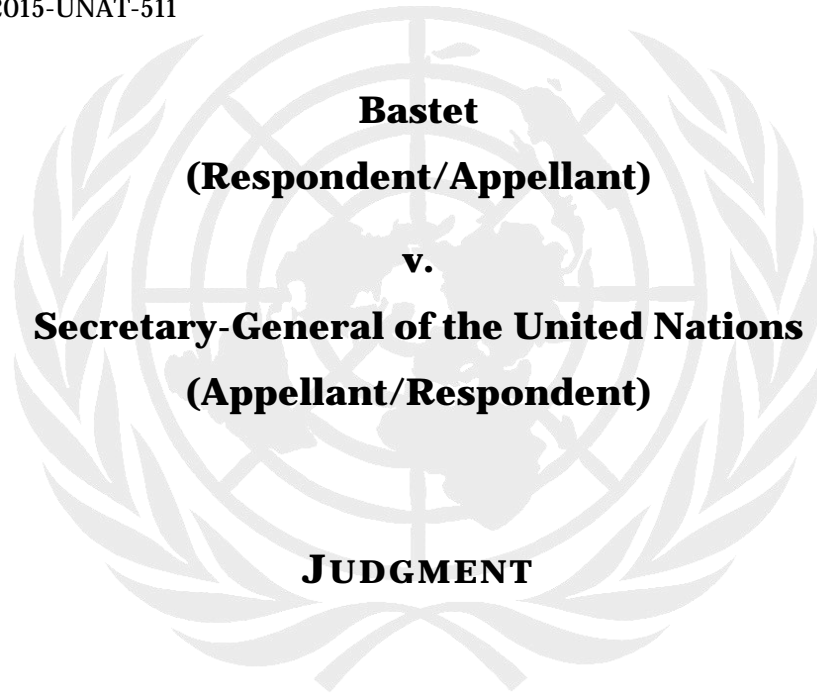




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2015-UNAT-511



**Bastet
(Respondent/Appellant)**

v.

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

JUDGMENT

Before: Judge Luis María Simón, Presiding
Judge Inés Weinberg de Roca
Judge Mary Faherty

Case Nos.: 2014-586 & 2014-583

Date: 26 February 2015

Registrar: Weicheng Lin

Counsel for Mr. Bastet: François Lorient

Counsel for Secretary-General: Stéphanie Cartier

JUDGE LUIS MARÍA SIMÓN, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it two appeals, by Mr. Bruno Bastet and the Secretary-General of the United Nations, against Judgment No. UNDT/2013/172, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Geneva on 16 December 2013. On 18 February 2014, the Secretary-General filed his appeal, and Mr. Bastet answered on 18 April 2014. On 4 April 2014, after being exceptionally granted an extension of time,¹ Mr. Bastet filed his own appeal, and the Secretary-General filed his answer on 10 June 2014.

Facts and Procedure

2. Mr. Bastet joined the Organization on 6 March 2000 and in February 2005, he was transferred to the Department of Economic and Social Affairs in New York.

3. Between 3 August 2005 and 6 August 2008,² Mr. Bastet submitted four rental subsidy claims on an annual basis to the Office of Human Resources Management (OHRM) for himself, his domestic partner and her daughter, as well as for their common son, as the tenants of an apartment in Manhattan. On each occasion he submitted a copy of the signed lease entered into with Euro Consulting S.A., as well as proof of payment of rent to support his claim.

4. On 27 August 2009, the Office of Internal Oversight Services (OIOS) was informed of a press article that reported, inter alia, that Mr. Bastet had falsified his address in order to illegally obtain a housing allowance in France, and that he was receiving rental subsidies from the United Nations even though he owned an apartment in Manhattan.

5. OIOS conducted its investigation, and in December 2009 presented Mr. Bastet with its preliminary report, on which Mr. Bastet commented. The report was finalised on 31 December 2009 and submitted to the Programme Manager.

6. On 22 February 2010, the Officer-in-Charge (OIC) of the Administrative Law Unit recommended to the OIC, OHRM, to institute disciplinary proceedings against Mr. Bastet under Section 5 of Administrative Instruction ST/AI/371 (Revised Disciplinary Measures and Procedures). The same day, the OIC, OHRM, informed Mr. Bastet that he faced misconduct

¹ Order No. 179 (2014) of 2 April 2014.

² 3 August 2005, 3 August 2006, 19 July 2007 and 6 August 2008.

charges for knowingly submitting inaccurate claims for rental subsidy allowance and certifying the accuracy of such claims, and for receiving rental subsidy allowances to which he knew he was not entitled. Mr. Bastet was invited to provide comments.

7. On 9 March 2010, Mr. Bastet provided his comments. He claimed, *inter alia*, that while he appeared on paper to be the owner of the Manhattan apartment, the apartment actually belonged to his father. He requested that all charges be dropped.

8. On 22 March 2010, the OIC, OHRM, recommended to the Secretary-General, through the Under-Secretary-General (USG) for Legal Affairs and the USG for Management, that Mr. Bastet be dismissed. This memorandum was signed by the USG for Legal Affairs and the OIC, USG for Management, but no date of signature is indicated on the memorandum.

9. On 27 April 2010, the OIC, OHRM, informed Mr. Bastet that the USG for Management, on behalf of the Secretary-General, had decided to impose on him the disciplinary measure of dismissal from service and that the Organization would seek to recover the amount of his rental subsidy payments.

10. On 27 October 2010, after the UNDT granted him an extension of time to file his application on the merits,³ Mr. Bastet submitted an application to the UNDT. He claimed that the OIOS investigation procedures violated several of his due process rights. Mr. Bastet maintained that he was not the real owner of the Manhattan apartment, and challenged the authority of the OIC, OHRM, to initiate the disciplinary process.

11. The Secretary-General challenged the receivability of Mr. Bastet's UNDT application and, on 11 December 2012, the UNDT in New York decided that the application was receivable.⁴

12. On 12 April 2013, the case was transferred to the Geneva Registry of the Tribunal.⁵

13. On 4 December 2013, an oral hearing was held. The UNDT in Geneva did not revisit the issue of receivability.

³ Order No. 263 (NY/2010) of 14 October 2010.

⁴ *Bastet v. Secretary-General of the United Nations*, Judgment No. UNDT/2012/196.

⁵ Order No. 96 (NY/2013) of 12 April 2013.

14. On 16 December 2013, the Dispute Tribunal rendered its Judgment. The UNDT found that neither the USG for Management, nor the OIC designated to act on behalf the USG for Management during her absence, had the proper authority to take the decision to dismiss Mr. Bastet, as the purported delegation upon which the Secretary-General relied had not been officially published. As such the dismissal decision was unlawful and should be rescinded. Noting also that all the individuals involved in the decision-making concerning Mr. Bastet's dismissal were OICs, and not the officials expressly stipulated in Administrative Instruction ST/AI/371 to partake in a disciplinary process, and that the designation of OICs was current "practice" in the Organization, the UNDT observed that "highly important decisions are not actually being taken by the individuals authorized to take them". Notwithstanding this procedural irregularity, the UNDT found that the facts constituted serious misconduct by Mr. Bastet such that the dismissal decision was justified on its merits. Accordingly, the UNDT did not deem it necessary to consider the other acts of misconduct that were also grounds for the disciplinary measure (namely, falsifying lease agreements, submitting inaccurate declarations about the number of persons for whom he claimed a rental subsidy allowance, and that rather than residing at the Manhattan apartment, he had leased it).

15. By way of remedy, the UNDT ordered rescission of the dismissal decision and, in the event the Secretary-General elected to rescind the contested decision, removal of the related material from Mr. Bastet's personnel file. Should the Secretary-General decide not to rescind the dismissal decision, the UNDT alternatively ordered that no compensation be paid to Mr. Bastet as any loss of salary and other consequences arose from his own serious misconduct, and that the documents relating to the dismissal remain in his personnel file given the disciplinary measure was justified on the merits.

Submissions

Mr. Bastet's Appeal

16. Mr. Bastet contends that the UNDT Judgment failed to address the substantive irregularities of the OIOS investigation, such as the absence of an official investigation, shortcomings in disciplinary procedures, the absence of disciplinary proceedings, and foremost the absence of established evidence. The UNDT also exceeded its jurisdiction insofar as the trial judge substituted himself for the OIOS investigators, contravening the principle of

double jeopardy. Furthermore, the UNDT concluded unilaterally, in the absence of established evidence and without due process, that Mr. Bastet had committed “serious misconduct”.

17. Mr. Bastet submits that, in reaching its misconduct finding, the UNDT erred on a number of facts (specified at appeal brief, Annex 5), and requests that they be struck from the UNDT Judgment. The UNDT’s misconduct finding also fails to take into account mitigating circumstances, namely that Mr. Bastet was wholly unaware that the 1991 deed erroneously stated his name, and not his father’s, until the OIOS investigation. The UNDT also erred in considering that Mr. Dinkelmeyer was Mr. Bastet’s legal representative in the absence of any evidence. Furthermore, insofar as the UNDT Judgment purported to cite “Facts”, it merely duplicated the findings of the OIOS report, which Mr Bastet submits is deficient and contested, having never been signed by him.

18. The UNDT also erred in law insofar as it: (i) conflated the common law and civil law conceptions of a “notary”; (ii) erroneously referred to ST/AI/371 of 1991 as “in effect” at the time of the dismissal decision (i.e., February to April 2010), although it had been implicitly abrogated as of 1 July 2009 when Chapter X of the former Staff Rules was abolished, thereby leaving a legal vacuum as concerns disciplinary matters. Its successor, Administrative Instruction ST/AI/371/Amend.1 of 11 May 2010, only came into effect after the contested dismissal decision. His due process rights were also violated insofar as it was never clear which Administrative Instruction was applied in his matter.

19. Procedurally, although the UNDT in *Abboud* held that it may be appropriate to launch an investigation under Staff Rule 10.1 of the Staff Rules then in effect⁶ in respect of allegations where it appeared an employee acted in a way such as to warrant imposition of a disciplinary measure,⁷ no official investigation under the new Staff Rule 10.1 took place. Furthermore, the UNDT consistently failed to order disclosure of the full copy of the 1991 deed and ruled without having seen a full copy of the document.

20. The UNDT also decided the case *proprio motu* and without hearing witnesses, contrary to Order No. 74 (NY/2013) of the UNDT in New York, whereby the parties had agreed to hear five witnesses. Instead, at the oral hearing the trial judge posed questions to Mr. Bastet’s Counsel on issues of fact to which he could not testify. The UNDT also erred in stating that Mr. Bastet was

⁶ Secretary-General’s Bulletin ST/SGB/2009/7 (Staff Regulations and Rules), 16 June 2009.

⁷ *Abboud v. Secretary-General of the United Nations*, Judgment No. UNDT/2010/030, p. 27.

“unwilling to attend” the oral hearing, as his Counsel had indicated to the trial judge that Mr. Bastet could attend a subsequent hearing.

21. The UNDT also failed to exercise its jurisdiction to grant appropriate remedies. Mr. Bastet claims pecuniary losses in the amount of 48 months of lost revenue, as well as emoluments and entitlements which have been frozen since his dismissal (specified at appeal brief, Annex 10). He claims an additional USD 50,000 in moral damages as a result of the exceptional damages suffered from the adverse publicity generated by the Secretary-General’s office, and the “public disgrace” he experienced when he was escorted from his office in front of media as evidenced by Annex 7 to his brief, as well as violation of his due process rights. He also requests payment of USD 40,000 in legal costs for abuse of proceedings and obfuscation by the Secretary-General.

The Secretary-General’s Answer

22. The UNDT correctly concluded that Mr. Bastet’s misconduct, namely claiming rental subsidies for an apartment registered in his own name, was established by clear and convincing evidence. The record of the September 2009 interview with OIOS showed Mr. Bastet was aware that the 1991 deed listed him as the official owner of the apartment. The UNDT did not err on a question of fact leading to a manifestly unreasonable result when it found that Mr. Bastet was aware of the alleged “error” in the 1991 deed.

23. Insofar as Mr. Bastet contested his signature on the OIOS report, the burden of proving impropriety lies with the staff member contesting the decision. Mr. Bastet did not bring forward any evidence of coercion on the part of OIOS.

24. The UNDT correctly concluded that the established facts legally amounted to serious misconduct and that the sanction of dismissal was proportionate. The Appeals Tribunal has upheld decisions to dismiss staff members for lapses in integrity in several cases.

25. Further, the UNDT correctly concluded that the damages claimed by Mr. Bastet were caused solely by his own serious misconduct and did not warrant any award of compensation. The Appeals Tribunal’s jurisprudence has held that there may not be grounds for compensation in the absence of actual prejudice.

26. The UNDT also did not err in law in applying Administrative Instruction ST/AI/371 of 1991, and there was no legal vacuum between 1 July 2009 and 11 May 2010 concerning the imposition of disciplinary measures.

27. Mr. Bastet's claim that the UNDT erred in finding that the 1991 deed had been "notarized" and conflated the civil law and common law distinction attaching to this characterisation is irrelevant. Such claim does not displace the evidence that Mr. Bastet claimed rental subsidies in respect of an apartment which he owned.

28. As concerns the three procedural errors alleged by Mr. Bastet: (i) it was within the bounds of the UNDT's discretion to determine that it did not need a copy of the full 1991 deed in order to reach its determination, and Mr. Bastet could have attached a copy of the full 1991 deed to his application; (ii) it was within UNDT's broad case management discretion to decide whether witnesses were required, and no error was proven in this respect; and (iii) Mr. Bastet did not establish that the UNDT sought to elicit unsworn testimony from his Counsel.

29. Lastly, Annexes 2, 7, 8 and 10 of Mr. Bastet's appeal brief are additional evidence and should not be accepted on appeal, while Annexes 5 and 9, which contain arguments which supplement Mr. Bastet's appeal brief, circumvent the page limit prescribed by the Appeals Tribunal's Rules of Procedure and should not be considered as per this Tribunal's jurisprudence in *Lauritzen*.⁸

30. The Secretary-General requests this Tribunal to dismiss Mr. Bastet's appeal in its entirety. He further requests this Tribunal to vacate the UNDT's orders to rescind the dismissal decision and to remove the material relating to the disciplinary process from Mr. Bastet's personnel file.

The Secretary-General's Appeal

31. The UNDT erred in law in finding that the disciplinary process had been undertaken by officials who did not have the proper authority to act. The note dated 17 August 2009 from the Chef de Cabinet of the Executive Office of the Secretary-General to the USG for Management confirmed that the Secretary-General had decided to delegate "responsibility for making decisions to impose disciplinary measures and to dismiss staff members [...] to the Under-Secretary-General for Management with effect from 1 July 2009". Although the UNDT

⁸ *Lauritzen v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-282, paras. 17-19.

considered such delegation had not been officially published, staff were expressly advised by virtue of Secretary-General's Bulletin ST/SGB/151 that the Secretary-General's authority over, inter alia, disciplinary matters "may be delegated from time to time" to the USG for Management.⁹ As the Staff Rules do not otherwise prescribe the manner or form that such delegation of authority should take, a clearly evinced delegation of authority by memorandum could be sufficient, as was found to be the case in *Malmström et al.*,¹⁰ *Longone*,¹¹ *Ademagic et al.*,¹² *McIlwraith*¹³ and *Schoone*.¹⁴ The Secretary-General requests that this Tribunal confirm the validity of the delegation.

32. The UNDT also erred in concluding that the USG for Management could not further delegate her disciplinary authority to a designated OIC. The UNDT's finding that the initial delegation had to expressly provide for such future sub-delegation is not based in United Nations law or policy, nor is it followed in practice, as demonstrated in the case of appointments. Further, as the delegation of authority to the USG for Management was not a personal delegation to Ms. Kane, but a delegation to a functional position, persons designated to act as OIC are temporarily authorized to exercise the authorities and functions of that position. To find otherwise would invalidate the countless administrative decisions made by OICs and upend the proper administration of the Organization.

33. Insofar as the UNDT considered the practice of designating individuals as OICs to be invalid, such delegation is necessary for the proper and efficient administration of the Organization and aligns with the Secretary-General's general obligation to act promptly and avoid unnecessary delays, a duty this Tribunal has consistently upheld. Not only have the various Registries of the Dispute Tribunal resorted to this practice, but the Appeals Tribunal has affirmed decisions taken by OICs in the course of its jurisprudence, thereby affirming the practice.

34. The UNDT also erred when it found that Mr. Bastet was unaware of the identity of the person who took the dismissal decision. The dismissal letter of 27 April 2010 expressly informed Mr. Bastet that the "Under-Secretary-General for Management, on behalf of the Secretary-General,

⁹ Secretary-General's Bulletin ST/SGB/151 (Administration of the Staff Regulations and the Staff Rules), 7 January 1976, Section 3.

¹⁰ *Malmström et al. v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-357, paras. 52-57.

¹¹ *Longone v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-358, para. 33.

¹² *Ademagic et al. and McIlwraith v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-359, para. 38.

¹³ *McIlwraith v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-360, para. 14.

¹⁴ *Schoone v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-375.

has decided to impose on you the disciplinary measure of dismissal from service” and the letter was signed by the OIC for Management acting for the USG for Management.

35. The UNDT also erred in rescinding the decision to dismiss Mr. Bastet for serious misconduct given that the UNDT had confirmed that the irregularity it identified did not affect the substance of the dismissal decision, i.e., that Mr. Bastet’s conduct in fact constituted serious misconduct warranting dismissal.

Mr. Bastet’s Answer

36. Concerning the authority to delegate, Mr. Bastet submits that the Secretary-General conflates high level substantive decisions of a discretionary nature belonging to the Secretary-General, which include disciplinary powers, with routine and mechanical administrative decisions, such as the recruitment process for lower level staff or certification of documents. Delegation of the former is to be strictly construed and dutifully executed by the recipient and implicit sub-delegation is generally impermissible. While agreeing that the delegation of disciplinary authority to the USG for Management was a delegation to a functional post and not to Ms. Kane personally, Mr. Bastet asserts the OIC could only exercise the delegation if he were designated to the post by the Secretary-General and not by the USG for Management. The latter’s sub-delegation usurps the Secretary-General’s authority to delegate.

37. Disciplinary measures are specifically within the remit of the Secretary-General and his ability to delegate such authority is discretionary. While Staff Rule 10.1(c) authorizes the Secretary-General to delegate to selected officials, there is no express power for such official to sub-delegate the same without the Secretary-General’s authorisation. In the present case, as neither the OIC for Management nor the OIC, OHRM, received an express sub-delegation of power, the decisions they purported to take are invalid.

38. Mr. Bastet disputes that he was aware of the identity of the decision-maker by reason of the dismissal letter of 27 April 2010, claiming this letter was disclosed to him for the first time on 29 October 2013.¹⁵ The Secretary-General intentionally concealed for three years the fact that the USG for Management did not personally take the dismissal decision, but rather her OIC, as well as how the disciplinary process unfolded between February and April 2010. He alleges that the

¹⁵ This assertion is undermined by the fact that Mr. Bastet attached the challenged decision to his UNDT application in October 2010.

dismissal process was a “rubber-stamping justice system controlled by junior legal staff at OHRM” and that the Organization refused to call any of those involved in the decision-making process as witnesses before the UNDT, stating that the “whole OHRM operation appears as a secret trial, a phantom exercise” and far from a professional, transparent justice system.

39. The UNDT was correct to find that the OIC was not competent to take the dismissal decision, as the OIC had no prior professional experience in either law or human resources management.

40. The Organization was also negligent in preparing and promulgating delegations of authority in line with the new Staff Rule 10.1(c) of 1 July 2009, and the delegation of authority by memorandum should have been officially published as it constituted a major change of “personnel policy” requiring “consultation with the appropriate staff representative bodies”, as per Section 5.3 of ST/SGB/1997/1.¹⁶

41. While a *potential* delegation of authority may have been issued in 1976 per ST/SGB/151,¹⁷ such delegation has been significantly modified over the years. Furthermore, the Secretary-General withdrew his delegation from the USG for Management between August 2007 and August 2009, and ST/SGB/2009/11 which came into effect on 24 June 2009,¹⁸ was silent as to any transfer of delegation of disciplinary measures to the USG for Management; it stated only that “[a]s of 1 July 2009, the Secretary-General will have the authority to impose disciplinary measures without the recommendation of a joint body”.

42. Mr. Bastet requests that the Appeals Tribunal reject the Secretary-General’s appeal and award him compensation in the sum of USD 50,000 for the violation of his due process and contractual rights during the OHRM procedures leading to his dismissal, and USD 20,000 in legal costs against the Secretary-General for abusive procedures and systematically concealing the OIC’s summary decision.

¹⁶ Secretary-General’s Bulletin ST/SGB/1997/1 (Procedures for the Promulgation of Administrative Issuances), 28 May 1997.

¹⁷ Secretary-General’s Bulletin ST/SGB/151 (Administration of the Staff Regulations and the Staff Rules), 7 January 1976, Section 3.

¹⁸ Secretary-General’s Bulletin ST/SGB/2009/11 (Transitional measures related to the introduction of the new system of administration of justice), 24 June 2009.

Considerations

Preliminary Matter

43. Mr. Bastet requests an oral hearing in order to testify before this Tribunal that he is neither a signatory nor a party to the 1991 deed, and that he was not represented by Mr. Dinkelmeyer at the time of the 1991 deed. He claims he was denied the right to be heard during the OIOS investigation as well as the subsequent UNDT hearing. The Tribunal did not grant the petition for a hearing, since the issues for decision were already clearly defined by the parties' written submissions. It was also considered that the proposed testimony of Mr. Bastet was adequately conveyed in his written petitions and, even if it were to be taken as truth, it would become immaterial to the outcome of the case, for reasons to be explained hereunder.

Merits

44. Having reviewed the grounds of the appeals filed by both parties, logically the Appeals Tribunal must first examine the validity of the administrative process that resulted in the dismissal of Mr. Bastet, since the remaining issues depend on the conclusions adopted with respect to the legality of the disciplinary procedure.

45. The only irregularity that the Dispute Tribunal found marred the disciplinary process was what it considered to be an invalid delegation of authority concerning the exercise of the disciplinary power. The UNDT considered that the non-publication of the delegation prior to the power being exercised rendered it invalid. That finding was the basis for the rescission ordered by the UNDT in its Judgment.

46. The Appeals Tribunal holds that the disciplinary measure was regularly adopted by an individual properly vested with the delegated authority to make that decision. Therefore, the imposition of the disciplinary measure was valid and its rescission as ordered by the UNDT must be vacated.

47. The Dispute Tribunal acknowledges that there had been a delegation from the Secretary-General to the USG for Management, through the note of 17 August 2009; however, it denied the validity of the delegation only because it was unpublished.

48. The Appeals Tribunal upholds the appeal from the Secretary-General, accepting the argument that Staff Rule 10.1(c) expressly provides that the authority to impose disciplinary measures is vested with “the Secretary General or officials with delegated authority”, and does not require that such delegation take any specific form. Consequently, we find that the Secretary-General had validly delegated the powers outlined in Staff Rule 10.1(c) in favour of the USG for Management.

49. Any adequate mechanism can be used for the purpose of delegation, provided that it contains a clear transmission of authority to the grantee concerning the matter being delegated.

50. Absent any express requirement of prior publication, the delegation becomes effective upon issuance and may be known by staff members and other departments or offices once it is exercised. We do not share the view of the Dispute Tribunal that the delegation need be officially published since it inserts a formal exigency not required by the norms.

51. Moreover, the delegation of authority is attributed to a functional post and not to the individual person holding that post. Therefore, when the USG for Management was on leave and another staff member was temporarily charged with the USG’s duties, the power delegated by the Secretary-General to the USG for Management could be exercised by the OIC. Accordingly, we reject Mr. Bastet’s argument that disciplinary measures may only be taken by the USG for Management personally. That idea fails to distinguish between administrative posts vested with certain attributes and the persons who occupy those posts.

52. Neither does this Tribunal concur with the Dispute Tribunal on the invalidity of the practice of designating OICs. While it could be convenient to have an express policy and specific regulation on this subject-matter, the lack of either does not render the practice illegal. It must also be pointed out that such designations are universally accepted and are required to ensure the daily functioning of many public and private entities. If for any reason the person occupying one position is forced to be out of office for any period of time, nobody would gainsay the right of the temporary replacement to fulfil the duties involved in the position.

53. Therefore, we see no obstacle to finding that the administrative decision impugned in the present case was adopted by a competent authority and, therefore, cannot be considered invalid for that reason.

54. Once established that the impugned disciplinary measure was adopted by an authority who was competent at the relevant time, this Tribunal finds no reason to depart from the conclusions of the thorough judicial review conducted by the Dispute Tribunal with respect to the merits of the disciplinary procedure.

55. As required by the Appeals Tribunal's jurisprudence, the Dispute Tribunal correctly sought to ascertain whether the facts on which the sanction was based had been established, whether the established facts qualified as misconduct, and whether the sanction was proportionate to the offence.¹⁹

56. The UNDT Judgment expressly specified that it preferred to base its findings on the principal and least questionable piece of evidence on file, being the 1991 deed of sale.²⁰ It concluded that the misconduct arose from the fact that Mr. Bastet could not ignore that he was officially the legal owner of the apartment and submitted a lease agreement to obtain rental subsidy without disclosing that fact.²¹ The UNDT's conclusion did not affirm whether Mr. Bastet was the *actual* owner of the apartment, in the sense of having responsibility for it on a day-to-day basis, which he claimed was his father's role, as distinct from being the "official" or formal owner as he alleged. The sole fact that he failed to disclose that the documents reflected that he was the official owner of the apartment was sufficient to constitute the misconduct.

57. As the Appeals Tribunal agrees with the UNDT's conclusion, all of Mr. Bastet's arguments relating to the "actual" ownership of the apartment are rendered immaterial. The fact that the staff member did not disclose the situation at the time of claiming a monetary benefit was enough to constitute the misconduct.

58. The Dispute Tribunal carefully reviewed the facts before it and we find it arrived at reasonable conclusions of fact. Mr. Bastet's appeal did not satisfy the burden arising from Article 2(e) of the Appeals Tribunal Statute as he failed to demonstrate that the impugned Judgment was based on an error of fact resulting in a manifestly unreasonable decision.

¹⁹ *Walden v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-436; *Koutang v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-374; *Nasrallah v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-310.

²⁰ Impugned Judgment, para. 79.

²¹ Impugned Judgment, para. 77.

59. Hence, we affirm the UNDT Judgment to the extent it found Mr. Bastet's actions constituted misconduct and declined to order compensation on the basis that compensation cannot be awarded when no illegality has been established. As the Appeals Tribunal held in *Antaki* and *Oummih*, compensation cannot be granted when there is no breach of the staff member's rights or administrative wrongdoing in need of repair.²²

Judgment

60. The appeal from the Secretary General is allowed and the rescission ordered in the UNDT Judgment is vacated. The UNDT Judgment is affirmed with respect to the merits of the impugned administrative decision and its order for no compensation. Mr. Bastet's appeal is dismissed in its entirety.

²² *Oummih v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-420, citing *Antaki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-095.

Original and Authoritative Version: English

Dated this 26th day of February 2015 in New York, United States.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Faherty

Entered in the Register on this 17th day of April 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar