



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

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Judgment No. 2013-UNAT-346

**Goodwin  
(Appellant/Respondent)**

**v.**

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

**JUDGMENT**

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Before:	Judge Mary Faherty, Presiding Judge Inés Weinberg de Roca Judge Richard Lussick
Case Nos.:	2012-388 & 2012-389
Date:	28 June 2013
Registrar:	Weicheng Lin

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Counsel for Mr. Goodwin: George G. Irving

Counsel for Secretary-General: Amy Wood

1. On 17 August 2012, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York issued Judgment No. UNDT/2012/126, in the case of *Goodwin v. Secretary-General of the United Nations*. On 12 October 2012, both Mr. Craig Goodwin and the Secretary-General of the United Nations appealed this Judgment to the United Nations Appeals Tribunal (Appeals Tribunal). Both parties filed their respective answers on 7 December 2012.

### **Facts and Procedure**

2. From 2001 to 2003, Mr. Goodwin served with the Organization in Timor Leste, and from 2003 to 2004 in Liberia. In early 2004, he was involved in the planning of the United Nations Advance Mission in Sudan (UNMIS), to which he was subsequently deployed as a Logistics Officer. In November 2005, Mr. Goodwin was selected for the post of Chief Aviation Officer at UNMIS, at the P-5 level. The decision was, however, not immediately implemented in light of an ongoing management audit and subsequent investigation by the Office of Internal Oversight Services (OIOS) into procurement activities within UNMIS. On 28 November 2005, Mr. Goodwin was therefore re-appointed to his post at UNMIS, at the P-4, step 7 level.

3. From September to December 2005, OIOS conducted a comprehensive management audit of peacekeeping activities, including at UNMIS. OIOS issued a draft report on 20 December 2005, in which it, *inter alia*, found irregularities in procurement activities within UNMIS.

4. On 10 January 2006, Mr. Goodwin was recalled to the Organization's Headquarters in New York and on 16 January 2006, he received a letter from the Chef de Cabinet in which he was advised that in view of the ongoing OIOS investigation, the Secretary-General had decided to place him on special leave with full pay (SLWFP), pursuant to Staff Rule 105.2(a)(i).

5. In January 2006, a Procurement Task Force (PTF) was established within OIOS to investigate allegations of wrongdoing in the Organization's procurement activities, including matters raised in the OIOS report. On 4 August 2006, the PTF issued a report (PTF Report), which included allegations of misconduct against Mr. Goodwin. On 15 August 2006, Mr. Goodwin was advised that, based on the PTF Report, he was being charged with

misconduct.<sup>1</sup> Mr. Goodwin was further advised that his SLWFP was being ended and that he could return to work in another duty station performing functions unrelated to his post in Sudan. In August 2006, he returned to duty at the Organization's Headquarters.

6. On 14 September 2006, Mr. Goodwin was given a revised version of the PTF Report, withdrawing one of the original charges due to a factual error.<sup>2</sup>

7. On 8 January 2007, Mr. Goodwin was advised that disciplinary charges against him would be dropped and that the matter would be referred to the Department of Peacekeeping Operations (DPKO) for administrative action. On 16 January 2007, the Assistant Secretary-General, DPKO, issued Mr. Goodwin a reprimand which confirmed the findings of the PTF Report, as communicated to him in the 15 August 2006 letter, including the subsequent amendment of 14 September 2006.

8. On 19 January 2007, Mr. Goodwin was informed that the administrative reprimand was withdrawn pending a further review by the newly appointed Secretary-General. In December 2007, the case was referred to the Joint Disciplinary Board (JDC) which issued its report in February 2009. The JDC recommended that the charges be dropped and that the administrative reprimand be reinstated. On 2 June 2009, Mr. Goodwin was informed that the Secretary-General had decided to accept the JDC's recommendations.

9. In April 2009, Mr. Goodwin accepted a position in Kenya as Officer-in-Charge of Mission Operations and Plans, African Union Mission in Somalia (AMISOM).

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<sup>1</sup> Judgment No. UNDT/2011/104, para. 14:

The Applicant was informed that the PTF had found that, amongst other things, that he had been derelict in his managerial responsibilities as Chief Aviation Officer at UNMIS and that he had failed to exercise sound and prudent oversight, although both letters noted that there was no allegation that the Applicant had personally benefited from the procurement exercises. The letters stated further the PTF's findings that the Applicant had failed to ensure that the Organisation's procurement rules and financial regulations were followed, resulting in an accumulated debt of more than USD 1.3 million, and that he had made misleading statements to investigators, attempted to blame subordinates for his failings, and failed to ensure that the Organisation's resources were properly used. The Applicant was advised that, based on the PTF Report, he was charged with misconduct, (specifically, that he contravened article 101.3 of the Charter of the United Nations and staff regulations 1.2(a), 1.2 (b) and 1.3(a)).

<sup>2</sup> Judgment No. UNDT/2011/104, para. 16: "On 14 September 2006, Mr. Goodwin was informed that one of the original charges had been withdrawn (the charge that he had been aware of a subordinate's improper contacts with a vendor during a bidding process)."

10. On 27 August 2009, Mr. Goodwin filed an application with the UNDT challenging the Secretary-General's decision to first withdraw and then reinstate the administrative reprimand and the decision to transfer him from his post with UNMIS. On 21 June 2011, the UNDT issued Judgment No. UNDT/2011/104 on the merits, in which it concluded that while the Organization had a valid reason to reprimand Mr. Goodwin on 16 January 2007, it breached his procedural rights by removing it three days later, and by reinstating it in June 2009. The UNDT further held the decision to transfer Mr. Goodwin from his functions at UNMIS was a disguised disciplinary measure in breach of his terms of employment.

11. On 17 August 2012, the UNDT issued Judgment No. UNDT/2012/126 on compensation. The UNDT declined to award compensation for pecuniary harm on the ground that Mr. Goodwin failed to demonstrate that he suffered any actual economic harm. The UNDT however ordered that the Secretary-General pay USD 30,000 as compensation for "harm to [Mr. Goodwin's] reputation, exacerbated by delay and due process violations", which has "also affected his general possibilities for career advancement and promotions". Both parties appeal this Judgment.

### **Submissions**

#### **Mr. Goodwin's Appeal**

12. Mr. Goodwin submits that the UNDT erred in law and fact by awarding no compensation for his actual economic loss. He requests that the Appeals Tribunal find that he is entitled to compensation in the amount of 12 months net base pay.

13. The UNDT erred in finding that Mr. Goodwin failed to demonstrate that the reprimand affected his chances for promotion to other posts as his argument concerned the specific P-5 post in circumstances where he had already been selected. The implementation of Mr. Goodwin's promotion was first deferred and finally rejected, solely on the basis of the illegal actions of the Secretary-General imposing a disguised disciplinary measure.

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

14. The Secretary-General requests the Appeals Tribunal to affirm the UNDT findings that Mr. Goodwin did not suffer any actual economic harm and submits that his appeal be dismissed in its entirety.

**The Secretary-General's Appeal**

15. The Secretary-General submits that the UNDT erred in law and exceeded its competence in awarding damages for non-pecuniary harm and requests that the Appeals Tribunal vacate the award of compensation.

16. Mr. Goodwin failed to submit any evidence in support of his claim that his reputation or wellbeing was harmed as a result of the breach of his due process rights.

17. Furthermore, the UNDT made no factual findings specifying the actual injury that resulted from the breach. The UNDT awarded Mr. Goodwin compensation on mere general findings, which are legally insufficient to support the award of compensation.

18. Alternatively, the Secretary-General requests the Appeals Tribunal to find that the UNDT erred by ordering an excessive amount of compensation and to reduce the award accordingly.

**Mr. Goodwin's Answer to the Secretary-General's Appeal**

19. Mr. Goodwin requests the Appeals Tribunal to reject the appeal in its entirety and to award costs to him.

**Considerations**

*Mr. Goodwin's Appeal*

20. Mr. Goodwin appeals the UNDT's failure to award him compensation for pecuniary loss. He contends that the Dispute Tribunal, while recognizing the unlawfulness of the treatment afforded to him between 2005 and 2009, nonetheless committed an error of law and fact by failing to observe that the promotion to the P-5 post of Chief Aviation

Officer, for which he was recommended in November 2005, was denied to him as a consequence of the unlawful acts of the Administration.

21. The Secretary-General argues that no error of law or fact was made by the Dispute Tribunal and contends that the UNDT properly considered that Mr. Goodwin “must establish that he suffered actual economic harm” and found that he had not. The Secretary-General contends that the UNDT’s reasoning is fully in line with the jurisprudence of the Appeals Tribunal which has consistently held that there must be a sufficient evidentiary basis of injury for an award of compensation.<sup>3</sup> The Secretary-General further submits that no testimony or other specific evidence of actual economic harm was presented by or on behalf of Mr. Goodwin at the hearing on compensation held before the Dispute Tribunal and maintains that arguments made on Mr. Goodwin’s behalf constituted speculative statements “that, but for the investigation into misconduct that occurred as a result of the PTF Report, [Mr. Goodwin] would have been promoted to the P-5 level at an earlier point in time”.

22. In declining to award damages for pecuniary loss the UNDT stated:

The Tribunal finds that [Mr. Goodwin] has provided limited evidence of his exclusion from consideration for other posts. There was no oral testimony from [Mr. Goodwin], or documentary evidence of his having applied for positions during the period he alleges he was not selected. There has been limited explanation given as to why, as [Mr. Goodwin] contended, he suffered more damages in his specific field of aviation than a staff member in any other field would have suffered in the same circumstances, or how the shift from aviation to a role in programs caused damages. Indeed, at the hearing, Counsel for [Mr. Goodwin] conceded that the professional salary scale was the same for both fields. The Tribunal also notes that there is no right to promotion and in any case, [Mr. Goodwin] was eventually promoted.<sup>4</sup>

23. The Appeals Tribunal (by a majority with Judge Faherty dissenting) does not find any error of law or fact on the part of the UNDT such as would entitle the Appeals Tribunal under Article 2(1)(c) and (e) of its Statute to interfere with the findings of the Dispute Tribunal on the issue of pecuniary damages. In *Lutta* we have stated that we will “respect the opinion of the trial judge as to how to determine damages in each particular case”.<sup>5</sup> The trial judge is best placed to assess the nature and evidential value of the information being provided by an applicant to the UNDT to justify an award of damages, including pecuniary damages. In the

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<sup>3</sup> *Hastings v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-109; *James v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-009.

<sup>4</sup> Judgment No. UNDT/2011/126, para. 16.

<sup>5</sup> *Lutta v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-117, para. 14.

absence of a compelling argument that the UNDT erred on a question of law, or on a question of fact resulting in a manifestly unreasonable decision, we will not lightly interfere with the findings of the Dispute Tribunal. We do not find that the present appeal constitutes a compelling argument, as we are not persuaded that the information contained in Mr. Goodwin's Submission on Compensation before the UNDT constitutes a sufficient evidentiary basis for the claim he makes. Furthermore, we are satisfied that insofar as Mr. Goodwin satisfied the UNDT as to the effect on his general promotion prospects of the impugned action of the Administration, he was compensated for this in the award of USD 30,000 moral damages.

24. Accordingly, the majority's decision is that Mr. Goodwin's appeal is dismissed.

*The Secretary-General's Appeal*

25. The Secretary-General contends that the UNDT erred on questions of law and fact and exceeded its competence in awarding Mr. Goodwin compensation for non-pecuniary harm, specifically in awarding him compensation for harm to his reputation and well-being. The Secretary-General submits "that in the absence of evidence of harm, it was not open to the UNDT to extrapolate an award of damages for due process violations. [Mr. Goodwin] could only have been compensated for the actual moral injury that he suffered, if he had presented evidence of such injury."

26. Furthermore, the Secretary-General maintains that the UNDT did not make any substantial factual findings of such harm and contends that a "general finding by the UNDT that there has been a breach of ... due process rights or delays in the process does not provide a sufficient basis for an award of compensation for moral injury. Rather, ... the UNDT is obliged to assess the impact of a breach and determine the severity of the actual injury resulting from such a breach."

27. Mr. Goodwin urges the Appeals Tribunal to reject the Secretary-General's appeal and asserts that the compensation for non-pecuniary harm awarded by the Dispute Tribunal stemmed from the findings of fact it made in its Judgment on the merits, which substantiated the award of moral damages.

28. In its Judgment on the merits, the Dispute Tribunal found the Administration to have acted improperly and to have breached Mr. Goodwin's terms of appointment by, (i) its decision to withdraw the reprimand issued on 16 January 2007 and refer the matter to the JDC – a decision categorized by the UNDT as “double jeopardy”, and (ii) its decision to transfer Mr. Goodwin from his assignment at UNMIS, an action which the Dispute Tribunal found to be a “disguised disciplinary measure”.

29. In its Judgment on compensation, the UNDT stated “[t]he Tribunal finds that being investigated for misconduct and having been issued with an administrative reprimand is more than likely to have negatively impacted [Mr. Goodwin's] general reputation and well-being” and went on to state:

[T]he Tribunal is convinced from the submissions of [Mr. Goodwin] and in light of all the circumstances of the case, including the inappropriate content of the initial reprimand and the protracted period of time which it took to resolve the matter, that the [Secretary-General's] breaches did attach some “stigma” to [Mr. Goodwin] which negatively affected his general reputation and wellbeing, and therefore also his career and life in the broader sense. The Tribunal considers that this damage went beyond that which would have been caused had an appropriate reprimand been issued within a reasonable period of time, and [Mr. Goodwin] should be compensated for this.

30. The Dispute Tribunal further opined:

Whilst it is recognised that it is for [Mr. Goodwin] to substantiate the harm suffered as a result of delays and due process violations, and that damages may not be exemplary or punitive, [Mr. Goodwin] was subjected to an extended period of uncertainty and, as it turned out, an unnecessary disciplinary process. In dealing with [Mr. Goodwin], the [Secretary-General] breached the rule against double jeopardy (see para. 37 in *Goodwin* UNDT/2011/104 on liability), and subjected [Mr. Goodwin] to a disguised disciplinary measure.”

31. Addressing the issue of Mr. Goodwin's reassignment, (in its Judgment on the merits) the UNDT stated “[t]he [Secretary-General] did not have the power under the former Staff Rules to impose this disciplinary measure, and, in any event, did not afford [Mr. Goodwin] the usual protections which constitute the disciplinary process”. In that Judgment the Dispute Tribunal also observed

[Mr. Goodwin] has maintained throughout the proceedings that his transfer from the UNMIS post constituted a disguised disciplinary measure. The [Secretary-General]



has failed to respond in a meaningful manner to this argument, and has not sought to adduce evidence or argument justifying the transfer, or to address the related contention that [Mr. Goodwin's] career has been stymied, despite having had an opportunity to do so in the current proceedings.

32. The UNDT's findings on the merits, which are not the subject of appeal before us, clearly establish that there were breaches of the substantive and procedural entitlements which attached to Mr. Goodwin's contract of employment.

33. In *Asariotis*, we stated:

To invoke its jurisdiction to award moral damages, the UNDT must in the first instance identify the moral injury sustained by the employee. This identification can never be an exact science and such identification will necessarily depend on the facts of each case. What can be stated, by way of general principle, is that damages for a moral injury may arise:

(i) From a breach of the employee's substantive entitlements arising from his or her contract of employment and/or from a breach of the procedural due process entitlements therein guaranteed (be they specifically designated in the Staff Regulations and Rules or arising from the principles of natural justice). Where the breach is of a *fundamental* nature, the breach may *of itself* give rise to an award of moral damages, not in any punitive sense for the fact of the breach having occurred, but rather by virtue of the harm to the employee.

(ii) An entitlement to moral damages may also arise where there is evidence produced to the Dispute Tribunal by way of a medical, psychological report or otherwise 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 UNDT is satisfied that the stress, harm or anxiety is such as to merit a compensatory award.<sup>6</sup>

34. We are entirely satisfied that the substantive and procedural breaches identified by the Dispute Tribunal in the present case *of themselves* merit an award of moral damages because of the "harm" caused to Mr. Goodwin, namely his having been subjected to an improper and unlawful disciplinary process and an unlawful reassignment. In those circumstances we do not find any error of law or fact on the part of the Dispute Tribunal in compensating the staff member for the "stigma" which the UNDT quite properly found attached to him as a result of the Administration's actions.

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<sup>6</sup> *Asariotis v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-309, para. 36. (Emphasis in the original. Footnote omitted.)

35. On the issue of quantum of damages, we stated in *Solanki* that “compensation must be set by the UNDT following a principled approach and on a case by case basis” and “[t]he Dispute Tribunal is in the best position to decide on the level of compensation given its appreciation of the case”.<sup>7</sup> Having regard to all the matters of which the UNDT was apprised in the present case and noting, in particular, the nature of the administrative actions found by the Dispute Tribunal to be unlawful, we do not find that it erred in law or fact in its assessment of the moral damages to be awarded.

36. Accordingly, the Secretary-General’s appeal is dismissed.

37. While we have dismissed the Secretary-General’s appeal, we do not find any basis for an award of costs in favour of Mr. Goodwin.

### **Judgment**

38. For the foregoing reasons, both appeals are dismissed.

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<sup>7</sup> *Solanki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-044, para. 20.

Original and Authoritative Version: English

Done in New York, United States.

*(Signed)*

Judge Faherty, Presiding  
28 June 2013

*(Signed)*

Judge Weinberg de Roca  
21 June 2013

*(Signed)*

Judge Lussick  
28 June 2013

Entered in the Register on this 26<sup>th</sup> day of August 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar

**Dissent by Judge Faherty on Mr. Goodwin's Appeal:**

1. In his Submission on Compensation, on foot of UNDT Order No. 293 (NY/2011), Mr. Goodwin stated in paragraphs 3 and 4 as follows:

The decision to transfer [Mr. Goodwin] from the P-5 post of Chief of Aviation in UNMIS occurred after he had been competitively selected, assumed the functions as Officer-in-Charge and was proposed for appointment to the post by the mission in the fall of 2005. The [Secretary-General] has not disputed this point, which is [a] matter of record, and the official correspondence from the mission remains in his possession should further verification be required.

[Mr. Goodwin's] arguments that this action was a disguised disciplinary measure rests on the fact that his career and professional reputation were directly affected by denying him the benefits that his return to the post would have entailed. The negative effects of the imposition of a *de facto* "deferment, for a specified period, of eligibility for consideration for promotion" (which is a disciplinary measure enumerated under Staff Rule 10.2) had the effect of an additional, surreptitious penalty. This was found by the Tribunal to entail the liability of the [Secretary-General]. [Mr. Goodwin] would either have been promoted to P-5 or at least received an SPA for performing functions at a higher level. His legitimate career expectations were derailed until August 2010, when he was promoted to his present post of Chief of Operations and Plans, [United Nations Support Office for AMISOM].

2. The Secretary-General's Submission in response to Order No. 293 (NY/20110) stated at paragraph 24 the following:

In late 2005 [Mr. Goodwin] was selected for a position at the P-5 level. However, the recommendation for appointment was held in abeyance pending the outcome of the investigation. Following the finding that [Mr. Goodwin] had failed to fulfil his functions at the P-4 level to the standards required by the Staff Regulations and Staff Rules [Mr. Goodwin] was not promoted to the P-5 level.

3. The reprimand and disguised disciplinary measure which followed the investigation referred to by the Secretary-General was a process found by the UNDT to have been unlawful and improper and the Dispute Tribunal's reasons for such findings are set out in its Judgment on the merits.

4. It is an undisputed fact, known to the Dispute Tribunal prior to its determination on the issue of compensation that at the time of the initiation of the impugned disciplinary process Mr. Goodwin had been recommended for promotion to the P-5 position of Chief Aviation Officer. Curiously however, at paragraph 15 of its Judgment, the UNDT states that Mr. Goodwin could have established actual economic harm if he had identified “a specific promotion which he missed out on”. Yet that is, I am satisfied, what Mr. Goodwin does at paragraphs 3 and 4 of his Submission on Compensation.

5. It is also apparent from the face of the Judgment on Compensation that the UNDT only considered Mr. Goodwin’s claimed pecuniary loss in terms of abstract promotions, a case he did not make in his submission to the Dispute Tribunal.

6. I am thus satisfied that in assessing the claim for pecuniary loss, the UNDT failed manifestly to attach any or sufficient weight to the fact that Mr. Goodwin had been recommended for promotion to the P-5 level at the time of the impugned administrative actions.

7. By reason of the foregoing, I am satisfied that the Dispute Tribunal erred on a question of fact resulting in a manifestly unreasonable decision in ruling that Mr. Goodwin had not identified a specific promotion which he missed out on. I am satisfied that actual financial loss was incurred as a result of his not having been able to assume the P-5 position for which he was recommended in November 2005.

8. Details of the loss were contained in his Submission on Compensation to the UNDT which is annexed to his appeal. Given that Mr. Goodwin made specific reference to the difference in pay between a P-5, step 1 position and a P-4, step 7 position, I do not agree with the Secretary-General that the claim being made is speculative.

9. Having regard to the calculations furnished and taking into consideration that the UNDT, in awarding USD 30,000 moral damages, took into account the effect on Mr. Goodwin’s “general possibilities for career advancement and promotions”, I would in those circumstances award pecuniary damages in the amount of eight months’ net base salary. Accordingly, I would allow the appeal.

Original and Authoritative Version: English

Dated this 28<sup>th</sup> day of June 2013 in New York, United States.

*(Signed)*

Judge Faherty

Entered in the Register on this 26<sup>th</sup> day of August 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar