



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

Judgment No. 2022-UNAT-1239

**Hassan Abdel Majid Saleh
(Appellant)**

v.

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

JUDGMENT

Before:	Judge John Raymond Murphy, Presiding Judge Graeme Colgan Judge Kanwaldeep Sandhu
Case No.:	2021-1593
Date of Decision:	1 July 2022
Date of Publication:	13 July 2022
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Amanda Stoltz

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2021/069, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) on 18 June 2021, which dismissed the application of Mr. Hassan Abdel Majid Saleh, a former staff member of the United Nations Interim Force in Lebanon (UNIFIL). Mr. Saleh contested a decision to impose on him 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) for submitting fraudulent medical insurance claims.

2. For the reasons set out below, the appeal is dismissed and the Judgment of the UNDT is affirmed.

Facts and Procedure

3. Mr. Saleh commenced service with the Organization in 2007. At the time of his separation from service, he served as Language Assistant at the G-4 level at the UNIFIL.

4. In December 2019, Mr. Saleh was charged with submitting false information in relation to three claims for reimbursement for dental expenses to the medical insurance plan Cigna.

5. Mr. Saleh's misconduct was discovered in October 2018 when Cigna requested that Mr. Saleh submit panoramic X-rays/orthopantomograms (OPGs) for treatments in respect of which he had claimed reimbursement. Between 18 October and 8 November 2018, Cigna and Mr. Saleh communicated about the submission of original OPGs for the treatment received.

6. In December 2018, the Cigna Investigation Unit informed Mr. Saleh that if he did not provide the correct OPGs by 14 January 2019, he would have to refund USD 2,144. This amount related to three specific claims which Cigna had reimbursed Mr. Saleh between 2016 and 2018. In a communication on 15 February 2019, Mr. Saleh admitted that there was a difference between the services claimed in the past and the X-ray and that one of the claim of June 2017 was for a relative in need for the dental services who could not afford them. He maintained that this was not fraud but rather "a mistake".

7. On 21 March 2019, Cigna informed Mr. Saleh that the relevant invoices in relation to the three claims had been examined by its dental consultant who had concluded that the irreversible treatments described on the invoices had not occurred as they did not show on the OPGs that Mr. Saleh had submitted. The three invoices related to i) a claim submitted on 11 April 2016 in the amount of USD 730 for services allegedly rendered by Dr. RFB to either Mr. Saleh or his wife (the documentation in relation to this claim being contradictory) and in respect of which Cigna paid USD 584 to Mr. Saleh; ii) a claim submitted on 29 June 2017 for dental work performed by Dr. RFB on IS, a relative of Mr. Saleh in respect of which Mr. Saleh was paid USD 840; and iii) a claim submitted on 8 February 2018 for dental work performed by Dr. MM on NS, his sister in law in respect of which Mr. Saleh was paid USD 720. Consequently, Cigna demanded reimbursement of USD 2,144 for the payments made based on these three invoices. Mr. Saleh reimbursed Cigna the USD 2,144 on 13 April 2019.

8. Cigna forwarded a fraud report to the Office of Internal Oversight Services (OIOS) implicating Mr. Saleh on 19 March 2019. After a preliminary assessment, OIOS referred the matter to UNIFIL on 11 April 2019 for investigation. On 13 May 2019, the Regional Conduct and Discipline Section referred the allegations against Mr. Saleh to the UNIFIL Special Investigations Unit (SIU) for investigation. The SIU investigators conducted an investigation between 13 May and 10 June 2019 and finalized their report on 11 June 2019.

9. During Mr. Saleh's interview with SIU on 27 May 2019, he stated that the dental treatments provided on 9 April 2016, 29 June 2017 and 4 February 2018 were provided to his relatives, but he had submitted claims to Cigna for these treatments because his relatives needed assistance. He considered the claims to be "humanitarian assistance" to his relatives.

10. Based on the findings in the investigation report, UNIFIL recommended that the matter be referred to the Office of Human Resources (OHR) for further action.

11. Mr. Saleh was placed on administrative leave with pay (ALWP) effective 16 October 2019. He received a memorandum outlining allegations of misconduct from OHR on 16 December 2019, in which it was alleged that between 2016 and 2018, he had submitted false information in support of claims for reimbursement for dental expenses to Cigna. He was informed that if the facts were established, his conduct would constitute a violation of staff regulations 1.2(b) and 1.2(q) and section 10.1 of ST/AI/2015/3 (Medical insurance plan

for locally recruited staff at designated duty stations away from Headquarters). Mr. Saleh was granted one month to provide comments and informed of his right to avail himself of the assistance of legal counsel. On the same day, he was placed on administrative leave without pay (ALWOP).

12. In a response dated 15 January 2020, Mr. Saleh: (a) admitted to misusing the medical insurance plan but attributed his conduct to a need to assist sick family members who were in dire financial circumstances; (b) apologized for his “misjudgments”; (c) undertook to not misuse the medical insurance plan again; and (d) denied having an agreement with the two dentists. Mr. Saleh requested that the following be taken into consideration as mitigating factors when imposing a disciplinary sanction: (a) his employment with UNIFIL since 2007 and his good conduct during his years of service; (b) his successful performance of his duties; (c) his wife and three minor children who depend on him solely for financial support and health insurance coverage; and (d) substantial loans he had taken to purchase a house and a car for his family. He expressed his willingness to accept any disciplinary measure that would allow him to continue working with the Organization.

13. By a memorandum dated 4 February 2020 (sanction letter), the Assistant Secretary-General for Human Resources informed Mr. Saleh that the Under-Secretary-General for Management Strategy, Policy and Compliance (USG/DMSPC) had concluded that the allegations against him had been established by clear and convincing evidence. USG/DMSPC concluded that there were no aggravating circumstances and considered his admission of misconduct, apology and expression of sincere remorse and his long service with the Organization as mitigating circumstances. She did not consider his role in supporting his family and the fact that he had reimbursed Cigna as mitigating factors as he acted only when the fraud had been revealed. Based on the foregoing considerations, USG/DMSPC imposed the disciplinary measure of separation from service, with compensation in lieu of notice and without termination indemnity. Mr. Saleh was separated from service on 7 February 2020.

14. On 7 May 2020, Mr. Saleh filed an application with the UNDT challenging the contested decision.

15. At a case management discussion (CMD) held on 19 May 2021, Mr. Saleh confirmed his admission to having made unauthentic claims for reimbursement of dental care expenses which had not been incurred by him. However, Mr. Saleh argued that the invoice dated 9 April 2016 was a genuine claim pertaining to the treatment of his wife, who had been insured under his medical insurance plan. The parties agreed that the case could be decided without a hearing, and thus after inviting additional submissions relating to the invoice dated 9 April 2016, the UNDT proceeded to judgment without holding a hearing.

16. On 18 June 2021, the UNDT issued Judgment No. UNDT/2021/069, dismissing the application. The UNDT first found that Mr. Saleh's due process rights were respected as he had been properly informed of the subject and purpose of the interview and afforded sufficient notice during the investigation. The UNDT rejected Mr. Saleh's claim that he did not feel well during the interview and failed to diligently read the interview record before signing it, noting that Mr. Saleh raised no objections during his interview, nor did he raise any objections until the filing of the application before the UNDT. The UNDT also found that Mr. Saleh's contention that the SIU investigation included errors and misinterpretations was not specific and thus without merit.

17. The UNDT held that the allegations in relation to the claim of 11 April 2016 had not been established by clear and convincing evidence. There is no cross-appeal against this finding.

18. However, the UNDT found that the charges in relation to the claims of 29 June 2017 and 8 February 2018 were established by clear and convincing evidence in that Mr. Saleh admitted to his wrongdoing. Mr. Saleh admitted during the SIU investigation that he did not receive the treatments for which he claimed reimbursement. He, however, initially stated untruthfully that the claim forms in relation to these treatments were completed and submitted by his spouse and not by him. During the CMD, counsel for the Secretary-General confronted Mr. Saleh with the fact that the manuscript in both forms was his handwriting and the forms had been signed by him. Mr. Saleh was then compelled to concede that he had filled out and signed both claim forms, and thus in effect admitted to a further instance of dishonesty.

19. The UNDT found that the established facts amounted to misconduct as Mr. Saleh's conduct violated Staff Regulation 1.2(b) and (q) which requires staff members to uphold the highest standards of efficiency, competence and integrity.

20. The UNDT found that the imposed disciplinary measure was proportionate to the offense as it was in line with the measures imposed in the past similar cases and the Organization had considered and weighed all the relevant mitigating circumstances. The fact that one of the charges had not been proved did not alter this conclusion.

21. Therefore, the UNDT dismissed Mr. Saleh's application.

22. On 4 August 2021, Mr. Saleh filed an appeal against Judgment No. UNDT/2021/069, and the appeal was registered with the Appeals Tribunal as Case No. 2021-1593. On 18 October 2021, the Secretary-General filed his answer.

Submissions

Mr. Saleh's Appeal

23. Mr. Saleh reiterates his earlier submissions before the UNDT that he did not read the whole interview record before signing it, that one of the three claims was genuine, that the other two claims were filled and submitted by his spouse, and that he did not have any agreements with the two dentists.

24. Mr. Saleh submits that the following mitigating factors were not taken into consideration: (i) his 13 years of service with the Organization; (ii) his early admission of wrongdoing to Cigna; (iii) the harsh situation he and his family were undergoing due to circumstances in Lebanon; and (iv) the future of his family.

25. Mr. Saleh submits that it is unlawful to deny him termination indemnities "that are considered a right in all canons".

26. Finally, Mr. Saleh submits that there are many other staff members who have submitted fraudulent medical claims.

The Secretary-General's Answer

27. The Secretary-General submits that the UNDT properly considered the lawfulness of the contested decision consistent with the standard for judicial review established by the UNAT and Mr. Saleh failed to identify any errors in the UNDT judgment. Mr. Saleh failed to discharge the burden incumbent upon him to satisfy the UNAT that the UNDT Judgment was defective.

28. Mr. Saleh's vague and unfounded allegations of misconduct committed by other staff members are not a relevant issue on appeal in relation to his own misconduct.

29. Likewise, his claim to an independent right to a termination indemnity is not receivable at the appeal stage. Even if the issue was properly before the UNAT, the imposed disciplinary measure of separation from service *without* termination indemnity is clearly and explicitly provided for in staff rule 10.2(a)(viii).

30. Finally, the Secretary-General submits that Mr. Saleh's appeal to the proportionality of the imposed sanction should be dismissed because he failed to discharge the burden incumbent upon him to explain how the UNDT erred in the present case. The UNDT correctly concluded that retaining Mr. Saleh in service would be irreconcilable with the values of the Organization, that the imposed sanction was in line with the past cases involving similar misconduct, and that the Organization correctly identified and weighed all the mitigating circumstances.

Considerations

31. After initially denying the full extent of his misconduct and being confronted with the untruth of his exculpatory explanation, Mr. Saleh admitted two counts of fraud.

32. Mr. Saleh's complaints of procedural unfairness are unsustainable for the reasons stated by the UNDT and he has not discharged the burden incumbent upon him to satisfy this Tribunal that the UNDT Judgment was defective in that regard. He merely repeats the untenable submissions he made before the UNDT.

33. Fraud and dishonesty are serious misconduct. Any form of dishonest conduct, deception or fraud compromises the necessary relationship of trust between the Organisation and a staff member and will generally warrant the termination of employment. While the decision to

terminate employment necessarily involves the consideration and weighing of a number of factors, both mitigating and aggravating, in instances of dishonesty the severity of the misconduct tends to outweigh other mitigating considerations such as length of service, a clean disciplinary record, difficult personal circumstances, expressions of remorse and the like. The reason for that is dishonesty by a staff member invariably seriously damages or destroys the relationship of mutual trust and confidence in a way that renders the continuation of a quasi-fiduciary employment relationship untenable or even intolerable.

34. Mr. Saleh's conduct unquestionably damaged the trust relationship and the UNDT was correct to defer to the reasonable conclusion of the Administration that the damage was irreparable and outweighed the other mitigating considerations that the USG/DMSPC properly identified and took into account. As the Secretary-General correctly argues, retaining Mr. Saleh in service would be irreconcilable with the values of the Organization. The imposed sanction of separation from service without termination indemnity is explicitly provided for in Staff Rule 10.2(a)(viii), is in line with the past cases involving similar misconduct and is manifestly proportionate. In light of his fraudulent misconduct, Mr. Saleh has no right to receive a termination indemnity.

Judgment

35. Mr. Saleh's appeal is dismissed, and the UNDT Judgment is affirmed.

Original and Authoritative Version: English

Decision dated this 1st day of July 2022 in New York, United States.

(Signed)

Judge Murphy, Presiding

(Signed)

Judge Colgan

(Signed)

Judge Sandhu

Judgment published and entered into the Registry on this 13th day of July 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar