UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2021-UNAT-1121

Alex Lucchini

(Respondent/Applicant and Appellant on Cross-Appeal)

v.

Secretary-General of the United Nations

(Appellant/Respondent and Respondent on Cross-Appeal)

JUDGMENT

Before:	Judge John Raymond Murphy, Presiding Judge Martha Halfeld Judge Dimitrios Raikos
Case Nos.:	2020-1428
Date:	25 June 2021
Registrar:	Weicheng Lin

Counsel for Alex Lucchini:	George G. Irving
Counsel for Secretary-General:	Rupa Mitra

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. On 21 December 2018, Alex Lucchini (Mr. Lucchini) filed an application with the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) challenging the administrative decision to separate him from service following disciplinary proceedings, with compensation *in lieu* of notice and without any termination indemnity.

2. By Judgment No. UNDT/2020/090 (the Impugned Judgment), the Dispute Tribunal granted Mr. Lucchini's application in part, rescinding the administrative decision and setting *in lieu* compensation equivalent to remuneration payable for the time remaining on his fixed term appointment.[1] The tribunal also awarded an additional 10 months' net base salary in moral damages for loss of salary and for proven medical difficulties that he faced while on administrative leave without pay.

3. The Secretary-General filed an appeal on 18 August 2020, and Mr. Lucchini filed a cross-appeal on 1 September 2020, seeking an upward revision of the compensation awarded. Both parties also filed timely answers.

4. For reasons set out below, the Secretary-General's appeal is dismissed, and the cross-appeal is upheld to a limited extent, modifying the order of the UNDT and awarding the maximum *in lieu* compensation payable to Mr. Lucchini.

Facts and Procedure

5. Mr. Lucchini was employed by the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) as a Security Officer on a fixed term appointment (FTA) at the FS-4 level in Bamako. He was separated from service following disciplinary proceedings, which were initiated after a Malian woman (the Complainant) filed a report with the police in Mali that Mr. Lucchini had raped her on 4 January 2021. The report of rape has not been pursued by the police in Mali. However, the report led to an investigation by the Investigations Division of the Office of Internal Oversight Services (OIOS) and the Special Investigations Unit (SIU) at MINUSMA, which culminated in Mr. Lucchini's dismissal.

[1] *Lucchini v. Secretary-General of the United Nations*, Judgment No. UNDT/2020/090 dated 19 June 2020 (Impugned Judgment).

6. The Complainant worked for MINUSMA in Bamako performing the services of a cleaner as an independent contractor. Her contract was due to expire on 9 January 2018.

7. Mr. Lucchini claimed to have met the Complainant in April 2016 when she proposed an intimate relationship with him, which he declined. The Complainant denies that she met Mr. Lucchini then. Almost two years later, in December 2017, they met at his place of work at the Main Operating Base in Bamako. The Complainant told Mr. Lucchini that she was working for MINUSMA as an independent contractor and that she was about to go on a three-month mandatory break on the expiry of her contract on 9 January 2018. Mr. Lucchini said he would let her know if he heard of any job opportunities, and they exchanged phone numbers and agreed to stay in touch.

8. The Complainant sent Mr. Lucchini a Happy New Year text message on 31 December 2017. Mr. Lucchini alleged that a few days later, on 2 January 2018, the Complainant stopped by his office and kissed him on the mouth, asking him to call her later. The Complainant denies this. That same day, Mr. Lucchini phoned the Complainant at 11:59 p.m. asking to see her. The Complainant agreed, and Mr. Lucchini immediately drove to her apartment and asked her to come to his apartment. The Complainant agreed to go, and they had sexual intercourse while there. The Complainant claims the sex was non-consensual and that Mr. Lucchini had verbally insulted her during intercourse. She maintains that she had agreed to accompany Mr. Lucchini to his apartment in the early hours of the morning on the basis that she would know where it was if he had a work opportunity for her.

9. When Mr. Lucchini left the bedroom after intercourse, the Complainant exited the apartment and informed a security guard at the apartment complex that she had been raped. She left the premises by taxi. Mr. Lucchini left the apartment complex around the same time and phoned the Complainant several times. She did not answer her phone.

10. On 4 January 2018, the Complainant filed a report with the police accusing Mr. Lucchini of rape. Mr. Lucchini then contacted the Complainant who responded with several text messages informing him that she had reported him to the police. She threatened him by texting that she could put him in prison, saying that he did not know who she is, she is in her own land and "*je sais comment bouger les pions*" - meaning she knows how to move pawns in a chess game. Mr. Lucchini wrote back to her denying the rape accusation.

11. On 5 January 2018, the Complainant was examined by a physician. The results of the gynecological exam revealed no abnormality. As mentioned, the police did not pursue the rape charge against Mr. Lucchini.

12. On 25 January 2018, during the course of the OIOS investigation, Mr. Lucchini was placed on administrative leave without pay (ALWOP) pending completion of the disciplinary process on allegations of sexual intercourse without consent.

13. On 30 April 2018, the OIOS found that Mr. Lucchini had failed to observe the standards of conduct expected of an international civil servant and that there had been a breach of Staff Rule 1.2(e), which prohibits sexual exploitation and abuse. In relevant part, it reads: "Sexual exploitation and abuse is prohibited. (…) The exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour, is prohibited. United Nations staff members are obliged to create and maintain an environment that prevents sexual exploitation and sexual abuse."

14. The OIOS did not uphold the Complainant's allegation of rape.

15. On 13 June 2018, the Assistant Secretary-General, Office of Human Resources Management, (ASG/OHRM) informed Mr. Lucchini of the allegations of misconduct against him. Mr. Lucchini was alleged to have had sexual relations with the Complainant "who he was aware was about to lose her job as an independent contractor with MINUSMA and to whom he had indicated that he might aid in finding employment."

16. Mr. Lucchini submitted his response to the allegations on 26 July 2018, and on 5 October 2018, the ASG/OHRM informed him of the decision to impose the sanction of separation. Mr. Lucchini filed his application challenging the decision to separate him from service with the UNDT on 21 December 2018.

17. In its Judgment issued on 19 June 2020, the UNDT held that sexual exploitation had not been proven and the imposition of separation as a sanction was not justified. In a thoughtful and well-reasoned analysis, the UNDT found that there was no clear and convincing evidence of any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes or an inappropriate promise or exchange of money, employment, goods or services for sex. It ordered rescission of the contested decision

and set *in lieu* compensation equivalent to remuneration payable for the time remaining on Mr. Lucchini's FTA, being 10 months' net base salary. Additionally, even though it found Mr. Lucchini's claim for repayment of salary while on ALWOP to be irreceivable, as he had not sought timely management evaluation of that decision, it awarded an additional 10 months' net base salary in moral damages for loss of salary and for proven medical difficulties that Mr. Lucchini faced during that time period.

Submissions

Secretary-General's Appeal

18. The UNDT misinterpreted Staff Rule 1.2(e) and Section 3 of Secretary-General's Bulletin ST/SGB/2003/13 (Special measures for protection from sexual exploitation and sexual abuse) (collectively, the Sexual Exploitation and Abuse "SEA" provisions). The Secretary-General submits the UNDT incorrectly narrowed the scope of "sexual exploitation" limiting its application only in cases of explicit sexual exchanges (*quid pro quo*) and to cases between a United Nations staff member and members of disadvantaged communities. The Secretary-General argues the relevant provisions are broad enough to encompass "other forms" or "other types" of exploitive behavior.

19. The UNDT erred in fact and law when it found that the Complainant was not in vulnerable situation vis-à-vis Mr. Lucchini. There is no legal requirement that a person committing sexual exploitation must be in a position of formal authority over a victim.

20. The UNDT improperly disregarded the fact that Mr. Lucchini promised the Complainant he would let her know if he heard of job opportunities.

21. The UNDT took into consideration irrelevant matters: (i) the fact that OIOS initiated an investigation into rape and then switched to SEA; (ii) the credibility of the Complainant regarding the allegation of rape; (iii) the fact that the Complainant initiated the conversation with a Happy New Year text message, and (iv) the fact that the subsequent text messages from the Complainant after the encounter could show ill-motivation towards Mr. Lucchini.

22. The UNDT also erred in considering the 2016 recording, which was never authenticated. And the Secretary-General submits that any prior sexual advance by the Complainant back in 2016 is not relevant to whether sexual exploitation happened under different circumstances two years later.

23. Finally, the UNDT erred in ordering *in lieu* compensation of 10 months' net base salary and another 10 months' net base salary for moral damages. Even if UNAT were to uphold the *in lieu* compensation, it should still vacate the award in moral damages as there was no basis to provide such. Given that the UNDT found the claims relating to ALWOP to be not receivable, it could not award damages regarding those matters (loss of salary and medical insurance during ALWOP). The Secretary-General thus submits the UNDT provided a workaround to its own finding that the claims under ALWOP were not receivable and instead treated them as a form of moral damages.

Mr. Lucchini's Answer

24. The UNDT did not err in its interpretation of what constitutes sexual exploitation under the SEA provisions. It found that the Administration had not established the charge with clear and convincing evidence.

25. The Administration cannot use a blanket prohibition under "other forms" and "other types" of exploitive behavior, without providing a clear instruction to a staff member that a sexual relationship between co-workers of unequal rank and/or with a national of a country receiving a UN mission is prohibited. The staff member cannot be penalized after the fact.

26. Additionally, the allegation mutated from rape to sexual exploitation, based on a comment that Mr. Lucchini made to the Complainant that he would let her know if he heard of job opportunities.

27. The Secretary-General did not provide any legal authority for its broad interpretation of what constitutes a differentiation of power involving two employees, where there is no hierarchical relationship of any kind.

28. The Secretary-General's arguments generally appear to be pure conjecture and not based on specific application of the law to the facts. The only relevant question raised by the UNDT was whether the Administration had proven its charge of misconduct with clear and convincing evidence. In this respect, the Secretary-General has cited no reversible error.

29. The argument of vulnerability is misplaced since Mr. Lucchini as a Security Officer had no control of any kind over the Complainant's contract.

30. The UNDT was correct in considering the credibility of the Complainant as part of the totality of the evidence and reached the conclusion that there was no clear and convincing evidence that Mr. Lucchini had engaged in the sexual exploitation of the Complainant.

31. Regarding the recording of the 2016 conversation, it was not improperly considered by the UNDT as it was in fact admitted by OIOS as evidence and referenced in the investigation report. Furthermore, the tribunal did not base its findings on the content of the recording itself but rather acknowledged that it constituted an important piece of evidence that needed to be evaluated by OIOS.

32. Finally, the Complainant never alleged that she expected employment in exchange of sex – a key element in SEA.

33. The UNDT correctly held that the burden of proof was on the Secretary-General, not Mr. Lucchini.

34. Regarding the claims related to Mr. Lucchini's ALWOP, he submits that he could not challenge his placement on ALWOP until the conclusion of the disciplinary process. It was just a step in arriving at a final administrative decision.

Mr. Lucchini's Cross-Appeal

35. Mr. Lucchini submits that wrongful termination on account that he had engaged in sexual exploitation and abuse, a quasi-criminal allegation, merits exceptional remedies by its very nature and because of the impact this case had on his life. There is no requirement that compensation be limited to the duration of the FTA. Given his inability to secure another position in the security field as a result of his termination, UNAT should award two years' net base pay *in lieu* of reinstatement plus the ten months remaining on his FTA.

36. Regarding his ALWOP claims, Mr. Lucchini submits that it is not the placement on leave that was challenged in the application, but the salary withholding which depended on the outcome of the case. As such, the withholding of his salary was not a final act and depended on the outcome of the disciplinary process. Additionally, the purpose of compensation is to place the staff member in the position he or she would have been in had the wrong not occurred.

37. Finally, the former staff member also seeks additional compensation for moral damages because of the *fundamental* breach of his substantive rights and his due process rights, causing harm to his *dignitas*. Mr. Lucchini also presented evidence of additional hardship which he had to endure as a result of being forced to remain in Mali without any income and access to medical care. For these reasons, he requests the Tribunal to award moral damages in the amount of one year's net base pay.

Secretary-General's Answer

38. The UNDT was correct to find Mr. Lucchini's additional claims in terms of loss of salary and medical expenses incurred during his placement on ALWOP to be not receivable, as he had not filed a timely request for management evaluation when he was placed on administrative leave.

39. Mr. Lucchini was not procedurally prevented from raising a claim for the ten-month salary withholding until the conclusion of the disciplinary process. Pursuant to Staff Rule 10.4 (d), placement of a staff member on ALWOP is an administrative and not a disciplinary process, and the UNDT reasoned that Staff Rule 10.4 (d) must be read in conjunction with Staff Rule 10.4 (e). Thus, the placement on ALWOP is a final decision and can be challenged in its own right.

40. Overturning a finding of sexual exploitation, or any other disciplinary charge, does not automatically yield in an award of moral damages. Compensation requires a showing of harm. Mr. Lucchini has not demonstrated any exceptional circumstances warranting the payment of additional compensation to that he had already received *in lieu* of rescission. In addition, he has also not provided any evidence to warrant his request for an increase in moral damages in his cross-appeal.

Considerations

41. The onus rests on the Administration to prove with clear and convincing evidence that Mr. Lucchini was guilty of sexual exploitation and abuse as contemplated in Staff Rule 1.2(e).

42. Section 1 of ST/SGB/2003/13 defines sexual exploitation specifically as "any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another." Staff Rule 1.2(e) also prohibits the exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour.

43. Section 3.2 of ST/SGB/2003/13 provides *inter alia* that in order to further protect the most vulnerable populations, especially women and children, sexual exploitation and sexual abuse constitute acts of serious misconduct and are grounds for summary dismissal, and further, sexual relationships between United Nations staff and beneficiaries of assistance, since they are based on inherently unequal power dynamics, cause to undermine the credibility and integrity of the work of the United Nations and are strongly discouraged. The mischief that rules against this type of conduct aim to address is the reputational harm to the Organization caused by its staff members engaging in exploitative conduct in disadvantaged communities subject to the protective mandate of the Organization.[2]

44. The Secretary-General's submissions misinterpret and misconstrue the Judgment of the UNDT in many respects. As will appear presently, the UNDT did not narrow the scope of "sexual exploitation" limiting its application only to cases of explicit sexual exchanges (*quid pro quo*) and to cases between a United Nations Staff Member and members of disadvantaged communities. Nor did it hold that there was an invariable legal requirement that a person committing sexual exploitation had to be in a position of formal authority over a victim. These factors were relevant considerations properly taken into account by the UNDT in its determination of the broader question of whether there had been exploitation and abuse of vulnerability or trust. Likewise, the fact that OIOS switched the focus of the investigation; the initiation of contact by the Complainant; and the tone of text messages from the Complainant after the encounter are all facts that are relevant to the decisive facts in issue. They alone are not decisive but nonetheless remain contextually relevant to the inquiry

[2] *Gisage v. Secretary-General of the United Nations,* Judgment No.2019-UNAT-973 at para. 37

into the vulnerability of the Complainant and the power dynamic between Mr. Lucchini and the Complainant.

45. For the Secretary-General to succeed in this appeal, it is incumbent upon him in terms of Staff Rule 1.2(e) and Section 1 of ST/SGB/2003/13 to show that Mr. Lucchini misconducted himself in one of five possible ways. It must be shown on clear and convincing evidence that Mr. Lucchini: (i) abused a position of vulnerability for sexual purposes; (ii) abused a position of differential power for sexual purposes; (iii) abused trust for sexual purposes; (iv) exchanged money, employment, goods or services for sex; or (v) engaged in some form of humiliating, degrading or exploitative sexual behaviour.

46. The Complainant, a woman, is generally speaking a vulnerable person as contemplated by Section 3.2 of ST/SGB/2003/13. The issue to be decided though is whether Mr. Lucchini abused that vulnerability.

47. Mr. Lucchini and the Complainant were colleagues in MINUSMA. There is no principled basis to assume solely because Mr. Lucchini was an internationally recruited staff member of Italian descent and the Complainant was a locally contracted Malian national that there was an abuse of vulnerability. The Complainant worked as an independent contractor, and is a mature, middle-class divorcee/single parent in receipt of alimony, who lived at the home of her father - a retired Malian government official. Her mother is a fabric entrepreneur. Mr. Lucchini was a security guard. He had no workplace authority over the Complainant, from which he could bring a power dynamic to bear.

48. Despite their national and cultural differences, Mr. Lucchini and the Complainant were on a relatively equal footing as individuals, even if Mr. Lucchini probably enjoyed some measure of advantage as a United Nations staff member, while, by contrast, the Complainant, approaching the end of her existing contract, was in a more precarious position. Yet, later, at her own instance, she was able to renew her contract, like her previous contracts. But, in any event, it has to be said, securely employed persons engage intimately with precariously employed persons all the time. Indeed, such persons often fall in love, marry and raise happy families. As the UNDT correctly found, there was no basis to conclude that the Complainant might have believed Mr. Lucchini had authority over her employment and that he exploited her precarious position on that basis. He was in no position to exchange a new contract for sex.

49. Additionally, the facts point to the Complainant being less vulnerable than claimed. It is not disputed that it was the Complainant who, by her New Year's text messages, initiated the contact with Mr. Lucchini that led them to meet the next day. Moreover, the text messages sent by the Complainant the day after the sexual encounter were not expressed in a tone of vulnerability.

50. Hence, the UNDT did not err in holding that the Complainant was not in a position of vulnerability vis-à-vis Mr. Lucchini. There was no abuse of her vulnerability.

51. For similar reasons, there is no clear and convincing evidence that Mr. Lucchini abused any differential power or trust for sexual purposes. As the UNDT convincingly reasoned, Mr. Lucchini and the Complainant were colleagues, recruited in different ways, on different types of contracts and from different nationalities, but employed at the same United Nations mission. The Complainant was clearly not a beneficiary of United Nations assistance resulting in differential power, as envisaged at Section 3.2(d) of ST/SGB/2003/13. The submission by the Secretary-General that the difference in their earning capacity signified a differential power factor is not persuasive. There is insufficient evidence quantifying that difference. But more importantly, no legal provision was cited to support the proposition that earning capacity differences between staff members denoted a power differential such that there could be no intimate relations between them. Such a rule would amount to an unjustifiable (unnecessarily prudish) prohibition on staff in different grades falling in love with one another.

52. Likewise, as the UNDT again correctly held, an abuse of trust can only be established in the context of a trust or fiduciary relationship, such as supervisor-subordinate, doctor-patient, lawyer-client and teacher-student and so on. There was no relationship of trust between Mr. Lucchini and the Complainant that could have been abused. Mr. Lucchini had neither a professional nor a supervisory relationship with the Complainant.

53. It would seem that the strongest factor that motivated the Administration to take disciplinary steps was the belief that Mr. Lucchini may have offered employment for sex. The sanction letter stated that it was established by clear and convincing evidence that the Complainant had told Mr. Lucchini that her contract was about to expire, and that he told her that he would let her know if he heard about any job opportunities.

54. Again, as the UNDT correctly pointed out, a comment of that order cannot by any reasonable stretch of the imagination be construed as a promise of employment in the sense that sex would have been a *quid pro quo*. In any event, the Complainant did not mention this conversation in her initial report of the incident as a rape and in fact never complained that she had been offered employment in exchange for sex. That was not her complaint. The sexual exploitation investigation was introduced not by the Complainant but by the OIOS after discontinuing investigations into her complaint of rape. What is more, on her own version, the Complainant only spoke about her pending three-month break in service during their meeting at the workplace. There is no evidence that this matter surfaced or featured a few days after, when, in the early hours of the morning, she left her home and accompanied Mr. Lucchini to his apartment where they had sex. And, furthermore, as stated more than once, as a security guard, Mr. Lucchini did not have it in his gift to offer the Complainant employment. The Complainant had worked for MINUSMA for 2 years; it is inherently improbable that she believed he could have given her employment. Mr. Lucchini's version that he told her he would look out for opportunities is more likely and wholly unobjectionable.

55. In the premises, the UNDT did not err in concluding that there was no clear and convincing evidence of sexual exploitation, any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes or an inappropriate promise or exchange of money, employment, goods or services for sex. The UNDT did not examine whether Mr. Lucchini engaged in any form of humiliating or degrading sexual behaviour, presumably because such was not in contention before it. The Complainant at some point complained that Mr. Lucchini had insulted her during intercourse, but there is insufficient evidence to make any definitive finding in that regard.

56. The appeal should accordingly be dismissed.

57. Mr. Lucchini's cross-appeal is limited to the question of compensation. His claim for his salary during the period of his ALWOP is not sustainable. The UNDT correctly found that the claim was not receivable. In accordance with Staff Rule 10.4(d), placement on ALWOP is not a disciplinary measure. Mr Lucchini was therefore required to seek management evaluation of the decision prior to submitting his application to the UNDT. He has failed to do so.

58. Staff Rule 10.4(d) provides that if the allegations of misconduct are subsequently not sustained or it is subsequently found that the conduct at issue does not warrant dismissal or separation, any pay withheld during ALWOP shall be restored without delay. In this instance, as the UNDT correctly held, Staff Rule 10.4(d) does not apply as the allegation of misconduct was sustained after the investigation and the Secretary-General decided that it warranted separation. However, where the UNDT or this Tribunal finds that the separation was illegal, the loss of remuneration during ALWOP may legitimately be taken into account by the tribunal in making an award of compensation.

59. Once the UNDT concluded that the separation of Mr. Lucchini was unreasonable and illegal, it was permitted to order rescission of the contested decision. The practical effect of such an order would be the retrospective reinstatement of Mr. Lucchini with full benefits to 5 October 2018. Mr. Lucchini held a one-year fixed-term appointment, with no expectancy of renewal, which was due to expire on 19 July 2019, which was within 10 months of the date when the sanction was imposed. The UNDT held that an order for reinstatement of this duration was not practical in the circumstances and then assumed compensation *in lieu* must therefore be considered. Its reasoning is an incorrect application of the relevant provision.

60. Compensation *in lieu* only comes into play when rescission of the contested decision is granted or specific performance is ordered by the UNDT in terms of Article 10(5)(a) of the Dispute Tribunal Statute (UNDT Statute). That provision provides *inter alia* that in cases of termination where the UNDT orders rescission (reinstatement) or specific performance (re-employment) it must set an amount of compensation *in lieu* that the Secretary-General may elect to pay as an alternative to the rescission or specific performance. Thus, the Secretary-General is granted a power to override the decision of the tribunal ordering reinstatement or re-employment. In the 12 years of the existence of the internal justice system, the Secretary-General has consistently elected to pay *in lieu* compensation rather than abide by an order of rescission or specific performance. The UNDT erred in assuming that it needed to consider compensation *in lieu* once it determined that reinstatement was impractical. In cases where the UNDT prefers not to award reinstatement or re-employment for whatever reason, it may award compensation for harm (not compensation *in lieu*) in terms of Article 10(5)(b) of the UNDT Statute.

61. The UNDT in this case ordered the payment of compensation of 10 months' net base salary as compensation for the remainder of the FTA and a further 10 months as moral damages for the loss of earnings and medical expenses. Its approach was not entirely appropriate.

62. The starting point is to determine whether rescission (reinstatement) would be the appropriate remedy. Mr. Lucchini has been the victim of a substantial injustice arising from a perhaps over-zealous investigation by the OIOS. He has lost his employment, his reputation has been unjustifiably sullied and his future employment prospects in the security field undoubtedly harmed. In any other legal system, the only fair remedy to properly vindicate his rights would be retrospective reinstatement on full benefits to the date of his dismissal. In addition, he lost eight months' pay while on ALWOP. Fairness arguably thus requires payment of back pay to January 2018. It is unlikely that the Secretary-General will elect to give effect to a rescission order – hence, an order of compensation *in lieu* equivalent to 42 months' net base salary would not be beyond reasonable bounds.

63. Against that is the legitimate (though not decisive) consideration that Mr. Lucchini had only 10 months left on his FTA. He may have also mitigated his harm through other employment. Furthermore, the UNDT erred by treating pecuniary harm (loss of salary and medical expenses during ALWOP) as a form of moral damages.

64. An adequate award of compensation *in lieu* will compensate Mr. Lucchini for his other losses. The evident unfairness of the termination in this case justifies payment of the maxim compensation *in lieu* equivalent of two years' net base salary. The cross-appeal must accordingly be upheld, and the order of the UNDT modified to that extent.

Judgment

65. The appeal of the Secretary-General is dismissed. The cross-appeal is upheld to the limited extent that the order of the UNDT is modified by an order rescinding the contested decision and setting an amount of compensation (*in lieu*) equivalent to two years' net base pay that the Secretary-General may elect to pay as an alternative to the rescission of the contested administrative decision. Interest will accrue on the total sum from the date of this Judgment at the current US Prime rate until payment. If the total sum is not paid within the 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of payment.

Original and Authoritative Version: English

Dated this 25th day of June 2021.

(Signed)	*(Signed)*	*(Signed)*
Judge Murphy Cape Town, South Africa	Judge Halfeld Juiz de Fora, Brazil	Judge Raikos Athens, Greece

Entered in the Register on this 9th day of July 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar