



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2025-UNAT-1512

Reynaud Joseph-Marie Theunens
(Appellant)

v.

Secretary-General of the United Nations
(Respondent)

JUDGMENT

Before:	Judge Katharine Mary Savage, Presiding Judge Graeme Colgan Judge Kanwaldeep Sandhu
Case No.:	2024-1904
Date of Decision:	21 March 2025
Date of Publication:	9 April 2025
Registrar:	Juliet E. Johnson

Counsel for Appellant:	George G. Irving
Counsel for Respondent:	Angélique Trouche

JUDGE KATHARINE MARY SAVAGE, PRESIDING.

1. Mr. Reynaud Joseph-Marie Theunens (Mr. Theunens), a staff member of the United Nations Interim Force in Lebanon (UNIFIL) contested the decision of the Administration to impose on him the disciplinary measure of demotion of one grade with a three-year deferment of eligibility for consideration for promotion, in accordance with Staff Rule 10.2(a)(vii), for harassment and abuse of authority (contested decision).
2. On 29 December 2023, by Judgment No. UNDT/2023/145 (impugned Judgment),¹ the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) concluded that it had been established by a preponderance of the evidence that Mr. Theunens had committed harassment and abuse of authority and dismissed his application.
3. Mr. Theunens lodged an appeal against the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

5. In June 2001, Mr. Theunens joined the United Nations. In May 2009, he became Chief of the Joint Military Analysis Center (JMAC), UNIFIL, at the P-5 level. In his role, he supervised 10 staff members.
6. In 2019, three staff members of the JMAC filed complaints against Mr. Theunens alleging that, *inter alia*, he “created an abusive, harassing and discriminatory work environment and abused his authority as Chief of the Unit”.² On 20 February 2019, Complainant 1, an Information Analyst under Mr. Theunens’ supervision, filed a complaint of alleged misconduct against him to the Regional Conduct and Discipline Section of UNIFIL.³ On 31 May 2019, Complainant 2 and Complainant 3, two national staff members working as Language/Research Assistants, also filed complaints against Mr. Theunens.⁴

¹ *Theunens v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/145.

² Impugned Judgment, para. 7.

³ Complaint of Complainant 1 dated 20 February 2019.

⁴ Complaints of Complainant 2 and Complainant 3 dated 31 May 2019.

7. On 31 July and 16 August 2019, the Head of Mission and Force Commander (HoM/FC) of UNIFIL appointed a fact-finding panel to investigate the allegations of misconduct raised against Mr. Theunens.⁵

8. The fact-finding panel opened an investigation and interviewed 14 individuals, including the Complainants and Mr. Theunens.⁶

9. On 6 April 2020, the fact-finding panel issued its Investigation Report, in which it found that the following allegations had been substantiated:⁷

... In light of the above findings, the panel concludes that Mr. Theunens has constantly rejected the work of [Complainant 1] since his return from Yemen in 2015.

... Mr. Theunens was convinced that [Complainant 1] has not met the performance expectations since 2015. The panel found evidence that Mr. Theunens did not address the alleged underperformance in a constructive and timely manner.

... The panel notes that senior managers, peers and rebuttal panels consider that [Complainant 1]’s performance meet or exceed performance expectations, however, the constant rejection of [Complainant 1]’s work caused humiliation, created a hostile work environment and made him to believe that everything he produced was ‘toxic’.

... The Panel finds evidence of the prevalence of a hostile, discriminatory, and intimidating work environment in JMAC resulting from Mr. Theunens’ actions consistent with those that are prohibited under ST/SGB/2008/5. The Complainants and witnesses provided evidence that Mr. Theunens’ actions caused offense and humiliation and that Mr. Theunens used his position as a supervisor to influence the performance evaluation of staff members.

... The Panel finds that Mr. Theunens, in his tone, language, attitude and behaviour as evidenced by the complainants, witnesses, and Mr. Theunens himself, failed to adhere to and uphold and respect the principles of the United Nations Staff Rules and Regulations that staff members shall exhibit respect for all cultures, and that they shall not discriminate against any individual or group of individuals or otherwise abuse the power and authority vested in them.

⁵ Investigation Report, para. 1. See also Inter Office Memorandum from the HoM/FC to the United Nations Headquarters dated 31 July 2019.

⁶ *Ibid.*, para. 17.

⁷ *Ibid.*, paras. 202-204, 207 and 210.

10. By letter dated 5 April 2020, the HoM/FC informed Mr. Theunens that he was being placed on Administrative Leave with Pay (ALWP) “in order to protect the Complainants and witnesses, and to maintain a harmonious and effective work environment pending finalization of the [disciplinary] process”.⁸

11. On 6 April 2020, based on the findings of the Investigation Report, the HoM/FC referred the case to the Office of Human Resources (OHR) for appropriate action.⁹

12. On 15 July 2021, the Administrative Law Division, OHR, informed Mr. Theunens by letter that, based on the evidence and findings contained in the Investigation Report, he was charged with the following allegations of misconduct:¹⁰

- a. From at least 2011 until 2020, as Chief, JMAC, UNIFIL, you created an abusive, harassing and discriminatory work environment in JMAC;
- b. You abused your authority with respect to your management of [Complainant 1]’s performance;
- c. You engaged in discriminatory and harassing conduct towards [Complainant 2] and [Complainant 3] including by (a) introducing [Complainant 2] and [Complainant 3] by their respective religions (b) demonstrating a lack of respect for the Southern Lebanese population by mocking the name ‘Ali’, and (c) excluding, and/or limiting the disclosure of information to, [Complainant 2] and [Complainant 3] because of their nationality.

13. The letter also specified that, if established, Mr. Theunens’ conduct would constitute a violation of Staff Regulation 1.2(a) and Staff Rule 1.2(c) and (f). Mr. Theunens was given one month to submit his written comments on the factual findings, which he did on 16 September 2021, after being granted an extension.¹¹

14. On 13 January 2023, Mr. Theunens was informed by letter (Sanction Letter) from the Assistant Secretary-General for Human Resources that the Under-Secretary-General for Management Strategy, Policy and Compliance (USG/DMSPC) had determined that it had been established by a preponderance of the evidence that he had committed harassment and abuse of authority in contravention of Staff Regulation 1.2(a), Staff Rule 1.2(f) and Secretary-General’s

⁸ Letter of imposition of ALWP from UNIFIL to Mr. Theunens dated 5 April 2020.

⁹ Annex to the Sanction Letter dated 13 January 2023, para. 1.

¹⁰ Letter of allegations of misconduct from the Administrative Law Division, OHR to Mr. Theunens dated 15 July 2021, para. 62.

¹¹ *Ibid.*, paras. 63 and 65.

Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority). Specifically, it was established that:¹²

1. From approximately 2010-2020, during your service as Chief, JMAC, you created an inharmonious work environment within JMAC, by *inter alia* raising your voice to Sgt. [R.], targeting [Complainant 1], introducing [Complainant 2] and [Complainant 3] by their respective religions/sects and/or communities and intentionally not communicating with them;
2. From 2011-2020, following an interpersonal problem with [Complainant 1], you improperly used your authority by targeting [Complainant 1] through an overly critical approach to feedback on work outputs and an inadequate use of the performance evaluation process;
3. From 2010-2014, you introduced [Complainant 2] and [Complainant 3] by their respective religions/sects and/or communities;
4. Since 2016, because of an interpersonal conflict, you excluded [Complainant 2] and [Complainant 3] within the work environment by intentionally not communicating and seeking to use [A.K.] ‘as a filter’.

15. The Sanction Letter also stated that the USG/DMSPC had decided to drop the other allegations, namely that Mr. Theunens “engaged in discriminatory and harassing conduct towards [Complainant 2] and [Complainant 3] by demonstrating a lack of respect for the Southern Lebanese population by mocking the name ‘Ali’” or “by excluding, and/or limiting the disclosure of information to [Complainant 2] and [Complainant 3] because of their nationality”.¹³

16. The USG/DMSPC determined that Mr. Theunens’ actions amounted to serious misconduct. As a result, the USG/DMSPC imposed on Mr. Theunens the disciplinary measure of demotion of one grade with a three-year deferment of eligibility for consideration for promotion, together with the administrative measure of undertaking training to improve his ability to deal with a diverse working environment as arranged and directed by UNIFIL. In taking the contested decision, the USG/DMSPC considered as a mitigating factor the fact that Mr. Theunens had served with the Organization since June 2001 in challenging duty stations. As aggravating factors, the

¹² Sanction Letter dated 13 January 2023 from the Assistant Secretary-General for Human Resources to Mr. Theunens.

¹³ *Ibid.*

USG/DMSPC took into account the compound nature of his misconduct and his position as a staff member serving at the P-5 level.¹⁴

17. On 17 February 2023, Mr. Theunens filed an application with the Dispute Tribunal challenging the contested decision.

Impugned Judgment

18. From 11 to 15 September 2023, the UNDT held a hearing on the merits of the case, during which it heard oral evidence from seven witnesses: the three Complainants, Mr. Theunens, A.K. (who arrived in JMAC in March 2017 and succeeded Mr. Theunens as Chief of JMAC), E.V. (who, at the relevant time of events, had been the UNIFIL Chief of the Special Staff) and L.R. (who, from 2009 to 2017, served in JMAC as an Information Analyst at the P-3 and then P-4 level).¹⁵

19. On 29 December 2023, the Dispute Tribunal issued the impugned Judgment, dismissing Mr. Theunens' application. It noted that, since Mr. Theunens had admitted several key facts in the case, the dispute was limited to his explanations of how and why the incidents occurred.¹⁶ The UNDT then proceeded to review in detail the testimonies of the witnesses who had testified before it and assessed their respective credibility.

20. First, regarding the witnesses called by the Secretary-General, the UNDT found them to be credible. A.K. was found to be a "very credible witness", who exhibited no bias and whose candour and demeanour were those of an intelligent witness trying to tell the truth about what he observed. His testimony was found not to have been contradicted, not to have been in any way improbable, and to have been cogent, of high calibre, integrity and independence. The UNDT noted that Mr. Theunens' challenge to A.K.'s account was based on the claim that A.K. had his own behavioral issues, in particular with the military Deputy Chiefs of JMAC, and that he had taken over Mr. Theunens' position after the latter's demotion. The Dispute Tribunal rejected both challenges, stating that it had no doubts about the veracity of his testimony.¹⁷

21. Turning to the testimonies of the Complainants, the UNDT first analyzed the testimony of Complainant 3. It concluded that he was a reliable witness, noting that his testimony was consistent with the testimony of several other credible witnesses and some of Mr. Theunens' own

¹⁴ *Ibid.*

¹⁵ Impugned Judgment, para. 3.

¹⁶ *Ibid.*, paras. 309-310.

¹⁷ *Ibid.*, paras. 58-60.

admissions. The UNDT further found that, although Complainant 3 disliked Mr. Theunens, he did not “demonize” him.¹⁸ Similarly, regarding Complainant 2, the UNDT held that, although she did not like Mr. Theunens, her testimony seemed “probable, based on all of the evidence”.¹⁹ As for Complainant 1, the UNDT deemed him “relatively credible as a witness”, emphasizing that the discrepancies between his testimony and that of L.R. did not affect the credibility of either witness.²⁰

22. Second, turning to the witnesses called by Mr. Theunens, the UNDT first analyzed the testimony of E.V. Although it found him to be credible, the UNDT rejected the validity of his opinions regarding the work environment in JMAC on the basis that they were based on “very limited information”.²¹ Indeed, the UNDT highlighted that E.V. himself testified that there were not “many situations where [he] was visiting JMAC itself, the offices and meeting the other people [since] (...) [m]ost of [his] contacts were directly with Mr. Theunens”.²² Regarding the allegations concerning Complainant 1, the UNDT observed that E.V.’s testimony was consistent with that of the other witnesses, highlighting that he stated that Complainant 1 “was tense” and “told him he felt targeted” by Mr. Theunens.²³ Next, as for L.R., the UNDT found her to be neither a credible nor a reliable witness. On the contrary, it held that she was biased in favour of Mr. Theunens. In this regard, the UNDT emphasized that she did not recall several events that could have reflected poorly on Mr. Theunens and attempted to excuse some of his actions.²⁴ The UNDT also noted that her testimony contradicted previous statements she had made during her interview conducted by the fact-finding panel.²⁵ Furthermore, the UNDT observed that her reassignment as a supervisor of the national staff, “even though she was a P-3 Analyst and [Mr. Theunens] had previously wanted to have a P-4 as a supervisor”, gave her a special post adjustment and “coincided with her developing more negative views about the national staff”.²⁶

23. Third, the UNDT examined the testimony of Mr. Theunens. Rejecting his version of the events, the UNDT noted that his answers were “long, rambling, evasive, and evolving”.²⁷ The

¹⁸ *Ibid.*, para. 93.

¹⁹ *Ibid.*, para. 124.

²⁰ *Ibid.*, paras. 154-155.

²¹ *Ibid.*, para. 170.

²² *Ibid.*, paras. 164 and 168.

²³ *Ibid.*, paras. 165-166 and 169.

²⁴ *Ibid.*, paras. 204-205.

²⁵ *Ibid.*, para. 206.

²⁶ *Ibid.*, para. 208.

²⁷ *Ibid.*, para. 302.

UNDT further held that although he conceded that “there was a tense environment in JMAC throughout his time as Chief, (...) [it] was always someone else’s fault”.²⁸

24. The UNDT then examined the facts in support of each allegation of misconduct.

25. It first concluded that “from approximately 2010 to 2020, (...) [Mr. Theunens] created an inharmonious work environment within JMAC, by *inter alia* raising his voice to Sgt. [R.]”.²⁹ In particular, the UNDT held that Mr. Theunens himself admitted that he raised his voice at Sgt. R. “as many as three times”.³⁰ The UNDT found that there was “no justification for shouting at a subordinate, and certainly not in a manner that causes that person to be intimidated and unable to respond”.³¹

26. The UNDT found that, during that same period, but particularly from 2010 to 2014, it had been demonstrated that Mr. Theunens introduced Complainant 2 and Complainant 3 by their respective religions/sects and/or communities to JMAC visitors, namely as “the Christian” and “the Muslim”. It held that these designations were inappropriate and rejected Mr. Theunens’ claim that he was referring to “sects” and not “religions”, highlighting that he himself admitted that sects are based on religions.³²

27. The UNDT also concluded that, from 2010 to 2020, Mr. Theunens intentionally avoided communicating with Complainant 2 and Complainant 3. It further held that, since 2016, Mr. Theunens, as he himself admitted, used A.K. as “a filter” to avoid having to communicate with Complainant 2 and Complainant 3. The UNDT also rejected Mr. Theunens’ contention that he acted solely upon the recommendation of the Ombudsman and that his conduct was in accordance with the legal framework applicable.³³

28. The UNDT determined that, from 2011 to 2020, Mr. Theunens improperly used his authority to target Complainant 1 by: i) returning several of her reports with “constant, unnecessary criticisms”; ii) recommending her to take “basic report writing training” that were unnecessary given her experience; iii) taking away her supervisory role for no valid reason; iv) trying to enlist other staff members to inform on her; and v) making inadequate use of the

²⁸ *Ibid.*, para. 303.

²⁹ *Ibid.*, para. 322.

³⁰ *Ibid.*, para. 313.

³¹ *Ibid.*, para. 312.

³² *Ibid.*, paras. 317-318, 322 and 324.

³³ *Ibid.*, paras. 319-322 and 325.

performance evaluation process to improperly rate Complainant 1's performance. Regarding this last element, the UNDT rejected Mr. Theunens' argument that Complainant 1 had poor work performance, noting that "rebuttal panels at least twice raised [Mr. Theunens]' evaluations of [Complainant 1]'s performance".³⁴ The UNDT noted that, as a result of Mr. Theunens' actions, Complainant 1 became a "broken man" and had to take Special Leave Without Pay (SLWOP).³⁵

29. Therefore, the UNDT concluded that the facts of the case had been established by a preponderance of the evidence.

30. The UNDT held that Mr. Theunens' acts constituted misconduct in violation of Staff Regulation 1.2(a), Staff Rule 1.2(f) and Sections 1.2, 1.4 and 3.2 of ST/SGB/2008/5. The UNDT found that, contrary to Mr. Theunens' argument, his actions did not constitute normal disagreements over work performance. On the contrary, it held that some of his actions were not even related to the staff member's performance and, "even assuming that there were valid performance or other work-related issues, [his] conduct was far outside the bounds of normal disagreements or management actions".³⁶

31. Next, the UNDT determined that the sanction imposed on Mr. Theunens was proportionate. It further concluded that, given the serious and prolonged nature of the misconduct, along with Mr. Theunens' failure to rectify his actions despite multiple warnings, it was "clear that a non-disciplinary 'administrative action' would not have achieved the required result".³⁷ The UNDT noted that the Administration appropriately considered the past practices of the Organization in similar cases as well as aggravating and mitigating factors.

32. Last, the UNDT rejected Mr. Theunens' contention that the Administration had violated his due process rights during the investigation and the disciplinary process.³⁸

Procedure before the Appeals Tribunal

33. On 23 February 2024, Mr. Theunens filed an appeal against the impugned Judgment with the Appeals Tribunal, to which the Secretary-General responded on 10 May 2024.

³⁴ *Ibid.*, paras. 315-316.

³⁵ *Ibid.*, para. 316.

³⁶ *Ibid.*, paras. 326-333.

³⁷ *Ibid.*, para. 340.

³⁸ *Ibid.*, paras. 343-352.

Submissions

Mr. Theunens' Appeal

34. Mr. Theunens requests that the Appeals Tribunal rescind the contested decision and award him compensation for “moral damages to career and professional reputation” in the amount of two years’ net base salary.³⁹

35. Mr. Theunens submits that the UNDT committed several errors of facts in the impugned Judgment. In this regard, he claims that the UNDT erred in finding that, from 2010 to 2020, he created an inharmonious work environment. Specifically, Mr. Theunens alleges that the UNDT erroneously relied on “few isolated events”, which were corroborated only by the three Complainants and A.K. In particular, he contends that the UNDT placed undue emphasis on the incident in which he allegedly raised his voice at Sgt. R., an incident he asserts was not established by clear and convincing evidence. He points out that the Sanction Letter explicitly stated that since “Sgt. [R.] was not a complainant and was not interviewed during the investigation, Mr. Theunens’ conduct towards him [was] not considered as an instance of harassment in and of itself but rather as an element indicative of act 1”.⁴⁰ He also highlights that Sgt. R. neither filed a complaint, nor was interviewed by the fact-finding panel. Additionally, he denies the UNDT’s finding that he admitted losing his temper three times.⁴¹ Furthermore, Mr. Theunens argues that the UNDT improperly disregarded his performance evaluations and those of the Complainants and failed to address how he “could have engaged in misconduct over a ten-year period, with no suggestion of a problem in his excellent performance appraisals and without anyone notifying him about this (alleged) mistreatment of his colleagues”.

36. Mr. Theunens also contends that the UNDT erred in its assessment of the credibility of the witnesses who testified before it.

37. First, regarding A.K., Mr. Theunens alleges that the UNDT failed to consider that his testimony was contradicted by documentary evidence and that he had an interest in the outcome of the case, as he had been selected to replace him as Chief of JMAC.

³⁹ Appeal form.

⁴⁰ Annex to the Sanction Letter dated 13 January 2023, para. 60. According to the Sanction Letter, “act 1” refers to the count described in point 1 of the citation in paragraph 14 of the present Judgment.

⁴¹ Impugned Judgment, para. 313.

38. Second, regarding the credibility of Complainant 2 and Complainant 3, Mr. Theunens asserts that the UNDT ignored their bias against him. Specifically, he argues that they both used “confrontational language with racist connotation” towards him during their interviews by the fact-finding panel. As for Complainant 3, Mr. Theunens contends that he also demonstrated bias against L.R., referring to her as a “hairstresser”. He also argues that Complainant 2 and Complainant 3 disliked him because of the delays they faced in being promoted. Additionally, he points out that their complaints “coincided” with the negative performance evaluation received by Complainant 1, even though they could have filed their complaints earlier. Mr. Theunens reiterates that, contrary to the UNDT’s finding, he did not refer to Complainant 2 and Complainant 3 by their religions but their sects. He further asserts that Complainant 2 and Complainant 3 never raised the issue of these qualifications prior to filing their complaints. On the contrary, he claims that Complainant 3 referred to him positively in his 2013–2014 performance evaluation. Mr. Theunens also contends that the UNDT erred in finding that, since 2016, he used A.K. as “a filter” to avoid communicating with Complainant 2 and Complainant 3, noting that A.K. only became their First Reporting Officer (FRO) in April 2019. He reiterates that his actions towards Complainant 2 and Complainant 3 were consistent with the legal framework as well as guidance from the Ombudsman and that the UNDT disregarded the fact that he recommended them for promotion and gave them positive performance evaluations.

39. Third, regarding the credibility of Complainant 1, Mr. Theunens contends that the UNDT ignored their personal conflict, which he asserts stemmed from Complainant 1’s poor work performance. He also disputes the UNDT’s finding that Complainant 1 saw L.R. crying after a “heated conversation” with him, pointing out several inconsistencies regarding, *inter alia*, the alleged date on which the “crying incident” and the “heated conversation” occurred. Moreover, Mr. Theunens argues that the UNDT erred in finding that Complainant 1 became a “broken man” and had to leave on SLWOP as a result of his actions,⁴² when several witnesses confirmed that he applied for SLWOP for family reasons. He further asserts that the UNDT failed to consider Complainant 1’s “selective memory” regarding certain events, citing, among other things, his failure to recall incidents involving the Deputy Chief of JMAC. Lastly, Mr. Theunens notes that Complainant 1 only filed his complaint in February 2019, although he could have filed it earlier.

40. Fourth, Mr. Theunens claims that the UNDT erred in finding that E.V. had access to very limited information regarding the work environment at JMAC. On the contrary, he asserts that

⁴² *Ibid.*, para. 316.

E.V. was “aware of all issues in UNIFIL that required the HoM/FC’s attention, including any potential misconduct”, noting that he was also his FRO and Complainant 1’s Second Reporting Officer.

41. Fifth, Mr. Theunens submits that the UNDT erred in finding L.R. not to be a credible witness and in misrepresenting key parts of her testimony. In particular, he points out that the UNDT erred in suggesting that her “movement to P-4 was [his] decision” or in stating that her testimony was contradicted by declarations she had made to the fact-finding panel.⁴³

42. Mr. Theunens also submits that the UNDT committed several errors of law in the impugned Judgment. He recalls the burden of proof in disciplinary cases. Regarding the proportionality of the sanction imposed on him, Mr. Theunens contends that the sanction was “harsh” and that the UNDT failed to consider his record of service, “given the nature of the infractions, which were based on isolated incidents over a ten-year period”. He also asserts that it was unfair for the UNDT to refer to him as a “glib individual”.⁴⁴

The Secretary-General’s Answer

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

44. The Secretary-General submits that Mr. Theunens failed to demonstrate any error of fact that would warrant a reversal of the impugned Judgment.⁴⁵ On the contrary, the Secretary-General argues that Mr. Theunens merely disagrees with the impugned Judgment and attempts to reargue the case. The Secretary-General further points out that many of his arguments merely replicate submissions made before the UNDT. However, relying on Appeals Tribunal jurisprudence, the Secretary-General recalls that the appeals procedure is not an opportunity for a party to reargue their case and that the UNDT is not required to address each and every claim made by a litigant, particularly when such claim lacks merit.⁴⁶

⁴³ *Ibid.*, paras. 206 and 208.

⁴⁴ *Ibid.*, para. 302.

⁴⁵ The Secretary-General emphasizes that Mr. Theunens does not dispute the UNDT’s assessment of his credibility or the fact that he admitted several of the “key facts” of the case.

⁴⁶ *Ray Steven Millan v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1330, para. 99; *Negussie v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-700, para. 19.

45. The Secretary-General recalls that the Appeals Tribunal has consistently held that “the assessment of evidence is foremost in the hands and responsibility of the trial judge” and that it will consequently not lightly interfere with the UNDT’s findings, especially when oral evidence is heard.⁴⁷ In the present case, the Secretary-General argues that Mr. Theunens failed to demonstrate that any of the alleged errors would have led to a manifestly unreasonable decision or a different outcome of the case.

46. Turning to the specific errors of fact alleged by Mr. Theunens, the Secretary-General contends that, in reaching its conclusion that Mr. Theunens created an inharmonious work environment, the UNDT properly relied on the testimonies of several witnesses it found credible, as well as Mr. Theunens’ own admission that the toxic environment in JMAC existed for over a decade.⁴⁸

47. Turning to Mr. Theunens’ contentions regarding the instances where he raised his voice at Sgt. R., the Secretary-General argues that these contentions do not demonstrate any error committed by the UNDT. In this regard, the Secretary-General clarifies that the UNDT used the appropriate evidentiary standard of preponderance of the evidence, although it also held that the standard of clear and convincing evidence was met.⁴⁹ Regarding the number of times Mr. Theunens raised his voice, the Secretary-General notes that, although it is unclear on what basis the UNDT found that he raised his voice three times, several witnesses testified that it happened more than once, an element that Mr. Theunens does not challenge.⁵⁰ The Secretary-General further observes that the specific number of instances was not considered in the Sanction Letter and, thus, was not relevant when the contested decision was taken.

48. The Secretary-General submits that the UNDT appropriately considered and reflected the performance evaluations of the witnesses in the impugned Judgment. The Secretary-General further argues that Mr. Theunens’ assertion that the UNDT failed to address how he “could have engaged in misconduct over a ten-year period, with no suggestion of a problem in his excellent performance appraisals and without anyone notifying him about this (alleged) mistreatment of his colleagues” lacks merit. On the contrary, the Secretary-General notes that the UNDT found, based

⁴⁷ *Ravi Karkara v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1172, para. 64; *George M’mbetsa Nyawa v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1024, para. 81.

⁴⁸ Impugned Judgment, paras. 251, 283-284, 292 and 309.

⁴⁹ *Ibid.*, para. 311.

⁵⁰ *Ibid.*, paras. 57, 199 and 313-314.

on, *inter alia*, Mr. Theunens' own testimony regarding his performance record, that he had sufficient notice that his "inappropriate treatment of staff was unwelcome but still continued his behaviour".⁵¹ In any event, the Secretary-General asserts that whether or not Mr. Theunens had been notified of his actions is irrelevant in determining whether the facts of the case were established.

49. With regard to the UNDT's assessment of the witnesses' credibility, the Secretary-General contends that the UNDT properly assessed in detail the credibility of the witnesses who testified before it.

50. First, with regard to A.K.'s testimony, the Secretary-General argues that the UNDT properly addressed and rejected Mr. Theunens' argument that A.K. had an interest in the outcome of the case.⁵² In this regard, the Secretary-General also notes that Mr. Theunens did not demonstrate any contradiction between the UNDT's conclusion and the documentary evidence.

51. Second, regarding Complainant 2 and Complainant 3's credibility, the Secretary-General argues that their bias against Mr. Theunens and L.R. was appropriately weighted by the UNDT. Furthermore, the Secretary-General asserts that the allegation that Complainant 2 and Complainant 3 used language with racist connotation is unsubstantiated. In particular, the Secretary-General notes that it is clear from Complainant 3's testimony, that he never compared L.R. to a hairdresser.⁵³ The Secretary-General submits that Complainant 2 and Complainant 3 both credibly testified that it was not because of the delay they faced in being promoted that they disliked Mr. Theunens. Regarding the delay for filing their complaints, the Secretary-General contends that Mr. Theunens did not identify any error by the UNDT. In any event, the Secretary-General recalls that, pursuant to Appeals Tribunal jurisprudence, a delay in filing a complaint does not necessarily undermine the complainant's credibility.⁵⁴ The Secretary-General asserts that the UNDT correctly considered and rejected Mr. Theunens' argument that he did not refer to Complainant 2 and Complainant 3 by their religions but by their sects, or that his actions toward them aligned with the legal framework as well as guidance from the Ombudsman. The Secretary-General contends that the UNDT appropriately found that Mr. Theunens used A.K. as "a filter" to avoid having to communicate with Complainant 2 and Complainant 3, as Mr. Theunens

⁵¹ *Ibid.*, para. 332.

⁵² *Ibid.*, para. 60.

⁵³ *Ibid.*, para. 88.

⁵⁴ *Ishfaq Hossain v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1181, para. 57.

admitted.⁵⁵ The Secretary-General also argues that there is “ample evidence” supporting the UNDT’s conclusion that he did not communicate with Complainant 2 and Complainant 3, and that Mr. Theunens’ mere disagreement with this conclusion fails to establish any error in the impugned Judgment. The Secretary-General also notes that, contrary to Mr. Theunens’ argument, it is undisputed that he downgraded Complainants 2 and 3’s performance appraisals.⁵⁶

52. Third, as to the credibility of Complainant 1, the Secretary-General submits that the UNDT appropriately considered the fact that Complainant 1 did not appreciate him, as well as Mr. Theunens’ argument that the origin of their personal conflict lay in Complainant 1’s poor work performance. With regard to the incident where Complainant 1 alleges that he saw L.R. crying after a “heated conversation” with him, the Secretary-General observes that Mr. Theunens was not sanctioned for this incident and that his assertions regarding the date discrepancies remain unsubstantiated. Concerning Complainant 1’s reason for requesting SLWOP, the Secretary-General points out that it had been established before the UNDT that Complainant 1 wrote that the “pressure by [Mr. Theunens] and ongoing stress [had] become unbearable in [his] family and [him]”.⁵⁷ Regarding Mr. Theunens’ contention that Complainant 1 had a “selective memory” – specifically, his failure to recall the incidents involving the Deputy Chief of JMAC or the fact that he filed his complaint only in February 2019 – the Secretary-General submits that these arguments are, respectively, based on an erroneous reference to the hearing transcripts and a lack of citation.

53. Fourth, the Secretary-General contends that Mr. Theunens failed to demonstrate that the UNDT erred in its assessment of the credibility of E.V. and L.R. The Secretary-General further asserts that Mr. Theunens failed to show that he played no role in L.R.’s promotion.

54. The Secretary-General submits that Mr. Theunens also failed to demonstrate any error of law in the impugned Judgment. Regarding the applicable burden of proof, the Secretary-General notes that while Mr. Theunens refers to relevant legal framework and jurisprudence, he does not demonstrate how the UNDT violated any of these or identify any error committed by the UNDT.

55. Last, regarding the proportionality of the sanction imposed on Mr. Theunens, the Secretary-General contends that Mr. Theunens’ argument that the UNDT overlooked his record of

⁵⁵ Impugned Judgment, paras. 277 and 309.

⁵⁶ *Ibid.*, paras. 75, 119 and 238.

⁵⁷ *Ibid.*, para. 138.

service is not receivable as he raised it for the first time on appeal.⁵⁸ In any event, referring to the Sanction Letter, the Secretary-General argues that Mr. Theunens' argument is misplaced as his history of service was considered as a mitigating factor.

Considerations

56. In issue in this appeal is whether the UNDT erred in fact in finding that the Administration had shown by a preponderance of the evidence that Mr. Theunens had committed harassment and abuse of authority, and whether it erred in law in finding that the sanction imposed on Mr. Theunens was proportionate to the nature and gravity of his misconduct.

57. In disciplinary cases under Article 2(1)(b) of the Dispute Tribunal Statute, the UNDT will examine: i) whether the facts on which the disciplinary measure is based have been established (by a preponderance of the evidence, but where termination is a possible sanction, the facts must be established by clear and convincing evidence); ii) whether the established facts amount to misconduct; iii) whether the sanction is proportionate to the offence; and iv) whether the staff member's due process rights were respected.⁵⁹

58. In *Sanwidi*, we noted that:⁶⁰

... 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.

59. It is for this Tribunal to determine whether the UNDT made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction in arriving at the decision it reached. In doing so, our task is corrective in nature and is not an opportunity for a dissatisfied

⁵⁸ *Koffi Gilles Wilfried Amani v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1301, para. 61; *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, para. 37.

⁵⁹ *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.

⁶⁰ *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 40.

party to reargue their case.⁶¹ Consequently, provided that the UNDT has undertaken its task in the manner required of it, we will afford a degree of deference to its factual findings as the tribunal of first instance, particularly where oral evidence is heard. This is so given that the UNDT has the advantage of assessing the demeanour of witnesses while they testify, which is critical in assessing the credibility, reliability, and persuasiveness of their evidence.⁶²

60. As we have previously indicated, in undertaking its task, the UNDT is required to provide a full, systematic analysis of the evidence that was presented to it during the hearing and set out explicit reasons for accepting or rejecting the testimony of each witness who testified. It must make explicit findings pertaining to the credibility and reliability of the evidence placed before it and provide a clear indication of which disputed version it prefers, along with an explanation.⁶³ This involves a consideration of issues including: i) the witness' candour and demeanour; ii) the witness' latent and blatant biases; iii) internal and external inconsistencies in the evidence; iv) the probability or improbability of particular aspects of the witness' version; v) the calibre and cogency of the witness' testimony when compared to that of other witnesses testifying in relation to the same incident; vi) the opportunities the witness had to experience or observe the events in question; and vii) the quality, integrity and independence of the witness' recall of the events.⁶⁴

61. Having regard to the material that was placed before the UNDT, we are not persuaded that it has been shown that the UNDT made any material errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction in arriving at the decision that it did. The UNDT undertook its task in the manner required of it. It analysed the evidence placed before it and set out explicit reasons in an extensive Judgment for accepting or rejecting the testimony of each witness who testified, having regard to issues including the credibility of individual witnesses and the reliability of their accounts, and explaining why it preferred one disputed version over another. Its findings were borne out by the testimony of witnesses, certain of whom corroborated each other in key respects, with the allegations of bias or improper motives on the part of certain witnesses raised by Mr. Theunens being properly considered and rejected by the UNDT.

⁶¹ *Abdulhamid Al Fararjeh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1136, para. 37.

⁶² *Ravi Karkara* Judgment, *op. cit.*; *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123, para. 36.

⁶³ *AAC v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1370, paras. 45 and 47.

⁶⁴ *AAE v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1332, para. 105.

62. Importantly, the UNDT took into account the fact that Mr. Theunens admitted many of the key facts in the case. These included acknowledging that tensions existed between himself and both staff and national staff members, that in “hindsight [he was] probably too demanding [as a manager]”,⁶⁵ that he raised his voice at work, that he referred to the sects of certain national staff members, and that he had difficult interpersonal issues with Complainant 1. He admitted downgrading Complainant 1’s performance evaluation ratings, which were all later raised by rebuttal panels.⁶⁶ He also accepted that he reduced his direct communication with national staff and used their FROs as a “filter”.⁶⁷ The UNDT cannot be faulted for rejecting Mr. Theunens’ explanation of how and why the incidents occurred, as it was considered as self-interested and lacking in credibility.

63. The UNDT cannot be faulted for finding that, based on the facts of the case, it had been established by a preponderance of the evidence that Mr. Theunens had committed the alleged misconduct. This conclusion was supported by the evidence showing that his conduct was, in key respects, unrelated to performance or work; that the work deficiencies he claimed other staff displayed were not borne out by the performance ratings ultimately given to them; that he was unable of acknowledging others’ qualities, except for his own; and that his “conduct was far outside the bounds of normal disagreements or management actions”.⁶⁸ Despite having received sufficient notice that his actions were unwelcome, Mr. Theunens continued with his behaviour, or where he made slight changes, these were short-lived. From the record of proceedings, it is apparent that the UNDT did not err in finding that Mr. Theunens’ due process rights had not been violated by the Administration.

64. As a staff member, Mr. Theunens was required, under Staff Regulation 1.2(a), to uphold and respect the principles set out in the Charter, including the dignity and worth of all people, to exhibit respect for all cultures, and to refrain from discriminating against anyone or abusing the power and authority vested in him.

65. Section 1.2 of ST/SGB/2008/5 defines harassment as “any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person”. Section 1.4 states that abuse of authority, defined as “the improper use of a

⁶⁵ Impugned Judgment, para. 309.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*, para. 331.

position of influence, power or authority against another person, (...) may (...) include conduct that creates a hostile or offensive work environment”. Section 3.2 provides that:

... Managers and supervisors have the duty to take all appropriate measures to promote a harmonious work environment, free of intimidation, hostility, offence and any form of prohibited conduct. They must act as role models by upholding the highest standards of conduct. Managers and supervisors have the obligation to ensure that complaints of prohibited conduct are promptly addressed in a fair and impartial manner. Failure on the part of managers and supervisors to fulfil their obligations under the present bulletin may be considered a breach of duty, which, if established, shall be reflected in their annual performance appraisal, and they will be subject to administrative or disciplinary action, as appropriate.

66. The evidence before the UNDT demonstrated, on a preponderance of the evidence, that Mr. Theunens committed misconduct by conducting himself in a manner that violated Staff Regulation 1.2(a), Staff Rule 1.2(f) and Sections 1.2, 1.4 and 3.2 of ST/SGB/2008/5.

67. Turning to the issue of sanction, the UNDT properly noted that the Secretary-General holds discretion in relation to the imposition of a sanction on a staff member. The UNDT is not required to consider the correctness of the choice made by the Administration among the various courses of action open to it, nor to substitute its own decision for that of the Administration. Rather, any disciplinary measure imposed on a staff member must be proportionate to the nature and gravity of the misconduct, lawful, reasonable, and procedurally fair.⁶⁹ It is not to be more excessive than necessary to achieve the required result.

68. The disciplinary measure of demotion of one grade with deferment, for three years, of eligibility for consideration for promotion which was imposed was found by the UNDT to comply with past practice in comparable matters. Such measure was not “illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in [its] severity”.⁷⁰ There is no indication that the Secretary-General failed to weigh aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose. Moreover, there is no indication that the interests of Mr. Theunens, as a senior staff member, were not properly weighed against those of the Organization. On the contrary, the sanction imposed assured Mr. Theunens the opportunity to apply for promotion in the future. The UNDT’s conclusion that

⁶⁹ Staff Rule 10.3(b).

⁷⁰ *Portillo Moya v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-523, para. 21.

“a non-disciplinary ‘administrative action’ would not have achieved the required result”⁷¹ cannot be faulted, as the sanction imposed was proportionate to the misconduct committed.⁷²

69. For these reasons, the appeal must be dismissed.

⁷¹ Impugned Judgment, para. 340.

⁷² *Simone Monasebian v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1476, para. 79.

Judgment

70. Mr. Theunens appeal is dismissed, and Judgment No. UNDT/2023/145 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 21st day of March 2025 in Nairobi, Kenya.

(Signed)

Judge Savage, Presiding

(Signed)

Judge Colgan

(Signed)

Judge Sandhu

Judgment published and entered into the Register on this 9th day of April 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar