



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

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Judgment No. 2024-UNAT-1460

**Al Waleed Abdelrahman Abdrabou  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Leslie F. Forbang, Presiding Judge Katharine Mary Savage Judge Abdelmohsen Sheha
Case No.:	2023-1831
Date of Decision:	28 June 2024
Date of Publication:	30 July 2024
Registrar:	Juliet E. Johnson

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Counsel for Appellant: Self-represented

Counsel for Respondent: Francisca Lagos Pola

**JUDGE LESLIE F. FORBANG, PRESIDING.**

1. Mr. Al Waleed Abdelrahman Abdrabou, a former Security Assistant (G-5) at the United Nations Development Programme (UNDP) in Hodeidah,<sup>1</sup> Yemen, contested a disciplinary decision to separate him from service, with compensation in lieu of notice and without termination indemnities, for having engaged in entitlement fraud by submitting forged documents for reimbursement for medical services that were not received (contested decision).
2. By Judgment No. UNDT/2023/037, the United Nations Dispute Tribunal (UNDT) dismissed the application on the merits (impugned Judgment).<sup>2</sup>
3. Mr. Abdrabou lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

**Facts and Procedure<sup>3</sup>**

5. Mr. Abdrabou commenced service with the Organization in Yemen in 2008.<sup>4</sup> From 1 May 2016, he was employed by UNDP under a fixed-term appointment with service limited to the United Nations Department of Safety and Security (UNDSS).<sup>5</sup>
6. Whereas Mr. Abdrabou served in Hodeidah, his wife and two of his youngest children lived in Sana'a at the material time and he visited them there regularly.<sup>6</sup> His eldest child, a son (BB) born in 2009, did not live with him but with his former wife in another part of the country.<sup>7</sup>
7. Locally recruited staff members holding a UNDP letter of appointment and stationed outside United Nations Headquarters, like Mr. Abdrabou, were provided with health insurance

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<sup>1</sup> Also spelled as Hudaydah and Al-Hadida in the case records.

<sup>2</sup> *Abdrabou v. Secretary-General of the United Nations*, Judgment dated 29 May 2023.

<sup>3</sup> Summarized from the impugned Judgment as relevant to the appeal.

<sup>4</sup> Response to Charge Letter (Annex 5 to the supplementary filing), para. 13; Investigation Report, para. 2.

<sup>5</sup> *Ibid.*; the Secretary-General's answer to the appeal, para. 2.

<sup>6</sup> Response to Charge Letter (Annex 5 to the supplementary filing), paras. 14-16.

<sup>7</sup> *Ibid.*; Investigation Report, para. 7.

under the medical insurance plan (MIP), which is a self-insurance plan.<sup>8</sup> The MIP provided health insurance for eligible staff members and their family members. Cigna International Health Service (Cigna) administered the MIP on behalf of UNDP, reviewed claims submitted and processed reimbursements for insured claimants. UNDP funded Cigna's payments to insured claimants and was ultimately responsible for covering the costs of any reimbursements processed by Cigna and was subject to any loss from undue reimbursements.

8. At the material time, Mr. Abdrabou, his spouse and his three children were insured with Cigna.<sup>9</sup>

9. On 22 December 2019, he submitted a claim to Cigna, seeking reimbursement of medical expenses which he stated were incurred between 13 and 21 November 2019.<sup>10</sup> He attached to the claim an invoice dated 28 November 2019 and a medical report dated 13 November 2019 showing that BB was hospitalized at the University of Science and Technology Hospital (USTH), a care provider in Sana'a, Yemen. The invoice indicated that BB was hospitalized in the children's section of USTH from 13 to 21 November 2019 and the incurred charges included accommodation in the emergency room, X-rays, laboratory tests and surgery. He sought reimbursement from Cigna of the expenses totaling YER<sup>11</sup> 3,451,649 (then equivalent to USD 6,167.06).

10. On 17 February 2020, Cigna reimbursed Mr. Abdrabou the sum of USD 6,108.<sup>12</sup>

11. After the reimbursement, Cigna developed concerns about the invoice submitted by Mr. Abdrabou.<sup>13</sup> Accordingly, Cigna conducted an investigation and concluded that he had submitted a fraudulent medical insurance claim. On 20 May 2020, a Cigna Fraud Investigator referred his investigation file No. F20063 to UNDP's Office of Audit and Investigations (OAI).

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<sup>8</sup> Impugned Judgment, para. 2. In health insurance, a self-insurance (also called "self-insured" or "self-funded") plan is a type of plan where the employer itself collects premiums from enrollees and takes on the responsibility of paying employees' and dependents' medical claims, instead of purchasing coverage from an insurance company; the latter may manage payments.

<sup>9</sup> Impugned Judgment, para. 3.

<sup>10</sup> *Ibid.*, paras. 4-5.

<sup>11</sup> Yemeni rial.

<sup>12</sup> Impugned Judgment, para. 6.

<sup>13</sup> *Ibid.*, paras. 7-9.

12. On 11 August 2020, UNDP provided Mr. Abdrabou with a letter (Options Letter) proposing two options: either (i) OAI would conduct a full investigation of the alleged misconduct or (ii) he would immediately resign.<sup>14</sup> He chose option (i) and OAI proceeded with the investigation. Accordingly, on 16 November 2020, OAI informed him that he was the subject of an investigation into allegations of entitlement fraud, forgery and false certification related to the submission of a fraudulent invoice to Cigna.

13. Mr. Abdrabou was interviewed by OAI on 19 November 2020.<sup>15</sup> On 26 March 2021, OAI provided a draft report of its investigation to him for his review and comments. He provided comments on 5 April 2021. OAI produced its final Investigations Report on 22 April 2021.

14. On 12 November 2021, Mr. Abdrabou received a Charge Letter from the Assistant Administrator and Director, Bureau for Management Services, UNDP, informing him that the Organization was charging him with engaging in entitlement fraud by submitting a forged invoice and a medical report to Cigna for reimbursement for medical services that were not received.<sup>16</sup> He was given 10 days to respond to the charge and submit exculpatory evidence. After three extensions of time were granted, he submitted his response to the charge on 6 February 2022.

15. On 28 March 2022, Mr. Abdrabou received the Sanction Letter informing him of the contested decision.<sup>17</sup>

16. Referring to information obtained from a representative of USTH (R/USTH)<sup>18</sup> that the invoice contained multiple irregularities and confirmation from the R/USTH that the medical report had not been issued by USTH, the Sanction Letter informed him that the Associate Administrator of UNDP considered that there was sufficient evidence to confirm the charge against him.<sup>19</sup> It further referred to the statements of two of his colleagues at UNDP in Yemen—

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<sup>14</sup> Impugned Judgment, paras. 10-11.

<sup>15</sup> *Ibid.*, paras. 12-13.

<sup>16</sup> *Ibid.*, paras. 14-15.

<sup>17</sup> *Ibid.*, para. 16.

<sup>18</sup> Letter from USTH to OAI, dated 19 October 2020 (Exhibit 26 to the application before the UNDT; see also impugned Judgment, para. 50). The letter suggests that the R/USTH might have been a representative of Patients Accounts, Admissions Office, USTH. The Secretary-General maintains that the R/USTH was the Head of the Claims Division of USTH. Mr. Abdrabou maintains that the R/USTH was an accountant at USTH. A 1 November 2020 e-mail from the R/USTH to OAI is evidence that the R/USTH was an Accounts Supervisor at USTH (Exhibit 32 to the application; see also Mr. Abdrabou's response to Charge Letter, para. 34—Annex 6 to the Secretary-General's supplementary filing).

<sup>19</sup> Sanction Letter (Annex 7 to the Secretary-General's supplementary filing).

an Operations Analyst (OA) and a Human Resources Analyst (HRA)—, according to whom he had admitted to them that his son did not receive the medical treatments claimed and that he knew the inauthenticity of the documents submitted. In support of the finding, the Sanction Letter stated that he had submitted inconsistent and inaccurate information to OAI.

17. Referring to the Charge Letter, the Sanction Letter maintained a reference to Staff Regulation 1.2(b), paragraph 25 of the UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct (Legal Framework),<sup>20</sup> paragraph 7 of the UNDP Policy on Fraud and Other Corrupt Practices (Fraud Policy)<sup>21</sup> and Staff Rule 10.1(a), applicable at the relevant time.<sup>22</sup>

18. With regard to the proportionality of the sanction, the Associate Administrator of UNDP stated in the Sanction Letter:<sup>23</sup>

In reviewing your case, I have considered all relevant circumstances, including a number of aggravating and mitigating factors. In this regard, I note that you have not cooperated with the investigation and, as noted above, attempted to mislead investigators about the fact that you had already received reimbursement for the medical claims at issue. You have similarly not accepted any responsibility for your conduct, even in your reply to the Charge Letter, indicating that, while you are willing to reimburse the fraudulently-obtained money, you do not accept responsibility for how you obtained it. I note as well that despite indicating you would repay, you have not done so to date. It is important to note that UNDP is self-insured. Cigna is only the administrator, and the reimbursement you inappropriately received represents a direct loss to UNDP. I do not consider there to be any significant mitigating factors in your case, although I note your record of service, that this represents one incident, and the fact that you do not have any prior record of misconduct.

Following a thorough review of all the evidence on record and having considered the matter carefully, including the above-mentioned aggravating and mitigating factors, I have concluded that your actions displayed a serious lack of the core values required of international civil servants, are inconsistent with your continued service with the Organization and therefore warrant the imposition of the disciplinary measure of

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<sup>20</sup> June 2022 version #3.

<sup>21</sup> 2018 version.

<sup>22</sup> Sanction Letter (Annex 7 to the Secretary-General's supplementary filing); Charge Letter (Annex 6 to the Secretary-General's supplementary filing). Secretary-General's Bulletin ST/SGB/2018/1 (Staff Regulations and Rules of the United Nations).

<sup>23</sup> Sanction Letter.

separation from service with compensation in lieu of notice, pursuant to UN Staff Rules 10.1(a) and 10.2 (a)(viii), and without termination indemnities.

19. On 25 June 2022, Mr. Abdrabou filed an application with the UNDT.<sup>24</sup>

*The impugned Judgment*

20. By Judgment No. UNDT/2023/037 dated 29 May 2023, the UNDT dismissed the application.

21. As a preliminary matter, the UNDT noted that while Mr. Abdrabou had insisted on holding a hearing to hear from potential witnesses—one of his ex-wife’s brothers (PW1),<sup>25</sup> a distant relative and a family friend (PW2),<sup>26</sup> and a medical practitioner who could testify on his son’s medical problems (PW3)—, a hearing was not necessary because the facts to be assessed were in the case record, in particular the documents submitted for the reimbursement.<sup>27</sup> Considering the statements given by PW2 to OAI, it is not useful to hear PW2 as a witness.<sup>28</sup> The requested testimony of PW3 is irrelevant because it is not related specifically to the surgery in question, but to his son’s generic state of health which is not the issue.<sup>29</sup>

22. Turning to the merits of the application, the UNDT held that the invoice and the medical report were not authentic and there was clear and convincing evidence that Mr. Abdrabou had engaged in misconduct through his submission of a fraudulent medical insurance claim for medical services that had not occurred.<sup>30</sup>

23. The UNDT considered that Mr. Abdrabou had certified to Cigna that the information he was submitting was “correct and true” and was therefore, acknowledging that he was aware of the

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<sup>24</sup> Impugned Judgment, para. 17.

<sup>25</sup> Mr. Abdrabou’s ex-brother-in-law who had allegedly informed him of his son having had the surgery at USTH and payment of all the medical expenses having been made by the family, had demanded a refund from him and had then agreed to sending him the invoice and the medical report via WhatsApp.

<sup>26</sup> Mr. Abrabou’s distant relative and a family friend who had allegedly carried and delivered YER 3,400,000 from him to PW1 to refund the payment of the invoice.

<sup>27</sup> Impugned Judgment, para. 46. Although the UNDT referred to Mr. Abdrabou’s request to hear testimonies from PW1, PW2 and PW3 at an oral hearing having been made in his closing submission, it did not hold that the request was inadmissible.

<sup>28</sup> *Ibid.*, para. 69.

<sup>29</sup> *Ibid.*, para. 62.

<sup>30</sup> *Ibid.*, paras. 49-50, 71. The UNDT referred to the letter from Patient Accounts, Admissions Office, USTH, dated 19 October 2020.

contents of the medical insurance claim and attesting to its authenticity.<sup>31</sup> If not by him, the forgery should have purportedly been committed by other people interested in receiving the reimbursement, his ex-wife or ex-brother-in-law who gave the documents to him. In any case, however, even if he did not himself cooperate in the forgery and it was committed unbeknownst to him, he assumed full responsibility for the improper use of documents. To mitigate his responsibility, he should have demonstrated that the medical intervention occurred, that USTH requested payment by a real invoice, and that he paid the costs of the intervention.

24. The UNDT observed that no evidence had been offered of the effectiveness of the medical treatment.<sup>32</sup> Excluding the fake invoice and the fake medical report, no other documents or evidence were provided on the specific pathology suffered by Mr. Abdrabou's son and on the type and date of the surgery. No statements were provided from the medical practitioners or nurses or USTH's other staff members, nor his ex-wife and her brother, who were allegedly present at the intervention, nor by his son.<sup>33</sup>

25. The UNDT found that the statements of the OA and the HRA were credible.<sup>34</sup> Neither had any motive to lie and both provided separate and consistent statements about their conversation with Mr. Abdrabou and his admission, which corroborates the statements of each. The statements confirm the other evidence.

26. As to the costs of the alleged intervention, the UNDT noted that, apart from the fake documents, no other documents had been provided on any request of payment by USTH.<sup>35</sup> No evidence (and even allegation) was provided on the payment to USTH, an element which is crucial in a dispute concerning a reimbursement claim.<sup>36</sup>

27. The UNDT was of the view that the evidence offered on the alleged payment by Mr. Abdrabou of the amount shown by the fake invoice was not convincing at all.<sup>37</sup> It is difficult

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<sup>31</sup> Impugned Judgment, paras. 50-57.

<sup>32</sup> *Ibid.*, paras. 59-61.

<sup>33</sup> The UNDT also referred to the absence of any medical report generated after the alleged surgery. In addition, the UNDT found it uncommon that Mr. Abdrabou's involvement in the alleged events had taken place only weeks after the alleged surgery had occurred, not before the medical intervention.

<sup>34</sup> Impugned Judgment, para. 64.

<sup>35</sup> *Ibid.*, para. 65.

<sup>36</sup> The UNDT referred Mr. Abdrabou's admission in paragraph 51 of the Investigation Report that he did not "know how they paid the invoice or what they did".

<sup>37</sup> Impugned Judgment, paras. 66-68.

to believe that a payment in cash of such a large amount of money was made, including more than USD 6,000 being carried by third parties in a far area of a country facing many security problems. PW2 did not confirm to the investigators the alleged facts. Given the large sum of money at issue, it is highly unlikely that if such a transfer had been made, PW2 would fail to remember the transaction.

28. Referring to the Fraud Policy, the UNDT held that Mr. Abdrabou's behaviour entailed fraud.<sup>38</sup>

29. The UNDT found that Mr. Abdrabou's due process rights had been respected during the investigation and disciplinary process.<sup>39</sup> Given that he had not even presented to OAI a relevant basis for PW3 to be interviewed, it was reasonable for OAI to determine that PW3 did not have any knowledge of his submission of the insurance claim and was not a relevant witness.

30. The UNDT concluded that the sanction was reasonable and not disproportionate.<sup>40</sup> The Tribunals have consistently ruled that misconduct involving intentional and deceptive conduct, particularly for personal gain, merit the most severe sanctions such as separation from service or dismissal. Fraud undermines the very integrity of the Organization. Disciplinary measures have been imposed at the strictest end of the spectrum in cases involving staff submitting false claims for reimbursement of medical expenses.

#### *Procedure before the Appeals Tribunal*

31. On 25 July 2023, Mr. Abdrabou filed an appeal of the impugned Judgment with the Appeals Tribunal, to which the Secretary-General filed an answer on 27 September 2023.

### **Submissions**

#### **Mr. Abdrabou's Appeal**

32. Mr. Abdrabou requests the Appeals Tribunal to reverse the impugned Judgment and rescind the administrative decision.

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<sup>38</sup> *Ibid.*, para. 74.

<sup>39</sup> *Ibid.*, para. 81.

<sup>40</sup> *Ibid.*, paras. 84-85.



33. He argues that the adjudication of this matter was extremely unfair as the UNDT erred in the facts and in law, resulting in an unreasonable and unfair decision. It unfairly wholly adopted the Administration's view. It ignored and failed to consider the facts and the evidence proving that the invoice and the medical report were authentic.

34. Mr. Abdrabou submits that the UNDT erred in stating that he was not interested in or concerned with his son's health. The statement contradicts the fact that his son was "in [his] custody" and care during the 2017-2018 school year, his son's stay with the mother's family was against the local Yemeni law and Islamic Sharia and he had raised the matter officially but was unable to continue the judicial proceedings. The UNDT should have understood that it was not feasible to provide evidence on the effectiveness of the medical treatment. The UNDT failed to duly consider the circumstances of the medical intervention. The burden of proof rests with USTH.

35. Mr. Abdrabou asserts that while the arbitrariness and lack of credibility of the R/USTH in many instances are obvious,<sup>41</sup> the R/USTH accurately confirmed that his son had visited USTH and that the invoice number and stamp were correct and authentic.

36. With regard to another distant relative, who had used WhatsApp (since Mr. Abdrabou did not have a phone that supported WhatsApp) to receive the invoice and the medical report from PW1 and had transmitted it to him as instructed and was interviewed by OAI (TI), he contends that the UNDT erred in adopting the OAI's reading of TI's written statement. The transmitted documents were in Arabic, not English. Any documents in English must have been a WhatsApp download backlog of other files unrelated to his son. OAI's assumption was entirely wrong.

37. Mr. Abdrabou submits that the invoice provided by Cigna for comparison is incomparable. A comparable invoice is required: one that is for a direct payment, not insurance, and details a similar medical case or illness. His son's medical file and data were irretrievably lost by USTH in an extensive data loss, confirmed by the R/USTH, that took place between 2017 and 2020. It was impossible to meet the UNDT's expectation for the submission of further evidence.

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<sup>41</sup> Mr. Abdrabou refers to invoices issued in connection with the hospitalization of other members of his family at USTH, which refute the statement of the R/USTH.

38. Mr. Abdrabou argues that the UNDT's view on PW2's statements was incorrect. PW2 is a freelance carrier, possesses automobiles suitable for transferring goods and valuables and travels in Yemen. It was not therefore unusual that PW2 did not recall the event in question. The USD 6,000 was carried in a small nylon bag. PW2 confirmed that he had used PW2's delivery service on several occasions.

39. Mr. Abdrabou contends that the UNDT erred in fact, resulting in a manifestly unreasonable decision, and in law by accepting the alleged statement of the HRA. As an unsworn statement, bearing no signature nor the investigators' initials, it is inadmissible. In any event, the HRA's statement is of no evidentiary value. The UNDT's view was also unreasonable in respect of the statement of the OA. The OA was a student of his father. The HRA's unethical behaviour is a sign of lying and ulterior motives.

40. Finally, Mr. Abdrabou asserts that, contrary to the UNDT's finding, he had not received the reimbursement from Cigna at the time of making the payment to his ex-wife's family. In 2019 and 2020, he had no knowledge of receiving the reimbursement.<sup>42</sup> His interview before OAI was selective and biased.<sup>43</sup> He had no prior experience of using his MIP or dealing with a medical invoice from USTH. The UNDT's view of his preparedness to accept a proportionate measure for an unintentional mistake as an expression of his uncertainty about the facts was incorrect. The UNDT was wrong to refer to any inaccuracy in paragraph 44 of his response to the Charge Letter as justification for finding that the invoice in dispute was inauthentic. He provided his response at a stage when the evidence presented to him was extremely limited.

### **The Secretary-General's Answer**

41. The Secretary-General requests the Appeals Tribunal to affirm the impugned Judgment and dismiss the appeal.

42. The Secretary-General argues that the UNDT correctly determined that the imposed disciplinary sanction was lawful. The facts have been established by clear and convincing

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<sup>42</sup> Referring to the Options Letter as confirmation, Mr. Abdrabou submits that the reimbursement was "on hold".

<sup>43</sup> Mr. Abdrabou refers to the voice recording in Arabic (Annex 2 and Annex 3 to the appeal). He submits that the UNDT misapprehended the conversation by finding, among others, that he had not known of his son's hospitalization and how the family had paid for it.

evidence. The established facts amount to misconduct. The sanction is proportionate to the offence. Mr. Abdrabou's due process rights were respected. In the contested decision, UNDP had considered all comments and exculpatory evidence submitted by him.

43. The Secretary-General contends that Mr. Abdrabou has not established any errors warranting reversal of the impugned Judgment. The UNDT did not err in its consideration of the 19 October 2020 letter from USTH. Furthermore, on record, there is a copy of a genuine invoice, issued by USTH in connection with another patient on 24 November 2019, i.e. around the same time, showing an advance payment, unlike the invoice in dispute.

44. The Secretary-General further submits that the UNDT did not err in relying on the witness statement of the OA. It is corroborated by the statements of the HRA. Contrary to Mr. Abdrabou's claim, the HRA did not indicate having been pressured into providing the statement. There is no reason to conclude that the statement of the HRA was fabricated by OAI. Nevertheless, the statement of the OA is sufficient.

45. Lastly, the Secretary-General states that the UNDT did not err in considering the OAI Investigator Notes on interviews of TI and PW2. Their evidence does not directly relate to whether the invoice in dispute and the medical report were authentic. Mr. Abdrabou has submitted no evidence of bias by the OAI investigators. The UNDT's assessment of the probability that he was more eager to pay his son's medicals costs than interested in his son's medical condition at the moment of the treatment do not affect its finding on the relevant issue. It was reasonable for the UNDT to consider his refusal to provide the phone numbers of his ex-wife and PW1 and the lack of other evidence of his son having undergone any medical intervention at USTH.

### **Considerations**

46. We are seized with an appeal against Judgment No. UNDT/2023/037 of the UNDT dated 29 May 2023 upholding the disciplinary decision to separate Mr. Abdrabou from service, with compensation in lieu of notice and without termination indemnities, for having engaged in entitlement fraud by submitting forged documents for reimbursement for medical services that were not received.

*Request for an oral hearing*

47. As a preliminary matter, we address Mr. Abdrabou’s request for an oral hearing. He notes in his appeal form that the reason for his request is for the truth to be heard “loudly and clearly from (...) the witnesses [,] away from the misled notes submitted by (...) OAI during the investigation phase” and that OAI was “blatantly dishonest” when it interviewed two witnesses.

48. We reiterate that disposal by the Appeals Tribunal of requests for oral hearings is governed by its Statute and Rules of Procedure.<sup>44</sup> Article 8(3) of the UNAT Statute provides:

The judges assigned to a case will determine whether to hold oral proceedings.

49. Article 18(1) of the UNAT Rules of Procedure further specifies:

The judges hearing a case may hold oral hearings on the written application of a party or on their own initiative if such hearings would assist in the expeditious and fair disposal of the case.

50. According to the foregoing rules and our abundant jurisprudence, “the Appeals Tribunal has discretion to determine whether to hold an oral hearing or not with the aim of dealing with the case efficiently and fairly”.<sup>45</sup>

51. Therefore, the basis of holding an oral hearing in this case is whether it would assist in the expeditious and fair disposal of the case. In light of the availability of the OAI Investigator Notes on interviews and given that the factual and legal issues arising from this appeal have been clearly defined by the parties, there is no need for, or added value to, further clarification from a hearing. Moreover, we do not find that an oral hearing would assist in the expeditious and fair disposal of this case, as required by Article 18(1) of the UNAT Rules of Procedure.

52. Accordingly, Mr. Abdrabou’s request for an oral hearing is denied.

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<sup>44</sup> *Leopold Camille Yodjeu Ntemde v. Secretary General of the United Nations*, Judgment No. 2023-UNAT-1379, para. 55.

<sup>45</sup> *Ibid.*, para. 57 (internal citations omitted).

*Merits of the appeal*

53. We now turn to the merits of the appeal.

54. By our well-established case law, the role of the Dispute Tribunal when reviewing a disciplinary sanction imposed by the Administration is to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct under the Staff Regulations and Rules, whether the sanction is proportionate to the offence, whether the staff member's due process rights were respected during the investigation and disciplinary process.<sup>46</sup> Furthermore, "when termination is a possible outcome, misconduct must be established by clear and convincing evidence. Clear and convincing proof requires more than a preponderance of evidence but less than proof beyond reasonable doubt—it means the truth of the facts asserted is highly probable."<sup>47</sup>

*I. Whether the UNDT erred in finding that the facts on which the sanction is based are established*

55. The Dispute Tribunal relied on four key pieces of evidence and findings of fact to conclude that there was clear and convincing evidence that Mr. Abdrabou had submitted a medical insurance claim to Cigna for medical services that had never been provided, to wit:

(a) A formal letter from the Admissions Office (Patients Accounts), USTH, the hospital where Mr. Abdrabou's son allegedly received medical treatment, which indicated that the invoice and the medical report submitted by him to Cigna were not authentic.

(b) Mr. Abdrabou acknowledged his awareness of the medical insurance claim and its authenticity by certifying upon submission to Cigna that it was correct and true.

(c) The credible evidence of two of Mr. Abdrabou's colleagues who stated that he had told them that his son had not received the treatments reflected in the invoice and the medical report.

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<sup>46</sup> *Doreen Nimusiima v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1431, para. 88 (internal citation omitted); *Al Othman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-972, para. 69.

<sup>47</sup> *Mihai-Tudor Stefan v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1375, para. 63 (internal citation omitted).

(d) Mr. Abdrabou's failure to submit any evidence to show that the operation on his son actually occurred or that payments had been made to USTH for the alleged expenses submitted to Cigna, and the absence of any evidence of the effectiveness of the medical treatments such as statements from the medical practitioners or nurses or other staff members of USTH, or his ex-wife and her brother, PW1, who were allegedly present at the intervention, nor by his son.

56. Mr. Abdrabou contends that the UNDT ignored and failed to consider the facts and the evidence demonstrating that the invoice and the medical report were authentic. However, as we have stated in *Abbassi*, "[i]n order to overturn a finding of fact by the UNDT, the Appeals Tribunal must be satisfied that the finding is not supported by the evidence or that it is unreasonable".<sup>48</sup> This Tribunal has emphasized:<sup>49</sup>

[S]ome degree of deference must be given to the factual findings by the UNDT as the court of first instance, particularly where oral evidence is heard. The UNDT has the advantage of assessing the demeanour of each witness while he or she is giving evidence and this is critical for assessing the credibility of the witness and the persuasiveness of his or her evidence.

57. From the above, we find that the statements from two of Mr. Abdrabou's colleagues were credible, coherent and independent corroboration of each other. Each was sufficient corroborative evidence of the information received from the R/USTH that the invoice and the medical report had not been issued by USTH and were inauthentic. Therefore, we find that the UNDT's finding of fact was supported by clear and convincing evidence and reasonable.

58. Mr. Abdrabou argues that the UNDT erred in fact, resulting in a manifestly unreasonable decision, and in law by accepting the alleged statement of HRA. He contends that that the statement was inadmissible and of no evidentiary value on grounds that it was unsworn and bore neither the signature nor the initials of the investigator.

59. Under Article 17(3) of the UNDT Rules of Procedure, a witness statement shall be sworn, affirmed or made under the promise to tell the truth. When a statement is not made

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<sup>48</sup> *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110, para. 26.

<sup>49</sup> *Oh v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-480, para. 53 (internal citation omitted).

under oath or affirmation, there must be some other indicia of reliability or truthfulness for the statement to have probative value.<sup>50</sup> In *Messinger*, we noted the UNDT's broad discretion in the determination of both the admissibility and the weight of the evidence:<sup>51</sup>

There is a distinction between the admissibility of evidence and the weight to be attached to such evidence. The Dispute Tribunal has a broad discretion to determine the admissibility of any evidence under Article 18(1) of its Rules of Procedure and the weight to be attached to such evidence. This Tribunal is also mindful that the Judge hearing the case has an appreciation of all of the issues for determination and the evidence before the UNDT.

60. In order to establish that the UNDT erred, it is necessary to establish that the evidence, if dismissed, would have led to different findings of facts and changed the outcome of the case. In the case at bar, we find that the dismissal of the unsworn testimony of the HRA would not have changed the outcome of the case. The statement of the OA and the evidence from the R/USTH refuting the authenticity of the invoice and the medical report submitted by Mr. Abdrabou were sufficient to establish that he had submitted a fraudulent claim.

61. Lastly, Mr. Abdrabou asserts that submitting the medical insurance claim for reimbursement, with his certification of correctness, was an unintentional mistake.

62. With regard to the intent to deceive, we have stated in *Asghar*:<sup>52</sup>

(...) A finding of fraud against a staff member of the Organization is a serious matter. Such a finding will have grave implications for the staff member's reputation, standing and future employment prospects. For that reason, the UNDT generally should reach a finding of fraud only on the basis of sufficient, cogent, relevant and admissible evidence permitting appropriate factual inferences and a legal conclusion that each element of fraud (the making of a misrepresentation, the intent to deceive and prejudice) has been established in accordance with the standard of clear and convincing evidence. In other words, the commission of fraud must be shown by the evidence to have been highly probable.

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<sup>50</sup> *Nyambuza v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-364, para. 35 (internal citation omitted).

<sup>51</sup> *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123, para. 33.

<sup>52</sup> *Asghar v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-982, para. 35.

63. In the instant case, the evidence before us establishes that Mr. Abdrabou made an unlawful misrepresentation to Cigna and it is highly probable that he made such misrepresentation with the intent to deceive. His actions were potentially prejudicial to the UNDP which funded Cigna's payments to insured claimants, covered the cost of reimbursements processed by Cigna and was subject to any loss from undue reimbursements.

64. Accordingly, we find that the UNDT did not err in finding that the facts on which the sanction is based are established.

*II. Whether the UNDT erred in finding that the established facts qualified as misconduct*

65. We reiterate our definition in *Asghar* that “[f]raud consists in the unlawful making, with the intent to defraud or deceive, of a misrepresentation which causes actual prejudice, or which is potentially prejudicial, to another”.<sup>53</sup>

66. More specifically, paragraph 7 of the Fraud Policy defines fraud as:

- (...) any act or omission whereby an individual or entity knowingly misrepresents or conceals a fact
- a) in order to obtain an undue benefit or advantage or avoid an obligation for himself, herself, itself or a third party and/or
- b) in such a way as to cause an individual or entity to act, or fail to act, to his, her or its detriment.

67. Further, according to Section 3 of the Legal Framework, at paragraph 25(e), misconduct may include “wilful, reckless or grossly negligent [m]isrepresentation, forgery, or false certification, including but not limited to, in connection with any official claim or benefit, the failure to disclose a fact material to that claim or benefit, or engaging in a knowing misrepresentation which has adverse consequences for the Organization”.

68. Mr. Abdrabou certified to Cigna that the information he was submitting was “correct and true”. He contends that he had no prior experience of using his MIP or dealing with a medical invoice from USTH and merely forwarded documents as received. In any event, his certification to Cigna was false and had adverse consequence for the UNDP, which incurred a

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<sup>53</sup> *Ibid.*, para. 36.



loss of the then equivalent of USD 6,167.06 in undue reimbursement paid to Mr. Abdrabou. This qualified as misconduct under paragraph 25(e) of the Legal Framework. Therefore, the Dispute Tribunal was not wrong to conclude that even if Mr. Abdrabou did not himself cooperate in the forgery and it was committed unbeknownst to him, he assumed full responsibility for the improper use of the documents.

69. Consequently, we find that the UNDT did not err in finding that the established facts qualified as misconduct.

*III. Whether the UNDT erred in finding that the sanction was proportionate to the offence*

70. Although the issue of proportionality of the sanction was not raised on appeal, we take the opportunity to note that, as a general rule, any form of dishonest conduct compromises the necessary relationship of trust between the employer and employee and will generally warrant dismissal.<sup>54</sup> For example, in *Bastet*<sup>55</sup> and *Aghadiuno*<sup>56</sup>, this Tribunal found that a staff member who had committed fraud in obtaining rental subsidy for an apartment which they owned and special educational grant, respectively, were lawfully dismissed.

71. Once the facts and the misconduct have been established, the appropriateness of the level of sanction can only be considered unlawful in case of “obvious absurdity or flagrant arbitrariness”.<sup>57</sup> Such has not been demonstrated in the case at bar.

72. In that vein, we explained in *Mbaigolmem* that:<sup>58</sup>

(...) due deference must be shown to the Secretary-General’s decision on sanction because Article 101(3) of the United Nations Charter requires the Secretary-General to hold staff members to the highest standards of integrity and he is accountable to the Member States of the United Nations in this regard. (...)

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<sup>54</sup> *Rajan v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-781, para. 37.

<sup>55</sup> *Bastet v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-511, para. 56.

<sup>56</sup> *Aghadiuno v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-811, para. 103.

<sup>57</sup> *Aqel v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-040, para. 35.

<sup>58</sup> *Mbaigolmem v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-890, para. 16.

73. As a result, we find that the sanction imposed on Mr. Abdrabou is lawful and proportionate. Accordingly, the UNDT did not err in finding that the sanction was proportionate to the offence.

*IV. Whether the UNDT erred in finding that Mr. Abdrabou's due process rights were respected*

74. The UNDT in the impugned Judgment concluded that Mr. Abdrabou's due process rights were respected during the investigation and disciplinary process. Mr. Abdrabou contends that one of the witnesses lied and one of them, the HRA, had ulterior motives. He further alleged that his interview before OAI was selective and biased.

75. We have held previously that a discretionary administrative decision can be challenged only on the basis that the Administration had not acted fairly, justly or transparently with the staff member or was motivated by bias, prejudice or improper motive. The staff member has the burden of proving that such factors played a role in the administrative decision.<sup>59</sup>

76. As we said in *Nkoyock*, "[b]ias in law is not just blatant prejudice against someone or predetermination of an issue, but perhaps, more commonly, the perception of potential bias, the inappropriate participation of someone in a process that may affect adversely the rights of others".<sup>60</sup> The onus to show improper motive is on the party asserting it,<sup>61</sup> which Mr. Abdrabou has not discharged.

77. We agree with the UNDT that the fact that OAI had not interviewed any witness identified by Mr. Abdrabou was not in violation of his due process rights, given that he did not give any relevant basis for the witnesses to be interviewed. As we have held in *Wu*, "the question of whether to call a certain person to testify [is] within the discretion of the UNDT and [does] not

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<sup>59</sup> *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, para. 26 (internal citations omitted).

<sup>60</sup> *Moïse Alain Nkoyock (Fils) v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1401, para. 70.

<sup>61</sup> *Yatte Jules Bedawe v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1260, para. 68.

merit a reversal except in clear cases of denial of due process of law affecting the right to produce evidence”.<sup>62</sup>

78. Therefore, we find that the UNDT did not err in finding that Mr. Abdrabou’s due process rights were respected.

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<sup>62</sup> *Wu v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-597, para. 35 (internal citations omitted).

**Judgment**

79. Mr. Abdrabou's appeal is dismissed, and Judgment No. UNDT/2023/037 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 28<sup>th</sup> day of June 2024 in New York, United States.

*(Signed)*

Judge Forbang, Presiding

*(Signed)*

Judge Savage

*(Signed)*

Judge Sheha

Judgment published and entered into the Register on this 30<sup>th</sup> day of July 2024 in New York, United States.

*(Signed)*

Juliet E. Johnson, Registrar