



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

Judgment No. 2024-UNAT-1409

**Lilian Ular
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Katharine Mary Savage, Presiding Judge Gao Xiaoli Judge Kanwaldeep Sandhu
Case No.:	2023-1790
Date of Decision:	22 March 2024
Date of Publication:	9 April 2024
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Vincent Oloo
Counsel for Respondent:	Rupa Mitra

JUDGE KATHARINE MARY SAVAGE, PRESIDING.

1. Ms. Lilian Ular (Ms. Ular), a former staff member with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) contested what she described as: (i) harassment, unfair treatment, and abuse of authority; (ii) her non-selection for a position that she had applied for at MONUSCO; and (iii) the Administration's mishandling of a complaint of sexual harassment made by her four years prior.

2. On 31 December 2020, by Judgment No. UNDT/2020/221 (first UNDT Judgment),¹ the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissed her first two claims but found that the Administration had abused its authority in mishandling her sexual harassment complaint (contested decisions).

3. Ms. Ular appealed against the first UNDT Judgment before the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) in which she sought, *inter alia*, an award of damages for mishandling her sexual harassment complaint. On 18 March 2022, the Appeals Tribunal issued Judgment No. 2022-UNAT-1212 (UNAT Judgment),² granting in part Ms. Ular's appeal and remanding the specific issue of compensation for harm to the Dispute Tribunal for reconsideration.

4. On 11 January 2023, by Judgment No. UNDT/2023/001 (impugned Judgment),³ the Dispute Tribunal rejected Ms. Ular's application for consideration of moral damages.

5. Ms. Ular lodged an appeal against the impugned Judgment with the Appeals Tribunal.

6. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure⁴

7. At the relevant time of events, Ms. Ular was an Administrative Assistant with MONUSCO in Kinshasa.

8. On 8 July 2015, Ms. Ular reported to her supervisor that she was sexually harassed by a colleague on the same day. The accused colleague was at the time a staff member of MONUSCO

¹ *Ular v. Secretary-General of the United Nations*, Judgment No. UNDT/2020/221.

² *Lillian Ular v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1212.

³ *Ular v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/001.

⁴ Please note that this section is partly drawn from the UNAT Judgment.

who had been seconded from the United Nations Development Programme (UNDP). Almost a year later, on 5 and 6 June 2016, Ms. Ular reported verbal harassment and abuse from the same colleague.

9. On 20 August 2017, Ms. Ular reported the alleged sexual abuse to the Office of Internal Oversight Services (OIOS).

10. On 17 November 2017, Ms. Ular requested management evaluation of several decisions of the Administration including, *inter alia*, “being abused by [a] female staff member, and no assistance accorded by [the Administration]”.⁵

11. On 28 November 2017, the Management Evaluation Unit (MEU) informed Ms. Ular by letter that her request for management evaluation was not receivable as none of the contested decisions qualified as an administrative decision.⁶

12. On 22 August 2018, OIOS completed its investigation and concluded that Ms. Ular’s complaint of sexual abuse was substantiated. On the same date, OIOS submitted its Investigation Report to UNDP for appropriate action, as the accused colleague was a UNDP staff member.

13. On 14 March 2019, Ms. Ular requested a second management evaluation of several decisions of the Administration seeking, *inter alia*, “[a]n acknowledgment that the failure to address [her] serious concerns over the years, including the sexual harassment and abuse, has grossly violated [her] rights as an employee”.⁷

14. On 15 April 2019, UNDP informed OIOS that there was insufficient evidence that the accused staff member had engaged in misconduct against Ms. Ular, and therefore, the case had been closed.

15. On 3 May 2019, the MEU informed Ms. Ular by letter that her contention that no action had been taken regarding her complaint of sexual harassment and abuse was not receivable, observing that the MEU did not have competence to review any decision taken by UNDP regarding its review of the matter given that UNDP has its own management evaluation process.⁸

⁵ Management evaluation request dated 17 November 2017.

⁶ Management evaluation response dated 28 November 2017.

⁷ Management evaluation request dated 14 March 2019.

⁸ Management evaluation response dated 3 May 2019.

16. On the same date, Ms. Ular filed an application with the Dispute Tribunal challenging the following decisions:⁹

- a. Continued harassment, unfair treatment and abuse of authority. (...)
- b. Breach of several rules and regulations.
- c. Not being considered and bypassed for promotion on several occasions resting with a decision made on 22 January 2019.
- d. Not being compensa[ted] for work performed at higher level.
- e. Failure to address claim for sexual harassment and abuse.

17. On 13 May 2019, OIOS informed Ms. Ular by letter that it had completed its investigation and concluded that her complaint of sexual abuse was substantiated, but that UNDP decided to close the case against her colleague on the basis that there was insufficient evidence that the latter had engaged in misconduct.¹⁰

Procedures before the Dispute and the Appeals Tribunals

18. On 30 October 2020, Ms. Ular filed a Motion for leave to file additional supporting documents/evidence and for leave for oral hearing (Motion) before the Dispute Tribunal. Ms. Ular attached to her Motion, *inter alia*, two medical reports dated 17 December 2019 and 20 January 2020, respectively.¹¹

19. On 31 December 2020, the Dispute Tribunal issued the first UNDT Judgment in which it only found receivable that part of Ms. Ular's application contesting the failure of the Administration to address her claim of sexual harassment. The Dispute Tribunal did not expressly rule on Ms. Ular's Motion seeking to file additional evidence. The UNDT noted the inordinate amount of time it took the Administration to respond to Ms. Ular as well as the fact that she was not properly informed throughout the investigative process. It suggested that she should have been afforded the opportunity to access the OIOS Investigation Report and the reasons given by UNDP for not pursuing the case against her colleague.¹²

20. In light of UNDP's action in closing the case on account of insufficient evidence, without engaging with Ms. Ular, the UNDT determined that such action constituted an abuse of authority.

⁹ UNDT Application dated 3 May 2019.

¹⁰ Letter from OIOS to Ms. Ular dated 13 May 2019.

¹¹ Motion for leave to file additional supporting documents/evidence and for leave for oral hearing and its annexes.

¹² *Ular v. Secretary-General of the United Nations*, Judgment No. UNDT/2020/221, paras. 43-55.

As such, it ordered the Administration to provide Ms. Ular with a clear explanation for the decision not to pursue her complaint within one month. However, it denied her any other remedy as it found that she had not provided the evidence required to support her claims.¹³

21. On 28 February 2021, Ms. Ular filed an appeal against the first UNDT Judgment with the Appeals Tribunal and requested, *inter alia*, an award of damages for the mishandling of her sexual harassment complaint.

22. On 9 March 2021, UNDP informed Ms. Ular by e-mail of the outcome of her complaint of sexual harassment, namely that the “allegations [she] made did not appear to have remained consistent over time, and the evidence to corroborate the allegations was insufficient. Overall the evidence was not sufficient to constitute ‘clear and convincing’ evidence”.¹⁴

23. On 18 March 2022, the Appeals Tribunal dismissed Ms. Ular’s claims that she had been a victim of harassment, unfair treatment, and abuse of authority or that her candidacy for a MONUSCO position was not given full and fair consideration. However, with regard to the UNDT’s finding that the Administration abused its authority in mishandling her sexual harassment complaint, the UNAT found that the UNDT erred in finding that there was no evidence supporting her claim for moral damages. The UNAT further observed that Ms. Ular sought, in her Motion, to file additional evidence to advance, among other things, medical evidence addressing her health status. Since that evidence was directly relevant to the issue of moral damages, the UNAT concluded that the UNDT’s failure to expressly rule on the Motion was an error of procedure that affected the decision of the case. The UNAT provided no opinion on whether compensation should be granted but granted the appeal in part, remanding the issue of compensation for harm to the Dispute Tribunal for reconsideration.¹⁵

Impugned Judgment

24. On 11 January 2023, the Dispute Tribunal issued the impugned Judgment, dismissing Ms. Ular’s application for consideration of moral damages. The UNDT noted that the award of compensation for harm requires that:¹⁶

¹³ *Ibid.*, paras. 56-59.

¹⁴ E-mail from UNDP to Ms. Ular dated 9 March 2021.

¹⁵ *Lillian Ular v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1212, paras. 48-56.

¹⁶ Impugned Judgment, para. 35.

[H]arm must be established by convincing medical evidence. Secondly there must be a legal breach committed by the [A]dministration and thirdly there must be a link between the damage caused and the breach committed by the [A]dministration.

25. The UNDT concluded that there was insufficient evidence to conclude that any distress caused to Ms. Ular resulted from the mishandling of her sexual harassment complaint. The medical reports provided by her did not mention either the events that were the subject of her complaint or its mishandling but rather indicated a history of illness:¹⁷

The first report of 30 November 2019 of the Centre Hospitalier prepared only after [Ms. Ular] filed her application states that [she] had complained of lack of sleep and headaches ‘for several years’. These symptoms are consistent with the 20 January 2020 diagnosis of [her] medical condition the onset of which typically occurs in a person’s late teens or early twenties. In January 2020, [Ms. Ular] was 55 years old.

26. The UNDT also determined that Ms. Ular did not demonstrate any moral harm caused by the delay in notifying her of the outcome of her sexual harassment complaint, finding that there was no ongoing delay on the dates when the medical reports were issued.¹⁸

27. On 9 March 2023, Ms. Ular filed an appeal against the impugned Judgment with the Appeals Tribunal, to which the Secretary-General responded on 9 May 2023.

Submissions

Ms. Ular’s Appeal

28. Ms. Ular appeals the decision of the UNDT, seeking the Appeals Tribunal to reverse the impugned Judgment and award her at least two years’ net base salary as compensation for harm as well as “costs of the [a]ppeal on a full indemnity basis”. Ms. Ular submits that the Dispute Tribunal erred in fact, in law and failed to exercise jurisdiction vested in it by dismissing her application and seeks an oral hearing before the Appeals Tribunal on the basis that the matter is “factually complex and legally intricate”.¹⁹

29. Ms. Ular takes issue with the UNDT’s denial of her request for an oral hearing, where the doctors could have testified to clarify the content of the medical reports. In the absence of

¹⁷ *Ibid.*, para. 39. Please note that the impugned Judgment seems to refer to the medical report dated 17 December 2019 rather than 30 November 2019.

¹⁸ *Ibid.*, paras. 38 and 40-41.

¹⁹ Appeal form.

an oral hearing, she submits that it was not open to the Dispute Tribunal to question the sufficiency or the content of these reports.

30. Ms. Ular contends that the UNDT failed to exercise the jurisdiction vested in it by limiting itself to considering the moral harm caused to her as a result of the delay in notifying her of the outcome of her sexual harassment complaint when the entire handling of her complaint was found procedurally and substantively flawed. Ms. Ular also refers the Appeals Tribunal to what she describes as “gross abuse of authority” by the Administration.²⁰

31. In addition, Ms. Ular submits that the UNDT erred in law by elevating the evidentiary standard required for an award of moral damages. Relying on Appeals Tribunal jurisprudence, she argues that the evidence supporting a claim for compensation for moral harm does not need to be of a medical nature and that evidence to prove moral injury may take the form of a medical report that “can be directly be linked *or reasonably attributed* to a breach of (...) her substantive or procedural rights”.²¹ In the present case, she submits that she met that standard and should not have been expected to dictate to the doctors the content of their reports.

32. Ms. Ular also contends that the UNDT erred in law by adopting the Secretary-General’s submissions without reservation regarding her alleged history of illness predating her complaint. Ms. Ular observes that the Secretary-General’s allegations in this regard were not supported by any evidence and that the UNDT erred in law in finding that she had not met the legal threshold for an award of moral damages.

33. Several errors of fact on the part of the UNDT are alleged in its analysis of the medical reports submitted. Ms. Ular submits that it was a “gross misrepresentation” of the medical reports to conclude that they showed a history of ill health when they established a causal link and made several references to the incidents that led to her complaints. However, even if the Appeals Tribunal were to conclude that the medical reports did not specifically mention her complaints, Ms. Ular argues that she still meets the evidentiary standard required for an award of moral damages.

²⁰ With regard to the “gross abuse of authority”, Ms. Ular reiterates the same allegations of harassment, unfair treatment and abuse of authority that were dismissed by the Appeals Tribunal in the UNAT Judgment.

²¹ *Asariotis v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-309, para. 36 (emphasis added).

34. Ms. Ular also observes that the UNDT wrongly concluded that there was no ongoing delay on the dates when the medical reports were issued. On the contrary, she contends that the “fact that OIOS reacted to [her] [a]pplication by e-mailing her, 10 days post-filing, on the status of her complaint does not eliminate the [two]-year delay in handling the sexual harassment complaint and the consequences of said delay on [her] mental and physical well-being”. Finally, Ms. Ular contends that the Dispute Tribunal erred in fact in concluding that she did not raise the question of abuse of power in her application.²²

The Secretary-General’s Answer

35. The Secretary-General opposes the appeal and seeks that the Appeals Tribunal uphold the impugned Judgment and dismiss the appeal, noting that it is not open to Ms. Ular to raise her allegations of harassment, unfair treatment, abuse of authority or non-selection anew before the Appeals Tribunal. The UNDT was required to, and correctly considered, whether there was evidence of moral harm caused by the delay in notifying her of the outcome of her complaint, with the only finding of unlawfulness by the UNDT being the delay in providing Ms. Ular with an explanation for the decision not to pursue her allegations of sexual harassment.

36. The Secretary-General submits that the UNDT applied the appropriate evidentiary standard required for an award of moral damages and correctly found that the medical reports and the fact that Ms. Ular complained in general terms to the doctors about her workplace issues did not establish that her harm stemmed from the Administration’s undue delay in notifying her of the outcome of her complaint of sexual harassment.²³ On the contrary, the Secretary-General notes that Ms. Ular was already experiencing illness for several years.

37. Ms. Ular’s reliance on Appeals Tribunal jurisprudence is said to be misplaced since *Asariotis*²⁴ was issued before the amendment to Article 10(5)(b) of the Dispute Tribunal Statute (UNDT Statute) and Article 9(1)(b) of the Appeals Tribunal Statute (Statute) requiring that the Tribunals may only order compensation for harm if the harm is supported by evidence. It follows

²² Impugned Judgment, para. 43.

²³ The Secretary-General further observes that, unlike in the present case, in *Malsei v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-637, there was a causal link (“episodes of severe anxiety and panic” that “started due to a stressful situation at work”) indicating the origin of the staff member’s health issues in the medical report considered by the UNAT.

²⁴ *Asariotis* Judgment, *op. cit.*

that for an award of moral damages, “[t]here must indeed be proven harm stemming directly from the Administration’s illegal act or omission for compensation to be awarded”.²⁵

38. The UNDT enjoys a broad discretion to determine whether an oral hearing is required,²⁶ with Ms. Ular having been provided an adequate opportunity to produce evidence required. The Secretary-General submits that Ms. Ular has failed to explain how the doctors could have established a causal link before the UNDT when their medical reports did not do so contemporaneously.

39. It was not unlawful for the Dispute Tribunal to find the Secretary-General’s submissions persuasive. The Secretary-General contends that the UNDT’s conclusion regarding Ms. Ular’s history of ill health predating her complaint was not unreasonable. The medical report dated 17 December 2019 mentioned her headaches and trouble sleeping over several years, with no medical report indicating the cause of her depression and bipolar mood disorder. In addition, the medical report dated 20 January 2020, recorded that Ms. Ular was “euthymic”, i.e., that she was feeling well. It follows that the cause of these medical issues may have been for various reasons other than the Administration’s delay in handling her sexual harassment complaint.

40. With regard to Ms. Ular’s contention that the UNDT wrongly concluded that there was no ongoing delay when the medical reports were issued, the Secretary-General notes that it was only one of several elements that the Dispute Tribunal took into consideration to dismiss Ms. Ular’s application.

Considerations

Application for oral hearing

41. Ms. Ular sought an oral hearing of this appeal on grounds that it could assist this Tribunal in its determination of the matter, given its factual complexity and legal intricacies. Under Article 8(3) of the Statute and Article 18(1) of the Appeals Tribunal Rules of Procedure, the Appeals Tribunal may grant an oral hearing if it would “assist in the expeditious and fair disposal of the case”. The Secretary-General filed no submissions regarding this request.

²⁵ *Korkut Yavuz v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1266, para. 32.

²⁶ *Herbert Robinson v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1040.

42. This Tribunal has refused oral hearings where the factual and legal issues arising from the appeal have already been clearly defined by the parties and an oral hearing would not “assist in the expeditious and fair disposal of the case”.²⁷ An appeal is not a rehearing of the matter but an opportunity for the parties to address narrow issues, including errors of law, fact, and jurisdiction. The factual and legal issues in this appeal have been clearly defined by the parties and we are not persuaded that an oral hearing would assist in the expeditious and fair disposal of the case. For these reasons, the request for an oral hearing is denied.

Merits of the appeal

43. An appellant must bring an appeal within the jurisdiction of this Tribunal, which in terms of Article 2(1) of the Statute, is competent:

[T]o hear and pass judgment on an appeal against a judgment rendered by the [UNDT] in which it is asserted that the Dispute Tribunal has:

- (a) exceeded its jurisdiction or competence;
- (b) failed to exercise jurisdiction vested in it;
- (c) erred on a question of law;
- (d) committed an error in procedure, such as to affect the decision of the case; or
- (e) erred on a question of fact, resulting in a manifestly unreasonable decision.

44. On 18 December 2014, by General Assembly resolution 69/203, Article 10(5) of the UNDT Statute and Article 9(1) of the Statute were similarly amended. Article 10(5)(b) of the UNDT Statute now provides that the UNDT may order:

Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years’ net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

45. The importance of the amendment to these Articles is that three elements must now be proved in order for compensation for harm to be awarded to a staff member, namely: (i) an illegality; (ii) the harm itself; and (iii) a nexus between these two requirements.²⁸ It is thus not

²⁷ *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-712, para. 12. See also *Mustapha Guenfoudi v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1364, paras. 61-62; *Anshasi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2017-UNAT-790, para. 15.

²⁸ *Kebede v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-874, para. 20.

enough to simply demonstrate the existence of an illegality in order to obtain compensation.²⁹ The claimant bears an additional burden to adduce sufficient evidence to prove that the illegality caused moral injury or harm that should be compensated. Further, while the facts may in some circumstances speak for themselves and be sufficient to allow a finding of harm, this is not always the case.³⁰

46. In issue in this appeal is whether the UNDT erred in dismissing Ms. Ular's claim for moral damages on the basis that no harm was proved to be attributable to the illegality found to exist. Ms. Ular contends that, in the submission of her medical reports to the UNDT, the required standard had been met, as she had provided the evidence required to justify an award of damages in these circumstances. She further argues that she should not have been expected to dictate the content of such reports to the doctors.

47. However, the medical report dated 17 December 2019 submitted by Ms. Ular recorded that she had complained of lack of sleep and headaches "for several years". Such symptoms were consistent with a diagnosis on 20 January 2020 of a medical condition, the onset of which typically occurs in a person's late teens or early twenties. As of January 2020, Ms. Ular was 55 years old. It followed that, based on the evidence before the UNDT, no nexus was proved between the illegality committed against Ms. Ular and any harm suffered by her as a result.

48. Compensation must be determined following a principled approach and on a case-by-case basis.³¹ In *Applicant*,³² this Tribunal found that to sustain a claim for moral damages, there must be supporting evidence beyond simply the staff member's own testimony. In *Coleman*,³³ it was emphasized that the evidence produced must be related to the harm suffered, failing which an entitlement to moral damages does not arise. In that case, the evidence produced could not "be directly linked, or reasonably attributed, to a breach of [the staff member] substantive or

²⁹ *Marius Mihail Russo-Got v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1095, para. 39; *Kallon v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742, para. 60.

³⁰ *Kallon* Judgment, *op. cit.*, para. 63.

³¹ *Belkhabbaz v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-873, para. 90.

³² *Applicant v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1001/Corr. 1, para. 43.

³³ *Sarah Coleman v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1228, paras. 39 and 42-43.

procedural rights” as a result of which a finding was unable to be made that “the stress, harm or anxiety [was] such as to merit a compensatory award”.³⁴

49. We are satisfied that the UNDT did not commit an error of law or fact in refusing to award Ms. Ular compensation for harm in the form of moral damages, in that she failed to advance evidence to prove an entitlement to compensation for any such harm suffered.

50. As to the costs of the appeal, which Ms. Ular sought be paid on a full indemnity basis, legal costs may, in terms of Article 9(2) of the Statute, be awarded against a party where it is apparent that there has been a manifest abuse of the proceedings before this Tribunal. No such abuse of process exists and there is therefore no basis on which to justify an award of costs in this matter.

51. It follows for these reasons that the appeal cannot succeed and must be dismissed.

³⁴ *Ibid.*, para. 42.

Judgment

52. Ms. Ular's appeal is dismissed, and Judgment No. UNDT/2023/001 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 22nd day of March 2024 in New York, United States.

(Signed)

Judge Savage, Presiding

(Signed)

Judge Gao

(Signed)

Judge Sandhu

Judgment published and entered into the Register on this 9th day of April 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar