



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

Judgment No. 2023-UNAT-1393

**Berhanemeskel Nega
(Respondent/Applicant)**

v.

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

JUDGMENT

| | |
|----------------------|---|
| Before: | Judge Leslie F. Forbang, Presiding Judge Kanwaldeep Sandhu Judge Gao Xiaoli |
| Case No.: | 2022-1763 |
| Date of Decision: | 27 October 2023 |
| Date of Publication: | 1 December 2023 |
| Registrar: | Juliet E. Johnson |

Counsel for Appellant: Francisca Lagos Pola

Counsel for Respondent: Brandon Gardner, OSLA

JUDGE LESLIE F. FORBANG, PRESIDING.

1. In Judgment No. UNDT/2022/105 (impugned Judgment),¹ the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) granted the application of Mr. Berhanemeskel Nega (Respondent), who had challenged the Administration's failure to make good faith efforts to absorb him into a new post after his position with the United Nations-African Union Hybrid Operation in Darfur (UNAMID) was abolished.

2. As a remedy, the UNDT ordered that Mr. Nega be placed in a position (among those he applied to) at the same level that he had at the time of the abolition of his post, which was level D-1. Alternatively, the UNDT ordered the Organization to pay Mr. Nega compensation in lieu of two years' net-base salary at the D-1 level according to the salary scale in effect at the time of his separation from service.

3. The Secretary-General of the United Nations (Appellant) filed an appeal of the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) on the sole issue of the quantum of compensation.

4. For the reasons set forth herein, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure²

5. Mr. Nega had been a United Nations staff member since 16 October 2001 and held a continuing appointment with the Organization since 28 October 2016. At the time of the events in question, Mr. Nega was the Chief of Service, Political Affairs, at UNAMID based in Khartoum, Sudan.

6. On 15 January 2021, Mr. Nega was advised by letter that due to the imminent closure of UNAMID, based on a decision of the United Nations Security Council, his post would be abolished and that his separation would be effective on 13 April 2021.

¹ *Nega v. Secretary-General of the United Nations*, Judgment No. UNDT/2022/105 (7 October 2022).

² The facts as relevant to the present appeal are drawn from the impugned Judgment, paras. 2-12.

7. On 14 February 2021, UNAMID requested that all affected staff with permanent or continuing appointments, like Mr. Nega, upload relevant documents onto the Horizon platform, which was established to assist individuals identify and apply for other posts in the Organization.

8. On 10 March 2021, Mr. Nega filed a request for management evaluation with the Management Evaluation Unit (MEU) contesting the termination of his continuing appointment and separation from service. His anticipated separation on 13 April 2021 was suspended pending the outcome of the MEU review.

9. In the meantime, Mr. Nega applied to various vacancies through the Horizon platform, including the post of Deputy Director, D-1, Western Africa Division in the Department of Political and Peacebuilding Affairs (DPPA), which was advertised under Temporary Job Opening (TJO) 152064. The TJO contained a “special notice” that the position was “temporarily available until 2 March 2022”.

10. On 4 June 2021, Mr. Nega was invited to interview for this post on 16 June 2021. Prior to the interview, however, Mr. Nega received notification from the MEU on 7 June 2021 that it had decided to uphold the Administration’s decision to terminate his appointment. The MEU further advised that the selection process for TJO 152064 was on hold due to a hiring freeze. Mr. Nega was separated from service that same day.

11. Another individual was selected for TJO 152064 on 7 September 2021, at which point, Mr. Nega had separated from the Organization.

Dispute Tribunal Proceedings

12. On 19 August 2021, Mr. Nega filed an application with the UNDT challenging the Organization’s refusal to “make good faith efforts to absorb him on to a new post after it decided to abolish his existing post”.

13. In the impugned Judgment, the UNDT rejected the Secretary-General’s contention that the application was not receivable because Mr. Nega had intended to retire. The UNDT found that Mr. Nega completed the retirement documents only upon request, and that the record reflected

that he wanted to continue in service until he reached his mandatory retirement age of 65 in December 2023.³

14. The UNDT also rejected the Secretary-General's argument that Mr. Nega could receive priority consideration only at the moment of finalization of the recruitment for TJO 152064 (in September 2021) when he had already retired, and instead was of the view that Mr. Nega was entitled to priority consideration during the earlier stages of the recruitment process. The UNDT considered that the invitation Mr. Nega received for an interview on 16 June 2021 "prove[d]" that the post was not subject to a hiring freeze when he was separated from the Organization.⁴

15. The UNDT further held that the invitation to interview, and the fact that Mr. Nega was one of eight candidates shortlisted (out of 31 candidates), was a tacit acknowledgment by the Administration that he was suitable for the post, and as a staff member on continuing appointment who was facing termination, the Administration was obliged to consider him on a preferred, non-competitive basis from this point.⁵ The UNDT accordingly concluded that the Administration failed in its obligation to make good faith efforts to absorb Mr. Nega into a new post.

16. As a remedy, the UNDT ordered that Mr. Nega be placed in a position (among those he applied to) that was commensurate with his D-1 level post that was abolished. As an alternative to reinstatement, the UNDT set compensation in lieu of two years' net-base salary, the maximum allowed under Article 10(5) of the Dispute Tribunal's Statute (UNDT Statute). In evaluating the range of awards, the UNDT reasoned that larger compensation should be granted in cases of termination of senior staff with permanent appointments, as compared to cases where a recently hired staff member on a fixed-term appointment does not have their appointment renewed, because the latter individuals have no security of tenure or expectation of renewal.⁶

17. With respect to this case, the UNDT found that two years' net-base salary was appropriate given "the seniority of [Mr. Nega], the type of contract held, and the chance of being offered other equivalent positions" as well as the "reasons for the termination and the months of service left till retirement age, and also (...) the Administration's non-payment of the education grant for 2021-2022 and 2022-2023 school years".⁷

³ Impugned Judgment, paras. 29-30.

⁴ *Ibid.*, paras. 49-50.

⁵ *Ibid.*, para. 52.

⁶ *Ibid.*, para. 59.

⁷ *Ibid.*, para. 60.

18. On 6 December 2022, the Secretary-General lodged an appeal of the impugned Judgment with the Appeals Tribunal solely on the issue of the amount of compensation.

19. Mr. Nega filed his answer to the appeal on 3 February 2023.

Submissions

The Secretary-General's Appeal

20. The Secretary-General requests that the UNAT reduce the award for in-lieu compensation in this case, which he considers manifestly unreasonable. He argues that the UNDT erred in fact and law in failing to consider the relevant factors and instead considering irrelevant factors in making this award.

21. Relying on this Tribunal's decision in *Ashour*,⁸ the Secretary-General points out that in-lieu compensation "should be as equivalent as possible to what the person concerned would have received, had the illegality not occurred". According to the Secretary-General, the illegality found by the UNDT was the Administration's failure to consider Mr. Nega's application for TJO 152064 on a preferred non-competitive basis. Consequently, the Secretary-General argues, the proper factor to consider in determining compensation in lieu was the duration of the TJO. The Secretary-General submits that given that the TJO was only temporarily available for six months, awarding Mr. Nega two years' net-base salary was excessive.

22. The Secretary-General additionally argues that the UNDT erred in fact and law by failing to consider that Mr. Nega was receiving a retirement benefit after his separation of service. Had Mr. Nega not been separated from service he would not have received his pension. Being granted in-lieu compensation in addition to receiving his pension from the Organization constitutes unjust enrichment. The Secretary-General notes that no staff member can receive both a salary and pension benefit at the same time, and accordingly, given that Mr. Nega is receiving his pension, the UNDT's award of two years' net-base salary should be substantially reduced.

23. Lastly, the Secretary-General submits that the UNDT erred in law and in fact by considering the education grant for Mr. Nega's daughter for 2021-2022 and 2022-2023 when determining the compensatory award. The Secretary-General argues that Mr. Nega had not

⁸ *Ashour v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-899, para. 20.

submitted any evidence of support for such compensation, and that all he had provided was a transcript of expenses for the prior year (2021-2022) at St. John's University, and this transcript did not even contain the name of his daughter. Mr. Nega has also not shown that he met all of the eligibility requirements for the education grant. In sum, it was an error to consider the Administration's non-payment of the education grant when the UNDT made its compensatory award.

24. For the foregoing reasons, the Secretary-General requests that the UNAT reduce the award of compensation in lieu for Mr. Nega.

Mr. Nega's Answer

25. Mr. Nega submits that the Secretary-General has failed to demonstrate that the UNDT made an error of fact and/or law, or exceeded its competence in awarding him two years' net-base salary at level D-1 based on its finding that the Administration failed to make good faith efforts to place him in an alternative position upon abolishment of his post.

26. Mr. Nega highlights some additional facts for the Appeals Tribunal, namely, that when he reached his normal retirement age of 62 in December 2020, he elected to continue in service of the Organization with the expectation of retiring at the mandatory retirement age of 65 in December 2023.

27. Mr. Nega submits that his daughter matriculated to St. John's University in New York City on 20 August 2021 to commence full-time study and remains enrolled there. Mr. Nega submits additional school transcripts and sample education grant forms in relation thereto.⁹

28. Mr. Nega argues that the UNDT correctly concluded that his compensatory award should be set at two years' net-base salary. Mr. Nega points out that pursuant to Article 10(5)(a) of the UNDT Statute, the Dispute Tribunal's award for compensation for harm "shall normally not exceed the equivalent of two years' net-base salary" but that in "exceptional cases" it may order more, where "supported by evidence".

⁹ Respondent's Answer, Annex 13.

29. Mr. Nega recalls that the UNAT will not lightly overturn a UNDT judgment and, as was stated in *Rhyan Ramsaroop*,¹⁰ where “[t]he estimate of compensation must necessarily be somewhat rough and ready” and “[w]here the amount of compensation or damages is a matter of estimation and discretion, the appellate tribunal will be slow to intervene”.

30. Mr. Nega contends that the Secretary-General is mistaken in limiting the duration of TJO 152064 to a period of six months, and states “on information and belief” that the candidate originally selected for this position remains there to this day, such that he has been there 18 months and counting. Accordingly, Mr. Nega argues that had he been selected for this position, it is “exceedingly likely” that he would have continued to serve in this position until he reached his mandatory retirement age.

31. On information and belief, Mr. Nega also submits that the individual selected for TJO 152064 is presently serving as the Officer-in-Charge of the entire Western Africa Division at the D-2 level, thus the selection gave this individual the opportunity for promotion. Mr. Nega argues that this shows that had he been selected instead, and given his 14 years of relevant experience in West Africa and having been elected to be in a pool of candidates for senior positions, he “no doubt would have had the same opportunity”.

32. In any event, Mr. Nega argues that pursuant to the Appeals Tribunal’s Judgment in *Timothy*,¹¹ the Administration’s obligations to him extended beyond the duration of the TJO and mandated that he be placed in a suitable alternative post until he reached mandatory retirement age in December 2023. Mr. Nega points out that the two years’ net- base salary that was awarded by the UNDT was actually less than what he would have received had he been able to serve through to his mandatory retirement age (approximately 30 months).

33. Mr. Nega contends that the Secretary-General’s argument that his compensatory award should have been reduced because Mr. Nega is now receiving his pension is “wrong on its face”, that such a rule has never been applied by either the UNAT or the UNDT, and there is no jurisprudence to support this.

34. Mr. Nega acknowledges that a staff member cannot simultaneously receive a pension and a salary but contends that compensation in lieu that is calculated based on salary is not the

¹⁰ *Rhyan Ramsaroop & Miksch et al. v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1165, para. 42.

¹¹ *Timothy v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-847.

same thing as receiving a salary for services rendered. Mr. Nega avers that compensation in lieu serves a different purpose than payment for services rendered, and there is no rule barring a staff member from receiving compensation in lieu and a pension.

35. Mr. Nega also submits that the two years' net-base salary award does not come close to placing him in the same financial position that he would have been in had he been able to continue his service through to mandatory retirement age. He notes that he lost the ability to earn a full 2.5 years of salary, payments into his pension based on that salary, and education grants; as well as the possibility of a promotion to D-2 at even higher salary levels and higher pension contributions. Thus, even deducting for the pension payments received, he submits that he would still be entitled to the two years' net-base salary award from the UNDT. Mr. Nega also submits that he suffered moral damages by the Organization's failure to find him a suitable post notwithstanding his significant contributions to the Organization.

36. Finally, Mr. Nega submits that the UNDT did not err in considering the expenses of his daughter's education for 2021-2022 and 2022-2023 when setting his compensation in lieu. Mr. Nega states that it is trite law that in-lieu compensation may include compensation for benefits and entitlements that the staff member would have received absent the Administration's unlawful decision.

37. Mr. Nega states that the Secretary-General is incorrect about the transcript submitted, which in fact clearly stated his daughter's name and itemized description of the payments for the 2021-2022 school year. Mr. Nega argues that his estimate of USD 100,000 in lost education grant payments was well below the estimated cost of USD 250,000 for his daughter's education during the 2.5 years he would have been eligible to receive the education grant in the absence of the Organization's unlawful decision. He submits that the UNDT had sufficient information about these costs to factor it into its decision on in-lieu compensation.

38. Absent any finding that the UNDT's consideration of education costs was capricious, Mr. Nega avers that the UNAT should not reduce his compensatory award on this basis.

39. For all of the foregoing reasons, Mr. Nega requests that the Appeals Tribunal deny the Secretary-General's request to reduce the UNDT's award of compensation in lieu.

Considerations

40. We have before us an appeal against Judgment No. UNDT/2022/105 of the Dispute Tribunal rendered on 7 October 2022.

41. The orders of the Dispute Tribunal which constitute the main issue for determination before us are reproduced in relevant part as follows:¹²

... [Mr. Nega] must be placed in a position - among those he applied to - of the same level to that one he had at the time of the abolition of his post.

... The [Administration] is to pay to [Mr. Nega] the compensation in lieu of two years' net-base salary at the D – 1 level as per the salary scale in effect at the time of [his] separation from service.

42. We note that the discretion of the Administration to restructure its organs is wide, but not unfettered. In its restructuring efforts, the Administration must comply with its obligations towards staff members affected by the exercise.

43. This is attested to in our jurisprudence resounded in a series of recent decisions including *Fasanella*, where we stated that “an international organization necessarily has power to restructure some or all of its departments or units, including the abolition of posts, the creation of new posts and the deployment of staff”.¹³ But in the exercise of its broad discretion to do so, “the Administration has the duty to act fairly, justly and transparently in dealing with its staff members”.¹⁴

¹² Impugned Judgment, para. 61(b) and (c).

¹³ *Fasanella v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-765, para. 23 (internal citation omitted).

¹⁴ *Ibid.*

44. The Administration’s obligation to safeguard the interest of displaced employees is guided by Staff Rules 9.6(e), 9.6(f) and 13.1,¹⁵ which aim at mitigating the effects of retrenchment on staff members, notably those holding continuing appointments. We established in *Timothy* that:¹⁶

Staff Rule 9.6(e) specifically sets forth a policy of preference for retaining a staff member with a continuing appointment who is faced with the abolition of a post or reduction of staff, and creates an obligation on the Administration to make reasonable efforts to find suitable placements for the redundant staff members whose posts have been abolished.

45. It is unnecessary to elaborate on the Administration’s efforts in the instant case considering that the Secretary-General did not contest the findings of the Dispute Tribunal that “the Administration failed in its obligation to make good faith efforts to absorb [Mr. Nega] into a new post after it decided to abolish his existing post”.¹⁷ We established further in *Timothy*, that “[f]ailure to accord to the displaced staff members the rights conferred under [Staff Rule 9.6] will constitute a material irregularity”.¹⁸

46. At the same time, it is well-settled that the person concerned is required to cooperate fully.¹⁹ We have pointed out in *Fasanella*, that for cooperation to be fulfilled, “any permanent staff member facing termination due to abolition of his or her post [] must show an interest in a new position by timely and completely applying for the position”.²⁰

47. Turning to the case at hand, the Dispute Tribunal quite correctly held that Mr. Nega had satisfied a major prerequisite, by applying for the post of Deputy Director, D-1 level, Western Africa Division, DPPA, advertised as TJO 152064.²¹ He was “short listed and convoked to interview”,²² thereby satisfying the requirement of cooperation.

48. Moreover, we agree with the Dispute Tribunal’s finding that “by short listing him, the administration had tacitly acknowledged that he was deemed suitable for the position per

¹⁵ Secretary-General’s bulletin, ST/SGB/2018/1/Rev. 2 (Staff Regulations and Rules of the United Nations).

¹⁶ *Timothy* Judgment, *op. cit.*, para. 31.

¹⁷ Impugned Judgment, para. 53.

¹⁸ *Timothy* Judgment, *op. cit.*, para. 31.

¹⁹ *Ibid.*, para. 35.

²⁰ *Fasanella* Judgment, *op. cit.*, para. 31.

²¹ Impugned Judgment, para. 45.

²² *Ibid.*, para. 52.

Timothy, as a continuing appointment holder facing termination, the Administration was thus obliged from that point to consider his candidacy on a preferred, non-competitive basis”.²³ The Administration’s failure to do so led to the Dispute Tribunal’s award of compensation in lieu, which underlies the present controversy.

49. Aggrieved by the magnitude of the award of compensation in lieu, the Secretary-General filed this appeal before us arguing that the “UNDT ordered a manifestly unreasonable award of compensation in lieu which should be reduced”.

50. To begin with, the powers of the Dispute Tribunal to make such an award are both statutory and jurisprudential. Article 10(5)(a) of the UNDT Statute reproduced below in part, accords the Dispute Tribunal the following powers:

(...) Rescission of the contested Administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;

51. We have in a series of decided cases, interpreted and applied Article 10(5)(a). In *Rhyan Ramsaroop*, we held that:²⁴

(...) when rescission is granted the UNDT is obliged in terms of Article 10(5)(a) of the UNDT Statute to set an amount of in-lieu compensation that the Secretary General may elect to pay as an alternative to rescission.

52. Consequently, the purpose of compensation in lieu, as noted in *Ashour*, “is to place the staff member in the same position he or she would have been in, had the Organization complied with its contractual obligations”.²⁵ In-lieu compensation is only an alternative to rescission or specific performance which should be as equivalent as possible to what the person concerned would have received had the illegality not occurred.

53. In the instant case, the Secretary-General has not challenged the substantive findings of the UNDT underlying the order of rescission of the termination and compensation in lieu of

²³ *Ibid.*

²⁴ *Rhyan Ramsaroop*, Judgment, *op. cit.*, para. 36 (quoting *Ross v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-926, para. 49).

²⁵ *Ashour* Judgment, *op. cit.*, para. 18.

two years' net-base salary at the D-1 level awarded to Mr. Nega. Thus, we are requested in this case, as in *Mwamsaku*, "only (...) to determine if the compensation awarded in lieu of rescission was fair, adequate and reasonable or if it was in need of an upward or downward change".²⁶

54. To ascertain the need for such an upward or downward change, we pointed out in *Mwamsaku*, that "the elements which can be considered are among others, the nature and the level of post occupied by the staff member (i.e., continuous, provisional, fixed term), the remaining time, chances of renewal, etc."²⁷ It is thus understandable that the quantum of in-lieu compensation awarded would depend on the specific context of the particular case.

55. Turning to the case under review, we discern that the Dispute Tribunal was appropriately guided by these factors when making its award, specifically it looked at:²⁸

(...) the seniority of the Applicant, the type of contract held, and the chance of being offered other equivalent positions(...), and in particular taking into account the reasons for termination and the months of service left till retirement age and also considering the Administration's nonpayment of the education grant for 2021-2022 and 2022-2023 school years (...).

56. Absent any noticeable error of fact or law raised by the Secretary-General against the findings of the Dispute Tribunal, the attitude of this Tribunal in such situations was succinctly laid down in *Rhyan Ramsaroop* that:²⁹

Universally, and traditionally, it is accepted that where a lower tribunal has given a decision on a matter within its discretion in the strict sense, the appellate tribunal should interfere only if it concludes that the tribunal *a quo* had not exercised a judicial discretion by exercising it capriciously or upon wrong principle, did not bring unbiased judgment to bear on the question or did not act for substantial reasons. The exercise of power by the UNDT should not be set aside on appeal merely because the Appeals Tribunal would have preferred the UNDT to have followed a different course than the legitimate one it opted to follow.

²⁶ *Mwamsaku v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-246, para. 27.

²⁷ *Ibid.*, para. 28.

²⁸ Impugned Judgment, para. 60.

²⁹ *Rhyan Ramsaroop* Judgment, *op. cit.*, para. 41.

57. In light of our deference to the Dispute Tribunal in such matters, we find it an adventure in futility to re-examine the factors considered by the UNDT as this would amount to reviewing the matter *de novo*.

58. Be that as it may, for purposes of clarity we find it necessary to examine the points raised by the Secretary-General to substantiate his contention that the award was unreasonable and excessive.

59. In the first place, the Secretary-General argued that the Dispute Tribunal erred in law and in fact by failing to consider that TJO 152064 was only temporarily available for six months, and consequently that the latter duration should have served as the basis for computing the award for Mr. Nega. We disagree.

60. In *Ashour*,³⁰ we set the principle that the duration of the probationary period in a competitive vacancy is essential in the measure of compensation in non-selection cases. But contrary to the facts in *Ashour*, the instant appeal is not a classic case of non-selection. The discussion of TJO 152064 in the impugned Judgment was subsidiary to the substantive issue and aimed only at establishing that there had been the required cooperation of Mr. Nega in his absorption into a new post following the restructuring. Accordingly, this argument of the Secretary-General lacks merit and falls to the ground.

61. We now turn to the second arm of the Secretary-General's argument to justify the reduction of the award, namely that the "UNDT erred in fact and in law by failing to consider that [Mr. Nega] received a retirement benefit".

62. The Dispute Tribunal adequately elucidated the point that compensation in lieu is "not related at all to the economic loss suffered". We recall this Tribunal's decision in *Eissa*,³¹ where the Secretary-General did not contest the unlawfulness of the decision to terminate the staff member, but challenged, like in this case, only the remedies afforded him and prayed that the Appeals Tribunal "vacate or reduce the award of compensation in the judgment", including elimination of the termination indemnity awarded to Mr. Eissa. Although in *Eissa* we slightly modified the award on grounds specific to that matter, we nevertheless established that

³⁰ *Ashour* Judgment, *op. cit.*, para. 23.

³¹ *Eissa v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-469, para. 25.

compensation in lieu “is not compensatory damage based on economic loss. Thus, there is no reason to reduce this award by the amount of termination indemnity”.³²

63. In that vein, we held further in *Fasanella* that “the UNDT erred in reducing Mr. Fasanella’s in-lieu compensation by the amount of his termination indemnity, to which he has a right under Staff Regulations and Staff Rules”.³³ And therefore, we concluded in that appeal that “the award of in-lieu compensation [by the Dispute Tribunal] should be modified to strike the deduction for termination indemnity”.

64. The principles in the aforesaid cases render the Secretary General's averment in the case at hand, that the Dispute Tribunal erred in fact and law by failing to consider that Mr. Nega had received retirement benefits, untenable. Whether Mr. Nega received a pension or termination indemnity is irrelevant to the calculation of compensation in lieu of rescission in the peculiar circumstances of this case.

65. Inspired by the foregoing Judgments in *Eissa* and *Fasanella*, we reject the Secretary-General’s request for reduction on that score. We make lucid, as pointed out in *Herbert Robinson*, that the award contemplated under Article 10(5)(a) and (b) of the UNDT Statute “are two different heads of compensation; in-lieu compensation differs from compensation from harm. The former is an alternative to rescission or specific performance and should be equivalent as possible to what the person concerned would have received had the illegality not occurred”.³⁴

66. Finally, the Secretary-General averred that the Dispute Tribunal erred in fact and in law in considering Mr. Nega’s loss of the education grant for the 2021-2022 and 2022-2023 school years.

67. We discussed earlier the factors considered by the Dispute Tribunal, including its consideration of the education grant.³⁵ These factors were considered cumulatively. Ordinary common sense will agree to the fact that had Mr. Nega not been terminated he would have enjoyed all the advantages accruing to his post under the Staff Regulations and Staff Rules,

³² *Ibid.*, para. 27.

³³ *Fasanella* Judgment, *op. cit.*, para. 34.

³⁴ *Herbert Robinson v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1040, para. 23 (internal citation omitted).

³⁵ Impugned Judgment, para. 60.

including an education grant for his dependent children. This was our position in *Rolli*,³⁶ where we held that “we can discern no error in the UNDT’s compensatory order in this regard”, meaning, the UNDT properly accounted for Mr. Rolli’s educational expenses in making its award. We also disagree with the Secretary-General’s assertion in his brief that the transcript submitted by Mr. Nega (for 2021-2022) did not bear his daughter’s name. This is untrue. Annex 12 of Mr. Nega’s final submission to the Dispute Tribunal confirms the Secretary-General’s error on this point.

68. However, the Secretary-General’s argument that Mr. Nega never submitted a transcript of educational expenses for 2022-2023 is true. Reacting to that, Mr. Nega attached additional documentation in annex 13 to his answer to the present appeal. But that piece of evidence is immaterial to us because, as we have held in *Herbert Robinson*,³⁷ Mr. Nega has not applied for leave to call additional evidence and hence has not shown what “exceptional circumstances” exist to permit this Tribunal to accept annex 13 as additional evidence pursuant to Article 2(5) of the UNAT Statute.

69. Even without this additional evidence, we still find no error, as per *Rolli*, that Mr. Nega’s daughter’s educational expenses were considered as one of the factors, cumulatively, to arrive at the award. This renders the Secretary-General’s averment idle.

70. The Secretary-General’s contentions therefore stand rejected. Based on the foregoing, this Tribunal dismisses the appeal and affirms the impugned Judgment.

³⁶ *Angioli Rolli v. Secretary-General of the World Meteorological Organization*, Judgment No. 2023-UNAT-1346, para. 58.

³⁷ *Herbert Robinson* Judgment, *op. cit.*, para. 42.

Judgment

71. The Secretary-General's appeal is dismissed, and Judgment No. UNDT/2022/105 is affirmed.

Original and Authoritative Version: English

Decision dated this 27th day of October 2023 in New York, United States.

(Signed)

Judge Forbang, Presiding

(Signed)

Judge Sandhu

(Signed)

Judge Gao

Judgment published and entered into the Register on this 1st day of December 2023 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar