



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

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Judgment No. 2021-UNAT-1156

**Ahmad Shuaib Payenda  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Martha Halfeld, Presiding Judge John Raymond Murphy Judge Sabine Knierim
Case No.:	2020-1477
Date:	29 October 2021
Registrar:	Weicheng Lin

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Counsel for Appellant:	Self-represented
Counsel for Respondent:	André Luiz Pereira de Oliveira

**JUDGE MARTHA HALFELD, PRESIDING.**

1. Ahmad Shuaib Payenda (Mr. Payenda) was a staff member of the United Nations Children’s Fund (UNICEF) serving at the Afghanistan Country Office. He was dismissed from service after the conclusion of a disciplinary process, which was premised upon the charge that he had misstated the truth on his job application to the post he then occupied. He filed an application with the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) challenging *inter alia* the dismissal decision, and on 22 September 2020, the UNDT issued Judgment No. UNDT/2020/171,<sup>1</sup> rejecting his application and finding that the disciplinary measure was lawful. For reasons set out below, we reject the appeal and affirm the UNDT Judgment.

**Facts and Procedure**

2. Mr. Payenda served as a Finance Assistant at the GS-5 level (UNICEF Post) at the UNICEF Afghanistan Country Office from 17 August 2017 until September 2018, at which time he was dismissed from service for misconduct. He held a fixed term appointment at the time of his dismissal.

3. Prior to UNICEF, Mr. Payenda served as an Accounting and Treasury Assistant at the GS-4 level from 2014 until August 2017 at the separately constituted International Organization for Migration (IOM) in Kabul, Afghanistan.

4. While he was still employed at IOM, Mr. Payenda applied to the UNICEF Post in April 2017. On his application form, he marked “no” to the question regarding whether he had ever been the subject of any previous investigation for misconduct.

5. On 24 May 2018, the UNICEF Office of Internal Audit and Investigations (OIAI) was made aware that Mr. Payenda, contrary to the information he had provided on his application form, might have been the subject of an investigation for misconduct by his former employer, the IOM.

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<sup>1</sup> *Payenda v. Secretary-General of the United Nations*, Judgment No. UNDT/2020/171 dated 22 September 2020 (Impugned Judgment).

6. On 14 June 2018, UNICEF placed Mr. Payenda on administrative leave without pay (ALWOP) pending the completion of its investigation into allegations that the latter had breached his obligations under Staff Rule 1.5(a) by failing to provide truthful information on his job application (ALWOP Decision).

7. In a letter dated 13 August 2018, the Legal Counsel for IOM confirmed to UNICEF that Mr. Payenda had indeed been the subject of an investigation into misconduct for “acts constituting fraud or abuse of assets or funds, leading to financial loss to the Organization”. The IOM Legal Counsel also informed UNICEF that Mr. Payenda had been served with a formal Notice of Allegations (NoA) on 26 January 2017, which he signed on 29 January 2017 confirming receipt. Mr. Payenda was formally interviewed by the IOM’s Office of the Inspector General on 31 January 2017 about the allegations of serious misconduct against him.

8. In August 2018, OIAI concluded that at the time Mr. Payenda applied to the UNICEF Post, he omitted that he had been the subject of an investigation for misconduct at IOM. Further, OIAI concluded that Mr. Payenda had failed to observe the standard of conduct expected of international civil servants when he certified that the statements and information he provided on his application were true, complete and accurate to the best of his knowledge and belief.

9. On 28 August 2018, the Director, UNICEF Division of Human Resources, charged Mr. Payenda with misconduct for intentionally misstating the truth in his application to the UNICEF Post. On 1 September 2018, Mr. Payenda responded to the charge of misconduct.

10. On 14 September 2018, after a careful examination of the entire dossier and giving due consideration to Mr. Payenda’s response to the charge, the UNICEF Deputy Executive Director, Management, concluded that there was clear and convincing evidence showing that Mr. Payenda had misstated the truth on his application to the UNICEF Post and decided to dismiss him from service (Dismissal Decision).

11. On 12 November 2018, Mr. Payenda filed an application with the UNDT challenging his placement on administrative leave and subsequent dismissal.

*The UNDT Judgment*

12. On 22 September 2020, the UNDT issued the Impugned Judgment, finding Mr. Payenda's claim regarding the ALWOP Decision irreceivable *ratione materiae* as he had not submitted a timely request for management evaluation, as required by Staff Rule 11.2 (a).

13. Second, the Dispute Tribunal also upheld the Dismissal Decision, finding that at the time of his application to the UNICEF Post, Mr. Payenda was indeed aware he was the subject of an investigation.

14. The tribunal found no reason to question the veracity of the information provided by the IOM Legal Counsel and also noted that Mr. Payenda did not provide any evidence to rebut IOM's contention. The UNDT was thus satisfied that the allegations against Mr. Payenda were established by clear and convincing evidence.

15. The tribunal further found that by deliberately failing to provide correct information to UNICEF, Mr. Payenda's behavior constituted misconduct and that the sanction of dismissal was a proportionate measure given the seriousness and gravity of the offense.

16. Finally, the UNDT also did not find any procedural flaw in the course of the disciplinary proceedings. It therefore rejected the application and confirmed the dismissal sanction.

*Procedure before the Appeals Tribunal*

17. On 16 October 2020, Mr. Payenda filed an appeal against Judgment No. UNDT/2020/171, and the appeal was registered with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) as Case No. 2020-1477. On 14 December 2020, the Secretary-General filed his answer.

**Submissions**

**Mr. Payenda's Appeal**

18. Mr. Payenda submits the UNDT committed an error in procedure when upholding the dismissal decision. He points to paragraph 31 of the Impugned Judgment, where the UNDT states that Mr. Payenda was served with a formal NoA on 26 January 2017, but the tribunal however refers to the Legal Counsel letter, dated 13 August 2018, as proof that he was served on that date.

19. Second, the appellant also argues the UNDT erred when it stated that Mr. Payenda was served with the NoA notifying him that he was the subject of allegations of misconduct when in fact the tribunal could not conclude such given that it only had access to a partial screenshot of the NoA. He claims if the NoA was an important piece of evidence, the tribunal should have had access to the whole document.

20. Third, the appellant asserts that UNDT failed to exercise jurisdiction because it did not require UNICEF to present any document to prove that Mr. Payenda had knowledge that he was under investigation for misconduct by IOM prior to applying for the UNICEF Post.

21. Finally, Mr. Payenda also submits the Dispute Tribunal erred on several questions of fact that yielded a manifestly unreasonable decision. The appellant argues the UNDT failed to require the Administration to submit a clear and convincing document, showing that Mr. Payenda was indeed aware that he was under an investigation for misconduct. The appellant also asserts that the tribunal ignored his submissions, which could have proven that he was never involved in any type of misconduct. Lastly, Mr. Payenda also submits that the investigation by IOM was nothing more than an attempt to retaliate against him for whistleblowing on IOM corruption.

### **The Secretary-General's Answer**

22. The Secretary-General submits the UNDT was correct to dismiss the application in regards to the ALWOP Decision as Mr. Payenda never filed a timely request for management evaluation – a fact which is not disputed on appeal.

23. Second, the Secretary-General submits the UNDT was correct in its determination that by the clear and convincing standard, Mr. Payenda had committed misconduct within the meaning of the Staff Regulations and Rules. The Respondent also argues the UNDT was correct in determining that the disciplinary sanction of dismissal was a proportionate measure given the seriousness and gravity of the alleged offense.

24. Relying on *Ainte*,<sup>2</sup> the Secretary-General argues it is the responsibility of a job candidate to ensure that his application does not contain any inaccuracies. By failing to disclose that he was the subject of an investigation for misconduct, Mr. Payenda had

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<sup>2</sup> *Ainte v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-388.

intentionally misstated the truth on his application. As such, he did not uphold the highest standards of integrity required of international civil servants.

25. Regarding Mr. Payenda's claim that the full NoA document shows he was not the subject of an investigation, the Secretary-General argues to the contrary, that in clear and unambiguous terms, the full NoA shows that Mr. Payenda was indeed the subject of an investigation.

26. The Respondent also submits the UNDT did not only rely on the screenshot of the NoA but analyzed all the evidence attached to the case record when concluding that at the time of his application, Mr. Payenda was already aware that he was the subject of an investigation. The Secretary-General also adds there is no basis for Mr. Payenda's claim that IOM had cleared him of the allegations of misconduct.

27. Finally, the Secretary-General submits the appellant misses the point upon his insistence that no evidence had been adduced showing that he was involved in any type of misconduct. The Respondent asserts the question on the job application is not whether Mr. Payenda had engaged in any type of misconduct but whether he had been investigated for misconduct.

### **Considerations**

28. The main issue under consideration is whether the UNDT erred on a question of law or of fact leading to an unreasonable decision when it held that: (i) the facts in support of the allegations against Mr. Payenda were established by clear and convincing evidence that he had indeed misrepresented the truth in his application to the UNICEF Post;<sup>3</sup> (ii) these facts amounted to misconduct;<sup>4</sup> (iii) the sanction of dismissal was proportionate to the seriousness and gravity of the offense,<sup>5</sup> and (iv) due process was respected in the course of the disciplinary proceedings.<sup>6</sup>

29. In his appeal, Mr. Payenda claims there is no clear and convincing evidence in the record showing he had received notice that he was the subject of an investigation. While he argues that he had never been under investigation or that he had no information in that regard,

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<sup>3</sup> Impugned Judgment, para. 33.

<sup>4</sup> *Ibid.*, para. 36.

<sup>5</sup> *Ibid.*, para. 42.

<sup>6</sup> *Ibid.*, para. 45.

he however, on the same hand, acknowledges the existence of a “fact finding process,” the subject of which, he alleges, was unclear.

30. As previously established by the Appeals Tribunal, clear and convincing evidence of misconduct, including serious misconduct, imports two high evidential standards. The first standard: “clear” evidence is that the evidence of misconduct must be unequivocal and manifest.<sup>7</sup> Separately, the second standard: “convincing” requires that this clear evidence must be persuasive to a high degree, appropriate to the gravity of the allegation against the staff member and in light of the severity of the consequence of its acceptance.<sup>8</sup> Evidence, which is required to be clear and convincing, can be direct evidence of events or may be of evidential inferences that can be properly drawn from other direct evidence.<sup>9</sup>

31. The letter from the IOM Legal Counsel dated 13 August 2018 is documentary proof to this effect. It clearly states the following:<sup>10</sup>

On 26 January 2017, IOM's Office of the Inspector General (OIG) served Mr. Payenda with a formal Notice of Allegations (NoA) informing him that he was the subject of allegations of “*acts constituting fraud or abuse of assets or funds leading to financial loss to the Organization in relation to the disbursement of cash/reintegration grants*”. Mr. Payenda signed the NoA on 29 January 2017. On 31 January 2017, OIG investigators formally interviewed Mr. Payenda about the allegations against him.

32. Coming from an authorized representative of an agency within the United Nations System, which previously employed Mr. Payenda, this letter enjoys the status of an official act and, as such, carries with it the presumption of regularity.<sup>11</sup> Therefore, once this piece of evidence had been adduced to the record together with the screenshot of the NoA, it was incumbent upon Mr. Payenda to provide countervailing evidence, which he did not do.

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<sup>7</sup> *Negussie v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1033, para. 45.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> Legal Counsel, International Organization for Migration, letter to Director of Human Resources, UNICEF, 13 August 2018 (emphasis in original).

<sup>11</sup> See *Rolland v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-122, para. 26.

33. The approval of his resignation and the exit clearance form relating to the devices and documents he possessed as a staff member of IOM are not proof that he had been cleared of any charges against him and in no case this could justify his statement to UNICEF that he had never been the subject of any prior investigation for misconduct.

34. Despite Mr. Payenda's persistent claims that he was never involved in a formal investigation, the totality of the evidence on the record shows quite the opposite. It should also be noted that both parties agreed that no oral hearing was required and that the UNDT could adjudicate the matter based on the record.<sup>12</sup> Under these circumstances, contrary to Mr. Payenda's contention, there was no need for the UNDT to order that more documents be adduced to the record. Therefore, it follows that the UNDT was correct in its finding that the facts were established according to the appropriate standard of clear and convincing evidence.<sup>13</sup>

35. Next, when determining whether the facts, as established, amounted to misconduct, the UNDT based its conclusion on *Rajan* and Staff Regulation 1.2(b),<sup>14</sup> which provides that: "[S]taff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status."

36. Relating to the basic rights and obligations of staff members, Staff Rule 1.2(d) states that "[d]isciplinary procedures (...) may be instituted against a staff member who fails to comply with his or her obligations and the standards of conduct set out in the Charter of the United Nations, the Staff Regulations and Rules, the Financial Regulations and Rules and administrative issuances". Staff Rule 1.5(a) on notification by staff members and their concomitant obligation to supply information also provides that "[s]taff members shall be responsible for supplying the Secretary-General with relevant information, as required, both during the application process and on subsequent employment, for the purpose of determining their status under the Staff Regulations and Rules as well as for the purpose of completing administrative arrangements in connection with their employment". This same provision further establishes that "[s]taff members shall be held personally accountable for the accuracy

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<sup>12</sup> Impugned Judgment, para. 5.

<sup>13</sup> *Ibid.*, para. 33.

<sup>14</sup> *Rajan v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-781, para. 28.



and completeness of the information they provide”, which in other words means that it is the candidate’s responsibility to ensure his application contains no inaccuracies.

37. Specifically connected to misconduct is Staff Rule 10.1(a), which provides that “[f]ailure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct”. In turn, Staff Rule 10.1(c) establishes that the decision “to launch an investigation into allegations of misconduct, to institute a disciplinary process and to impose a disciplinary measure shall be within the discretionary authority of the Secretary-General or officials with delegated authority”.

38. In *Rajan*, cited by the UNDT in its Judgment,<sup>15</sup> the Appeals Tribunal held that a failure by a staff member to comply with his or her disclosure of information obligations under the Charter of the United Nations, the Staff Regulations and Rules or other relevant administrative issuances, or to observe the standard of conduct expected of an international civil servant, is undeniably misconduct. Staff Regulation 1.2(b) makes it clear that, as a “core value” of the Organization, staff members shall uphold the highest standards of integrity. This concept includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status. As a general rule, any form of dishonest conduct compromises the necessary relationship of trust between employer and employee and will generally warrant dismissal.<sup>16</sup>

39. In light of the above, the Appeals Tribunal reiterates that dishonest conduct by definition implies an element of intent or some element of deception. Deliberate false statements, misrepresentations and a failure to disclose required information are invariably dishonest. And, importantly, the failure to reply correctly to a prominent and very relevant question in an application form amounts to a false answer from which dishonesty normally may be inferred. Hence, a false answer in an application form is *prima facie* proof of dishonesty, shifting the evidentiary burden to the maker of the false statement to adduce sufficient evidence of innocence.<sup>17</sup> Having established the facts by clear and convincing

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<sup>15</sup> Impugned Judgment., para. 35.

<sup>16</sup> *Rajan* Judgment, *op. cit.*, para 37.

<sup>17</sup> *Ibid.*, para. 38.

evidence and upon evaluating the alleged misconduct against the applicable legal standards, the UNDT was correct in determining that the failure to disclose relevant information amounted to misconduct, which of course carried the possible sanction of termination of appointment.

40. There is an additional component here, which reinforces the UNDT's finding of misconduct. It bears recalling that the IOM investigation was also linked to allegations of fraud and abuse of assets or funds. Honesty and integrity are core values expected of international civil servants, and allegations of impropriety in those respects should be thoroughly investigated. It is even more significant in the present instance as Mr. Payenda occupied the post of Finance Assistant. However, even though the disciplinary process at IOM had not concluded at the time Mr. Payenda resigned, what matters in the present case is not the outcome of the IOM investigation but rather the fact that he was clearly informed in January 2017 that there was an investigation into his alleged misconduct before he had applied for the UNICEF Post in April 2017.<sup>18</sup>

41. It follows that when Mr. Payenda submitted his application for the UNICEF Post, he was fully aware of the ongoing investigation against him and yet he ticked the "no" box, indicating that he had not been the subject of an investigation for misconduct by his former employer. Had Mr. Payenda given the correct information, the result of his selection might well have been different. The misrepresentation, therefore, may have improperly influenced the outcome of the recruitment process, which resulted in Mr. Payenda's selection. The Organization was never afforded the benefit of a full and accurate picture of Mr. Payenda's candidacy. Hence, the UNDT was correct in its finding that this "behaviour amounts to misconduct as he deliberately failed to provide correct information to UNICEF".<sup>19</sup>

42. Furthermore, Mr. Payenda's efforts to undermine the IOM investigation, which he claims was nothing more than an attempt to retaliate against him for whistleblowing on IOM corruption, appear quite disingenuous. First, any claim of purported retaliation should have been addressed within IOM. The disciplinary process at IOM never concluded because Mr. Payenda had resigned from IOM and started a new position at UNICEF. It does not appear from the record that he was not sanctioned because of a lack of evidence or because the allegations were not substantiated. Rather, the OIAI Investigation Report

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<sup>18</sup> Impugned Judgment, para. 2.

<sup>19</sup> *Ibid.*, para. 36.

actually revealed that after IOM had substantiated the allegations, it withheld part of Mr. Payenda's final entitlements to recover monies lost in an alleged embezzlement scheme.

43. Whether or not Mr. Payenda's intended purpose for resigning his post at IOM and applying to the position at UNICEF was to escape any disciplinary measure by IOM cannot be determined with certitude. But the previous possible misconduct, although subject to an investigation at the time, is not the issue here.

44. Regardless of the outcome of the previous investigation by IOM, there was a breach of the duty to give correct information in the application to UNICEF. In this regard, what matters is whether or not Mr. Payenda breached his duty towards UNICEF as defined in Staff Rule 1.5 (a) when he gave erroneous information in his application, even though a few months before he applied to the UNICEF Post, he had not only been made aware of the investigation but he had also been interviewed regarding the allegations against him. In light of this finding, the Appeals Tribunal agrees with the UNDT that Mr. Payenda's action demonstrates "his inaptitude as an international civil servant and a lack of compliance with the Organization's highest standards of integrity."<sup>20</sup>

45. Further, regarding whether there was an error in the UNDT Judgment with regard to its finding that the sanction was proportionate to the offense, the Appeals Tribunal reiterates its long-established jurisprudence set in *Sanwidi*:<sup>21</sup>

... In the context of administrative law, the principle of proportionality means that an administrative action should not be more excessive than is necessary for obtaining the desired result. The requirement of proportionality is satisfied if a course of action is reasonable, but not if the course of action is excessive. This involves considering whether the objective of the administrative action is sufficiently important, the action is rationally connected to the objective, and the action goes beyond what is necessary to achieve the objective. This entails examining the balance struck by the decision-maker between competing considerations and priorities in deciding what action to take. However, courts also recognize that decision-makers have some latitude or margin of discretion to make legitimate choices between competing considerations and priorities in exercising their judgment about what action to take.

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<sup>20</sup> *Ibid.*, para. 41.

<sup>21</sup> *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, paras. 39, 40, and 42.

... When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.

...

... In exercising judicial review, the role of the Dispute Tribunal is to determine if the administrative decision under challenge is reasonable and fair, legally and procedurally correct, and proportionate. As a result of judicial review, the Tribunal may find the impugned administrative decision to be unreasonable, unfair, illegal, irrational, procedurally incorrect, or disproportionate. During this process the Dispute Tribunal is not conducting a merit-based review, but a judicial review. Judicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision. This process may give an impression to a lay person that the Tribunal has acted as an appellate authority over the decision-maker's administrative decision. This is a misunderstanding of the delicate task of conducting a judicial review because due deference is always shown to the decision-maker, who in this case is the Secretary-General.

46. In the present case, when assessing whether the sanction imposed was proportionate to the offense, the UNDT found no justification for Mr. Payenda's behavior, since he had neither provided any reasons for his actions nor had he shown any regret. Rather, when confronted with his behavior, he tried to cover it up. For the UNDT, this type of conduct clearly demonstrated his inaptitude as an international civil servant and a lack of compliance with the Organization's highest standards of integrity.<sup>22</sup>

47. The Appeals Tribunal has no reason to differ from this finding. Mr. Payenda's arguments on appeal do not convince this Tribunal of the correctness of his behavior nor give any justification for it. What he does is continue to counterattack, by claiming that he had not been served with the correct notice and that there was not clear and convincing evidence of the allegations against him. In so doing, Mr. Payenda tries to distract the Tribunal with peripheral and insignificant aspects of the Judgment, which did not pose a threat to his due process rights.

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<sup>22</sup> Impugned Judgment, paras. 39 and 41.

As this Appeals Tribunal has previously established, only substantial procedural irregularities can render a disciplinary sanction unlawful,<sup>23</sup> and this did not occur here.

48. Indeed, according to Article 2 (d) of the Appeals Tribunal Statute (Statute), an error in procedure which could possibly lead to the reversal of a judgment relates to a grave error in the management of the proceedings before the UNDT such as to affect the outcome of a case. In other words, the judgment could have been different, had such an error in procedure not occurred. In the present case, however, the alleged “error in procedure” invoked by Mr. Payenda merely refers to a possible mistake in the name of the piece of evidence produced before it (which was a NoA rather than an IOM Legal Counsel letter), which had no bearing on the result of the UNDT assessment.

49. In this respect, the claim that only part of the NoA was adduced to the record, which would not have been sufficient to demonstrate that Mr. Payenda had received notice of the allegations of misconduct, is meritless. In *Ainte*,<sup>24</sup> the Appeals Tribunal confirmed that it is the candidate’s responsibility to ensure his application is premised upon accurate information and that the Secretary-General has the discretion to determine the appropriate level of sanction to be imposed. In that case, the termination of a senior official for the very serious misconduct of submitting a false document was not found to be absurd, unlawful or otherwise disproportionate.

50. In the present case, the screenshot unambiguously showed that an investigation was ongoing following allegations of misconduct against Mr. Payenda. However, he preferred to tick the “no” box on the application form, indicating that he had never been the subject of any investigation. Having received formal communication of the allegations of wrongdoing against him, Mr. Payenda cannot argue that he was not aware of the existence of this investigation. Had he had any doubt as to the extent of such notice, he should have enquired about it. Instead, he purportedly ignored such formal notice and attached no importance to it and then presented no reasonable justification for his misstatement made to UNICEF.

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<sup>23</sup> *Muindi v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-782, cited in *Nadasan v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-918, para. 43.

<sup>24</sup> *Ainte* Judgment, *op. cit.*, paras. 28 and 29.

51. Mr. Payenda pursued a strategy on this appeal trying to deconstruct the UNDT's reasoning with unsubstantiated allegations, in a veiled attempt to relitigate the issues. However, the present appeal process is not an arena to rediscuss issues, which have already been settled at the first instance level. As already noted in *Krioutchkov* and *Aliko*,<sup>25</sup> the Appeals Tribunal is not an instance for a party to reargue his case, without identifying the defects and demonstrating on which grounds an impugned UNDT judgment is erroneous. In the absence of a compelling argument that the UNDT erred on a question of law, or on a question of fact resulting in a manifestly unreasonable decision, the Appeals Tribunal will not lightly interfere with the findings of the Dispute Tribunal.<sup>26</sup>

52. Following the Appeals Tribunal's jurisprudence on the standard of review, our task on appeal is not to ourselves re-decide the case that was before the UNDT using the same tests. That is because we cannot enjoy a number of advantages experienced by the first-instance judge, for example seeing and hearing the witnesses give their accounts of events. Rather, our task is to determine whether the UNDT did not apply the correct tests and whether the tribunal could reasonably have reached the decisions it did about what happened.<sup>27</sup> Having reviewed the circumstances of the present case, the UNDT did not err in its Judgment.

53. There is one last aspect to be mentioned here, which confirms the UNDT's finding of proportionality. Since the misconduct was incurred at the very start of the selection exercise, by virtue of the misrepresentation of substantial information in the application process, there was no way to circumvent or fix this wrongdoing. The application itself was tarnished *ab ovo*. And because it constituted a single fact that vitiated the very basis upon which Mr. Payenda's new appointment was secured, it was pointless for the Administration to try and use any sort of didactic measure in order for the appointment to continue, as there would be no other opportunity for the staff member to demonstrate that he had learned from his previous error. Mr. Payenda's action was unique and substantial, and it has proven to be irredeemable, leading to his lawful dismissal as acknowledged by the UNDT.

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<sup>25</sup> *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-711, paras. 20-22; *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540, paras. 28-30.

<sup>26</sup> *Goodwin v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-346, para. 23.

<sup>27</sup> *Negussie v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1033, para. 48.

**Judgment**

54. Mr. Payenda's appeal is dismissed, and Judgment No. UNDT/2020/171 is upheld.

Original and Authoritative Version: English

Dated this 29<sup>th</sup> day of October 2021.

*(Signed)*

Judge Halfeld, Presiding  
Juiz de Fora, Brazil

*(Signed)*

Judge Murphy  
Cape Town, South Africa

*(Signed)*

Judge Knierim  
Hamburg, Germany

Entered in the Register on this 14<sup>th</sup> day of December 2021 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar