UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2017-UNAT-791

Ho

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Dimitrios Raikos, Presiding Judge Deborah Thomas-Felix Judge Martha Halfeld
Case No.:	2017-1075
Date:	27 October 2017
Registrar:	Weicheng Lin

Counsel for Ms. Ho:	Self-represented
Counsel for Secretary-General:	Wambui Mwangi

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2017/013, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 7 March 2017, in the case of *Ho v. Secretary-General of the United Nations*. Ms. Camay Kit Ching Ho filed her appeal on 1 May 2017, and the Secretary-General filed an answer on 3 July 2017.

Facts and Procedure

2. The following are facts established by the UNDT:[1]

> ... [Ms. Ho] entered the Organization as a Programme Management Officer, [United Nations Framework Convention on Climate Change (UNFCCC)], in Bonn on 8 November 2012, under a fixed-term appointment at the P-3 level.
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> ... In January 2015, [Ms. Ho] resigned effective 15 February 2015.
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> ... On 26 May 2015, she submitted proof to UNFCCC that she had relocated to Malaysia, her home country.
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> ... On 1 June 2015, UNFCCC finalized the Personnel Action related to [Ms. Ho]'s separation from service ("Separation PA") effective 15 February 2015.
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> ... By email dated 2 June 2015, UNFCCC sent to [Ms. Ho] a copy of her Separation PA for her records.
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> ... On 6 July 2015, [Ms. Ho] emailed a Human Resources Assistant, [Human Resources (HR)], UNFCCC, requesting advice on the section "End of Service entitlements" on her [S]eparation PA[.]
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> ... On 8 July 2015, she wrote another email to HR, UNFCCC, requesting *inter alia* information about whether her repatriation grant had been remitted and, if so, to where it had been sent. By email of the same day, HR, UNFCCC, advised [Ms. Ho] that her "repatriation grant [would go] to the bank account [she] indicated in [her] final salary payment form" and that it would be processed "via payroll". [Ms. Ho] replied, also on the same day, confirming that she had "not received her 5 weeks repatriation grant", and asking that UNFCC[C] "check with payroll or provide the name/email to check with" while noting that the matter had "been long outstanding".
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> ... By email of 13 July 2015, [Ms. Ho] followed up with HR, UNFCCC, on the payment of her repatriation grant. By email of the same day, a Human Resources Assistant, HR, UNFCCC, confirmed that she was in contact with Payroll, and informed

[1] Impugned Judgment, paras. 3-24.

her that while it could take some months for the processing of the repatriation grant, she would keep [Ms. Ho] informed of any development.

... By email of 4 December 2015 to HR, UNFCCC, [Ms. Ho] reiterated her request for information about when she would be paid the repatriation grant. The following day, a Human Resources Assistant, HR, UNFCCC, replied that she would follow up on the outstanding payment upon her return to the office the following week.

... By email of 24 February 2016 [Ms. Ho] followed up yet again on the payment of her repatriation grant.

... By email of 18 May 2016, [Ms. Ho's] Counsel from the Office of Staff Legal Assistance ("OSLA") contacted the Chief, HR, UNFCCC, requesting his intervention in the processing of the repatriation grant.

... By email of 26 May 2016, the Chief, HR, UNFCCC, responded that they had "resolved the issue and [that [Ms. Ho]] may expect payment over the next few weeks" and expressed his regret for "the delay in the processing of [the] payment".

... By email dated 30 May 2016 to the Management Evaluation Unit ("MEU"), [Ms. Ho] requested management evaluation of "the long overdue payment [of her] repatriation grant".

... Following clearance from UNFCCC, the Financial Resources Management Service, [United Nations Office at Geneva (UNOG)], released the payment of the repatriation grant with a payment date of 31 May 2016. As per the documents on file, the repatriation grant amount held in trust was USD 5,994.07. It was wired, as per [Ms. Ho's] instructions, to her [Malaysian] account, and the conversion from USD to [Malaysian ringgit (MYR)] was made using the prevailing United Nations Operational Rates of Exchange (UNORE) of May 2016, namely USD 1 = MYR 3.897, resulting in the crediting of MYR 23,358.89 to [Ms. Ho].

... By letter dated 6 June 2016, the MEU acknowledged receipt of [Ms. Ho's] request for management evaluation.

... By email of 8 June 2016, a Human Resources Officer, HR, UNFCCC, sent to [Ms. Ho] an "UMOJA clip regarding the disbursement of the repatriation grant". It showed that USD 5,994.07 had been cleared for payment effective 31 May 2016. By email of the same day, [Ms. Ho] informed UNFCCC that the money had not yet reached her account and that, based on the information she had received, she was of the view that the Organization had underpaid her USD 268.29.

... By email of 9 June 2016, a Human Resources Assistant, HR, UNFCCC, replied to [Ms. Ho] that she had "contacted treasury again for further information".

> ... By email of 10 June 2016, [Ms. Ho] reiterated that she had not received any monies in her account. On the same day, a Human Resources Assistant, UNFCCC, replied to [Ms. Ho] that UNFCC was "still awaiting feedback from treasury".
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> ... By email of 14 June 2016 to [Ms. Ho], the MEU advised her that "the Administration presented a payslip whereby the repatriation grant [had been] transferred to [her] account", and asked her to confirm if she had received the payment in question. By email of 15 June 2016, [Ms. Ho] *inter alia* advised the MEU that although she had not received any payslip, she had been underpaid USD 268 for her repatriation grant and that she wished to "add this underpayment to [her] claim against UNFCCC".
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> ... By email dated 21 June 2016, a Human Resources Officer, HR, UNFCCC, inquired with [Ms. Ho] if she had received the repatriation grant.
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> ... By letter dated 14 July 2016, the MEU informed [Ms. Ho] that it would proceed to close her file. In support of this, the MEU advised [Ms. Ho], *inter alia*, that payment of her repatriation grant, amounting to USD 5,994.07, had been executed on 31 May 2016 and that she had confirmed receipt of the equivalent MYR amount, namely MYR 23,358,89 by email of 24 June 2016. Her banking statement of Maybank shows that she received that amount in her bank account on 20 June 2016.
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> ... [Ms. Ho] filed (...) [her] application [before the UNDT] on 4 October 2016, and the Respondent filed his reply on 14 November 2016. By Order No. 26 (GVA/2017) of 1 February 2017, the [Dispute] Tribunal asked the Respondent to provide additional information on the normal workflows to process payment of a repatriation grant, and [Ms. Ho] to do so with respect to material and moral damages she suffered. Both parties provided information pursuant to said order on 15 February 2017, and [Ms. Ho] filed some documents on an *ex parte* basis.

3. On 7 March 2017, the UNDT issued the impugned Judgment dismissing Ms. Ho's request for material damages while awarding her USD 500 for moral damages in connection with the Administration's 12-month delay in payment, which was due to Ms. Ho on 26 May 2015, the date she submitted proof of her relocation. The Administration remitted payment on 31 May 2016 (and the money was credited to Ms. Ho's Maybank account on 20 June 2016). As the Administration admitted the delay was due to "human oversight" and despite various follow-ups sent by Ms. Ho, the UNDT concluded that "the Administration failed to fulfil its obligation to make a timely payment of [Ms. Ho's] entitlement to repatriation grant".[2] The UNDT held, however, that Ms. Ho did not suffer material damages from the delay as she actually received more money using the UNORE rate in effect in May 2016

[2] *Ibid.*, para. 43.

than she would have received if the Administration had timely remitted payment using the UNORE rate of May 2015. The UNDT rejected Ms. Ho's argument that the UNORE for June 2016 (when the payment was credited into her account) should have been applied instead of the lesser UNORE of May 2016, as the Administration remitted funds in May 2016 and "[a]ny problems at the receiving bank cannot be construed as falling within the responsibility of the United Nations, and cannot impact on the applicable UNORE".[3] The UNDT dismissed Ms. Ho's plea for eight per cent interest for the period of delay relying upon the jurisprudence of the Appeals Tribunal in *Warren*.[4] Nonetheless, the UNDT held that Ms. Ho was not entitled to interest because the amount she received was based on the favourable UNORE, which exceeded the amount she would have earned in United States prime rate interest over the relevant period.[5] The UNDT awarded Ms. Ho USD 500 as adequate compensation for moral damages for the "stress, frustration and anxiety caused by the Organization's failure to process the payment in due time".[6]

Submissions

Ms. Ho's Appeal

4. Ms. Ho submits that the UNDT erred in fact and law as it did not properly address her plea for material and moral damages. In determining the applicable UNORE, the UNDT failed to consider the Administration's use of a third-party remitter which related to the delay between the Administration's remittance and the amount not crediting to her account until 20 June 2016. Ms. Ho refers to the Secretary-General's submission to the Dispute Tribunal at paragraph 26 of the impugned Judgment, which states "Payroll, UNOG, traced the payments made to [Ms. Ho] and did not find any return of funds or repayment requests that could explain the time taken for the monies to reach [Ms. Ho's] account. Payroll records lead to conclude that funds were remitted from the Organization's account on 2 June 2016, and [Ms. Ho] may seek clarification from her bank on this matter". Ms. Ho asserts that this statement is incorrect and submits an e-mail from her bank (Maybank) which indicates the remitter was "INTL FCSTONE LIMITED" and funds were received from "CIMB BANK BHD". Ms. Ho further indicates that the UNOG treasury screen shots submitted to the UNDT indicate that USD was converted to MYR and the

[3] *Ibid*., paras. 46-50.
[4] *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-059.
[5] Impugned Judgment, paras. 51-57.
[6] *Ibid*., paras. 58-64

agent bank was Citibank New York. Ms. Ho argues that there is a Citibank in Kuala Lampur, Malaysia and "there was no reason for an unrelated third party, a NASDAQ listed commodities/payments broker, to remit money to [her] account using a local bank, CIMB Bank Bhd [and] it can be concluded that this payment (...) did not originate from the same CITIBANK payment request that was generated on 31 May 2016". Ms. Ho asserts that using a third-party remitter was requested by UNOG Payroll or UNFCCC and in turn as it was credited in June 2016, the exchange rate of June 2016 is prevailing. Ms. Ho also argues that given the delay of 12 months, the UNFCCC should have checked with her as to whether the bank she nominated in 2015 was still valid and which currency she preferred as circumstances had changed during such a delay.

5. As a result, Ms. Ho requests the UNFCCC and their agent UNOG Treasury to "provide a written explanation why [her] banking details were provided to an unconnected 3rd party [...] without her consent [which] constitutes a breach of an employee's privacy [and] could potentially cause complications with money laundering investigators and tax authorities for [her] in Malaysia". She requests a formal apology, increased material damages of USD 268, the difference between the amount paid by UNFCCC (USD 5,725) and the actual repatriation grant due (USD 5,994), and the addition of five per cent interest from the date it was due in June 2015. Ms. Ho also seeks an increase of her moral damage award, from USD 500 to USD 2,000 in line with the award by the UNDT in *Tran Nguyen*[7] "to reflect the gravity of the situation of unlawfully retaining money, breaching [her] privacy and confidentiality by unlawfully providing [her] bank account details to a third party" and "for the incorrect/false information provided by UNFCCC to UNDT".

The Secretary-General's Answer

6. The Secretary-General requests that the Appeals Tribunal dismiss the appeal in its entirety as not receivable. The UNDT decided in Ms. Ho's favour and the Appeals Tribunal's jurisprudence provides that "the party in whose favour a case has been decided is not permitted to appeal against the judgment on legal or academic grounds". Ms. Ho is therefore, "prevented from filing an appeal, which is an instrument to pursue a change of the judicial decision, in the form of modification, annulment or vacation, used as a way to repair a concrete grievance

[7] *Tran Nguyen v. Secretary-General of the United Nations,* Judgment No. UNDT/2015/002.

[directly] caused by the impugned judgment".[8] Ms. Ho has failed to demonstrate that the UNDT Judgment generated harm that constitutes the *conditio sine qua non* of her appeal.

7. The appeal is not receivable as Ms. Ho failed to identify an error that may have led to a manifestly unreasonable decision warranting the intervention of the Appeals Tribunal. Ms. Ho fails to identify the UNDT's findings of fact that were not supported by the evidence or were unreasonable. Ms. Ho requests USD 2,000 in moral damages citing without any supporting arguments to *Tran Nguyen;* however, there is no jurisprudential nexus between this case and Ms. Ho's situation. Ms. Ho's argument for an increased moral damage has no basis. Ms. Ho has not submitted any evidence to the MEU, to the UNDT, or to the Appeals Tribunal in support of these assertions and the issue in this case remains to be about the rate of exchange in calculating her repatriation grant. Allegations regarding her privacy and use of a third-party remitter are being raised for the first time on appeal having not been previously submitted for management evaluation. Such decisions are only receivable by the UNDT and subsequently the Appeals Tribunal if they have previously been submitted for management evaluation. Thus, the issue of her breach of privacy is not receivable *ratione materiae.*

8. The Secretary-General further submits that Ms. Ho is re-litigating her request for material damages because she disagrees with the UNDT's decision. The UNDT already examined whether Ms. Ho suffered harm on account of the delay and whether she was entitled to payment of interest and provided reasoned analysis upon findings of fact and law which are reasonable. Ms. Ho's argument that given the delay, the Administration should have checked with her to confirm if the bank information she provided in 2015 was still valid and to confirm her preferred currency does not demonstrate an error by the UNDT. Moreover, the onus is on Ms. Ho to update her banking details. This issue was also not previously submitted for management evaluation and is not receivable. Regarding Ms. Ho's request for a formal apology, the Secretary-General notes the Chief of Human Resources, UNFCCC already expressed his regret for the delay.

[8] *Bagot v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-718, para. 29.

Considerations

Receivability of the appeal

9. The first issue to be decided is whether the appeal is receivable.

10. In *Rasul*,[9] *Sefraoui*,[10] and other cases,[11] the Appeals Tribunal held that the party in whose favour a case has been decided is not permitted to appeal against the judgment on legal or academic grounds. Thus, the successful party is prevented from filing an appeal, which is an instrument to pursue a change of a judicial decision, in the form of modification, annulment or vacation, used as a way to repair a concrete grievance directly caused by the impugned judgment. The concrete and final decision adopted by a court must generate the harm that constitutes the *conditio sine qua non* of any appeal. It is not enough to claim that the grievance comes from the reasoning of the judgment, from all or part of its motivation or from the rejection of certain or all of the arguments submitted by a party. The right to appeal arises when the decision has a negative impact on the situation of the affected party. That means that a judgment can contain errors of law or fact, even with regard to the analysis of the tribunal's own jurisdiction or competence and yet, it may still be not appealable.

11. The Secretary-General submits that the appeal at hand is not receivable and should be rejected in its entirety as Ms. Ho's position has prevailed at the first instance.

12. This is not true. In her application filed with the UNDT Ms. Ho requested, among others, compensation for her financial loss by paying her interest at eight per cent per annum, the award of moral damages amounting to USD 5,000 and the payment of USD 268 due to her as the difference between the actual amount that was paid by UNFCCC of USD 5,725 (MYR 23,358.89) and the repatriation grant due to her of USD 5,994.[12] The UNDT partly favoured her by awarding moral damages in the amount of USD 500, while it dismissed all other pleas. Therefore, contrary to the Secretary-General's contention, the appeal is receivable since Ms. Ho has partially prevailed before the Dispute Tribunal and is entitled to file an appeal to pursue the modification, annulment or vacation of the impugned Judgment.

[9] *Rasul v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-077, para. 15.
[10] *Sefraoui v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-048, para. 18.
[11] *Saffir and Ginivan v. Secretary-General of the United Nations,* Judgment No. 2014-UNAT-466, paras. 14-23; *Larkin v. Secretary-General of the United Nations,* Judgment No. 2011-UNAT-134, para. 34.
[12] Impugned Judgment, para. 25.

Merits

Exchange rate

13. Staff Rule 3.19(a) (Repatriation Grant) provides that:

> ... The purpose of the repatriation grant provided by staff regulation 9.4 is to facilitate the relocation of expatriate staff members to a country other than the country of the last duty station, provided that they meet the conditions contained in annex IV to the Staff Regulations and in this rule.

14. Staff Regulation 9.4 stipulates that:

> ... The Secretary-General shall establish a scheme for the payment of repatriation grants in accordance with the maximum rates and under the conditions specified in annex IV of these Regulations.

15. The above-mentioned annex IV (Repatriation Grant) states the following:

> ... In principle, the repatriation grant shall be payable to staff members who have completed at least five years of qualifying service, whom the Organization is obligated to repatriate and who at the time of separation are residing, by virtue of their service with the United Nations, outside their country of nationality. The repatriation grant shall not, however, be paid to a staff member who is dismissed. Eligible staff members shall be entitled to a repatriation grant only upon relocation outside the country of the duty station. Detailed conditions and definitions relating to eligibility and requisite evidence of relocation shall be determined by the Secretary-General.

16. There has not been any dispute, either before the UNDT or this Tribunal, in terms of Ms. Ho's eligibility to the payment of a repatriation grant under the above provisions, as well as the USD amount due to her, in application of the table contained in annex IV to the Staff Regulations, namely USD 5,994.

17. Rather, the crux of the present case can be summarized on the issue of the exchange rate used to calculate the repatriation grant due to Ms. Ho in light of the UNORE.

18. In her appeal, Ms. Ho seeks USD 268 as the difference between the actual amount that was paid by UNFCCC of USD 5,725 (MYR 23,358.89) and the repatriation grant due to her of USD 5,994.

19. Ms. Ho argues that the UNORE that should have been applied to determine the amount to be remitted to her MYR bank account is that of 20 June 2016 (which was USD 1 = MYR 4,078), when the payment was released, to wit, when the money was actually transferred to her account, rather than that of 31 May 2016 (which was USD 1 = MYR 3,897), which was used by the Administration.

20. In the course of its Judgment, the UNDT addressed this issue in the following terms:[13]

> ... To determine any material damage, the [Dispute] Tribunal first has to take into account the UNORE that applied at the time the payment became due (that is upon receipt of the proof of relocation, 1 June 2015) and/or the UNORE applicable at the time the payment should have been effected had normal workflows been respected and the payment been timely (i.e., 30 June 2015). That has to be compared to the UNORE that was applied when the payment was actually made (i.e., 31 May 2016).
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> ... The UNORE on 1 June 2015 was USD 1 = MYR 3,642, while that on 30 June 2015 was USD 1 = MYR 3,768 MYR/USD. Applying the more favourable of the two, that at 30 June 2015, [Ms. Ho] would have received MYR 22,585.66. In contrast, on 31 May 2016, the UNORE was USD 1 = MYR 3,897. In applying this UNORE, [Ms. Ho] received MYR 23,358.89.
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> ... It follows that Ms. Ho was not prejudiced by the UNORE applied in May 2016. Quite the contrary, she received MYR 773.23 more than what she would have received had the UNORE of June 2015 been applied. In other words, [Ms. Ho] received more money than she would have had the Administration acted promptly once the payment became due.

21. Upon reviewing this finding, the Appeals Tribunal holds that the UNDT gave careful and fair consideration to Ms. Ho's arguments regarding the decisive time of the applicable UNORE and weighed them against the facts of the case. The UNDT came to the conclusion, on the one hand, that the UNORE that applied at the time the payment became due (that is upon receipt of the proof of relocation, 1 June 2015) and/or the UNORE applicable at the time the payment should have been effected had normal workflows been respected and the payment been timely (i.e., 30 June 2015), had to be taken into account for the purpose of calculating the exchange rate between USD and MYR. On the other hand, the UNDT concluded that both of them were less favourable for Ms. Ho who would have received MYR 773,23 less as compared

[13] *Ibid.*, paras. 47-49.

to the UNORE that was applied by the Administration, i.e. when the payment was actually made (i.e., 31 May 2016).

22. We discern no fault in this finding of the UNDT, as the determinant UNORE is that applicable at the due date of the repatriation grant entitlement,[14] that is upon receipt of the proof of relocation (1 June 2015), and, indeed, Ms. Ho has not demonstrated in her appeal that the UNDT fell into any error, whether of fact or law. There is no merit to her claim that the UNORE that should have been applied is that of 20 June 2016 (which was USD 1 = MYR 4,078), when the money was actually transferred to her account. If that was the case, the determinant time for the applicable UNORE and hence the calculation of the exchange rate would be dependent on random and unpredictable factors, notably on the Administration's choice of the relevant time of payment.

The award of compensation

23. Article 9(1)(*b*) of the Statute of the Appeals Tribunal (Statute) does not only allow compensation for non-pecuniary damage (i.e., stress, and moral injury) but also for pecuniary or economic loss other than the "value" of the rescinded administrative decision.[15] Our case law requires that the harm be directly caused by the administrative decision in question.[16] Pursuant to Article 9(1)(*b*) of the Statute, compensation may be awarded for harm suffered that is supported by evidence. Finally, there may not be duplicative compensation.[17]

24. As the Appeals Tribunal held in *Warren*:[18]

> ... Notwithstanding the absence of express power of the UNDT and the Appeals Tribunal in their respective statutes to award interest, the very purpose of compensation is to place the staff member in the same position he or she would have been in had the Organization complied with its contractual obligations. In many cases, interest will be by definition part of compensation. To say that the tribunals have no jurisdiction to order the payment of interest would in many cases mean that

[14] *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-59, para. 17.
[15] *Faraj v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-587, para. 26.
[16] *Diatta v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-640; *Israbhakdi v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-277. See also *Mihai v. Secretary General of the United Nations*, Judgment No. 2017-UNAT-724, para. 21.
[17] *Mihai v. Secretary General of the United Nations*, Judgment No. 2017-UNAT-724, para. 21, citing *Kasmani v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-305, para. 37.
[18] *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-59, para. 10.

> the staff member could not be placed in the same position, and that therefore proper "compensation" could not be awarded.

25. In the context of examining whether Ms. Ho had suffered any material damage from the delay in payment of the repatriation grant, the UNDT reasonably noted the non-observance in the present case of "a general principle of due diligence and good faith towards staff members enshrined in the Charter of United Nations" which "constitutes a structural principle of good management practice",[19] and came to the correct conclusion that "by making the payment (31 May 2016) almost eleven months after it should have been effected had normal workflows been respected (July 2015), despite the various follow-ups sent by Ms. Ho, the Administration failed to fulfil its obligation to make a timely payment of Ms. Ho's entitlement to repatriation grant under the Staff Rules and Regulations".[20]

26. In the present case, Ms. Ho seeks compensation for the delay in payment of her repatriation grant, by way of interest of five per cent on the amount of USD 5,725 from the date it became due, 1 June 2015.

27. Firstly, insofar as the rate of interest for the amount due to Ms. Ho is concerned, the UNDT correctly decided, in accordance with our jurisprudence,[21] to award interest at the United States Prime Rate applicable at the due date of the entitlement (3.5 per cent), calculated from the due date of the entitlement (30 June 2015) to the date of payment (31 May 2016).

28. Secondly, in examining whether Ms. Ho was finally entitled to compensation by way of interest for the undue delay in payment, the UNDT opined:[22]

> ... Having found that the payment would have been timely up to the end of June 2015/mid-July 2015, the [Dispute] Tribunal considers that any interest the Applicant could have earned has to be calculated from that point in time through 31 May 2016. The U.S. prime rate applicable in June/July 2015 was 3.5 per cent. Calculated from 30 June 2015 to the date of payment (31 May 2016), that is, over a period of eleven months, the interest applied to MYR 22,585.66 amounts to MYR 724,62.

[19] Impugned Judgment, para. 40.
[20] *Ibid*., para. 43.
[21] *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-59, para. 17.
[22] Impugned Judgment, paras. 55-56.

> ... However, the [Dispute] Tribunal notes that the Applicant received a total amount of MYR 23,358.89 in May 2016, instead of MYR 22,585.66 that she would have received if payment had been made in June 2015. Therefore, since the difference in payment, i.e., MYR 773.23, exceeds the amount of interest calculated above, the [Dispute] Tribunal cannot but find that even taking into account the potential interest she could have obtained through investment, the Applicant did not suffer any material damage.

29. We find no reasons to differ from that conclusion, since the findings of fact made by the UNDT can only be disturbed under Article 2(1)(*e*) of the Statute, when there is an error of fact resulting in a manifestly unreasonable decision, which is not the case here.

30. The UNDT has considered the issues of material damages and the interest claimed by Ms. Ho in detail, providing reasons, facts and law, as required under Article 11(1) of its Statute and in accordance with the Appeals Tribunal's jurisprudence. As we have repeatedly stated,[23] the very purpose of compensation is to place an appellant in the same position he or she would have been in had the Organization complied with its contractual obligations, and any compensation may never give rise to undue enrichment.

Moral damages

31. This Tribunal has consistently held that "compensation must be set by the UNDT following a principled approach and on a case by case basis" and that the Appeals Tribunal will not interfere lightly as "[t]he Dispute Tribunal is in the best position to decide on the level of compensation given its appreciation of the case".[24]

32. In the instant case, the UNDT awarded Ms. Ho compensation for moral damages in the amount of USD 500 for having suffered stress, frustration and anxiety caused by the Organization's failure to process the payment in due time.[25]

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[23] *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-59, para. 10; *Azzouni v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-162, para. 23.
[24] *Mihai v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-724, para. 15; *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-691, para. 28, citing *Rantisi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-528, para. 71; *Faraj v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-587, para. 26, and *Solanki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-044, para. 20.
[25] Impugned Judgment, para. 64.

33. Ms. Ho requests moral damages be increased to USD 2,000 from the Dispute Tribunal's award of USD 500 to reflect the gravity of the situation of "unlawfully retaining money".

34. We hold that the UNDT did not commit any error of law in its assessment of the compensation award, which we find was fair and reasonable. Ms. Ho has not demonstrated any error of law or manifestly unreasonable factual findings on the part of the Dispute Tribunal. In such circumstances, the Appeals Tribunal gives deference to the Dispute Tribunal in the exercise of its discretion and will not lightly disturb the quantum of damages.[26]

35. In addition, we reject Ms. Ho's argument that she should have received moral damages equivalent to that awarded to the staff member in *Tran Nguyen*.[27] This Tribunal is not bound by *Tran Nguyen* and no similar circumstances were present in the instant case. In any event, the criterion for an award of moral damages is the degree of injury suffered by the individual staff member under the specific circumstances as a result of the unlawful decision. Even if the type of unlawful decision were the same as in another case/or a number of other cases, this does not establish that the degree of moral damage must be the same.[28]

36. We find that the Dispute Tribunal did not commit any error in its assessment of the award of moral damages. Ms. Ho has not established any ground which would justify our interference.

37. Finally, in her appeal, Ms. Ho submits that her banking details were provided to an unconnected third party (INTL FCSTONE LIMITED) without her knowledge and consent, thus breaching her privacy and confidentiality and requests a formal apology from the Administration for having breached her privacy and. However, these issues were not raised before the UNDT, and thus cannot be introduced for the first time on appeal for consideration by the Appeals Tribunal.[29] We find that Ms. Ho's appeal in this regard is not receivable.

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[26] *Maslei v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-637, para. 31; *Leclercq v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-429, para. 22, citing *Sprauten v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-219.
[27] *Tran Nguyen v. Secretary-General of the United Nations*, Judgment No. 2015/UNDT/002.
[28] See, *Maslei v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-637, para. 32.
[29] *Haimour and Al Mohammad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-688, para. 38; *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-547, para. 25; *Simmons v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-221, para. 61.

38. From the foregoing, we hold that Ms. Ho has failed to establish that the UNDT committed errors on questions of facts and law such as to warrant a reversal of the Judgment.

39. Accordingly, the appeal fails.

Judgment

40. The appeal is dismissed and Judgment No. UNDT/2017/013 is hereby affirmed.

Original and Authoritative Version: English

Dated this 27th day of October 2017 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Raikos, Presiding	Judge Thomas-Felix	Judge Halfeld

Entered in the Register on this 8th day of December 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar