigating factors when imposing a disciplinary sanction: (a) his employment with UNIFIL since 2007 and his good conduct during his years of service; (b) his successful performance of his duties; (c) his wife and three minor children who depend on him solely for financial support and health insurance coverage; and (d) substantial loans he had taken to purchase a house and a car for his family. He expressed his willingness to accept any disciplinary measure that would allow him to continue working with the Organization.<sup>20</sup>

15. By a memorandum dated 4 February 2020 (“sanction letter”), the Assistant Secretary-General for Human Resources informed the Applicant that the USG/DMSPC had concluded that the allegations against him had been established by clear and convincing evidence and that she had decided to impose on him the disciplinary measure of separation from service, with compensation in lieu of notice and without termination indemnity.<sup>21</sup> The Applicant acknowledged receipt of the sanction letter on 6 February 2020<sup>22</sup> and was separated from service on 7 February 2020<sup>23</sup>.

## **SUBMISSIONS**

### ***Applicant’s submissions***

16. The Applicant’s case is that the contested decision should be rescinded and he should be restored to service for the following reasons:

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<sup>19</sup> Reply, annex R/6.

<sup>20</sup> Reply, annex R/7.

<sup>21</sup> Application, annex 2.

<sup>22</sup> Reply, annex R/9.

<sup>23</sup> Application, p. 2.

a. The measure imposed was too severe, especially since he was denied termination indemnity after working for the Organization for 13 years.

b. In imposing the contested disciplinary measure, the Respondent failed to take into consideration that: he was under pressure to assist family members in need; he readily admitted his mistake to Cigna; he reimbursed the USD2,144 that was paid to him for the three claims in question; cooperated with the investigation although other staff members had encouraged him to lie/deny all the charges; he is unemployed and unable to support his family.

c. The SIU investigator interviewed him for three hours during Ramadan. He submits that several of his answers were recorded wrongly due to the investigator misunderstanding and/or misinterpreting what he said. He also did not re-read the whole interview before signing it because he was exhausted from fasting. Additionally, he did not think that he would be sanctioned so harshly.

17. The Respondent submits that it was established by clear and convincing evidence that between 2016 and 2018, on one or more occasions, the Applicant submitted false information in support of MIP claims for reimbursement for dental expenses to Cigna. The Respondent points to the following facts in support of his position:

a. The MIP claims submitted by the Applicant on 11 April 2016, 29 June 2017 and 8 February 2018 did not relate to dental treatment received by him; and he received a total of USD2,144 in reimbursement by Cigna.

b. During the Applicant's interview with the SIU investigators, and later in his comments to the allegations of misconduct, he admitted that the medical reports/invoices he submitted in support of the MIP claims for reimbursement did not relate to dental treatment received by him or his wife.

18. The Respondent submits that the Applicant's conduct amounted to serious misconduct under Chapter X of the Staff Rules because by submitting MIP claims that

contained false information, the Applicant failed to uphold the highest standards of integrity, in violation of staff regulation 1.2(b). Further, by misusing his United Nations insurance, a benefit that he receives by virtue of his position with the Organization, the Applicant also violated staff regulation 1.2(q) and section 10.1 of ST/AI/2015/3.

19. The Respondent submits that the disciplinary measure was proportionate to the offense because it is in line with past cases involving submission of false information in relation to a medical claim or abuse of the medical insurance provided by the Organization which have resulted in dismissal or separation from service with compensation in lieu of notice but without termination indemnity. With respect to mitigating factors, the Administration considered the Applicant's admission of his conduct, apology for his conduct, expression of sincere remorse and the Applicant's long service with the Organization.

## CONSIDERATIONS

20. The Dispute Tribunal examines the following elements in disciplinary cases:

- a. If the staff member's due process rights were guaranteed during the entire proceeding;
- b. Whether facts were established by clear and convincing evidence;
- c. Whether the facts amount to misconduct;
- d. Whether the sanction is proportionate to the gravity of the offence and;<sup>24</sup>

21. The Appeals Tribunal has clarified that "it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him" or otherwise "substitute its own decision for that of the Secretary-General".<sup>25</sup>

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<sup>24</sup> *Turkey* 2019-UNAT-955, para. 32; *Miyzed* 2015-UNAT-550, para. 18; *Nyawa* 2020-UNAT-1024.

<sup>25</sup> *Sanwidi* 2010-UNAT-084, para. 40.

22. In disciplinary cases, when termination is a possible outcome, the evidentiary standard is that the Administration must establish the alleged misconduct by “clear and convincing evidence”, which “means that the truth of the facts asserted is highly probable”.<sup>26</sup>

23. The Tribunal will examine the three claims for which the Applicant was sanctioned against the elements set out at paragraph 21 above.

***Whether Applicant’s due process rights were respected***

24. The Tribunal finds that in the investigation the Applicant had been properly informed of the subject and purpose of the interview and afforded sufficient notice. Further, the Applicant’s assertion that he did not feel well during the interview and failed to diligently read the interview record before signing it is without support. At the end of his interview, the Applicant was asked if he had any objections as to how the interview was conducted, to which he responded in the negative. He, in any event, did not raise any objections to the findings until the application.

25. The Applicant’s contention in the application that the SIU investigation included errors and misinterpretations was not specific. In clarifying the issue at the CMD, the Tribunal addressed the only factual issue raised, by inviting the Applicant’s submissions regarding the particulars of the claim of 11 April 2016, and, ultimately, ruling in his favour on this score. The Applicant did not raise any further factual corrections and the remaining admissions were confirmed in his written submissions and during the CMD.

***Whether the facts in relation to the claim of 11 April 2016 (invoice dated 9 April 2016) have been established by clear and convincing evidence.***

26. On 11 April 2016, the Applicant submitted a claim form to Cigna for reimbursement of dental expenses in the amount of USD730. In support of the claim, the Applicant attached a report and invoice, dated 9 April 2016, from Dr. RFB.<sup>27</sup> Cigna

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<sup>26</sup> *Turkey op. cit.*, para. 32.

<sup>27</sup> Reply, annex R/2, pp. 21, 23 & 38–39.



paid the Applicant USD584 for this claim.<sup>28</sup> The Applicant indicated in the claim form that his wife, HS, was the patient but the report and invoice from Dr. RFB indicated that the Applicant was the patient.

27. The Applicant admitted during his 27 May 2019 SIU interview that the 11 April 2016 claim was for dental services provided to one of his male relatives, IS. He explained that although he had not received the dental services, Dr. RFB put his name on the report and invoice because he was the Cigna plan member who was “doing the favor” for IS. He put his wife’s name on the form because he did not want to “put all the claims on one name”. He stated that Dr. RFB made a mistake by putting his name instead of his wife’s name on the documents. He confirmed that the dental work listed in the report did not conform with his OPG.<sup>29</sup> The Applicant confirmed during the CMD that there had been concern about putting all claims in his name, while maintaining however, that his wife had indeed received the treatment in April 2016.

28. It is worth noting that Cigna informed SIU on 20 May 2019 that “the claim form of 11 April 2016 did indicate the name of the staff member’s spouse, however we consider it an error because the invoice was issued in the name of [the Applicant] and when we informed him of the irregularities detected, he did not dispute but returned the refund requested automatically. This invoice was listed in our report as invalid because the crown on tooth no. 25 could not have been performed as it was not shown on [the Applicant’s] post-OPG”. Cigna stated that it was not in possession of the Applicant’s spouse’s OPGs.<sup>30</sup>

29. At Section VIII, para. 6 of the application and during the 19 May 2021 CMD, the Applicant averred that the 11 April 2016 claim was genuine. He averred that although the dental service was provided to his wife, Dr. RFB made a mistake by issuing the invoice in his name instead of his wife’s name. He denied that Dr. RFB had, in fact, provided the dental treatment to IS. In support of this contention, he submitted: (a) an undated OPG that had his wife’s name and date of birth; and (b) a

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<sup>28</sup> Reply, annex R/2, pp. 41-43.

<sup>29</sup> Application, annex 3, pp. 1-2.

<sup>30</sup> Reply, annex R/2, p. 59.

letter, dated 24 May 2021, from Dr. RFB stating that the Applicant's wife had been the patient on 9 April 2016 and that he had put the Applicant's name on the invoice and report because it was him who was the insured.<sup>31</sup>

30. The Respondent urged the Tribunal to reject the Applicant's assertions in his application and at the CMD with respect to the 11 April 2016 claim due to the inconsistent explanations he had provided to the SIU investigator in 2019 and the Tribunal in 2020/2021. The Respondent's position is that the Applicant should have provided the documents that he submitted on 7 June 2021 during the investigatory and disciplinary processes to clarify that the 9 April 2016 treatment had been provided to his wife but, instead, he specifically told the SIU investigator that the service had been provided to IS, who was not insured on the Applicant's Cigna plan. Consequently, this information was not before the USG/DMSPC when the sanction decision was made.<sup>32</sup>

31. The Respondent submits further that: (a) the OPG submitted by the Applicant on 7 June 2021 is undated and thus has no probative value as regards the legitimacy of the invoice of 9 April 2016; (b) Dr. RFB's statement of 24 May 2021 is not credible as he was also involved in the Applicant's fraudulent scheme; and (c) even if the Tribunal accepts the Applicant's assertion that there was a genuine mistake with this claim, the disciplinary measure imposed would still be warranted as the Applicant admitted his misconduct in respect of the other false claims that had been submitted to Cigna.

32. The Tribunal finds that, for the reasons stated by the Respondent, the documents submitted by the Applicant are of limited evidentiary value. These factors notwithstanding, the Tribunal notes that: (a) the Applicant had no interest in falsifying a claim to the benefit of his wife, who was insured as a family member under the same plan; (b) the explanation by the dentist is not entirely unreasonable; and (c) the undated OPG, apparently belonging to a female, indeed displays a prosthetic crown on tooth No. 25. Against these facts, and lacking any physical evidence, the main incrimination comes from the Applicant's earlier reactions: refunding to Cigna and admission in the

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<sup>31</sup> Applicant's submissions of 24 May 2021 and 7 June 2021.

<sup>32</sup> Respondent's response to Order No. 119.

investigation. The Tribunal cannot, however, exclude that these acts had been dictated by the Applicant's consciousness of other instances of abuse of the insurance plan. However, in the case of the invoice in question, the Tribunal does not consider the charge proven by clear and convincing evidence.

***Whether the facts relating to the claims of 29 June 2017 (invoice dated 29 June 2017)<sup>33</sup> and 8 February 2018 (invoice dated 4 February 2018)<sup>34</sup> have been established by clear and convincing evidence***

33. The Applicant admitted to the SIU investigator that the treatment related to the 29 June 2017 claim was for his relative, IS, and that Dr. RFB put his name on the invoice and report at IS' request. He gave IS the settlement from Cigna so he could pay Dr. RFB. He submitted the claim to Cigna to assist IS. The Applicant confirmed that he had not received any of the dental work indicated in Dr. RFB's report and that he reimbursed Cigna USD840 for this claim.<sup>35</sup>

34. With respect to the 8 February 2018 claim, he admitted to the SIU investigator that the patient had been his sister-in-law, NS and that she had requested Dr. MM to put his name on the report and invoice since he was insured. He submitted the claim to Cigna to assist NS. The Applicant confirmed that he had not received any of the dental work indicated in Dr. MM's report and that he reimbursed Cigna USD720 for this claim.<sup>36</sup>

35. The above notwithstanding, at section VIII, paragraph 7 of the application, the Applicant stated that the claims for 29 June 2017 and 8 February 2018 were "filled and submitted by my spouse and not me". He claimed that his wife had submitted those claims to assist her sister and her cousin and that he not been aware of it until he received the email from Cigna. This is why he reimbursed the money as soon as he found out.

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<sup>33</sup> Reply, annex R/2, pp. 31-37.

<sup>34</sup> Reply, annex R/2, pp. 24-30.

<sup>35</sup> Application, annex 3.

<sup>36</sup> Ibid.

36. During the CMD, Counsel for the Respondent pointed out that the two claim forms at issue could not have been filled out by the Applicant's wife as asserted because both forms had the Applicant's handwriting and signature. The Applicant subsequently conceded during the CMD that he had filled out and signed both claim forms mentioned in paragraph 7 and that his wife only dropped them into the Cigna mailbox that was situated outside UNIFIL Headquarters.

37. The Tribunal considers that the facts relevant for the claims for 29 June 2017 and 8 February 2018 have been established by clear and convincing evidence.

***Whether the established facts amount to misconduct***

38. Staff regulation 1.2(b) requires staff members to "uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status". Submission of fraudulent claims is clearly irreconcilable with the concept of integrity. While it is true that the Applicant reimbursed Cigna the money that had been unduly rendered to him, the mere fact that he knowingly submitted unauthentic invoices and receipts constitutes a violation of staff regulation 1.2(b) and amounts to misconduct.

39. The Tribunal notes that although Cigna administers the health insurance of staff members, the access to it is by virtue of the staff member's status with the Organization. The terms of it are negotiated, and costs are borne in part, by the Organization. Therefore, any fraud or abuse of the insurance plan by any member harms not only the reputation of the Organization but also undermines its standing vis-à-vis the insurance provider and its financial interests. The Applicant's conduct, therefore, also violated staff regulation 1.2(q), which requires that the use of assets of the Organization be only for official purposes.

### ***Proportionality of the sanction***

40. In *Sanwidi*<sup>37</sup> the United Nations Appeals Tribunal (“UNAT”) stated:

... In the context of administrative law, the principle of proportionality means that an administrative action should not be more excessive than is necessary for obtaining the desired result. The requirement of proportionality is satisfied if a course of action is reasonable, but not if the course of action is excessive. This involves considering whether the objective of the administrative action is sufficiently important, the action is rationally connected to the objective, and the action goes beyond what is necessary to achieve the objective. This entails examining the balance struck by the decision-maker between competing considerations and priorities in deciding what action to take. However, courts also recognize that decision-makers have some latitude or margin of discretion to make legitimate choices between competing considerations and priorities in exercising their judgment about what action to take.

... When judging the validity of the Secretary-General’s exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.

41. While UNAT recognizes the Secretary-General’s discretionary authority to impose a disciplinary sanction, it also recognizes that this discretion is not unfettered and the UNDT can interfere when the sanction lacks proportionality, i.e. when it is excessive, unbalanced and unsuitable.<sup>38</sup> In *Samandarov*<sup>39</sup>, UNAT stated:

With regard to the discretion of the Secretary-General to impose a sanction, the UNDT noted that this discretion is not unfettered, in that there is a duty to act fairly and reasonably in terms of which the UNDT is permitted to interfere where the sanction is lacking in proportionality.

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<sup>37</sup> 2010-UNAT-084, paras. 39, 40 & 42. See also *Turkey* 2019-UNAT-955; *Jenbere* 2019-UNAT-935.

<sup>38</sup> See for instance, *Applicant* 2013-UNAT-302, para. 29, citing: *Messinger* 2011-UNAT-123; *Portillo Moya* 2015-UNAT-523, paras. 17 and 19-21; *Masri* 2010-UNAT-098, para. 30; *Sanwidi* 2010-UNAT-084, para. 43; *Haniya* 2010-UNAT-024, para. 31; and *Mahdi* 2010-UNAT-018, para. 27.

<sup>39</sup> 2018-UNAT-859.

The proportionality principle limits the discretion by requiring an administrative action not to be more excessive than is necessary for obtaining the desired outcome.

42. In *Rajan*<sup>40</sup>, UNAT stated:

The requirement of proportionality asks whether termination is the appropriate and necessary sanction for the proven misconduct or whether some other alternative sanction will be more suitable in the circumstances. In this regard, it must be kept in mind that termination is the ultimate sanction and should not be imposed automatically. The question to be answered in the final analysis is whether the staff member's conduct has led to the employment relationship (based on mutual trust and confidence) being seriously damaged so as to render its continuation intolerable

43. In the present case the Tribunal agrees with the Respondent that retaining the Applicant in service would be irreconcilable with the values of the Organization. The measure applied was in line with the past cases involving submitting false information in relation to a medical claim or abusing the medical insurance provided by the Organization which have resulted in dismissal or separation compensation in lieu of notice but without termination indemnity.<sup>41</sup> Removing one specific event from the scope of confirmed charges, that is, the claim dated 11 April 2016, does not alter this conclusion. The Tribunal further finds that the Respondent correctly identified and weighed all the mitigating circumstances.

44. In conclusion, the Tribunal finds no basis to interfere with the disciplinary measure.

## **JUDGMENT**

45. The application is dismissed.

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<sup>40</sup> 2017-UNAT-781, para. 47.

<sup>41</sup> See Practice of the Secretary-General in disciplinary matters and cases of possible criminal behavior, 1 July 2016 to 30 June 2017 (A/72/209), paras. 32-37 and 42; and Practice of the Secretary-General in disciplinary matters and cases of possible criminal behavior, 1 July 2015 to 30 June 2016 (A/72/209), paras. 40, 42 and 46.

*(Signed)*  
Judge Agnieszka Klonowiecka-Milart

Dated this 18<sup>th</sup> day of June 2021

Entered in the Register on this 18<sup>th</sup> day of June 2021

*(Signed)*  
Abena Kwakye-Berko, Registrar, Nairobi