UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2022-UNAT-1234

Gabriel Vincent Branglidor

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Martha Halfeld, Presiding Judge John Raymond Murphy Judge Dimitrios Raikos
Case No.:	2021-1539
Date:	18 March 2022
Registrar:	Weicheng Lin

Counsel for Appellant:	Gregory Thuan dit Dieudonne
Counsel for Respondent:	Rupa Mitra

JUDGE MARTHA HALFELD, PRESIDING.

1. On 2 February 2021, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) issued Judgment No. UNDT/2021/004 (Judgment) in the matter of *Gabriel Branglidor v. Secretary-General of the United Nations*.

2. Mr. Branglidor (the Appellant) is a former staff member of the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA). He challenged the decision to impose on him the disciplinary measure of separation from service on account of misconduct because he had submitted one or more education grant claims and/or documentation that contained false information for the period September 2014 through April 2017.

3. The UNDT dismissed his application, considering that the facts on which the sanction was based had been established to the requisite standard of clear and convincing evidence; that the established facts qualify as misconduct under the Staff Regulations and Rules; that the sanction was proportionate to the offence; and that Mr. Branglidor's due process rights had been observed.

4. For the reasons set out below, *inter alia,* that the totality of the evidence confirms the UNDT's conclusion that Mr. Branglidor was well aware of the untruthfulness of the forms when he submitted the second claim for the regular disbursement of the education grant, the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) finds that the UNDT was correct when it held that the act of misconduct was committed with knowledge and intent. Even though the misconduct did not lead to any actual prejudice, since the Administration recovered the payment made in advance and did not pay any further education grant, Mr. Branglidor's endeavor could have undoubtedly caused some potential prejudice.

5. The appeal is accordingly dismissed.

Facts and Procedure

6. On 3 June 2015, Mr. Branglidor submitted a signed P.45 form to Human Resources Management, MINUSMA (HRMS), dated 2 June 2015, requesting an education grant advance for the 2015-2016 academic year for KB. The P.45 form was received by the Regional Service Center Entebbe (RSCE) on 11 June 2015.

7. On 28 July 2015, Mr. Branglidor created a request for an education grant advance for the 2015-2016 academic year for KB in the Field Support Suite (FSS) and attached another signed P.45 form, dated 20 July 2015. Mr. Branglidor did not, however, submit the request for processing thus it was automatically cancelled by FSS on 12 April 2016. The advance was subsequently processed in Umoja based on a *pro forma* invoice that Mr. Branglidor submitted to the RSCE on 5 November 2015. The invoice, dated 8 September 2015, bore the letterhead of the Institute of American Universities (IAU), and indicated that the total charge for the fall and spring semesters for the 2015-2016 academic year for KB was USD 27,045.14. On 14 December 2015, Mr. Branglidor received an education grant advance payment of EUR 8,662.75.

8. On 16 and 22 July 2016 and 15 August 2016, the Education Grant Service Line (EGSL) at the RSCE received e-mails from an icloud address, which appeared to be KB's, stating that she had not attended IAU during the 2015-2016 school year as indicated on the "education grant forms" but had attended a public university instead. Although KB denied having sent the e-mails from that address, she confirmed the contents to be correct. She also expressed the strong view that her mother, SB, had sent the e-mails to the EGSL/RSCE because she had spoken frequently of "exposing" Mr. Branglidor, had previously tried unsuccessfully to get KB to do so and had previously used her children's e-mail addresses in order to conceal her authorship.

9. On 29 December 2016, the Office of Internal Oversight Services (OIOS) received a report alleging that Mr. Branglidor had submitted false information in support of education grant claims. The allegations concerned education grant claims submitted between September 2014 and April 2017 for Mr. Branglidor's dependent children, DB, GB, KB and GRB. OIOS initiated an investigation into the allegations. According to the Director of Administration at the Institute for American Universities (DoA/IAU), sometime in April 2017, Mr. Branglidor visited her unexpectedly at IAU in Aix-en-Provence, France, and asked her to sign two P.41 forms for his daughters KB and GB for him to be reimbursed by the United Nations. She signed and stamped the forms as requested and e-mailed copies to him on 10 April 2017.

10. By e-mail dated 11 April 2017, the EGSL/RSCE directed Mr. Branglidor to submit his education grant claim for KB via FSS to allow them to proceed with processing. On 12 April 2017, the EGSL/RSCE notified Mr. Branglidor that if he did not create the claim and submit the supporting documents by close of business, the advance paid to him on 14 December 2015 would be recovered. He responded the same day that he did not have access to FSS because he was away from his duty station and that he was "stuck in bed at home" due to a

severe medical condition that was hampering his movement. He was therefore willing to accept a recovery "should it take place". Mr. Branglidor failed to submit the P.41 form for KB in FSS by the education grant claim deadline of 12 April 2017, thus there was a recovery of the 14 December 2015 advance.

11. On 28 April 2017, Mr. Branglidor submitted the education grant claim for KB's attendance at IAU for 2015-2016. This submission contained a P.41 form signed by the DoA/IAU and the P.45 form signed by himself. Both documents were dated 24 April 2017. The P.41 stated that KB attended IAU from 14 September 2015 to 20 May 2016 at a cost of USD 27,230. This claim was rejected, and no payment was made to Mr. Branglidor.

12. OIOS issued its report on 30 April 2018 and on 26 December 2018, the Assistant Secretary-General for Field Support referred the matter to the Office of Human Resources Management (OHRM) for appropriate action. On 30 January 2019, formal charges of misconduct and relevant supporting documentation were e-mailed to Mr. Branglidor. Mr. Branglidor was alleged to have engaged in misconduct by submitting to the Organization, between September 2014 and April 2017, one or more education grant claims and/or documentation for KB and DB that contained false information. Mr. Branglidor was given two weeks to respond to the allegations. He submitted his response to the allegations on 10 February 2019.

13. By a letter dated 18 March 2019, the Assistant Secretary-General for Human Resources informed Mr. Branglidor that the allegations in respect of education grant claimed for DB were dropped. This was notwithstanding a finding that Mr. Branglidor had submitted claims for non-existing schooling expenses for DB and one of them had resulted in a payment which would be subject to recovery. In respect of KB, there was clear and convincing evidence that his conduct amounted to misconduct because he had submitted one or more education grant claims and/or documentation that contained false information for the period September 2015 through April 2017. She further informed him that his conduct had violated Staff Regulation 1.2(b) and Section 9.1 of ST/AI/2011/4 (Education grant and special education grant for children). Accordingly, the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity in accordance with Staff Rule 10.2(a)(viii) was imposed on him. Mr. Branglidor was separated from service on 2 April 2019.

14. On 4 June 2019 and 8 August 2019 respectively, Mr. Branglidor filed applications challenging the decisions to impose on him the disciplinary measure of separation from service (Case No. UNDT/NBI/2019/057) and a decision he characterized as the "failure in entitlements disbursements after separation from service" (Case No. UNDT/NBI/2019/117). By Order No. 142 (NBI/2019), the UNDT consolidated the two cases for adjudication in one judgment. Subsequently, upon a finding that gathering information relevant only to Case No. UNDT/NBI/2019/117 would delay the issuance of the UNDT Judgment, the case was severed by way of Order No. 027 (NBI/2021). At the time the UNDT Judgment was issued, Case No. UNDT/NBI/2019/117 remained under consideration.

15. On 2 February 2021, the UNDT issued Judgment No. 2021/004, rejecting the application. The UNDT considered that Mr. Branglidor had not provided any evidence that would contradict the fundamental findings on the objective element of the impugned conduct and that he had indeed made requests for reimbursement based on untrue information. The UNDT further found that the credible facts of the case added up to form a very high probability of an act committed with knowledge and intent. Moreover, the UNDT held that the facts as established qualified as misconduct under the Staff Regulations and Rules, and the sanction was not disproportionate to the offence committed. Finally, the UNDT held that Mr. Branglidor's due process rights had been respected at all times.

16. On 1 April 2021, Mr. Branglidor filed his appeal and on 1 June 2021, the Secretary-General filed his answer.

Submissions

Mr. Branglidor's Appeal

17. The UNDT erred in law in finding that the sanction that he received was proportionate to the offence that he committed. He claims that the sanction was "clearly disproportionate," as no aggravating circumstances existed and because there were mitigating circumstances that the UNDT failed to take into account, in particular that he was away from his family for long periods due to his work; he faced difficult working conditions; his father passed away in 2016; he cooperated with the OIOS investigators; and this was his only offence.

18. The UNDT erred in procedure with regard to the OIOS investigation. The OIOS investigator was biased against Mr. Branglidor. Such a bias was evident because he was unnecessarily reminded during his interview of having been abandoned by his mother, because the investigator had giggled during the questioning, and because the OIOS investigation report omitted to refer to an e-mail he had provided that had been sent by the IAU Director, in which the latter stated, "I can only assume that I signed [the Education Grant forms]". The UNDT erred when it "abstained from ruling" on the issue of the refusal by the Office of Staff Legal Assistance (OSLA) to provide him with a legal representative before the UNDT. Mr. Branglidor further complains about the amount of time he was given to complete the checkout process and leave the country, following the imposition of the disciplinary sanction and that he suffered mental and physical harm as a result.

19. The UNDT committed errors in its assessment of the facts. The UNDT should have found credible Mr. Branglidor's denial that he knew that KB had changed universities. It incorrectly found that he had made no payments to the IAU. Mr. Branglidor disputes the UNDT's finding that he had not offered any evidence contradicting the findings that he had made requests for reimbursement based upon untrue information. He claims that he did offer such evidence, namely, a payment plan he sent to the IAU; a payment of USD 3,845 that he claimed to have made to IAU; and the payment list on the credit card authorization forms that he sent to IAU for the processing of KB's school fees. In support of his appeal in this regard, he refers to his interactions with the IAU Director; the fact that it was KB who had used his credit card to pay for the registration fees at Aix-Marseille *Université* (AMU); and his strained relationship with KB.

20. Mr. Branglidor also claims the UNDT erred in fact when it found that he had not provided any alternative explanation for the 27 September 2015 correspondence between himself, his spouse, and KB, in which he provided relevant documents required for KB to obtain her student identity card for AMU. He states that nothing in that correspondence indicated that KB was changing schools and all the documents he provided to KB could have also been used for her registration at the IAU.

21. Mr. Branglidor asks that the Appeals Tribunal grant his appeal and that his disciplinary sanction be reassessed.

The Secretary-General's Answer

22. The UNDT did not err in law in finding that the sanction was proportionate to the offence. While Mr. Branglidor claims that the sanction was "clearly disproportionate," as no aggravating circumstances existed and there were mitigating circumstances that the UNDT failed to take into account, he merely reiterates, on appeal, the same submissions he made before the UNDT. UNAT has repeatedly held that an appeal of a UNDT judgment does not represent an opportunity to relitigate a case. The appellant has the burden of satisfying UNAT that the judgment rendered by the Dispute Tribunal is defective. The appellant must identify the alleged defects in the judgment and state the grounds relied upon in asserting that the judgment is defective.

23. In any event, Mr. Branglidor has failed to establish any error of law in the Judgment. The jurisprudence that he cites contains qualifying language showing that, in disciplinary matters, mitigating circumstances "may" be taken into account, on a "case-by-case basis" and the choice of sanction is a matter of discretion, and each case is considered individually. In this regard, UNAT has held that the Tribunals will only interfere and rescind or modify a sanction imposed by the Administration where the sanction imposed is blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity. On the contrary, the Secretary-General was able to demonstrate that cases involving false education grant claims normally attract sanctions at the stricter end of the spectrum, namely, separation from service without termination indemnity, or outright dismissal.

24. Notwithstanding the seriousness of the misconduct, the Administration imposed the sanction of separation from service with compensation in lieu of notice, rather than the strictest sanction of dismissal. The UNDT properly recognized that the measure applied was not the most severe and was consistent with the established practice in similar matters. The decision to impose this sanction was well within the discretion of the Secretary-General. For all of the above reasons, Mr. Branglidor has failed to demonstrate any error on the part of the UNDT in its finding that the sanction applied was proportionate to the offence.

25. Mr. Branglidor has failed to show any procedural or other error on the part of the UNDT with regard to his due process rights or in the manner in which he was separated. Mr. Branglidor's arguments regarding the claim that the OIOS investigator was biased against him are repetitions of his submissions before the UNDT. He has failed to even attempt to demonstrate that the UNDT made any error with regard to those arguments. Mr. Branglidor has not satisfied his burden to

demonstrate that the UNDT committed any error regarding alleged bias in the OIOS investigation, and UNAT should dismiss his claims in this regard.

26. Mr. Branglidor has failed to show that the UNDT committed any error with regard to the manner in which his service was ended. He repeats his complaint regarding the amount of time he was given to complete the checkout process and leave the country, following the imposition of the disciplinary sanction and that he suffered mental and physical harm as a result. Mr. Branglidor received compensation in lieu of notice when he was separated and was given one week to complete the checkout procedures. Notwithstanding these facts, he again makes no reference to the UNDT Judgment and has failed to even attempt to show that the UNDT committed any error regarding the amount of time he was given at the time of his separation. In any event, the submission is not relevant to the administrative decision that he challenged before the UNDT, which was the decision to impose the disciplinary sanction of separation with compensation in lieu of notice.

27. Mr. Branglidor has also failed to show that the UNDT committed any error with regard to the fact that OSLA did not provide him with a legal representative. His assertion that OSLA declined to represent him is incorrect. The UNDT took specific note of his contention that the fact that OSLA had declined to represent him was a mitigating factor. The UNDT held that Mr. Branglidor had been informed of the allegations against him and of his right to seek legal assistance. In this regard, UNAT has held that the right of staff members to receive assistance from OSLA does not amount to a right to be represented by OSLA.

28. Mr. Branglidor has failed to show that the UNDT committed any error of fact. All of the evidence he refers to was expressly considered by the UNDT and rejected as inadequate to counter a finding that he had claimed reimbursement based on untrue information. Indeed, the UNDT highlighted the fact that, during his OIOS interview, the Appellant had repeatedly stated that he would obtain and furnish to the OIOS his bank statements showing that the disputed payment to IAU was actually made, yet he was never able to produce or to provide such statements to OIOS or to the UNDT. Similarly, with respect to the UNDT's finding that he had been aware, at the time of making his education grant claim, that KB had changed universities, he continues to simply enumerate the same submissions as he made before the UNDT.

29. Mr. Branglidor has also failed to show that the UNDT erred in fact when it found that he had not provided any alternative explanation for the 27 September 2015 correspondence between himself, his spouse, and KB, in which he provided his identity documents that were required for

KB to obtain her student identity card for AMU. He has belatedly attempted to provide such an explanation for the first time on appeal by remarking that all the documents he provided to KB "could also be used for her registration at the IAU". Even this attempt at an explanation, however, is phrased as a hypothetical one, and he does not actually state that he believed that KB had requested the documents for her to register at the IAU. Thus, Mr. Branglidor provides no additional element to sustain his appeal.

30. Mr. Branglidor simply asserts that the UNDT should have found his claims credible. He is thus challenging the UNDT's findings on credibility and weight of the evidence, rather than any actual error of fact in the Judgment, let alone an error of fact resulting in a manifestly unreasonable decision. Indeed, the UNDT held that Mr. Branglidor's shifting explanations of his actions were of low credibility, and the issues he had identified amounted to "peripheral details," while the counter-evidence in the form of written and recorded statements provided to OIOS by KB and the IAU Director was "exhaustive, voluntary, apparently sincere, [did] not disclose any tendency to unduly incriminate the [Appellant], [were] coherent internally and with each other, and confirmed by documents." They were "altogether credible."

31. The Secretary-General requests that UNAT uphold the Judgment and dismiss the appeal.

Considerations

Oral hearing

32. As a preliminary matter, the Appeals Tribunal deals with the request for an oral hearing. Oral hearings are governed by Article 8(3) of the Appeals Tribunal's Statute and Article 18(1) of the Appeals Tribunal's Rules of Procedure (Rules). The case in question deals with a disciplinary measure of separation from service due to misconduct, namely, a request for an education grant based on untrue information. Although only Mr. Branglidor had been heard before the UNDT, the UNDT's efforts to hear other oral evidence were in vain and the case was decided on the written record and on Mr. Branglidor's oral evidence alone. Under the above provisions, the oral hearing before the UNAT, however, does not aim to provide any further oral evidence or otherwise, but to discuss elements of fact and of law which are already on the record.

33. In this sense, Mr. Branglidor's argument that a hearing should be required to allow him to highlight all the necessary elements which were not taken into account by the UNDT's Judgment, is not persuasive enough so as to justify an oral hearing about the factual issues

raised in the appeal, which deals not only with the alleged disproportionality of the sanction imposed, but also with possible errors of fact and of procedure. The factual and legal issues arising from the appeal have already been clearly defined by the parties and there is no need for further clarification. All elements for discussion are already on the record. Moreover, we do not find that an oral hearing would "assist in the expeditious and fair disposal of the case", as required by Article 18(1) of the Rules. Mr. Branglidor's request for an oral hearing is denied.

Merits of the case

34. The applicable legal framework is the following:

> Staff Rule 10.1
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> Misconduct
>
> (a) Failure 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.
>
> (b) Where the staff member's failure to comply with his or her obligations or to observe the standards of conduct expected of an international civil servant is determined by the Secretary-General to constitute misconduct, such staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of his or her actions, if such actions are determined to be wilful, reckless or grossly negligent.
>
> (c) 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.
>
> Staff Rule 10.2
>
> Disciplinary measures
>
> (a) Disciplinary measures may take one or more of the following forms only:
>
> (i) Written censure;
>
> (ii) Loss of one or more steps in grade;
>
> (iii) Deferment, for a specified period, of eligibility for salary increment;
>
> (iv) Suspension without pay for a specified period;
>
> (v) Fine;
>
> (vi) Deferment, for a specified period, of eligibility for consideration for promotion;

> (vii) Demotion with deferment, for a specified period, of eligibility for consideration for promotion;
>
> (viii) Separation from service, with notice or compensation in lieu of notice, notwithstanding staff rule 9.7, and with or without termination indemnity pursuant to paragraph (c) of annex III to the Staff Regulations;
>
> (ix) Dismissal.
>
> (b) Measures other than those listed under staff rule 10.2 (a) shall not be considered to be disciplinary measures within the meaning of the present rule. These include, but are not limited to, the following administrative measures:
>
> (i) Written or oral reprimand;
>
> (ii) Recovery of monies owed to the Organization;
>
> (iii) Administrative leave with full or partial pay or without pay pursuant to staff rule 10.4.
>
> (c) A staff member shall be provided with the opportunity to comment on the facts and circumstances prior to the issuance of a written or oral reprimand pursuant to subparagraph (b) (i) above.

35. In his appeal, Mr. Branglidor claims that the UNDT Judgment contains: i) an error of law related to the disproportionality of the sanction, the Administration having not considered the absence of aggravating circumstances and the existence of multiple mitigating circumstances in favour of a less severe sanction; and ii) errors of fact connected with the findings that he had not made any payments to the IAU and that he was aware of KB's change of University. Also, Mr. Branglidor maintains that there were procedural errors during the investigation and decision-making process, as well as before the UNDT. The Appeals Tribunal will assess each of these claims in turn in the order set out below.

Alleged errors in procedure

36. Under the heading of procedural errors, Mr. Branglidor raises some issues. The Appeals Tribunal Statute permits an appeal against a judgment rendered by the UNDT when it is asserted that the UNDT has committed an error in procedure such as to affect the decision of the case. It must be thus established that the error in procedure stated in the Appeals Tribunal Statute does not refer to an error in procedure possibly made by the Administration during the decision-making process, but rather to an error in procedure during the proceedings before the UNDT. The error of the Administration could be relevant for the merits of the case, not as a preliminary matter to be assessed by the Appeals Tribunal. In other

words, what the Appellant raises does not relate to a preliminary matter on appeal, but rather to the merits of the case.

37. This said, and in the interests of justice, the Appeals Tribunal will consider the issues wrongly raised by Mr. Branglidor under this heading. Mr. Branglidor claims that he was unfairly treated during the investigation phase. Firstly, he asserts that he was not assisted by a lawyer. Secondly, he contends that the investigation was biased, in that it exploited his vulnerability by the investigator asking irrelevant questions in an unprofessional manner, namely by "giggling" during the interrogation. Thirdly, Mr. Branglidor maintains that the e-mail of 9 May 2017 from the DoA/IAU in which she stated, "I only can assume that I signed them", was not incorporated into the OIOS report, even though this comment contradicted its conclusion that he had visited the DoA/IAU on 10 April 2017.

38. In this respect, the UNDT Judgment agreed with the Secretary-General in that no violation of due process rights had been substantiated. According to the UNDT, Mr. Branglidor was interviewed by OIOS, was asked about the material aspects of the matter, and was then informed that he was a subject of an investigation concerning false statements "in respect of requests and claims for education grants, advances and payments submitted by" him to the EGSL. Subsequently, he was provided with a copy of the audio-recording of his interview and he was given 10 working days to submit a written statement about the matters discussed during the interview. The UNDT then found that the OIOS interviews were audio-recorded and transcribed, thus, there was no room for the OIOS investigator to "distort" interviewees' statements.[1] The UNDT also found that the transcriber's note of "giggling" in interview transcripts was not evidence of coaching or exploitation of an interviewee.[2]

39. Although a neutral interviewer should abstain from expressing emotions or display behaviour which could be misinterpreted by an interviewee, the mere note of the interviewer's giggling is not sufficient to vitiate the authority of the investigation report, since there is no evidence of this having impacted the outcome of the investigation. It can therefore be considered a minor slip in the entirety of the investigation phase, inconsequential to the decision of the present case.

[1] Impugned Judgment, para. 46.
[2] *Ibid.*

40. The e-mail of 9 May 2017 from the DoA/IAU does not detract from the UNDT's findings, nor does it constitute proof that the visit to the DoA/IAU did not occur. It only refers to the DoA/IAU's embarrassment for having wrongly signed the documents attesting that KB had been a student at IAU in the academic year 2015-2016 without verifying the date correctly, whereas she had been a student at IAU the year before. This confusion was mentioned in the OIOS report[3], and therefore Mr. Branglidor's contention that the OIOS report had not considered factual elements in his favour is without merit. Moreover, while the e-mail was specifically considered in the UNDT Judgment[4], the visit on 10 April 2017 was confirmed by the DoA/IAU, which corresponds with Mr. Branglidor's leave record showing that he had travelled to Marseille between 8 and 17 April 2017.[5]

41. Furthermore, Mr. Branglidor contends that he had only been given four working days to complete the checkout and leave the country after having received the decision to separate him from service, when in fact he should have been given three months' notice. This sudden separation, Mr. Branglidor maintains, caused him "severe injuries" both mentally and physically.

42. As will be discussed below in this Judgment, the UNDT correctly considered the sanction to be proportionate to the offence.[6] It appears that the issue of the separation from service with compensation in lieu of notice is incorrectly raised for the first time on appeal, since the Appeals Tribunal could not establish that it had been raised previously before the UNDT. In any event, Staff Rule 10.2 (viii) provides that the disciplinary measure of separation from service can take place "with notice or compensation in lieu of notice, notwithstanding staff rule 9.7". Therefore, regardless of the three-month minimum period of notice normally applicable to the termination of a staff member's continuing appointment, compensation in lieu can replace the notice, when a disciplinary measure is imposed on the staff member concerned, as happened in the present case. Mr. Branglidor was given one week between the receipt of the decision to separate him from service, on 25 March 2019, and the effective date of separation, 2 April 2019.

[3] *Ibid.*, para. 30.
[4] *Ibid.*, para. 27.
[5] *Ibid.*, paras. 23.c and 32.
[6] *Ibid.*, paras. 19 and 44.

43. Still under the heading of alleged errors in procedure, Mr. Branglidor further claims that the UNDT did not rule on the issue of his self-representation before the UNDT, since OSLA had refused to provide him with a legal representative. This assertion is not correct, however, since the UNDT took note of this specific contention in its Judgment.[7] In the present case, there is no evidence that i) Mr. Branglidor had submitted a request for OSLA assistance; ii) his possible submission had not received adequate consideration by OSLA, whose resources are not unlimited. In any circumstance, a request for assistance does not amount to a right to be represented by OSLA, as the Appeals Tribunal's jurisprudence has indicated.[8] Although not unfettered, OSLA has the discretionary power not to represent a person, and there is no indication that this exercise of discretion had been incorrect in the present case.

44. The appeal under the heading of alleged errors of procedure must fail.

Standard of review

45. The general standard of judicial review in disciplinary cases requires the UNDT to ascertain whether the facts on which a sanction is based have been established, whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offence.[9] When termination is a possible outcome, misconduct must be established by clear and convincing evidence, which means that the truth of the facts asserted is highly probable.[10] Apart from exceptional cases involving major violations of due process rights,[11] it is not sufficient for the UNDT to find procedural errors in a disciplinary process but, where necessary, it has to conduct a *de novo* review of the facts and a judicial review of the remaining aspects of the case.[12] The requirement of a *de novo* review of the facts does not mean that the UNDT will necessarily have to re-hear all the witnesses of the investigation procedure or to hear new witnesses. If there is sufficient and substantial evidence in the written record, the UNDT may also base its findings on the record.

[7] *Ibid.*, para. 42.
[8] *Worsley v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-199, para. 37.
[9] *Portillo Moya v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-523, para. 17.
[10] *Applicant v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-302, para. 29, citing *Molari v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-164.
[11] See e.g. *Muindi v. Secretary-General of the International Maritime Organization*, Judgment No. 2017-UNAT-782.
[12] *Mbaigolmem v. Secretary-General of the United Nations,* Judgment No. 2018-UNAT-819, para. 27.

Alleged errors of fact – alleged payments to IAU and possible good faith

46. Mr. Branglidor does not claim that the recovery by the Administration of the advance payment of EUR 8,662.75 in relation to his daughter's non-attendance to IAU was unlawful. Nor does he challenge the rejection of his further submission, on 28 April 2017, for his daughter's education grant for the same academic year (2015-2016) in the amount of USD 27,045. He claims, rather, that he believed in good faith that his daughter, KB, had attended IAU in that year, since he had not been informed that she had changed universities (IAU), and was in fact attending a public university in France (AMU). Mr. Branglidor contends that the UNDT Judgment erred when it found that i) he had not made any payments to the IAU; and that ii) he was aware of KB's change of university.

47. It is not disputed that Mr. Branglidor's daughter, KB, did not attend IAU for the 2015-2016 academic year. What is in dispute, however, is whether he was conscious of this fact when he reiterated his claim for an education grant for KB's attendance at IAU for the academic year 2015-2016. This fact is of relevance to determine the possible good faith when the claim was made.

48. Regarding possible payments to the IAU, it is true that on 10 September 2015, Mr. Branglidor signed a credit card authorization form for IAU for the amount of USD 5,446.00, to be paid in September and November 2015 and January, March and May 2016, respectively. It is also correct that on 22 September 2015, the amount of USD 3,845.00 was paid to IAU, for KB's 2015-2016 academic year (out of a total of USD 27,045.00), as demonstrated by the invoice issued by the IAU College. The UNDT thus erred when it stated that Mr. Branglidor did not pay for IAU at all.[13] This invoice, however, also shows that the other fees due by September and December 2015 were not paid, generating the balance due of USD 23,200 by 17 December 2015. Mr. Branglidor does not claim or provide evidence of such payments and thus the Appeals Tribunal can only assume that they were not paid, for reasons that Mr. Branglidor did not explain. This lack of explanation or evidence of payment of the other subsequent charges due to IAU after the initial payment in September 2015 is evidence against Mr. Branglidor's case, and further indicates that KB no longer needed his financial support for IAU.

[13] Impugned Judgment, para. 36.

49. Furthermore, according to the UNDT, in light of KB's statement to the OIOS investigator, Mr. Branglidor was aware of the fact that his daughter was not attending IAU because: i) he had paid registration fees for her attendance at AMU for the 2015-2016 school year; ii) in August and September 2015, he had sent her the documents needed to complete her registration for AMU; iii) he had helped her complete the forms in October 2015; iv) when she started AMU in September 2015, she lived at home and Mr. Branglidor saw her at the bus stop while she was departing for AMU; v) she and Mr. Branglidor had been in touch throughout February 2016; vi) KB moved out on her own in May 2016 and had very little contact with her parents afterwards; and vii) Mr. Branglidor did not provide any financial support for her attendance at AMU during 2015-2016 since it was free.[14]

50. On appeal, Mr. Branglidor raises a number of factual issues which, however, do not favour his cause. Still on the matter of which university his daughter attended for the relevant academic year 2015-2016, he claims that the thread of e-mails between himself and KB, in which she communicated to him on 27 August 2015 the payment of EUR 419 with his credit card for her "*final* application transfer credits" to IAU, is proof of her transfer to IAU, not the opposite.

51. Firstly, this unexpected line of reasoning contradicts the incontrovertible fact that KB changed universities from IAU to AMU for the academic year 2015-2016, as admitted by Mr. Branglidor in his appeal, when he submitted that he "believed in good faith that she was still attending the IAU". Secondly, according to the official IAU website indicated by KB in her e-mail to Mr. Branglidor at the time[15], the procedure of transfer to another university required the credit transfer toward the new institution, including the completion of a form with a statement that the credit earned at IAU would be accepted towards the student's degree program at the new institution "signifying that work completed at IAU will receive credit toward the applicant's degree". The credit transfer form had to be e-mailed to IAU, and so this was the context in which the 27 August 2015 e-mail must be interpreted. The e-mail only confirmed the change of university towards AMU for the academic year 2015-2016. This conclusion is corroborated by KB's information provided to the OIOS investigator that Mr. Branglidor was aware that she was not attending IAU.[16]

[14] *Ibid.*, para. 34.
[15] https://iau.edu/academics/credittransfer
[16] Impugned Judgment, para. 23.b.

52. Mr. Branglidor also insists on the controversy regarding the issue of the visit to the DoA/IAU in person in Aix-en-Provence, France, in April 2017 in order to obtain this official's signature on the forms. Contrary to what the DoA/IAU stated, he maintains that such a visit did not happen and that the documents were e-mailed to her. Mr. Branglidor's purpose seems to be to demonstrate his good faith when filing the claim for the education grant, and at the same time to discredit the DoA/IAU's correction of the information she had given when she signed the P.41 form attesting that KB had attended the academic year 2015-2016 at IAU, when, in reality, this was not correct, as KB had indeed changed university[17]. On this issue, the UNDT held that Mr. Branglidor's inconsistent account of the circumstances of the completing and obtaining of the signatures on the forms is of low credibility.[18] To reach its finding, the UNDT recalled that Mr. Branglidor had told the OIOS investigator that *his wife* had collected the signed originals from the DoA's office, whereas Mr. Branglidor told the UNDT that it was *his other daughter, GB,* who had collected the forms from the DoA's office. The UNDT also highlighted another contradiction in Mr. Branglidor's version of events relating to the completion of the information on the P.41 forms, when on the one hand he told the OIOS investigator that he had completed *only* his own personal details and that the DoA/IAU had completed the rest of the form, and on the other hand, his evidence to the UNDT was that he had completed *all* the information on the forms, including the date.[19]

53. The fact that Mr. Branglidor's had not given any explanation for these contradictions in his account of the facts, and without any further argument in the appeal apart from mere repetition of arguments already rejected by the UNDT, the Appeals Tribunal has no reason to differ from the UNDT's finding that the DoA/IAU's version of events that the documents were signed without proper verification of the dates was convincing[20], and this is regardless of the fact that the documents had been previously sent by e-mail[21] or presented during the unexpected visit. Apart from corroborating the indisputable fact that there was no attendance of IAU during the academic year 2015-2016, the credibility awarded by the UNDT to the DoA/IAU's information is even more relevant in light of the fact that the DoA/IAU had no interest in filling out the forms to unduly benefit Mr. Branglidor.[22]

[17] *Ibid.*, para. 30.
[18] *Ibid.*, para. 33.
[19] *Ibid.*, para. 32.
[20] *Ibid.*, para. 31 and e-mail from the DoA/IAU of 09 May 2017.
[21] Reference is made to the e-mail from the DoA/IAU of 10 April 2017.
[22] *Ibid.*, para. 33.

54. Moreover, the finding about the visit in April 2017 in order to obtain the signature on a form relating to the academic year 2015-2016, together with the totality of the evidence, confirms the UNDT's conclusion that Mr. Branglidor was well aware of the untruthfulness of the forms when he submitted the second claim for the regular disbursement of the education grant indicating IAU as the education institution.[23] This is also relevant in determining that the UNDT was correct when it held that the act was committed with knowledge and intent.

55. Therefore, the Appeals Tribunal finds that while Mr. Branglidor might not have been aware of the fact that his daughter, KB, was not going to attend IAU for the 2015-2016 academic year when he submitted the initial P.45 form on 3 June 2015[24], the same situation did not apply on 28 April 2017, almost two years later, when he submitted the same request after the first one had been rejected and the advance paid to him had been recovered. Even though the misconduct did not lead to any actual prejudice, since the Administration recovered the payment made in advance and did not pay any further education grant, Mr. Branglidor's endeavor could have undoubtedly caused some prejudice.

56. The UNDT's minor error that Mr. Branglidor did not pay at all for IAU, as discussed above, is thus inconsequential in light of the totality of the evidence highlighted by the UNDT in its Judgment, which indicates with clear and convincing evidence an act committed with knowledge and intent when Mr. Branglidor applied for and received the education grant advance, and subsequently submitted a claim for the regular disbursement of the education grant, indicating IAU as the education institution of KB, when she had actually studied at another university.[25]

57. There was no error of fact committed by the UNDT that would affect the decision of this case.

Alleged disproportionality (error of law)

58. Mr. Branglidor claims that the sanction was disproportionate as no aggravating circumstances could be attributed to him and various mitigating circumstances were not adequately taken into account.

[23] *Ibid.*, para. 36.
[24] *Ibid.*, para. 10.
[25] *Ibid.*, paras. 36 and 37.

59. With regard to the aggravating circumstances, Mr. Branglidor's claim is meritless, as no aggravating factor was considered to be found in this case. If the argument is that the sanction was too harsh because no aggravating factor was found, the Administration has broad discretion in determining the disciplinary measures imposed on staff members as a consequence of misconduct. The Administration is the best authority to select a satisfactory sanction within the limits stated by the respective norms, sufficient to prevent repetitive wrongdoing, punish the wrongdoer, satisfy victims and restore the administrative balance. Thus, in determining the proportionality of a sanction, the UNDT should observe a measure of deference, but more importantly, it must not be swayed by irrelevant factors or ignore relevant considerations.

60. The Organization also considered that there was no mitigating factor in the case. On appeal, Mr. Branglidor merely expresses his disapproval of the UNDT's conclusion, claiming that it failed to take into consideration a number of points which he contends were mitigating factors, namely that he was facing difficult personal and working conditions, that he had cooperated with the investigators, and that this had been the first and only offence during his working life of impeccable service.

61. In the present case, while the UNDT acknowledged that a long record of unblemished service has been traditionally recognized by the Administration as a mitigating circumstance, it also observed that the measure applied in this instance was not the most severe and was consistent with the established practice in similar matters.

62. Mr. Branglidor does not disprove the UNDT's finding in this regard, but merely repeats his previous submissions before the UNDT. Nonetheless, the appeal is not an opportunity to reargue the case with the same arguments already presented before the UNDT. In addition, the UNDT does not have to respond to each and every argument of a party; it merely has the duty to unveil its considerations when taking the final decision and disposing of the case, so as to allow the losing party the opportunity to present counter arguments to the Judgment in the appeal. However, Mr. Branglidor has failed to state the grounds of appeal relied upon, in terms of Article 2(1) of the Appeals Tribunal Statute. As noted in *Krioutchkov*[26] and *Aliko,*[27] the Appeals Tribunal is not an instance for a party to reargue the case without identifying

[26] *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-711, paras. 20 to 22.
[27] *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540, paras. 28 to 29.

the defects and demonstrating on which grounds an impugned Dispute Tribunal judgment is erroneous.

63. Lastly, the Appeals Tribunal has not been persuaded that the UNDT erred when it did not consider the sanction disproportionate.[28]

[28] Impugned Judgment, para. 44.

Judgment

64. The appeal is rejected and Judgment No. UNDT/NBI/2021/004 is affirmed.

Original and Authoritative Version: English

Dated this 18th day of March 2022.

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

Entered in the Register on this 19th day of May 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar