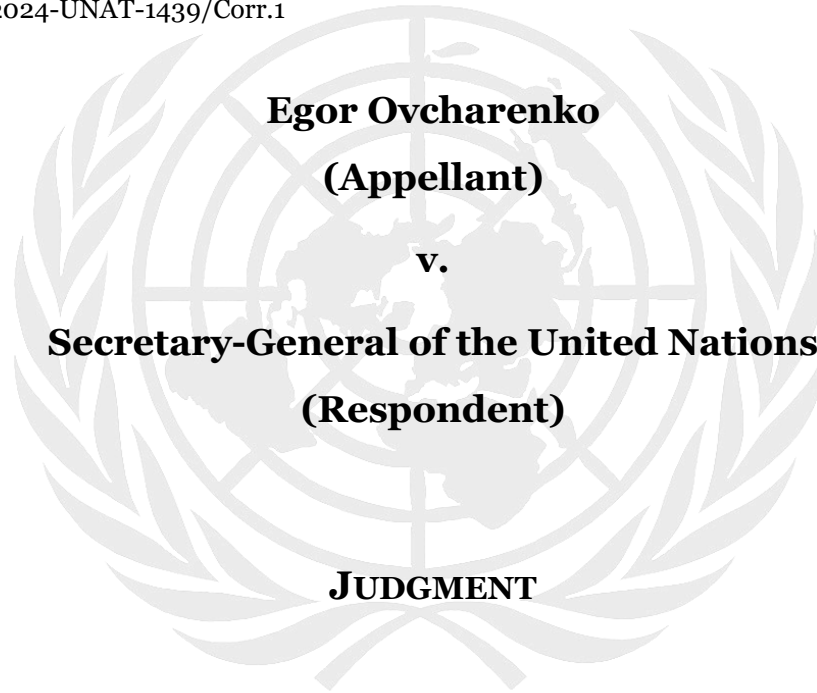




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2024-UNAT-1439/Corr.1



Egor Ovcharenko

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Leslie F. Forbang, Presiding Judge Nassib G. Ziadé Judge Abdelmohsen Sheha
Case No.:	2023-1796
Date of Decision:	22 March 2024
Date of Publication:	21 May 2024
Registrar:	Juliet E. Johnson

Counsel for Appellant: George Irving

Counsel for Respondent: Angélique Trouche/Amanda Stoltz

Reissued for technical reasons on 22 May 2024

JUDGE LESLIE F. FORBANG, PRESIDING.

1. Mr. Egor Ovcharenko, a P-4 Reviser in the Russian Translation Service, Documentation Division, Department for General Assembly and Conference Management (DGACM), and other staff members of DGACM contested before the UNDT the “unilateral change in the individual workload standards for translation and self-revision” (contested decision) as decided by the Under-Secretary-General for DGACM (USG/DGACM). By Judgment No. UNDT/2021/084 dated 16 July 2021,¹ the Dispute Tribunal dismissed the applications finding them not receivable *ratione materiae*. Several staff members, including Mr. Ovcharenko, appealed the UNDT Judgment arguing *inter alia* that the UNDT had failed to exercise jurisdiction by refusing to decide their cases on the merits. By Judgment No. 2022-UNAT-1262 dated 1 July 2022,² the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) granted the appeal and remanded the case to the UNDT for a determination on the merits.

2. On 26 January 2023, the UNDT issued Judgment No. UNDT/2023/006 dismissing the application in its entirety on the merits.³

3. Mr. Ovcharenko has filed an appeal.

4. For the reasons that follow, we dismiss the appeal and affirm the impugned Judgment.

Facts and Procedure

5. Mr. Ovcharenko is a Reviser at the P-4 Level in the Russian Translation Service, Documentation Division, DGACM.

6. On 31 December 2020, the General Assembly adopted resolution 75/252 (Questions relating to the proposed programme budget for 2021), in which it:⁴

welcome[d] the increased throughput productivity of the translation services at all duty stations, underline[d] that these productivity gains, enabled over the years by new working methods and technologies, justif[ied] revising the current notional workload

¹ *Ovcharenko et al. and Kutner et al. v. Secretary-General of the United Nations*, Judgment No. UNDT/2021/084.

² *Egor Ovcharenko et al. and Daniel Edward Kutner et al. v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1262 (Appeal Judgment).

³ *Ovcharenko et al. and Edward Kutner et al. v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/006 (impugned Judgment).

⁴ Appeal Judgment, para. 5.

standards approved in the pre-computer era by the General Assembly and decide[d] to increase the workload standards for the translation services to 5.8 pages per day[.]

7. On the same day, the USG/DGACM established a working group on the implementation of this new workload standard decided by the General Assembly.⁵ Over the first months of 2021, the implementation of this new workload standard was discussed at meetings between DGACM management and staff representatives. In addition, the working group reported on its work at global information sessions during which DGACM staff could ask questions. On 7 April 2021, the working group shared with concerned DGACM staff members its report on the new workload standards.⁶

8. On 8 April 2021, the USG/DGACM held a townhall meeting with staff members in which he discussed the implementation of the General Assembly resolution. He conveyed the decision to increase the workload standards of the translation services approved by the General Assembly in resolution 75/252 by increasing the daily workload of translators to 5.8 pages and of self-revisers to 6.4 pages.

9. On 26 April 2021, Mr. Ovcharenko, as well as other colleagues, requested management evaluation of the contested decision.⁷

10. On 29 April 2021, the Administration rejected the request for management evaluation as not receivable on grounds that the announcement made by the USG/DGACM did not directly affect “any individual staff member’s terms of employment”.⁸

11. Mr. Ovcharenko and other colleagues filed two applications with the UNDT challenging the alleged “unilateral change in the individual workload standards for translation and self-revision” of 8 April 2021. The UNDT joined the cases for consideration.⁹

12. By Judgment No. UNDT/2021/084, the Dispute Tribunal found that the applications were not receivable *ratione materiae* since the “announcement” by the USG/DGACM on 8 April 2021

⁵ E-mail by USG/DGACM establishing Working Group, Annex 3 to Secretary-General’s Answer.

⁶ Summary of meetings, Annex 5 to Secretary-General’s Answer; Report of the working group on workload standards, Annex 6 to Secretary-General’s Answer.

⁷ Appeal Judgment, para. 8.

⁸ *Ibid.*, para. 9.

⁹ *Ibid.*, paras. 10 and 11.

did not constitute an appealable administrative decision, and moreover the request for management evaluation on 26 April 2021 was premature.

13. In Judgment No. 2022-UNAT-1262, the UNAT found that the USG/DGACM's announcement on 8 April 2021 did produce direct adverse legal consequences affecting the terms and conditions of employment and remanded the case to the UNDT for a trial on the merits.

14. On 30 December 2022, in resolution 77/262, the General Assembly recalled its resolution 75/252 and "request[ed] the Secretary-General to fully implement the revised individual productivity standards for translation, and reaffirm[ed] the coefficients reflected therein, used to convert all assignments to 5.8 pages per day for translation and adjusted upward accordingly for self-revision and revision".¹⁰

15. On 26 January 2023, the UNDT issued Judgment No. UNDT/2023/006 dismissing the application in its entirety on the merits. The UNDT found that the increase of the workload standards for self-revision to 6.4 pages was a lawful exercise of the USG/DGACM's discretionary authority. The USG/DGACM is "charged with the overall responsibility of managing the work of the Department and its staff members" and this "includes deciding the specific workload standards and work output requirements".¹¹ Accordingly, the UNDT concluded that the proportional adjustment of workload standards for self-revision services was a matter that fell squarely within the USG/DGACM's discretionary authority.¹² Moreover, the UNDT found that the contested decision was taken based on the recommendations of a working group, which undertook a thorough, logical and methodological review of the workload standards for translation, revision and self-revision services, and was both fair and reasonable.¹³

16. The UNDT also found that the USG/DGACM followed all proper procedures when taking and implementing the contested decision.¹⁴ Specifically, the UNDT determined that neither Staff Regulation 8.1 nor ST/SGB/274 (Procedures and terms of reference of the staff management consultation machinery at the departmental or office level) were applicable in the present case since they do not apply to specific appealable administrative decisions.¹⁵ Finally, the UNDT

¹⁰ A/RES/77/262 of 30 December 2022 (Questions related to the proposed programme budget for 2023), para. 37.

¹¹ Impugned Judgment, para. 22.

¹² *Ibid.*, para. 23.

¹³ *Ibid.*

¹⁴ *Ibid.*, para. 36.

¹⁵ *Ibid.*, para. 29.

concluded that even if Staff Regulation 8.1 and ST/SGB/274 were applicable, which the UNDT found they were not, the facts of the case demonstrated that the affected staff members had been properly consulted.¹⁶

17. On 27 March 2023, Mr. Ovcharenko filed an appeal of the impugned Judgment with the UNAT. On 28 March 2023, the UNAT Registry transmitted the appeal to the Secretary-General. The Secretary-General filed his answer on 30 May 2023.

Submissions

Mr. Ovcharenko's Appeal

18. Mr. Ovcharenko argues that the UNDT committed errors of fact and law. Specifically, he contends that the UNDT incorrectly identified the contested decision. Mr. Ovcharenko never contested the decision of the General Assembly setting a nominal figure for pages of translation, but rather the implementation of this decision by the Administration. On 8 April 2021, the USG/DGACM decided to approve a detailed proposal for an increase in the workload in accordance with the new standards, essentially by working longer hours. The changes were expanded beyond the intent of the General Assembly resolution and imposed without any prior staff/management consultations, although it had been requested. As a result, they were imposed without the necessary support or transitional arrangements required and without a clear understanding of their implications for those affected. They were imposed without consideration for the team structure of the services, for differing experience, or for the difficulty of the texts.

19. Mr. Ovcharenko submits that pursuant to Staff Regulation 8.1(a), staff members are entitled to formal staff/management consultations on changes in their conditions of service. No such consultations preceded the adoption of the new policy. Virtual meetings with staff do not constitute effective participation of staff representational bodies as required under the Staff Regulations. Information sessions are not staff/management consultations. While the UNDT correctly considered that consultation does not require agreement, it does require good faith. The refusal to engage in any such consultations prior to the original contested decision, and the subsequent refusal to address concerns, violates this requirement. Secretary-General's Bulletin ST/SGB/274 mandates the process for applying this requirement at the departmental level.

¹⁶ *Ibid.*, paras. 30 to 35.

Despite repeated requests to engage in such discussions, no consultation preceded the adoption of the new policies implementing the General Assembly resolution.

20. Staff surveys conducted by staff representatives in 2021 and 2022 demonstrated a clear detrimental impact of the implementation of the new workload standards on staff welfare and working conditions. After fruitless efforts at the departmental level to have concerns heard, the issues were referred to and raised at the Staff Management Committee where the spokespersons requested postponement of further changes until a staff/management working group could take up the issues. The Administration demonstrated the absence of good faith by constantly circumventing consultations with staff representatives and addressing Member States. Instead, a virtual townhall took place on 12 January 2023 during which the new management decisions were announced. Mr. Ovcharenko claims that it becomes apparent that the Administration *de facto* denied the right of staff to be consulted on issues concerning staff welfare and working conditions.

21. The UNDT erred in its consideration of a General Assembly resolution adopted subsequent to the contested decision. The original claim concerns the decision taken in 2021 to implement a General Assembly resolution adopted in 2020. The UNDT erred in basing its Judgment on a General Assembly resolution adopted in 2022.

22. Finally, Mr. Ovcharenko claims that the impugned Judgment effectively denies him an avenue for redress over an issue of fundamental importance to his service.

23. Mr. Ovcharenko requests that the Appeals Tribunal grant the appeal, rescind the contested decision and award appropriate compensation.

The Secretary-General's Answer

24. The Secretary-General contends that Mr. Ovcharenko fails to demonstrate any error warranting the UNAT's intervention. The UNDT properly exercised its competence and correctly captured the issues subject to judicial review in its identification of the contested decision. In addition, the fact that Mr. Ovcharenko challenged the USG/DGACM's implementation of the General Assembly's decision, and not the General Assembly's decision itself, was not in dispute in the present case and the UNDT did not make any finding to the contrary. Accordingly, Mr. Ovcharenko has not demonstrated any reversible error on the part of the UNDT.

25. Mr. Ovcharenko has also failed to demonstrate any error in relation to the consultation of staff representative bodies. As Staff Regulation 8.1 and ST/SGB/274 are not concerned with individual decisions, the UNDT correctly determined that neither Staff Regulation 8.1 nor ST/SGB/274 were applicable in the present case. This case relates to the implementation of the General Assembly's decision to increase workload standards by 16 percent for translation to 5.8 pages. The Secretary-General, through the USG/DGACM, was accountable for implementing General Assembly resolution 75/252. As correctly found by the UNDT, this included "deciding the specific workload standards and work output requirements". The UNDT correctly concluded that the Administration's decision to proportionally increase workload standard for self-revision was a rational use of discretionary authority.

26. The Secretary-General submits that, assuming, for the sake of the argument, consultation was required (which it was not), the UNDT was correct in determining that, in such case, the affected staff members were appropriately consulted. The Administration engaged with good faith in extensive consultations with staff representative bodies and continuous information efforts with staff members. It was established that management and staff representative meetings were held on 15 January and 18 March 2021 and a townhall meeting (Meeting) between the USG/DGACM and staff was held on 8 April 2021. Prior to the Meeting, DGACM management and staff representatives met in various formats on 15 January, 26 January, 1 March, 4 March, 15 March, 18 March, and 1 April 2021. Staff representatives made proposals on 4 March 2021 and, as per the request of the USG/DGACM, the Working Group on Workload Standards prepared a table with written answers to each proposal. In addition, this working group reported on its work to DGACM staff at five global information sessions during which DGACM staff were able to participate and ask questions. Such efforts continued after the Meeting.

27. The Secretary-General contends that Mr. Ovcharenko fails to demonstrate any error in relation to the UNDT's consideration of a recent General Assembly resolution. It is clear that the UNDT properly considered the USG/DGACM's implementation of General Assembly resolution 75/252 in view of the applicable legal framework and the facts and evidence before it, and that the UNDT did not base its Judgment on any of the relevant General Assembly resolutions that post-dated the contested decision. The UNDT made it clear that it would not give any legislative act retroactive effect. And, although the UNDT correctly noted that the General Assembly, in its resolution 77/262, had "affirmed the contested decision", it also explicitly stated that "nothing in

General Assembly resolution 76/245, ACABQ report A/76/7, A/C.5/77/L.23, or General Assembly resolution A/RES/77/262, changes the Tribunal's conclusion.”

28. In view of the lawfulness of the contested decision, Mr. Ovcharenko is not entitled to any remedies. Moreover, the General Assembly endorsed and affirmed the contested decision and, in resolution 77/262, recalled “paragraphs I.57 and I.59 of the report of the Advisory Committee” and explicitly requested the Secretary-General to “fully implement the revised individual productivity standards for translation, and to adjust the 5.8 pages per day for translation upwards accordingly for self-revision and revision”. The General Assembly, in its resolution 77/262, did not decide upon any new workload standards to be applicable *ex post facto*, but simply reaffirmed the original intention of resolution 75/252. Accordingly, the matters raised in Mr. Ovcharenko's appeal appear to be academic, and the rescission of the contested decision would no longer be of any practical effect. In addition, Mr. Ovcharenko is not entitled to any compensation, having made no such request before the UNDT. He has also not provided any evidence of harm and there is thus no basis for any award of compensation for damages.

29. The Secretary-General requests that the UNAT affirm the impugned Judgment and dismiss the appeal.

Considerations

30. The main issues for determination are: a) whether the UNDT erred in identifying the contested decision; b) whether the UNDT erred in finding neither Staff Regulation 8.1 nor ST/SGB/274 applicable, and, in the affirmative, whether the UNDT erred in finding that even if Staff Regulation 8.1 and ST/SGB/274 were applicable, the necessary staff/management consultations had taken place; c) whether the UNDT erred in finding that the contested decision, namely to increase the daily workload requirement of self-revision services to 6.4 pages, was a lawful exercise of the USG/DGACM's discretionary authority; and d) whether Mr. Ovcharenko is entitled to any compensation. These issues shall be examined in turn.

a) Whether the UNDT erred in identifying the contested decision

31. Mr. Ovcharenko argues that the UNDT incorrectly identified the contested decision. He had challenged the Administration's implementation of the decision of the General Assembly setting a nominal figure for pages of translation and not the General Assembly resolution itself. The Secretary-General on the other hand contends that the UNDT properly exercised its

competence and correctly captured the issues subject to judicial review in its identification of the contested decision.

32. Under Article 10(6) of the Appeals Tribunal Statute, judgments of the Appeals Tribunal shall be final. The Appeals Tribunal has consistently held that where an issue has been decided in a final judgment, such issue becomes *res judicata*. It cannot be litigated again before the Tribunals. The principle of *res judicata* creates legal certainty and brings disputes already litigated to finality.¹⁷

33. In the present case, the Appeals Tribunal found in Judgment No. 2022-UNAT-1262 that the USG/DGACM's announcement on 8 April 2021 constituted an appealable administrative decision and specifically remanded the case to the UNDT to try the case on the merits on that particular ground. The principle of *res judicata* thus bars Mr. Ovcharenko from raising this issue again. The UNDT merely abided by our ruling in considering that announcement as the contested decision. In doing so, we find that the UNDT did not err in fact or in law.

b) Whether the UNDT erred in finding neither Staff Regulation 8.1 nor ST/SGB/274 applicable

34. It is settled law that Staff Regulation 8.1 and ST/SGB/274 impose a duty on the Administration to establish a staff representative body to undertake meaningful consultations with the affected staff members in particular circumstances.

35. In the matter at hand, the Dispute Tribunal determined that neither Staff Regulation 8.1 nor ST/SGB/274 were applicable in the present case since they are not applicable in relation to a specific appealable administrative decision.¹⁸

36. Mr. Ovcharenko submits that pursuant to Staff Regulation 8.1(a), staff members are entitled to formal staff/management consultations on changes in their conditions of service. The Secretary-General on his part argues that Mr. Ovcharenko failed to demonstrate any error in relation to the consultation of staff representative bodies and that the UNDT correctly determined that neither Staff Regulation 8.1 nor ST/SGB/274 were applicable in the present case since neither is concerned with individual decisions.

¹⁷ See *Tejbir Singh Soni v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1414, para. 25.

¹⁸ Impugned Judgment, para. 29.

37. We agree with the UNDT that contested decisions which are specific appealable administrative decisions, and which have a “tangible individual direct impact”¹⁹ for each affected staff member, constitute individual cases and therefore should not be normally subject to staff consultation. We therefore find no error in the UNDT Judgment in this regard.

c) Whether the UNDT erred in finding that the contested decision, namely to increase the daily workload requirement of self-revision services to 6.4 pages, was a lawful exercise of the USG/DGACM’s discretionary authority

38. Article 101 paragraph 1, of the Charter of the United Nations provides in part that “[t]he staff shall be appointed by the Secretary-General under regulations established by the General Assembly”. And in accordance with Staff Regulation 1.1(a), “[s]taff members are international civil servants”.

39. By the same token, pursuant to Staff Regulation 1.2(c), “[s]taff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations”.

40. We have held in *Gehr* and re-echoed in *Hepworth* that, “[t]raditionally, the reassignment of staff members’ functions comes within the broad discretion of the Organization to use its resources and personnel as it deems appropriate”.²⁰

41. In the same vein, in the seminal case of *Sanwidi*, we clarified that:²¹

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

¹⁹ *Ibid.*

²⁰ *Hepworth v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-503, para. 45, citing *Gehr v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-236.

²¹ *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 40.

42. We have consistently held that the Administration has broad discretion to “reorganize the operations and departments to meet changing needs and economic realities”.²²

43. We recognize the universally accepted principle that as a matter of law, an employment relationship creates mutual obligations between the employer and the employee. In this light, the principle governing the obligations of parties under an employment contract within the United Nations system is that of “shared responsibility”, as set out in *Timothy* and followed in the more recent case of *Andrysek*.²³

44. This principle obliges the Administration and the staff member to take corresponding steps in the event of changes in the terms or conditions of the contract of employment. In that regard, we recall our opinion in *Gabaldon* that “an employment contract of a staff member subject to the internal laws of the United Nations is not the same as a contract between private parties”.²⁴ It follows therefore, from our well-established position in *Hossain* that “an international organization necessarily has the power to restructure some or all of its departments or units”.²⁵

45. We therefore agree that the increase in workload in the matter at hand can be construed as part of the restructuring of a department or unit by the Secretary-General. It therefore stands to reason that an international organization, in this case the United Nations acting through the Secretary-General to whom it devolves general authority and acting in implementation of General Assembly resolution 75/252, had the power within his discretion to increase the workload of staff members of DGACM as part of the restructuring process.

46. Consequently, we agree with the Secretary-General that the UNDT correctly noted that the USG/DGACM is charged with the overall “responsibility of managing the work of the Department and its staff members”.²⁶

²² *Hassanin v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-759, para. 45.

²³ *Oldrich Andrysek v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1169, paras. 13, 65 and 83, citing *Timothy v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-847.

²⁴ *Gabaldon v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-120, para. 22, citing *James v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-009, para. 45.

²⁵ *Hossain v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1359, para. 51, citing *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902, para. 34.

²⁶ Impugned Judgment, para. 22.

47. Accordingly, and although General Assembly resolution 75/252 only implicitly regulates the workload standard for translation services, the UNDT correctly concluded that the proportional adjustment of workload standards for self-revision services was a matter that fell squarely within the Administration's discretionary authority.²⁷

48. Moreover, as noted by the UNDT, the contested decision was taken based on the "recommendations of a Working Group, which undertook a thorough, logical and methodological review of the workload standards for the translation, revision and self-revision services and was both fair and reasonable".²⁸

49. In the present case, the question is whether an increase in translation and self-revision workload of a few pages would be unique and unusual to come under the purview of the principle enunciated above. The answer is definitely not in the affirmative. The decision to increase workload was not only reasonable and proportionate in accordance with the internal practices of the Organization, but satisfied the test in *Sanwidi*.²⁹

d) Whether Mr. Ovcharenko is entitled to compensation

50. Mr. Ovcharenko requests that the Appeals Tribunal grant the appeal, rescind the contested decision and award appropriate compensation.

51. Having determined that the contested decision was lawful, there can be no compensation.³⁰ The request for compensation thus falls to be dismissed.

²⁷ *Ibid.*, para. 23.

²⁸ *Ibid.*

²⁹ *Sanwidi* Judgment, *op. cit.*

³⁰ *Elmira Ela Banaj v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1357, para. 118.

Judgment

52. The appeal is dismissed, and Judgment No. UNDT/2023/006 is affirmed.

Original and Authoritative Version: English

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

(Signed)

(Signed)

(Signed)

Judge Forbang, Presiding

Judge Ziadé

Judge Sheha

Judgment published and entered into the Register on this 21st day of May 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar