



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2024-UNAT-1475

Kobi Jackson
(Respondent/Applicant)

v.

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

JUDGMENT

Before:	Judge Nassib G. Ziadé, Presiding Judge Katharine Mary Savage Judge Graeme Colgan
Case No.:	2023-1812
Date of Decision:	28 June 2024
Date of Publication:	16 August 2024
Registrar:	Juliet E. Johnson

Counsel for Mr. Jackson: Edwin Nhliziyo

Counsel for Secretary-General: Noam Wiener, Angélique Trouche

JUDGE NASSIB G. ZIADÉ, PRESIDING.

1. Mr. Kobi Jackson, a former staff member of the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA), contested a decision not to reimburse his tax payments.
2. By Judgment No. UNDT/2023/021, the United Nations Dispute Tribunal (UNDT) decided that the Secretary-General should reimburse to Mr. Jackson his 2015-2018 North Carolina state income tax and any penalty and interest accrued on unpaid tax for 2015-2018 from 27 January 2022 (impugned Judgment).¹ The UNDT dismissed all the other claims.
3. The Secretary-General 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 Procedure²

5. Mr. Jackson is a citizen of the United States of America.³ He joined the Organization on 31 July 2004 and retired on 1 October 2021.⁴ Prior to his retirement, he served as Finance and Budget Officer at the P-4 level at MINUSCA in Bangui.⁵
6. Until 2014, Mr. Jackson was a tax resident of the state of New Jersey.⁶ While serving at United Nations Headquarters in New York, he paid state tax on his United Nations salaries and emoluments to the state of New Jersey. On his reassignment to the field in 2006 and moving to serve outside the United States, he continued to pay state taxes to New Jersey.⁷ He was reimbursed accordingly through, it appears, tax year 2008.⁸ There is a dispute as to whether he had been

¹ *Jackson v. Secretary-General of the United Nations*, UNDT's Judgment dated 28 March 2023.

² Summarized from the impugned Judgment as relevant to the appeal.

³ Impugned Judgment, para. 5.

⁴ *Ibid.*

⁵ *Ibid.*, para. 1.

⁶ *Ibid.*, para. 6. References to taxes in this Judgment are to individual income taxes.

⁷ Impugned Judgment, para. 6; 23 December 2021 e-mail from Mr. Jackson.

⁸ 23 December 2021 e-mail from Mr. Jackson; 13 January 2023 memorandum of the Management Evaluation Unit (MEU), page 2; 2 April 2009 letter from the ITU to Mr. Jackson.

advised of an obligation to pay New Jersey taxes thereafter, but as set forth below, resolution of that issue is unnecessary to our resolution of this matter.

7. In 2015, Mr. Jackson moved his family to the state of North Carolina, changing his domicile accordingly.⁹ He did not pay income taxes to North Carolina because, he says, he assumed that state tax was not applicable when income was generated outside the United States.¹⁰

8. In October 2019, the North Carolina Department of Revenue (NCDOR) inquired with Mr. Jackson about his state tax.¹¹ NCDOR requested a tax return for 2015 and subsequently clarified that, irrespective of the source of income, all North Carolina residents had to pay income tax. On 20 November 2019, Mr. Jackson informed the United Nations Income Tax Unit (ITU) that he had been contacted by the tax authorities of North Carolina stating that he should pay tax for the 2015 tax year.¹² He submitted that his earnings were from out of state and that as such he should not pay state tax. He requested the ITU's advice on the matter.

9. On 18 May 2021, Mr. Jackson sent his 2015-2018 North Carolina income tax returns to the ITU for their review.¹³ He requested the ITU to pay his tax liability of USD 54,410.47 to the state of North Carolina.

10. On 27 August 2021, Mr. Jackson contacted the Chief, Headquarters Client Support Service, (Chief/HCSS), seeking an intervention regarding the outstanding tax reimbursements.¹⁴ He informed the Chief/HCSS of the following:

(a) Based on the statement from NCDOR, the outstanding balance of his tax liabilities as of 27 August 2021 amounted to USD 41,744.85, including penalties and interest.

(b) The amount was net of USD 28,462 that he had paid because a lien had been placed on his property, and USD 17,125 paid by the Organization.

⁹ Impugned Judgment, para. 6.

¹⁰ *Ibid.*; 23 December 2021 e-mail from Mr. Jackson.

¹¹ Impugned Judgment, para. 6; 23 December 2021 e-mail from Mr. Jackson.

¹² Impugned Judgment, para. 7.

¹³ 13 January 2023 memorandum of the MEU, page 2.

¹⁴ Impugned Judgment, para. 11.

(c) Based on an analysis, the actual amount due from the Organization was USD 70,131.61 comprising of USD 41,744.85 as per the NCDOR's statement and the reimbursement of USD 28,462.76 in taxes already paid by him.

11. On the same day, 27 August 2021, the ITU advised Mr. Jackson to pay any outstanding tax balance in order to avoid further penalties.¹⁵ The ITU also recalled that he had not filed a claim for reimbursement of his 2015-2018 North Carolina state taxes and, referring to Staff Rule 3.17, that retroactive claims could be reimbursed for a maximum period of one year. The ITU also clarified that he could request the Assistant Secretary-General for Human Resources (ASG/OHR) to make an exception to this rule.

12. On 23 December 2021, Mr. Jackson requested the ASG/OHR's approval to an exception to allow for a retroactive reimbursement of the tax payments.¹⁶

13. On 26 January 2022, Mr. Jackson was informed of the contested decision.¹⁷ The ASG/OHR declined his request, noting that:

1. The provisions of [Staff Rule] 3.17(ii) have not been met;
2. Criteria for extenuating circumstances have not been met as [he] as a staff member should have been aware of [his] private legal obligations (Staff Regulation 1.1(f));
3. Making an exception would be prejudicial to the interests of other staff member[s] or group of staff members as per [Staff Rule] 12.3(b).

14. On 8 March 2022, Mr. Jackson requested management evaluation.¹⁸ On 13 January 2023, the Management Evaluation Unit (MEU) informed him that it had decided to uphold the contested decision.

15. On 1 July 2022, Mr. Jackson filed the application with the UNDT, summarizing the details of the contested decision as follows:¹⁹

The decision (A/2) is about retroactive payment of tax liability for (...) State tax amounting to \$70,131 over the period 2015-2020 (...).

¹⁵ 27 August 2021 e-mail from the ITU with subject "Re: Need your intervention to conclude outstanding state and federal tax".

¹⁶ Impugned Judgment, para. 12.

¹⁷ *Ibid.*, paras. 1 and 13; 26 January 2022 e-mail.

¹⁸ Impugned Judgment, para. 14.

¹⁹ *Ibid.*, para. 1.

The impugned Judgment

16. By Judgment No. UNDT/2023/021 dated 28 March 2023, the UNDT granted the application in part. It decided that the Secretary-General should reimburse to Mr. Jackson his 2015-2018 state tax and any penalty and interest accrued on unpaid tax for 2015-2018 from 27 January 2022. The UNDT dismissed all the other claims.²⁰

17. The UNDT found that after having been reassigned from Headquarters to the field and paying his tax for two years, Mr. Jackson was advised by the ITU that he was not required to pay state tax because his income was earned abroad.²¹ This was confirmed by the Secretary-General's witness.²²

18. Citing *Johnson*,²³ the UNDT considered that its task was to determine whether in the exercise of its discretionary power not to grant an exception for retroactive tax reimbursement, the Administration advanced the legislative intent of ensuring equality of staff members in take-home salaries and allowances.²⁴ A recent UNDT Judgment in *LL*²⁵ was not based on Staff Regulation 3.3(f) and was therefore distinguishable from the present case.

19. The UNDT agreed that Staff Rule 3.17(ii) did not apply to tax reimbursement and therefore the Administration had considered an irrelevant factor.²⁶ Tax reimbursement is governed by a specific and unique legal regime carefully deliberated by the General Assembly and cannot be read into "other payments".²⁷ Furthermore, the source of the tax reimbursement is the Tax Equalization Fund provided in Staff Regulation 3.3(f) while the source of allowances and payments under Staff Rule 3.17(ii) is elsewhere. Unlike allowances and payments, the tax reimbursement is paid to a

²⁰ The UNDT declined to order reimbursement for 2019 and 2020 state taxes because Mr. Jackson had conceded that he received the 2019 and 2020 state tax reimbursements. The UNDT also dismissed his claims for the retroactive reimbursement of his 2017 United States federal tax. Finally, the UNDT denied his claim for the interest and penalties arising from the delayed payment up to 26 January 2022, the date of the contested decision, due to him having contributed to the delay in filing and claiming the tax reimbursement. No appeal against those parts of the UNDT's Judgment is before this Tribunal.

²¹ Impugned Judgment, para. 6.

²² *Ibid.* The UNDT referred to the hearing transcript, pages 6 and 73.

²³ *Johnson v. Secretary-General of the United Nations*, Judgment No. UNDT/2011/144, paras. 31-33, and *Johnson v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-240.

²⁴ Impugned Judgment, paras. 23-28.

²⁵ *LL v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/015.

²⁶ Impugned Judgment, paras. 30-35.

²⁷ Citing *Carmelo Franco v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1238, the UNDT noted that the present case was distinguishable from *Franco* which had dealt with a retroactive payment of special post allowance.

third party, the state government. It is a burden on the staff member because it comes from the staff assessment.

20. The UNDT maintained that the 2016-2019 Information Circulars were at the bottom of the legal framework, and they could not be used to circumvent the intent of the legislative body.²⁸ The Administrative Instruction ST/AI/1998/1 refers to the information circular only with respect to procedure. An information circular is not law and the Secretary-General has not shown the law that Mr. Jackson was ignorant of in pursuing the claim.

21. The UNDT proceeded to hold that the Administration, having deprived Mr. Jackson a sum of money in the form of staff assessment on the principle that it would be used to meet his private tax obligations, was not allowed to turn around and claim that he ought to have known about his private legal obligations.²⁹ In any event, his claim does not concern his private obligations but the terms and conditions of his employment to be treated in an equitable manner. The Administration based the contested decision on an irrelevant factor which was contrary to the intent of the legislature.

22. The UNDT found that the Secretary-General had not provided any evidence of prejudice to any specific staff member or group of staff members.³⁰ It is mere speculation. On the contrary, the Administration has contravened Staff Rule 12.3(b). The exception that purportedly gives the Administration discretionary power to deny a staff member retroactive tax reimbursement is inconsistent with Staff Regulation 3.3(f) and the General Assembly resolution, and is therefore illegal. The alleged requirement that Mr. Jackson should prove extenuating circumstances to claim tax reimbursement retroactively is imposed by the Administration without any legal basis.

23. The UNDT stated that the ground for denying Mr. Jackson tax reimbursement because he was delayed in submitting his tax returns was inconsistent with the principle of rationality.³¹ The decision is irrational with absurd consequences. Failure to exercise discretion to make a retroactive tax reimbursement was unreasonable considering that his salary had already been reduced by a staff assessment deposited in the Tax Equalization Fund yet to be utilized to meet his tax obligations. The rational penalty for late application that does not offend the principle of equality

²⁸ Impugned Judgment, paras. 37-39. The UNDT cited *Villamorán v. Secretary-General of the United Nations*, Judgment No. UNDT/2011/126, and *Villamorán v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-160.

²⁹ Impugned Judgment, para. 40.

³⁰ *Ibid.*, paras. 41-43.

³¹ *Ibid.*, paras. 44-46.

of staff members is the penalty and interest levied by the state government, which he must personally bear.

24. The UNDT held that any penalty and interest that accrued on the unpaid tax for 2015-2018 from 27 January 2022 shall be borne by the Secretary-General.³² The cause of the delay is attributed to the failure of the Administration to exercise discretion lawfully.

Procedure before the Appeals Tribunal

25. On 30 May 2023, the Secretary-General filed an appeal of the impugned Judgment with the Appeals Tribunal, to which Mr. Jackson filed an answer on 27 July 2023.

26. On 30 May 2024, the Appeals Tribunal directed the parties to submit documents and further information.³³ On 6 June 2024, each party submitted documents concerning prior communications between the parties. The Secretary-General also submitted further information on the staff assessment collected from Mr. Jackson, on which the latter filed comments on 13 June 2024.

Submissions

The Secretary-General's Appeal

27. The Secretary-General requests the Appeals Tribunal to vacate the impugned Judgment and uphold the contested decision.

28. The Secretary-General argues that the UNDT erred in finding that the Administration had unlawfully exercised its discretion when it denied Mr. Jackson's request for an exception to Staff Rule 3.17(ii). The UNDT erred in fact and law by treating his federal and North Carolina state tax obligations differently. His state tax liability, like his federal tax liability, was created by his negligence and ignorance of his own private legal obligations, i.e. "self-inflicted", as the UNDT should have found. Granting exceptions is reserved for exceptional circumstances.

29. The Secretary-General submits that the UNDT manifestly erred in fact when it found that Mr. Jackson had been told by the ITU that he did not have to pay North Carolina state tax.

³² *Ibid.*, para. 51.

³³ UNAT Order No. 562 (2024).

The Chief of the ITU (Chief/ITU) never testified to having provided such advice. Instead, the Chief/ITU testified:

[W]hen [Mr. Jackson] was working [at the] United Nations [H]eadquarter[s] in New York and living in New Jersey[,] [h]e was supposed to submit two State Tax return[s], one for New Jersey resident tax return, one for New York, non-resident tax return. When he moved to the mission, then my colleague advised him [that he was] no longer supposed to submit [a] non-resident New York tax return.

30. The Secretary-General contends that the UNDT erred in law by finding that the Administration “contravened” Staff Rule 12.3(b) by refusing to reimburse Mr. Jackson. His request to be granted an exception to Staff Rule 3.17(ii) was thoroughly considered and the discretion was exercised legally, rationally, in a procedurally correct and proportionate manner. The UNDT erred in finding otherwise. An exception to the regulatory framework must be interpreted in a strict manner.³⁴ The delay was due to his own negligence.³⁵ The UNDT’s finding is misconceived and confusing. Nothing requires the Secretary-General to retroactively reimburse tax incurred by staff with no time limit. Granting an exception in this case would be prejudicial to the interests of other staff members who were refused exceptions in similar circumstances. Discretion has been consistently applied. Allowing staff members to file retroactive claims for reimbursement without any limitations would seriously undermine good and efficient administration.

31. The Secretary-General argues that the UNDT erred when it held that staff members were not required to submit requests for payment of tax reimbursement within one year of being entitled for the reimbursement. The UNDT erroneously found that the Secretary-General had applied Staff Rule 3.17(ii) contrary to its plain meaning. The UNDT was wrong to hold that Staff Rule 3.17(ii) would not apply to payments made in accordance with Staff Regulation 3.3(f). A plain reading of Staff Regulation 3.3(f) demonstrates that when the General Assembly enacted Staff Regulation 3.3(f), it considered the reimbursements of taxes as payments: Staff Regulations 3.3(f)(iii) and 3.3(f)(iv) refer to the refund as “payment(s)”. Where a longer span was intended for the

³⁴ The Secretary-General cites, among other Judgments, *Olexandr Maruschak v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1282, paras. 16-17. The Secretary-General notes that Article 12.3(b) may be applied exceptionally in those rare cases in which the regular application of the Staff Rules would result in causing harm or damage to a staff member through no fault of their own.

³⁵ Referring to the maxim “he that comes to equity must come with clean hands”, the Secretary-General cites, among other Judgments, *Kauf v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-934, para. 33.

submission of retroactive requests for payments, such intention was explicitly expressed in the relative provision.³⁶

32. The Secretary-General submits that the UNDT erred in law and in fact in finding that by applying a one-year time limit, the Administration usurped legislative power. The UNDT erred by misunderstanding the relationship between Staff Regulation 3.3(f) and Staff Rule 3.17(ii). Staff Rules are also approved by the General Assembly. Nothing about this system renders it unequal. Like with any payment or allowance, staff members are required to request or show eligibility within a certain timeframe. The UNDT did not explain why it held that Staff Rule 3.17(ii) applied only to payments that are made to all staff of all nationalities, or why if a certain payment was intended only for one specific group, it was excluded from the provisions of Staff Rule 3.17(ii). At any rate, Staff Regulation 3.3(f) applies to staff members whose salary is taxed and relates to staff members from several different Member States. It was an error of fact by the UNDT to find that Staff Regulation 3.3(f) only applied to staff members from the United States.

33. The Secretary-General contends that the UNDT erred in finding that the source of payment impacted the applicability of Staff Rule 3.17(ii). The UNDT did not elaborate on why it thought that the fact that the reimbursement payments came from the Tax Equalization Fund rendered such payments different. The UNDT erred in law because how a particular payment or allowance is funded or paid does not affect the applicability of the relevant Staff Rules.

Mr. Jackson's Answer

34. Mr. Jackson requests that the Appeals Tribunal uphold the impugned Judgment and dismiss the appeal as frivolous and an abuse of process.

35. He argues that, on appeal, the Secretary-General has failed to advance any reasoned arguments against the relevant points.³⁷

³⁶ The Secretary-General refers to Staff Rule 9.12(h) providing that requests for repatriation grants may be submitted up to two years after the effective date of separation.

³⁷ Mr. Jackson lists several issues that, according to him, the Secretary-General failed to address in the appeal but needs to answer before the merits of the appeal can be considered:

- (a) Whether Staff Rule 3.17(ii) can modify Staff Regulation 3.3(f).
- (b) Whether denying him the reimbursement violated the principle of parity of staff members.
- (c) Whether the refusal to reimburse him violated Staff Regulation 3.3(f).
- (d) Whether the Secretary-General has the authority to use information circulars to modify the operation of a Staff Rule.

36. Mr. Jackson submits that the Administration contributed to creating the situation as he was advised in 2006 that no state taxes were payable on foreign earned income with respect to new Jersey taxes. Until then, he had been fully compliant with the federal and New Jersey taxes. During the Chief/ITU's delay of almost two years in responding to him, penalties and interest accrued. Staff assessment had already been deducted and he received no financial gain from not paying the state tax. His move to North Carolina did not change the source of his income, therefore it was reasonable of him to continue to believe that it was not subject to state income tax.

37. Mr. Jackson points out that the Organization reviews the taxes before reimbursements. The ITU was aware of his change of domicile and should have prompted him to pay North Carolina state tax. The Administration apparently reimbursed him on the basis of incorrect information on taxable earnings. Staff Regulations are binding and the Secretary-General has no discretion in interpreting them. Pursuant to the United States Tax Code 6502, corrections or revisions can be made up to ten years after the relevant tax year. The General Assembly must have been cognizant of this reality when it placed no time limit on claiming reimbursements.

38. Mr. Jackson contends that the Administration has not provided any argument as to why one Staff Rule can be used to override another Staff Rule but has intended that this Tribunal authorize its flawed practice. Its misinterpretation has caused hardship to staff members who are liable for paying United States taxes from past years. Consistent misapplication does not justify itself but needs to be corrected.

39. Mr. Jackson submits that the Secretary-General's reference to New York seems to be in error and is misleading. Even if the Secretary-General had discretion in the matter, it would raise the issue of whether the exercise of discretion was fair and lawful. Imposing a one-year time limit is arbitrary, improper and unlawful as the Organization must honour the laws of Member States.

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- (e) Whether the ITU shares responsibility for the situation.
 - (f) Whether he received a corrected payroll information from the ITU.
 - (g) Whether the ITU failed to verify his income tax returns.
 - (h) Whether the ITU should have flagged that the exemption, from taxation, of income earned abroad does not apply to all states.
 - (i) Whether the ITU delayed by taking almost two years to respond to his query about the claim of state taxes owed to North Carolina.
 - (j) Whether the ITU was unaware that North Carolina did not exempt, from taxation, income earned abroad.
 - (k) Whether the exercise of the Secretary-General's alleged discretion to grant an exception is not subject to judicial review.

The Secretary-General has provided no reasoned argument as to how the approach underlying the contested decision would not violate Staff Regulation 3.3(f).

40. Mr. Jackson argues that there is a marked distinction between allowances or benefits, and the reimbursement of taxes. The reimbursement is simply repaying the staff assessment from the Tax Equalization Fund. By denying him the exception requested, the Administration violated the principle of parity which should ensure that every staff member, no matter his or her nationality, receives the same net pay. There is no financial burden on the Organization.

Considerations

41. The threshold issue before the Appeals Tribunal is whether or not then-Staff Rule 3.17(ii) applies to the type of tax reimbursement at issue here.³⁸ We find, as described herein, that it does not.

42. The General Assembly established the Tax Equalization Fund, which is funded by mandatory staff assessments, for the fundamental purpose of the “achievement of equity among its Members and equality among its personnel”.³⁹ Staff Regulation 3.3 carries forward this vital purpose by providing the mechanism for staff to receive a refund for taxes paid and payable on their United Nations salary. Importantly, Staff Regulation 3.3 does not impose any time limit for staff to claim such a refund.

43. The ITU took the position, adopted as well by the ASG/OHR and advanced before this Tribunal by the Secretary-General, that Staff Rule 3.17(ii) applies to tax reimbursement and barred Mr. Jackson’s claim. The UNDT did not find this position compelling, and neither does this Tribunal.

44. With regard to retroactivity of “payments”, Staff Rule 3.17 provided at the relevant time:⁴⁰

³⁸ At all times pertinent to this matter, the disputed one-year limitation period was set forth in Staff Rule 3.17(ii). The limitation is now found in Staff Rule 3.15(ii). For ease of reference, we refer to the applicable Rule number at the relevant time, 3.17(ii).

³⁹ General Assembly resolution 13(I) of 13 February 1946 (authorizing the Secretary-General to reimburse staff members who are required to pay tax on salaries and wages received from the Organization); *see also* General Assembly resolution 973(X) of 15 December 1955 (establishing the Tax Equalization Fund for such reimbursement).

⁴⁰ Emphasis added.

A staff member who has not been receiving *an allowance, grant or other payment* to which he or she is entitled shall not receive retroactively such allowance, grant or payment unless the staff member has made written claim:

...

(ii) In every other case, *within one year following the date on which the staff member would have been entitled to the initial payment.*

45. As a preliminary matter to be addressed, Staff Rule 3.17(ii) does not by its express terms apply to tax reimbursement under Staff Regulation 3.3. Staff Rule 3.17 is concerned with a situation of a “staff member who has not been receiving an allowance, grant or other payment to which he or she is entitled”. And it is situated within a set of Rules which deal with matters such as dependency allowance, education grant and hardship allowance—none of which have any similarity with the tax reimbursement provision of Staff Regulation 3.3. Notably, where the Staff Rules do touch on the staff assessment from which tax reimbursements are paid (*see* Staff Rule 3.2), there is no mention of a time limit for reimbursement claims.

46. As written, Staff Rule 3.17(ii) would apply to tax reimbursement only if such reimbursement were included as an “other payment” under that Rule, since it is neither an “allowance” nor a “grant”. Under the interpretive doctrine of *ejusdem generis*, we interpret the words “other payment” to cover only transactions that are similar to allowances or grants, and we conclude that a tax reimbursement does not fall within the accepted meaning of those terms.

47. The Secretary-General observes that Staff Regulations 3.3(f)(iii) and 3.3.(f)(iv) use the word “payments” with reference to tax reimbursements. This argument is not persuasive. Staff Regulation 3.3(f) addresses the “refund of (...) the amount of staff assessment collected”, and it is not reasonable to treat such a “refund” as an “allowance, grant or other payment” within the meaning of Staff Rule 3.17.⁴¹

48. Moreover, we agree with the UNDT that given the particular legal regime adopted for tax reimbursement, which draws on payments withheld from staff compensation via the staff

⁴¹ In this regard, we do not adopt the UNDT’s conclusion that Staff Regulation 3.3(f) was not applicable because, in its view, it applied only to staff members from the United States, in contrast to Staff Rule 3.17(ii). As the Secretary-General correctly notes, there is no such geographic restrictions to Staff Regulation 3.3(f). This error by the UNDT does not affect this Tribunal’s ultimate conclusion, however.

assessment and in many cases is paid to the taxing authority directly, and not the staff member, it is unreasonable to treat such reimbursement as a “payment” under this Staff Rule.⁴²

49. We further recall that the Staff Rules are subordinate to the Staff Regulations within the legislative and regulatory framework of the United Nations and must be interpreted so as to be consistent with the text and purpose of Staff Regulations and, by necessity, General Assembly resolutions as well. The applicable General Assembly resolutions and Staff Regulations do not limit the time for claiming tax reimbursement, nor does their language or the context of their adoption evidence any intention that rigid time limits should be applied. Accordingly, we find no basis to apply the generic language of Staff Rule 3.17(ii) to this context. The time restriction in that Rule is not found in, nor been shown to be intended by, the broader regime within which the Staff Rules operate.

50. We likewise must reject the notion that the Information Circulars issued each year setting “[d]eadlines for submission of requests for reimbursement”, and which state, in relevant part, that “there is a one-year limitation on filing a claim for tax reimbursement”, provide a basis to find that limitation applicable here. While information circulars are important methods to establish and communicate procedures, they are not the method by which substantive provisions may be added to Staff Regulations.⁴³

51. We therefore conclude that the Secretary-General erred in applying the one-year time limit in Staff Rule 3.17(ii) to Mr. Jackson’s request for reimbursement of his North Carolina state income taxes. Because we so find, we do not reach the issue of whether, if that Staff Rule did apply, the Secretary-General abused his discretion in declining to waive that limitation. Nor do we reach the issue of whether Mr. Jackson had been advised (as he contends) that he did not need to pay taxes in any state, or whether, as the Secretary-General contends, no such statement was made.

52. Our determination above thus requires consideration of whether the remedy ordered by the UNDT was appropriate. The UNDT required the United Nations to reimburse Mr. Jackson the full amount of state taxes owed for 2015-2018, as well as any penalty or interest accrued on those taxes which accrued from 27 January 2022 (the day after ASG/OHR

⁴² Impugned Judgment, paras. 31-36.

⁴³ *Johnson v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-240, para. 44.

denied the request for an exception) to the date of payment.⁴⁴ The rationale for requiring Mr. Jackson to pay interest and penalties for the period through 26 January 2022 was that he had contributed to the delay in filing and claiming tax reimbursement up to that point.⁴⁵

53. That resolution is appropriate. Even though the United Nations is responsible for reimbursing Mr. Jackson for his state taxes, Mr. Jackson always had the obligation to “observe laws (...) of the State in which” he resided, and to perform his “private obligations”, pursuant to Staff Regulation 1.1(f). Mr. Jackson could and should have enquired whether or not he was obligated to pay North Carolina state taxes as soon as he moved there, but he did not. Indeed, even when he was advised by the state of North Carolina in 2019 that he owed taxes for 2015, he did not promptly pay his back taxes, but instead appears to have simply sent an e-mail to the United Nations (in November 2019) requesting a letter explaining that he owed no taxes (which would have been incorrect). Mr. Jackson did not take timely steps to ensure his compliance and cannot be heard to claim that the United Nations is liable for the consequences of his own delay. Any interest and penalties owed up to the point when the United Nations wrongly denied his reimbursement request are properly borne by Mr. Jackson.

54. We are mindful that the present Judgment formalizes the absence of any limitations period for requests for income tax reimbursement, and that this may create inconvenient administrative consequences for the United Nations. Whether there should be a time limit on such claims is not a matter for judicial comment. It is a matter for the legislature, the General Assembly, to consider and determine. This Tribunal’s role is to interpret and apply the relevant Regulations and Rules at the relevant times and in particular individual circumstances.

⁴⁴ Impugned Judgment, para. 52.

⁴⁵ *Ibid.*, para. 50.

Judgment

55. The Secretary-General's appeal is dismissed, and Judgment No. UNDT/2023/021 is hereby affirmed.

Original and Authoritative Version: English

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

(Signed)

Judge Ziadé, Presiding

(Signed)

Judge Savage

(Signed)

Judge Colgan

Judgment published and entered into the Register on this 16th day of August 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar