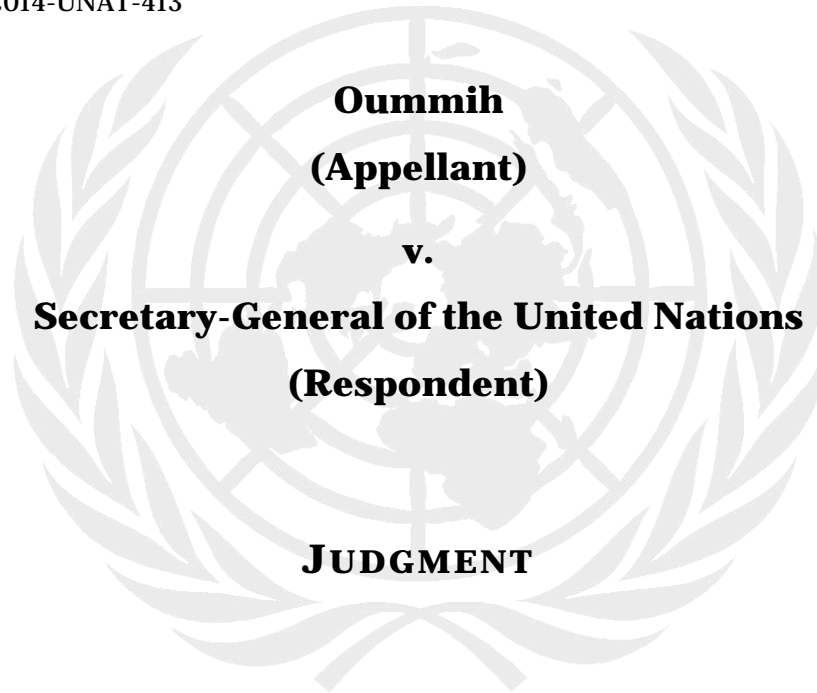




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2014-UNAT-413



**Oummih  
(Appellant)**

**v.**

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

**JUDGMENT**

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**Before:** Judge Luis María Simón, Presiding  
Judge Inés Weinberg de Roca  
Judge Rosalyn Chapman

**Case No.:** 2013-464

**Date:** 2 April 2014

**Registrar:** Weicheng Lin

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**Counsel for Appellant:** Cedric Vareil

**Counsel for Respondent:** Paul Oertly

**JUDGE LUIS MARÍA SIMÓN, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Amal Oummih against Judgment No. UNDT/2013/043, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Geneva on 8 March 2013, in the case of *Oummih v. Secretary-General of the United Nations*. Ms. Oummih appealed on 7 June 2013 and the Secretary-General filed his answer on 30 July 2013.

**Facts and Procedure**

2. Ms. Oummih entered the service of the Office of Staff Legal Assistance (OSLA), Office of Administration of Justice (OAJ), on 1 September 2009 as a Legal Officer on a two-year fixed-term contract. Her contract was subsequently extended.

3. On 6 March 2012, Mr. Brian Gorlick, the Chief of OSLA, e-mailed Ms. Oummih instructions relating to her work.

4. On 28 March 2012, one of Ms. Oummih's colleagues complained about her.

5. On 17 April 2012, while Ms. Oummih was on sick leave, Mr. Gorlick advised her that he was issuing her a written reprimand in respect of a case-management incident and for uncollegial behaviour. She was told that this written reprimand would be placed on her Official Status File (OSF), along with her comments, if any. Thereafter, Ms. Oummih contacted OAJ, requesting legal assistance in protesting the written reprimand. Her request was refused on 19 April 2012, on the grounds that the reprimand was legal.

6. On 7 May 2012, Ms. Oummih requested management evaluation of the decisions to produce a written reprimand; to place the warning on her OSF; and, to refuse her legal assistance. On 22 May 2012, however, she was notified that the written reprimand had been withdrawn and that all related documentation would be removed from her file. As a result, on 21 June 2012, Ms. Oummih was advised that her request for management evaluation was moot.

7. She contested this decision before the UNDT on 17 September 2012.

8. In Judgment No. UNDT/2013/043, the Dispute Tribunal rejected Ms. Oummih's application. The UNDT found it "unnecessary to rule on the lawfulness of the reprimand", which had been withdrawn and in relation to which she showed no compensable harm. The UNDT held that Ms. Oummih could not show moral or material damages for the period of just over one month during which the written reprimand was on her OSF. With respect to the refusal of OAJ to provide legal assistance, the UNDT noted that OAJ indicated the written reprimand was "lawful". This, it held, was hasty and inadequately reasoned. Nonetheless, the Dispute Tribunal concluded OAJ was entitled to refuse her legal assistance from OSLA, given the inherent conflict of interest posed by her application against a decision emanating from the OSLA Chief.

9. On 26 April 2013, Ms. Oummih requested an extension of time to appeal Judgment No. UNDT/2013/043, as well as Judgment No. UNDT/2013/044, to the Appeals Tribunal. She argued that she had been on medical leave and also that she needed time to secure bilingual counsel. On 6 May 2013, the Appeals Tribunal issued Order No. 133 (2013), granting Ms. Oummih until 7 June 2013 to file her appeals. She ultimately filed an appeal against only Judgment No. UNDT/2013/043.

10. On 24 March 2014, Ms. Oummih filed a Motion for Withdrawal of her appeal in the instant case.

### **Submissions**

#### **Ms. Oummih's Appeal**

11. Ms. Oummih submits that, whilst she suffered no material harm from the written reprimand, her moral harm was not negligible and was not remedied by the withdrawal of the reprimand. As such, the UNDT committed an error of fact that resulted in a manifestly unreasonable decision.

12. Ms. Oummih asserts that she was entitled to compensation for moral damages and that neither the withdrawal of the reprimand nor the UNDT Judgment constituted sufficient satisfaction. In particular, she states that the moral damage resulting from the written reprimand must be viewed in the context of the adverse work relationship she had with her supervisor, which aggravated the harm suffered.

13. She contends that the UNDT erred in law when it found that OAJ was entitled to refuse her legal assistance. On the contrary, she submits that the admitted conflict of interest with her supervisor at OSLA could have been avoided by securing the assistance of counsel from outwith OSLA or even OAJ, or by finding another solution such as financial assistance to defray the cost of private counsel.

**The Secretary-General's Answer**

14. The Secretary-General submits that Ms. Oummih has failed to show error of law or fact on the part of the UNDT, but simply restates the claims she made before the first instance court.

15. On the merits, he submits that the UNDT correctly rejected Ms. Oummih's claims concerning the existence of the written reprimand. The document having been withdrawn, the subject was moot.

16. With respect to damages, the Secretary-General contends that the UNDT properly declined to award compensation. The written reprimand was removed from her OSF only a few weeks after being placed there and Ms. Oummih did not prove to the Dispute Tribunal that she suffered any moral or material harm as a result of the placement of the written reprimand on her OSF for those weeks.

17. The Secretary-General argues, further, that the UNDT correctly rejected Ms. Oummih's claims concerning OAJ's refusal to grant her legal assistance. As a staff member of OSLA, her request for OSLA assistance presented a conflict of interest. In any event, he avers, once the written reprimand was withdrawn, her claim for legal assistance was also moot and, moreover, OSLA is entitled to decline to provide representation to any staff member.

**Considerations**

18. Ms. Oummih filed her appeal in this matter on 7 June 2013, having been granted an extension of the time limit in which to do so (see Order No. 133 (2013)).

19. She was notified in due course that her case would be considered by the Appeals Tribunal at its spring session in New York, which was scheduled to commence on 24 March 2014.

20. On 24 March 2014, *i.e.*, the first day of the Appeals Tribunal's spring session, Ms. Oummih filed a Motion for Withdrawal of her appeal in the instant case. In explanation, she stated, simply: "Applicant wishes to withdraw her appeal on the grounds that she no longer wishes to pursue this appeal."

21. In view of the fact that a panel of Judges had been constituted and assigned to the case, that all relevant documentation had been reviewed and prepared, and deliberations had taken place, as scheduled, the day the Appeals Tribunal received the Motion to Withdraw, we decided to dispose of the case by Judgment, rather than Order.

22. As this Tribunal has consistently held, an Appellant may withdraw his or her appeal simply by giving notice; the request need not be justified.<sup>1</sup> Accordingly, the Appeals Tribunal takes note of Ms. Oummih's succinct plea, and grants her Motion.

### **Judgment**

23. The appeal having been withdrawn, Judgment No. UNDT/2013/043 remains in force.

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<sup>1</sup> See Orders No. 69 (2011), No. 34 (2011), No. 16 (2010)

Original and Authoritative Version: English

Dated this 2<sup>nd</sup> day of April 2014 in New York, United States.

*(Signed)*

Judge Simón, Presiding

*(Signed)*

Judge Weinberg de Roca

*(Signed)*

Judge Chapman

Entered in the Register on this 13<sup>th</sup> day of May 2014 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar