



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

Judgment No. 2015-UNAT-549

**Ogorodnikov
(Respondent/Applicant)**

v.

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

JUDGMENT

Before:	Judge Deborah Thomas-Felix, Presiding Judge Richard Lussick Judge Rosalyn Chapman
Case No.:	2014-633
Date:	2 July 2015
Registrar:	Weicheng Lin

Counsel for Mr. Ogorodnikov:	Brian Gorlick/OSLA
Counsel for Secretary-General:	Rupa Mitra

JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General of the United Nations against Judgment No. UNDT/2014/059, issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 5 June 2014 in the case of *Ogorodnikov v. Secretary-General of the United Nations*.

Facts and Procedure

2. The following facts are uncontested:¹

... The Applicant [Mr. Georgy Ogorodnikov] joined the United Nations in 1992 as a military observer for the United Nations Transitional Authority in Cambodia (“UNTAC”). From 1995 to 1999 he worked for his national government whilst remaining in Cambodia. In 2000, the Applicant returned to the United Nations as a Camp Manager for the United Nations Transitional Administration in East Timor (“UNTAET”). From 2001 until 2007 the Applicant worked as a Human Rights Officer for various United Nations agencies, including: United Nations Peace Building Support Office in Central African Republic (“BONUCA”) in 2001–2002; United Nations Mission in the Democratic Republic of Congo (“MONUC”) in 2004–2005; and United Nations Mission in Ethiopia and Eritrea (“UNMEE”) in 2005–2007. In December 2007, the Applicant joined the United Nations Assistance Mission in Afghanistan (“UNAMA”) as a Civil Affairs Officer until his separation from service in January 2011. In December 2010, the Applicant was appointed to a post of Civil Affairs Officer with [the United Nations Stabilization Mission in Haiti (MINUSTAH)] that was supposed to commence on 2 February 2011.

... By Order No. 172 (NY/2012), dated 21 August 2012, the [Dispute] Tribunal directed the parties to submit a consolidated list of agreed facts and legal issues, identifying, where applicable, the issues, facts or statements on which they disagreed. In response to the Tribunal’s order, the parties stated that they did not dispute the factual description of the Applicant’s conduct, as set out in the allegations of misconduct, dated 18 May 2009, and the separation letter, dated 11 January 2011.

... For the purpose of efficiency, the Tribunal, unless indicated otherwise, reproduces the relevant agreed upon facts below:

- ii. On 1 October 2008, the Applicant left on a Welfare and Health trip to Turkmenistan. Upon his return, he submitted an Annual Leave Report to UNAMA Personnel Section indicating that he was away from 1 to 2 October 2008, along with a copy of page 26 of his [United Nations

¹ Impugned Judgment, paras. 3-7.

Laissez Passer (UNLP)], showing a re-entry stamp to Afghanistan dated 2 October 2008.

iii. Around the second week of October 2008, the Applicant submitted his UNLP to the UNAMA Personnel Section for renewal. While reviewing his UNLP, a Human Resources Assistant in the UNAMA Personnel Section noticed a discrepancy between the stamp in his UNLP which showed a re-entry date of 4 October 2008, and the copy of page 26 of his UNLP previously submitted, as described in point (ii) above.

iv. The Human Resources Assistant alerted her supervisor to the apparent discrepancy. By memorandum dated 28 November 2011, the matter was reported to the Conduct and Discipline office by [HO], UNAMA Chief Civilian Personnel. The Conduct and Discipline Office transmitted the matter to the UNAMA Security Section by memorandum dated 7 December 2008, and informed the Applicant of the same by memorandum of the same date. This documentation and material attached thereto is appended to the Special Investigations Unit (SIU) investigation report [...]. The SIU commenced an investigation into the matter.

v. As part of the investigation, on 15 December 2008 the SIU interviewed the Applicant and obtained an interview statement signed by the Applicant. The key points from the Applicant's interview statement are set out in paragraphs 7 through 11 of the allegations of misconduct [added below]:

7. According to your statement to the SIU investigators, when you left for your Welfare and Health trip on 1 October 2008, you thought it would only be for two nights and three days. However, you admitted that you did not return to Afghanistan until 4 October 2008.

8. Also according to your statement, while you were at the border of Afghanistan and Turkmenistan, you noticed that the Afghan border officer "*did a test stamp of his immigration stamp*" and "*[you] asked him if [you] could have the paper that the test stamp was on*". You further declared that "*it was only later when [you had] returned to [your] office in Herat that [you] noticed that the date on the test stamp said 2nd of October 2008*". However, it is noted that at no point during the investigation did you provide the SIU with an explanation as to why you requested the "*test stamp*" from the border officer while you declared "*being in a rush*" when you were at the border.

9. You admitted using the "*test stamp*" which indicated 2 October 2008 "*by cut[ting] and pasting it over the stamp in [your] UNLP that said 4th of October 2008*". You also admitted that you then completed your Annual Leave Report to match the forged stamp

and indicated 1 and 2 October 2008 as your leave days. You later submitted the Annual Leave Report together with a copy of [...] page 26 of your UNLP showing the forged stamp to UNAMA Personnel Section.

10. You stated to the investigators that you took this course of action because you realized that you had made a mistake and would have to explain the extra day of leave and “[you] *did not know what to do so [you] panicked.*” You further stated that you were in a panic because it was your understanding that Welfare and Health trips were only allowed for two nights and three days.

11. You also admitted to the SIU investigators that you signed your own Annual Leave Report. You declared that you did so given that your supervisor was away from the mission at the time and you were the designated Officer-in-Charge and that you did not know that you could not sign as your own supervisor. You were requested by the Personnel Section to resubmit a new Annual Leave Report signed by your supervisor, which you did.

vi. The SIU investigation report was issued on 16 December 2008. The SIU found, inter alia, that the Applicant had acted in violation of Staff Regulation 1.2(b), then staff rule 101.2(g) and ST/AI/1999/13, section 1.2(c).

vii. By memorandum dated 31 March 2009, [KP], then Director, Department of Field Support, referred the matter to OHRM for appropriate disciplinary action.

viii. By memorandum dated 18 May 2009, the Applicant was alleged to have engaged in misconduct.

1. Specifically, the Applicant was charged with: (i) “forging a stamp in [his] UNLP of which [he] submitted a copy to UNAMA Personnel Section as an official record of [his] leave date”; (ii) providing false information in his Annual Leave Report; and (iii) signing his own Annual Leave Report as supervisor. The Applicant was informed that his conduct, if established, would constitute a violation of the standards of conduct expected of staff members of the United Nations. In particular, that such conduct would violate staff regulation 1.2(b), former staff rules 101.2(b) and 101.2(g), and section 1.2 of ST/AI/1999/13 (“Recording of attendance and leave”).

2. The Applicant was provided with documentary evidence of the alleged misconduct in accordance with paragraph 6(b) of ST/AI/371, namely, a copy of the Investigation Report and supporting material. The Applicant was informed of his right to submit comments, if any, within two weeks of receiving the charges, and was further informed

of his right to seek the assistance of counsel. On 18 June 2009, the Applicant signed for receipt of the allegations of misconduct.

ix. The Applicant submitted his comments to OHRM via email dated 4 September 2009. In particular:

1. The Applicant admitted to altering a copy of his UNLP so that an entry stamp showed the date of 2 October 2008 (instead of the genuine date of 4 October 2008). The Applicant also admitted to entering false information on his Annual Leave Report to correspond with the altered entry date, and to submitting this information to the Personnel Section. The Applicant admitted to signing off on his falsified Annual Leave Report in his capacity as Officer-in-Charge, but stated that he was not aware that this was not permitted. The Applicant stated that when this error was brought to his attention, he duly submitted a new Annual Leave Report. It was done well before the investigation began.

2. The Applicant reiterated that his actions were not motivated by monetary benefit, pointing out that the consequent payment of moneys for which he was not entitled “was not calculated”, and that the moneys had already been recovered by the Organization.

3. The Applicant explained that Eid Holidays fell on October 1st and 2nd. Thus October 3rd and 4th were approved as weekend days for UNAMA employees.

4. The Applicant stated that, when he submitted his original Leave Request form, he had intended to be away from 1 to 3 October 2008 and to be traveling as part of a group. However he decided to visit an historical sight in Uzbekistan, and left the remainder of his group in Turkmenistan before traveling on alone to Uzbekistan. He was unable to cross the border from Turkmenistan to Afghanistan as planned on 3 October 2008, and as a result, on 4 October 2008, he had to cross two borders (from Uzbekistan to Turkmenistan and from Turkmenistan to Afghanistan). He was compelled to travel the entire day through unknown terrain in a private taxi with strangers, “which caused him [a] lot of stress and anxiety.” The Applicant stated that he was genuinely worried about whether he could reach his duty station within the time indicated on his Annual Leave Request. The Applicant was worried that by arriving late, it would negatively impact on his entitlement to take further leave.

5. The Applicant stated that it was when the border police officer stamped his UNLP with the date entry of 4 October 2008 that he “realized that [he] would have to explain why [he] had arrived one day

later than indicated on [his] [A]nnual [L]eave [R]eport.” He was not aware of how long he was permitted to be outside of UNAMA for a Welfare and Health trip. He stated that he was never given any written document containing the rules and guidelines pertaining to Welfare and Health trips. However, he had “heard” that he could be outside the UNAMA area for two nights and three days, and that if he exceeded this period, he would “break” his leave cycle and would not be permitted to take his next planned leave[.]

6. The Applicant stated that his actions were motivated by panic and his desire to see his family. The Applicant had already purchased a ticket to visit his family, and “the thought of not being able to travel away from [his] duty station to visit [his] family affected [his] judgment and ultimately led [him] to do what he did.” The Applicant stated that he experienced “stressful working conditions” in Afghanistan. He stated that his post was stressful due to “the restrictions on one’s liberty in terms of physical movement in the country and also the isolation.” Ultimately, he engaged in this conduct because he wanted to be “on the safe side” and “could not bear the thought of having to forfeit [his] visit home”[.]

7. The Applicant stated that he did not alter the UNLP itself, as he was “fully aware” that an alteration to his UNLP “could be discovered by a [sic] technical expertise”. Rather, he intentionally “cut and paste the date of 2 October [2008] instead of 4 October [2008], from the test stamp onto a photocopy of [his] UNLP and attached that copy to [his] Leave Report that [he] submitted” so as to “make the dates of arrival consistent with the Leave Request Form.”

8. The Applicant repeatedly admitted to his use of poor judgment. He fully understood that it was not the right thing to do. He emphasized that these were the first allegations ever brought against him.

x. By letter dated 11 January 2011, the Applicant was informed of the outcome of his case [namely]:

...

... there is insufficient evidence that [the Applicant] violated section 1.2 of ST/AI/1999/13. Accordingly, [the ASG for Human Resources Management] decided to drop this charge.

... there is sufficient evidence ... that [the Applicant]: (i) forged a stamp in a copy of [his] UNLP, which [he] submitted to UNAMA Personnel Section as an official record of [his] leave date; and (ii) provided false information in [his] Annual Leave Report.

The Under-Secretary-General for Management, on behalf of the Secretary-General, has further concluded that, in so doing, [the Applicant]: (i) failed to uphold the highest standards of efficiency, competence and integrity required by staff regulation 1.2(b); (ii) violated [his] obligation under former staff rule 101.2(b) to follow directions and instructions issued by the Secretary-General and their supervisors; and (iii) breached the prohibition on[,] inter alia, [internally] altering any official document, record or file, prescribed by former staff rule 101.2(g).

...

... the explanations for [his] actions which [the Applicant] provided in [his] comments do not justify [his] conduct, or amount to mitigating circumstances in [his] case. Accordingly, the Under-Secretary-General for management, on behalf of the Secretary-General, has decided to impose on [the Applicant] the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity[.] ... The imposition of this measure is proportionate to the gravity of [the Applicant's] misconduct.

.... On 4 November 2013, the parties attended a hearing on the merits in front of the Dispute Tribunal in New York for the purpose of clarifying facts at issue in the case.

... By Order No. 305 (NY/2013), dated 11 October 2013, the Tribunal requested that the parties each file closing submissions. Following the granting of extensions of time to file closing submissions, for the purpose of enabling the parties to attempt to resolve the matter informally, they each filed their closing submission on 14 January 2014.

3. On 5 June 2014, the UNDT rendered its Judgment. The UNDT noted that Mr. Ogorodnikov had not taken any leave days for his trip since the period of 1 to 4 October 2008 was a holiday weekend in UNAMA. It had therefore not been necessary for him to submit an Annual Leave Report, and he had done so only in accordance with a UNAMA practice. The UNDT concluded that “the documents containing incorrect information [...] were not supposed to be part of the official record”² and that although Mr. Ogorodnikov had included in his Annual Leave Report a “false statement regarding his return date”, this “had no effect on the information related to his annual

² Impugned Judgment, para. 70.

leave”.³ The inclusion of the false statement did therefore not amount to misconduct. The UNDT, however, found that Mr. Ogorodnikov had intentionally forged a stamp reflecting a false return date on a copy of his UNLP and submitted it together with his Annual Leave Report. Based on the false information, he received hazard duty pay to which he was not entitled. The UNDT concluded that Mr. Ogorodnikov’s actions constituted misconduct.

4. The UNDT held that Mr. Ogorodnikov’s “continuity of employment with UNAMA following the conclusion of the SIU’s investigation into [his] misconduct, and his high performance evaluations clearly contradict the conclusion that his conduct was ‘incompatible with further service’”,⁴ as the contested decision stated. The “trust between [Mr. Ogorodnikov] and the Organization was not temporarily or irremediably affected by his misconduct since the contractual relationship continued for another two years in UNAMA on the same post”,⁵ and he thereafter worked for another year in MINUSTAH. Thus, the UNDT held that Mr. Ogorodnikov’s misconduct “did not result in any negative impact upon the Organization”.⁶

5. The UNDT concluded that the Secretary-General had correctly determined the elements of the charges underlying the conduct, with the exception of the charge that Mr. Ogorodnikov provided false information on his Annual Leave Report. However, the UNDT found that there were mitigating circumstances that the decision-maker had wrongly ignored or rejected and that the sanction of separation from service with termination indemnity was disproportionate. The UNDT ordered that the sanction be replaced with a written censure, plus a fine of one month’s net base salary. The UNDT also awarded compensation for loss of earnings.

6. The Secretary-General appealed on 8 August 2014 and Mr. Ogorodnikov answered on 2 October 2014.

7. On 24 June 2015, the Appeals Tribunal issued Order No. 223 (2015), requesting the Secretary-General to file a response with further particulars in relation to the arguments set out by Mr. Ogorodnikov in his answer to the effect that the Secretary-General’s appeal is not receivable. The Secretary-General filed his response on 26 June 2015.

³ *Ibid.*, para. 31.

⁴ *Ibid.*, para. 80.

⁵ *Ibid.*

⁶ *Ibid.*

Submissions

The Secretary-General's Appeal

8. The UNDT erred in law and fact by finding that Mr. Ogorodnikov's inclusion of a false statement regarding his return date in his Annual Leave Report did not amount to misconduct. In addition to recording use of leave days, the Annual Leave Report is needed to establish eligibility for occasional recuperation break (ORB). By submitting false information on his leave report and attaching a document with a falsified Afghan police entry stamp, Mr. Ogorodnikov sought to claim an entitlement to ORB for which he was not eligible.

9. The UNDT erred in finding that the Organization failed to consider a number of mitigating factors. Contrary to the UNDT's conclusion, Mr. Ogorodnikov did seek to obtain personal gain from his misconduct. He committed misconduct by forging a government record and submitting false information to the Organization, so that he could claim a benefit – five days of paid leave – to which he was not entitled.

10. The UNDT also erred in fact by ruling that Mr. Ogorodnikov was sincere and cooperated with the investigators. He did not provide a satisfactory explanation of his actions in obtaining a stamp dated 2 October 2008 to falsify his return date on the copy of his UNLP. On the contrary, he gave different and inconsistent explanations of his actions at different points. In the circumstances of the case, it was reasonable for the Secretary-General to consider that Mr. Ogorodnikov's descriptions of his actions did not constitute a mitigating factor.

11. The UNDT also erred in ruling that the fact that this was Mr. Ogorodnikov's first offence was a mitigating factor. All staff members are expected to abide by the Organization's regulations and core principles, and the fact that a staff member has done so for many years before engaging in misconduct does not lessen the gravity of his or her actions.

12. The UNDT erred in ruling that Mr. Ogorodnikov's continued employment and satisfactory performance appraisals with UNAMA were a mitigating factor. A decision to continue employment of staff members who are under investigation reflects nothing more than the Organization's compliance with the relevant legal framework governing disciplinary proceedings. Moreover, the kind of misconduct of which Mr. Ogorodnikov was found culpable did not preclude him from completing his other functions satisfactorily, so his performance evaluations are irrelevant in this regard.

13. The UNDT erred in ruling that the delay in imposing a sanction constituted a mitigating factor. This point was not raised by Mr. Ogorodnikov and the Administration was not given the opportunity to address this matter. Had the Administration been given the opportunity, it would have explained that it had taken into account the issue of delay and such consideration resulted in a more lenient sanction.

14. The UNDT erred in concluding that the sanction was disproportionate when compared with other cases. While the cases cited by the UNDT involved the submission of false information to the Organization to obtain a benefit, they did not involve the additional element of improperly obtaining and falsifying an official government record. The sanction imposed in the present case is consistent with that involved in other disciplinary cases where staff members were dismissed or separated from service because they falsified government documents.

15. The Secretary-General requests that the Appeals Tribunal vacate the UNDT Judgment in its entirety.

Mr. Ogorodnikov's Answer

16. Mr. Ogorodnikov submits that the Secretary-General's appeal is not receivable *ratione temporis*. The UNDT Judgment was communicated to the parties on 6 June 2014 and accordingly, the filing deadline was 5 August 2014. The Secretary-General's appeal is dated 8 August 2014. While the Secretary-General contends that he only received the UNDT Judgment on 9 June 2014, the official e-mail record of 6 June 2014 contradicts this statement.

17. The UNDT correctly concluded that there should not be any consequences for Mr. Ogorodnikov's falsifying information on an unnecessary leave report. The submission of an annual leave report was of no factual or legal consequence to his entitlement for ORB as the cycle was not interrupted. The dates in issue, notably 1 to 4 October 2008, when Mr. Ogorodnikov travelled out of Afghanistan, were Eid holidays and the weekend for UNAMA staff. The UNDT correctly concluded that Mr. Ogorodnikov did not benefit from any leave days to which he was not entitled.

18. The UNDT's conclusion that the imposed sanction was disproportionate was supported by the law and the facts, and did not exceed its scope of review. The UNDT was further justified in examining the totality of the circumstances, including mitigating factors, as a part of the UNDT's consideration of proportionality.

19. The sanction letter makes only passing reference to "mitigating circumstances in your case". It provides no particulars or details of what mitigating factors were considered or whether or how they were considered, applied or rejected. The UNDT correctly found that the mitigating factors presented by Mr. Ogorodnikov in his response to the allegations of misconduct were only partially analysed and they were not "entirely or correctly evaluated by the Organization".

20. Mr. Ogorodnikov submits that there is a requirement for "parity of sanctions" among cases of similar misconduct. He contends that the principle of equality of treatment applies to all staff members in determining whether a sanction was proportionate to the misconduct. In order to do so, similar cases or policy guidelines or formal issuances should be considered. The Information Circulars on the Practice of the Secretary-General in disciplinary matters and cases of criminal behaviour suggest that cases involving similar allegations of fraud have resulted in disciplinary measures far below separation from service.

21. Mr. Ogorodnikov asks that the Appeals Tribunal reject the appeal in its entirety and affirm the UNDT Judgment.

Considerations

Receivability ratione temporis

22. The first issue is whether the Secretary-General's appeal is receivable *ratione temporis*. Mr. Ogorodnikov submits that the UNDT Judgment was communicated to the parties on 6 June 2014 and therefore the filing deadline was 5 August 2014. He argues that the Secretary-General's appeal is dated 8 August 2014 and therefore is not receivable *ratione temporis*.

23. The official records indicate that a copy of the Judgment was transmitted to the parties on 5 and again on 6 June 2014. A corrigendum was transmitted to the parties on 9 June 2014, which, together with the main Judgment constitutes the final Judgment of the Dispute Tribunal. As a result, the day on which the corrigendum was transmitted to the

parties is the day when time starts to run for the purpose of filing an appeal. Thus, we find that the Secretary General's appeal dated 8 August 2014 was filed within time and is receivable.

Did the UNDT err in concluding that Mr. Ogorodnikov did not commit misconduct by providing false information on his Annual Leave Report?

24. One of the main issues for the Appeals Tribunal to consider is whether the UNDT erred in concluding that Mr. Ogorodnikov did not commit misconduct by providing false information on his Annual Leave Report.

25. An examination of the "Joint Statement of the parties made pursuant to Order No. 172 (NY/2012) on Case Management" shows that Mr. Ogorodnikov admitted to the facts underlying a finding of misconduct. In that Joint Statement, Mr. Ogorodnikov admitted to altering a copy of his UNLP so that an entry stamp showed the date of 2 October 2008 instead of the genuine date of 4 October 2008. Mr. Ogorodnikov also admitted to entering false information on his Annual Leave Report to correspond with the altered entry date, and to submitting this information to the Personnel Section. Mr. Ogorodnikov further admitted to signing off on his false Annual Leave Report in his capacity as officer-in-charge.

26. The Secretary-General states that, in addition to the recording of use of leave days, the Annual Leave Report is used to establish a staff member's eligibility for ORB. The Secretary-General argues that by submitting false information on his Annual Leave Report and attaching a document with a falsified Afghan police entry stamp, Mr. Ogorodnikov sought to claim an entitlement to ORB to which he was not eligible. The Secretary-General's argument on this issue is uncontroverted.

27. The UNDT reasoned that Mr. Ogorodnikov could not be deemed to have taken any leave days for his trip since the period of 1 to 4 October 2008 was a holiday weekend in UNAMA. According to the Dispute Tribunal, this meant that it was not necessary for Mr. Ogorodnikov to submit an Annual Leave Report and that he had done so only in accordance with a UNAMA practice. The Dispute Tribunal concluded that "the documents containing incorrect information [...] were not supposed to be part of the official record"⁷ and that although Mr. Ogorodnikov had included in his Annual Leave Report a "false statement

⁷ Impugned Judgment, para. 70.

regarding his return date”, this “had no effect on the information related to his annual leave”.⁸ The inclusion of the false statement did therefore not amount to misconduct.

28. Since the parties have agreed to and identified the facts in their Joint Statement, we find that it is not open to the UNDT to conduct its own evaluation and then to substitute its view for that of the parties.

Did the UNDT err in concluding that the sanction which was imposed by the Secretary-General was disproportionate?

29. Staff Rule 10.3(b) provides, inter alia, that “[a]ny disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of his or her misconduct”. In the present case, this means that the Dispute Tribunal must determine whether the Secretary-General’s imposition of the ultimate sanction of separation from the Organization meets the justice of the case, after due consideration is given to the entire circumstances of the case.

30. In *Sanwidi* and more recently in *Cobarrubias* the Appeals Tribunal clearly enunciated that:⁹

... The jurisprudence of the Appeals Tribunal has been consistent and clear since its first session in 2010 establishing that:

[w]hen 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.

31. The fact that the UNDT does not agree with the decision does not change the reasonableness of the decision, nor does it change the fact that the decision may be procedurally correct. Also, the fact that the UNDT does not agree with the choice of the

⁸ *Ibid.*, para. 31.

⁹ *Cobarrubias v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-510, para. 19, quoting *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 40.

sanction imposed by the Secretary-General does not make the implementation of the sanction arbitrary and/or disproportionate. It is certainly not the role of the Dispute Tribunal to select what it believes to be the most appropriate sanction for the Secretary-General, but rather it is only to examine the fairness and reasonableness of the decision.

32. The misconduct of Mr. Ogorodnikov must be viewed in terms of the nature of the mission, purpose and principles of the United Nations and the impact which this type of misconduct can have on the Organization's reputation, credibility and integrity. This type of criminal misconduct, namely, the falsification and the illegal use of official government documents, if allowed, can have a substantial reputational impact on an organization such as the United Nations. It can also adversely impact on the trust and confidence which Member States repose in the system.

33. The UNDT opined that "[t]he Applicant's behavior also breached the highest standards of integrity which includes, but is not limited, to honesty and truthfulness in all matters affecting his work".¹⁰ Indeed, Article 101 of the Charter of the United Nations states, *inter alia*, that "[t]he staff shall be appointed by the Secretary-General under regulations established by the General Assembly" and that "[t]he paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity".

34. Fraudulent misconduct on its own is a very serious offence in any work place. In this case, however, the misconduct which Mr. Ogorodnikov has committed transcends beyond the Organization. It involves the falsification of an Afghan Government document and record and the use of this falsified record in the workplace. Such behaviour must be treated with the utmost seriousness and ought not to be condoned by any Organization, more so, an Organization like the United Nations which reports to and is accountable to Member States, which expect "the highest standards of efficiency, competence, and integrity" from the staff of the Organization.

35. We have examined and considered all the authorities which have been cited and the reasoning advanced to mitigate the sanction and to show that it was disproportionate to the offence. On the totality of the evidence, we find that the misconduct was of a grave and

¹⁰ Impugned Judgment, para. 34.

serious nature and in these circumstances the sanction of separation was not disproportionate and/or arbitrary, but reasonable. We find that the UNDT erred when it reversed the Secretary-General's decision to separate Mr. Ogorodnikov from service with compensation in lieu of notice and with termination indemnity.

36. For the foregoing reasons, the Judgment of the UNDT should be vacated.

Judgment

37. We grant the appeal and order that Judgment No. UNDT/2014/059 be vacated in its entirety.

Original and Authoritative Version: English

Dated this 2nd day of July 2015 in Geneva, Switzerland.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Lussick

(Signed)

Judge Chapman

Entered in the Register on this 20th day of August 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar