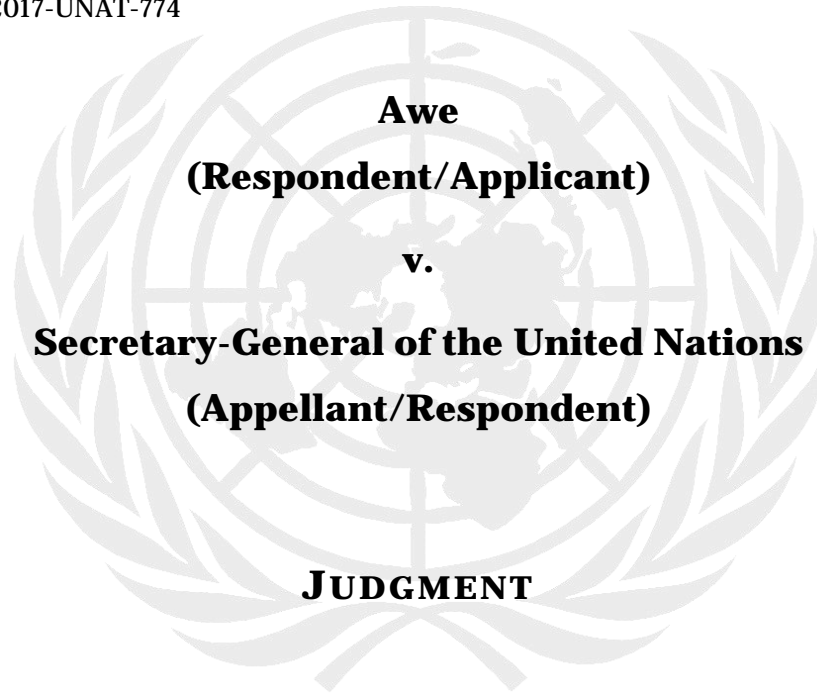




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2017-UNAT-774



**Awe
(Respondent/Applicant)**

v.

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

JUDGMENT

Before:	Judge Martha Halfeld, Presiding Judge Deborah Thomas-Felix Judge Richard Lussick
Case No.:	2017-1055
Date:	14 July 2017
Registrar:	Weicheng Lin

Counsel for Mr. Awe:	Self-represented
Counsel for Secretary-General:	Rupa Mitra

JUDGE MARTHA HALFELD, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2016/206, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 18 November 2016, in the case of *Awe v. Secretary-General of the United Nations*. The Secretary-General filed the appeal on 17 January 2017, and Mr. Ekundayo Olukayode Awe filed an answer on 18 March 2017.

Facts and Procedure

2. The following facts as found by the Dispute Tribunal read as follows:¹

... At the material time, the Applicant was the [Office of Internal Oversight Services (OIOS)] Chief Resident Auditor at the United Nations Assistance Mission for Iraq (UNAMI).]

...

... On 20 January 2014, Ms. Yasin[, then Chief of Mission Support (CMS)] refused to authorise the Applicant's Movement of Personnel for travel to Baghdad on an official mission pursuant to his duties as Chief Resident Auditor. The Applicant's mission to Baghdad had already been approved by UNAMI's Chief of Staff (COS), Mr. Rutgers, and cleared by the Security Section.

... Subsequently, at the Senior Management Team (SMT) meeting on 22 January 2014, the COS made statements about the Applicant which the Applicant regards as containing "malicious innuendo" which was prejudicial to him. At the same meeting, the COS indicated, in the presence of the CMS, that [he] intended to convince the Special Representative of the Secretary-General (SRSG/SRSG Mladenov) to have the Applicant withdrawn from the Mission because he had been seriously compromised.

... Minutes of this meeting were circulated to about 25 staff members, who comprised - among others - members of the management team, section chiefs and administrative assistants.

... The Minutes stated:

Issue of the Auditor's two week pre-planning mission to Baghdad was discussed and rationale for it questioned. It seems that making up for financial loss incurred due to the move to Kuwait features prominently in the decision to visit Baghdad. However, the mission is strongly backed by

¹ Impugned Judgment, paras. 2 and 12-51.

the Chief of the Auditing Unit. CMS has suggested rotating out the auditor because he has been seriously compromised.

... On 28 January 2014, the Applicant told Mr. Rutgers that he had seen the Minutes of the SMT meeting and the allegations that were made about him.

... On 20 February 2014, Mr. Rutgers wrote to the Applicant apologising for his actions.

... On 3 March 2014, the Applicant complained of abuse of authority and harassment on the part of Mr. Rutgers and Ms. Yasin, under section 5.11 of ST/SGB/2008/5. The complaint was addressed to the former Under-Secretary-General, Department of Field Support (USG/DFS) with a copy to the Assistant Secretary-General, Office of Human Resource Management (ASG/OHRM). He did not complain to the SRSG because he was present at the SM[T] at which the derogatory statements were made.

... On 17 April 2014, the complaint was referred by ASG/OHRM to SRSG Mladenov for his consideration and further action.

... On 15 June 2014, SRSG Mladenov decided to convene a [Fact-Finding Panel (FFP)] pursuant to section[] 5.14 of ST/SGB/200[8]/5 [Secretary-General's Bulletin entitled "Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority"]

... On 22 June 2014, the Applicant was informed that there was to be a delay in the investigation of his complaint because of the deterioration of the political and security situation in Iraq.

... On 6 August 2014, the FFP was established and provided with its terms of reference. [In his interoffice memorandum announcing the appointment of the FFP dated 6 August 2014, SRSG Mladenov stated that the FFP's task was "to establish the facts with respect to the allegations made by the complainants. You are not required to make any determination as to whether the facts, as established, may amount to misconduct".]

... Between 14 September 2014 and 18 February 2015, the Panel interviewed 14 witnesses. This list included the Applicant and staff members who were present at the meeting as well as Mr. Rutgers and Ms. Yasin.

... The Applicant was interviewed on 15 and 17 September 201[4]. Ms. Yasin was interviewed on the same day.

... Mr. Rutgers was interviewed on 18 September 2014, and SRSG Mladenov was interviewed on 29 January 2015.

... During one of the Applicant's interviews with the Panel, he was made to understand that its report would be submitted to the SRSG by the end of October. Prior to that, the Applicant was to have received a *verbatim* copy of his statement for his review and subsequent signature.

... On 11 November 2014, the Applicant wrote to the Panel to enquire into the status of the investigation and noted that he was yet to receive a copy of his statement. The Panel responded that their report was still pending, but sent him a copy of his statement[,] which the Applicant reviewed and returned.

... The Applicant was reassigned to serve in the United Nations Multidimensional Integrated Stabilisation Mission in Central African Republic (MINUSCA). He started in MINUSCA on 20 November 2014.

... On 17 December 2014, the Applicant wrote to SRSG Mladenov complaining about the delay in reviewing his complaint. The Applicant stressed that he had an interest in "getting (his) name cleared sooner rather than later because retention of the offending statements constituted a source of continued injury to (his) dignity, character, personal and professional reputation". This complaint was copied to the ASG/OHRM and the then USG/DFS.

... The Applicant did not receive a response from any of the recipients.

... On 13 January 2015, the Applicant requested management evaluation of the Respondent's violation of his due process rights and for prompt consideration of his complaint pursuant to ST/SGB/2008/5.

... On 20 January 2015, the Management Evaluation Unit (MEU) informed the Applicant that they found the Applicant's request for review to be not receivable.

... On 27 January 2015, the Applicant wrote to SRSG Mladenov again enquiring into the status of his complaint.

... The SRSG responded by informing the Applicant that the FFP had indicated that it would submit its Report by 15 February 2015, and that he would review it as a matter of urgency and take appropriate action.

... On 20 February 2015, the FFP provided SRSG Mladenov with its initial Investigation Report.

... The Respondent submits that between 20 February 2015 and 20 March 2015, the Mission's Conduct and Discipline Unit conferred with DFS and the Ethics Office regarding the potential conflict of interest in that SRSG Mladenov, who was to decide on further action following the Panel's findings, was also a witness in the FFP's investigations.

... On 4 March 2015, the Secretary of the FFP informed the Applicant that its Report had been submitted to the SRSG. On 22 March 2015, SRSG Kubis was appointed to succeed SRSG Mladenov as Head of Mission.

... SRSG Kubis received the Panel's Report on 24 March 2015.

... The relevant paragraphs of the FFP's summary of their findings [read:

[B]y preventing [the Applicant's] official travel to Baghdad on 21 January [2014] from taking place on unsubstantiated grounds and without exercising proper diligence, Mr Rutgers and Ms Yasin violated staff rule 1.2 (q) and abused the power and authority vested in them to process MOPs for official travel;

[B]y using false pretence, making unsubstantiated and derogatory remarks against Mr Awe in the presence of others and by circulating the minutes of the meeting in which such remarks has [sic] been affixed, Mr Rutgers and Ms Yasin violated the provisions of art. 101 (3) of the Charter of the United Nations, and the core values set out in former staff regulation 1.2 (a) and former staff rules 101.2(d), 201.2(d) and 301.3(d), which provide that every staff member has the right to be treated with dignity and respect;

[B]y making unsubstantiated and derogatory remarks against [the Applicant] in the presence of others and by circulating the minutes of the meeting in which such remarks had been affixed, Mr Rutgers and Ms Yasin failed to uphold the core value of professionalism and live up to the standards of efficiency and competence expected of them, in addition to creating a more challenging and possibly hostile working environment for [the Applicant];

[B]y attempting to have [the Applicant] removed from UNAMI on unsubstantiated grounds, Ms Yasin failed to uphold the core value of integrity and the standard of efficiency.][²]

... On 21 May 2015, SRSG Kubis informed the Applicant and the USG/DFS of the outcome of the investigation. The memorandum detailing the Panel's findings was dated 23 April 2015.

... The Applicant was informed that as a result of the Panel's findings, a letter of reprimand had been placed in Mr. Rutgers's Official Personnel File. With regard to Ms. Yasin, the matter was referred to the USG/DFS because she was no longer assigned to UNAMI.

... On 9 June 2015, the USG/DFS acknowledged receipt of SRSG Kubis' referral. The USG/DFS determined that the complexity of the case required the involvement of an expert trained in dealing with complaints of this nature.

... On 15 June 2015, the matter was forwarded to the USG of the Department of Peacekeeping Operations (USG/DPKO).

[²] These FFP findings are taken from para. 68 of the impugned Judgment.

... On 15 July 2015, the Applicant sought management evaluation of the SRSG's decision with regard to Ms. Yasin. The Applicant was specifically challenging the SRSG's decision to refer the matter to DFS.

... On 16 July 2015, MEU acknowledged receipt of the Applicant's submission and informed him that a decision would be rendered no later than 29 August 2015.

... On 5 October 2015, MEU decided that his request for management evaluation was not receivable.

... On 1 December 2015, the Applicant filed an Application challenging the Respondent's decision in respect of Mr. Rutgers. ...

... On 7 December 2015, the Applicant filed a second application before the UNDT challenging the Respondent's actions in respect of the Panel's findings against Ms. Yasin and the failure to afford him an effective remedy.

... The Respondent stated that the designated expert could not begin her work on the Applicant's complaint until 6 January 2016.

... In February 2016, the USG/DPKO referred the findings against Ms. Yasin to the ASG/OHRM. While the matter was under review by the ASG/OHRM, the Office received a second referral from the USG/DPKO concerning Ms. Yasin.

... As at the time of this [UNDT] Judgment [on 18 November 2016], the matter remains under "review" by OHRM.

3. In its Judgment now under appeal, the Dispute Tribunal reviewed the manner in which Mr. Awe's complaint of harassment and abuse of authority against Mr. Rutgers and Ms. Yasin had been dealt with, within the framework of ST/SGB/2008/5. The UNDT considered that the FFP had "clearly and unequivocally"³ established that Mr. Awe's allegations were well founded and that the conduct in question amounted to possible misconduct. Under the circumstance, in the view of the UNDT, SRSG Mladenov and subsequently SRSG Kubis, had no choice but to refer the matter to the ASG/OHRM for disciplinary action. Failure to make such a referral was "an error of procedure which denied [Mr. Awe] his contractual right to be afforded the benefit and protection against prohibited conduct in accordance with ST/SGB/2008/5".⁴

4. The Dispute Tribunal noted the deterioration in the political and security situation in Iraq, but "that [was] not an adequate explanation for the considerable delay in taking appropriate steps to mitigate the harm to [Mr. Awe]".⁵

³ Impugned Judgment, para. 70.

⁴ *Ibid.*, para. 71.

⁵ *Ibid.*, para. 75.

5. On the issue of compensation, the Dispute Tribunal noted the continuing damage to Mr. Awe's personal and professional standing and reputation as a result of the failure to expunge the derogatory comments from the SMT meeting minutes and in light of Mr. Awe's own complaint of humiliation and disrespectful treatment by the Mission's senior management team, in addition to the delays in the investigation and reporting processes. The UNDT thus concluded that Mr. Awe "suffered damage to his reputation and professional standing exacerbated by the continuing and unacceptable delay in affording him the relief to which he is entitled".⁶

6. By way of remedy, the UNDT ordered (i) the immediate removal of the offending references from the minutes of the SMT meeting on 22 January 2014 and the written notification of the FFP's findings to all recipients of the said minutes; (ii) USD 3,000 to be paid to Mr. Awe for procedural error; and, (iii) USD 15,000 to be paid to Mr. Awe for harm suffered.

Submissions

The Secretary-General's Appeal

7. The UNDT erred in law by finding that Section 5.18(c) of ST/SGB/2008/5 required the SRSG to refer to the matter of Mr. Rutgers and Ms. Yasin to the ASG/OHRM for disciplinary action. The UNDT misconstrued the legal framework of ST/SGB/2008/5. Under that Secretary-General's Bulletin, the role of the FFP was to conduct a fact-finding investigation, to identify the relevant facts concerning Mr. Awe's complaint, and then to detail such facts in a report. The role of the SRSG, on the other hand, was to evaluate the facts detailed in the FFP report and exercise his judgment as to how to appropriately address those facts. This understanding of the respective roles of the FFP and the SRSG is supported by the wording of Section 5.18(c) of ST/SGB/2008/5, and by the case law of the Appeals Tribunal. The UNDT's reading of ST/SGB/2008/5 would eviscerate the role and discretion of the responsible official, reducing him or her to a "rubber stamp" or a "postman".

8. The UNDT erred in law in finding that there was no justification for delays in addressing Mr. Awe's complaint. ST/SGB/2008/5 makes provision for exceptional circumstances that might require additional time to complete the investigation process and does not specify a deadline for the responsible official to decide what action should be taken on the investigation

⁶ *Ibid.*, para. 83.

report. In the present case, there were exceptional circumstances that caused impediment to a speedier resolution of Mr. Awe's complaint. In addition to the deteriorating security situation in Iraq, other circumstances posed additional challenges to scheduling and coordination: the need to interview a large number of witnesses, some of whom were senior officials holding key positions in volatile peacekeeping missions, and the concern about a potential conflict of interest on the part of SRSG Mladenov.

9. The UNDT erred in law in ruling that a retraction of the SMT meeting minutes was necessary to fully address Mr. Awe's complaint. It was open to the SRSG to decide that Mr. Awe's complaint was best addressed through a letter of reprimand to Mr. Rutgers. The UNDT pointed to no evidence to show that Mr. Awe's reputation had been harmed by the contents of the meeting minutes. By so ruling, the UNDT improperly stepped into the shoes of the responsible official to decide the appropriate way to address the actions of Mr. Rutgers in relation to Mr. Awe.

10. The Dispute Tribunal erred in law in awarding compensation to Mr. Awe. The USD 3,000 award for "procedural error" was based the UNDT's misinterpretation of Section 5.18 of ST/SGB/2008/5 as requiring the SRSG to refer the matter to the ASG/OHRM for disciplinary action. As there was no breach of Section 5.18, no compensation should have been awarded. Even assuming *arguendo* that the SRSG should have referred the matter to the ASG/OHRM, the UNDT did not provide any explanation or point to any evidence for how Mr. Awe might have suffered harm from the lack of such a referral. Furthermore, there was no evidence to support the UNDT's award of USD 15,000 for "stress and moral injury" allegedly caused by the remarks in the SMT meeting minutes. Moreover, the contents of the SMT meeting minutes themselves cannot constitute evidence of harm.

11. The Secretary-General requests that the Appeals Tribunal vacate the impugned Judgment in its entirety.

Mr. Awe's Answer

12. The Dispute Tribunal correctly concluded that there was a procedural error arising from the SRSG's failure to refer the matter to the ASG/OHRM as he was required to do so under the applicable provisions of ST/SGB/2008/5. As the Appellant, the Secretary-General has failed to provide competent legal argument to fault the UNDT's interpretation of ST/SGB/2008/5.

13. The UNDT correctly concluded that there were unjustifiable delays in addressing Mr. Awe's complaints. Contrary to the Secretary-General's arguments, the Dispute Tribunal took into consideration elements of delays that could have reasonably occurred, but correctly determined that there were delays that were unjustifiable. The Secretary-General's assertion about the need for time to look into conflict of interest concerns lacks merit, as it was a clear case of inefficient handling of the matter; it cannot be argued as a justifiable reason for the delay.

14. The Dispute Tribunal correctly concluded that a retraction of the offensive portion of the SMT meeting minutes was necessary. Though the Secretary-General claims that retracting the minutes will not be the only appropriate manner in which Mr. Awe's complaint can be addressed, he has failed to come up with any alternative suggestion for addressing the issue.

15. The Dispute Tribunal was correct in finding that there was stress and moral injury stemming from the unsubstantiated derogatory remarks in violation of Mr. Awe's right to be treated with dignity and respect. It was also correct in finding that the delay in processing Mr. Awe's complaints and the continued retention of the offending statements in the SMT minutes constituted a continuing damage to his personal and professional standing and reputation as an auditor, thereby forming sufficient grounds for the awards made.

16. Mr. Awe requests that the Appeals Tribunal dismiss the appeal and affirm the UNDT Judgment.

Considerations

17. Mr. Awe currently occupies a post as Resident Auditor in the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), Bamako, Mali, following a lateral reassignment. At the time of the events that gave rise to the present case, Mr. Awe held the post of Chief Resident Auditor at UNAMI, based in Kuwait. In Mr. Awe's complaint of prohibited conduct (abuse of power/authority) under ST/SGB/2008/5, he contends that the offending contents in the SMT minutes (refusal to authorize travel on an official mission previously approved; suggestion to rotate out the auditor because he was seriously compromised) caused him harm warranting compensation.

18. The FFP, in its meticulous report, found that Mr. Rutgers had (i) made unsubstantiated and derogatory remarks against Mr. Awe; (ii) allowed the SMT minutes to be circulated without reviewing them, knowing that they did not refer only to planning and

operational issues; and (iii) made comments which had the likelihood or the great potential to discredit Mr. Awe's personal and professional integrity, character and standing, as well as incite others to form an adverse opinion about Mr. Awe and to disrespect him, creating a more challenging working environment for him among an undetermined number of colleagues (since the copies had been circulated widely within and outside the mission).

19. The FFP further concluded that Mr. Awe's superiors, amongst others, "violated staff rule 1.2(q) and abused the power and authority vested in them ...", used false pretense and made unsubstantiated and derogatory remarks against him in the presence of others. Moreover, by circulating the minutes of the meeting in which such remarks has been affixed, they violated the core values of the Organization and Mr. Awe's right to be treated with dignity and respect, failed to uphold the core value of professionalism and live up to the standards of efficiency and competence expected of them, and created a more challenging and possibly hostile working environment for Mr. Awe.⁷

20. The FFP additionally found "the failure of UNAMI and OIOS Audit [Headquarters (HQ)] to adequately address the 21 January 2014 SMM [senior management meeting] incident".

Retraction of the minutes – effective remedy

21. In spite of the FFP's undisputed conclusions, Mr. Awe's only remedy was a letter of reprimand placed in Mr. Rutgers' Official Personnel File. Nothing has been done to clear Mr. Awe's name and the unlawful offending statements in the SMT minutes continue to damage his professional reputation. The reprimand in the offender's file and Mr. Rutgers' private apology⁸ do not constitute appropriate relief for the restoration of Mr. Awe's reputation and career, as there is no evidence that it was known by the people who received the SMT minutes containing the offending references.

22. Despite the Administration's insinuation about the limited impact of the SMT minutes, the question is that it did not meet its burden to provide appropriate measures to mitigate the harm, after the thorough report and findings of the FFP had been released. On the one hand, the Administration did not offer any alternative means of addressing the

⁷ See para. 68 of the impugned Judgment.

⁸ Impugned Judgment, para. 17. The letter was only circulated to the then-SRSG and the Chief of Peacekeeping Audit Services, OIOS.

issue and, on the other, it recognized that it would be a sign of good faith to “amend and recirculate the [SMT minutes] to the original recipients”.⁹

23. Indeed, the Administration and the offender acknowledged that other effective actions could have been taken.¹⁰ Nevertheless, despite Mr. Awe’s express request and the UNDT’s unambiguous order, this has not occurred.¹¹ If not retracted, the unsubstantiated comments in the SMT minutes can still be referenced in the future.

24. Given the nature and gravity of the FFP’s findings, we agree with the UNDT that the Administration should have removed the offending minutes, written to all recipients of the minutes withdrawing the damaging allegations against Mr. Awe, and/or simply forwarded the FFP’s report to the participants of the SMT meeting and recipients of the minutes.

25. There is no error in the UNDT Judgment in this regard. The appeal is dismissed insofar as it challenges the order in paragraph 85(a) of the impugned Judgment.

Compensation for procedural error

26. Article 10(5) of the UNDT Statute provides:

... As part of its judgement, the Dispute Tribunal may only order one or both of the following:

...

(b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years’ net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

⁹ Para. 13 of the Respondent’s submission pursuant to Order No. 435 (NBI/2016) before the UNDT: “As a sign of good faith and to address the Applicant’s ongoing concerns about the meeting minutes, the mission is ready and willing to amend and recirculate the Senior Management Meeting notes of 21 January 2014 to the original recipients if the Applicant wishes”.

¹⁰ Impugned Judgment, para. 79. Also, para. 64.2(a) of the FFP’s report: “Mr. Rutgers stated: ‘I take your point regarding corrective action that a wider dissemination of the apology would have been a better means of addressing [Mr. Awe’s] grievances more effectively. In hindsight, the [SMT] was not the proper forum to have addressed these issues’”; and, para. 64.2(d): “UNAMI SRSG, Mr. Nickolay Mladenov stated: ‘I agree with you [an apology should have been offered in the same forum where the comments had been made and documented in the minutes in order to correct or mitigate the damage caused] [...] But I take the point. It should be recorded in minutes of the [SMT]’”.

¹¹ Paras. 75 and 80 of the impugned Judgment.

27. The UNDT found that the FFP's report clearly and unequivocally established that the allegations made by Mr. Awe were well-founded and that the conduct in question amounted to possible misconduct. The UNDT hence concluded that the non-referral to the ASG/OHRM for disciplinary action was an error of procedure which denied Mr. Awe his contractual right to be afforded the benefit and protection against prohibited conduct in accordance with the applicable legislation, and that Mr. Awe was therefore entitled to an award of compensation for that procedural error.

28. Section 5.18(c) of ST/SGB/2008/5 provides that:¹²

If the report indicates that the allegations were well-founded and that the conduct in question amounts to possible misconduct, the responsible official shall refer the matter to the Assistant Secretary-General for Human Resources Management for disciplinary action. ...

29. While we agree that the FFP's report established that the allegations were well-founded and that the conduct in question amounted to possible misconduct and, therefore, the matter should have been referred to the ASG/OHRM,¹³ we have to consider that any action taken against Mr. Rutgers (managerial or disciplinary) can have only remotely affected Mr. Awe, whose main interest was to mitigate or eliminate the harm caused by the unsubstantiated remarks in the SMT minutes. Besides, there is no provision in the UNDT Statute for an award "for procedural error".

30. In view of the above, the Appeals Tribunal grants the appeal in part and vacates the Dispute Tribunal Judgment, insofar as it awards compensation for procedural error.

31. Notwithstanding the above, the Appeals Tribunal highlights the importance of compliance with the respective rules, regulations and/or bulletins, in particular with regard to referral of the matter to the competent official for disciplinary action and respect of deadlines.¹⁴

¹² Emphases added.

¹³ *Alobwede v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-586 is not applicable here. In that case, the fact-finding panel unanimously found no abuse of authority. Hence the Administration had discretion under Section 5.18(b) to take any managerial action. In the present case, however, Section 5.18(c) of ST/SGB/2008/5 applies, as the FFP indicated misconduct.

¹⁴ In this particular case, the Appeals Tribunal notes the excessive delay in the handling of Mr. Awe's complaint, in contrast to Section 5.17 of ST/SGB/2008/5, which states that the FFP's report "shall be submitted to the responsible official normally *no later than three months* from the date of submission

Compensation for harm

32. The UNDT awarded USD 15,000 to Mr. Awe as compensation for harm to reputation and professional standing based on the FFP's conclusions.

33. The UNDT also stated:¹⁵

The Tribunal finds that the Applicant's claim is well founded and that he suffered damage to his reputation and professional standing exacerbated by the continuing and unacceptable delay in affording him the relief to which he is entitled. The Applicant is entitled to compensation for the harm suffered, such harm being assessed well above the midpoint in the range of awards made by the Tribunal.

34. In the present case, there is no dispute about the FFP's findings, which clearly found that i) there were unsubstantiated and derogatory remarks against Mr. Awe in the presence of others, including the most senior managers in the Mission; ii) the minutes of the SMT meeting in which such remarks had been included were circulated to "a wide circle of individuals"; and, iii) there had been an attempt to have Mr. Awe removed from UNAMI on unsubstantiated grounds. The FFP interviewed fourteen witnesses.

35. The FFP concluded that "regardless of the intent of the concerned parties, such comments had *de facto* a harmful effect/impact" in discrediting Mr. Awe's personal and professional integrity, character and standing among an undetermined number of colleagues,¹⁶ "particularly in such a close environment as Baghdad".¹⁷ Additionally, SRSG Mladenov recognized the "damage caused" to Mr. Awe by the comments made and documented in the SMT minutes.¹⁸

of the formal complaint or report" (emphases added). The exceptional circumstances (the deteriorating security situation in Iraq and the appointment of a new SRSG) cannot justify a delay four times the normal time period (The complaint was submitted on 3 March 2014; the final FFP Report, *Addendum*, was not filed until 24 March 2015.) established by the relevant law. It is all the more unacceptable considering that the SRSG required the FFP to finalize its report no later than 31 October 2014 and that Mr. Awe made numerous inquiries for an update on the status of the investigation.

¹⁵ Impugned Judgment, para. 83.

¹⁶ Clarification in para. 56 of the *Addendum* dated 24 March 2015 to the FFP's report.

¹⁷ Para. 48.6 of the FFP's report of 18 February 2015. Also, the FFP's findings that such comments had *de facto* a harmful effect/impact, inciting others to form an adverse opinion about Mr. Awe and to disrespect him. (Clarification in para. 57 of the *Addendum* dated 24 March 2015 to the FFP's report.)

¹⁸ Para. 64.2(d) of the FFP's report.

36. In view of the foregoing and also considering the failure to provide prompt and effective redress (the minutes still being valid in the eyes of the participants; the offending statements not having been removed from the minutes; and, the FFP's report not having been circulated),¹⁹ we are satisfied that sufficient evidence was provided to justify the award of compensation for harm to reputation and professional standing in the present case.

37. Nevertheless, it does not appear that the UNDT took into account that this harm has a temporary nature, which will not affect the totality of Mr. Awe's career—particularly since the Appeals Tribunal upholds the removal of the offending references from the SMT minutes, with communication to all recipients, as ordered by the UNDT in paragraph 85(a) of its Judgment.

38. Accordingly, we consider USD 5,000 to be a more appropriate amount to compensate the harm suffered by Mr. Awe.

¹⁹ We also take note of the fact that Mr. Awe currently holds a post as Resident Auditor in MINUSMA (Mali). At the time of the events, he held the post of Chief Resident Auditor at UNAMI (Kuwait).

Judgment

39. The appeal is granted in part; Judgment No. UNDT/2016/206 is vacated, insofar as it awards compensation for procedural error, and modified, insofar as the award of compensation for harm is reduced to USD 5,000. The UNDT's order, set forth in paragraph 85(a) of the impugned Judgment, to remove the offending references in the minutes and to write to all recipients to inform them of the FFP's findings is affirmed.

Original and Authoritative Version: English

Dated this 14th day of July 2017 in Vienna, Austria.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Lussick

Entered in the Register on this 5th day of September 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar