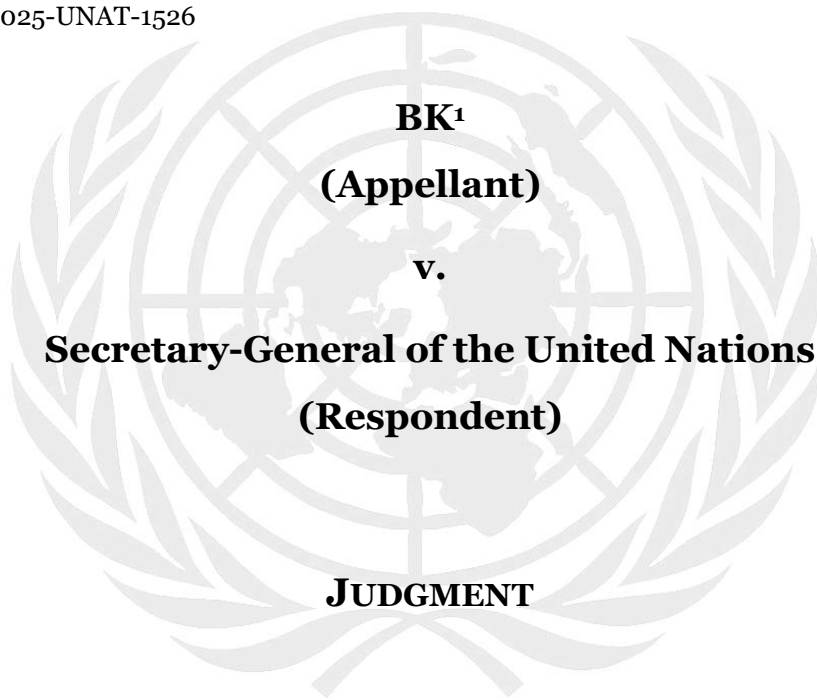




UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2025-UNAT-1526



BK¹
(Appellant)

v.

Secretary-General of the United Nations
(Respondent)

JUDGMENT

Before:	Judge Nassib G. Ziadé, Presiding Judge Leslie F. Forbang Judge Graeme Colgan
Case Nos.:	2024-1921 & 2024-1923
Date of Decision:	21 March 2025
Date of Publication:	28 April 2025
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Francisca Lagos Pola

¹ Following the two-letter substitute for the party's name by the United Nations Dispute Tribunal (UNDT) in a related case.

JUDGE NASSIB G. ZIADÉ, PRESIDING.

1. BK, a staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR), contested two decisions: the decision not to select him for the position of Project Control Officer, P-3, in Geneva (first contested decision) and the decision regarding the validity of his Periodic Medical Examination (PME) and medical clearance status (second contested decision).

2. By Order No. 35 (GVA/2024) on case management (first impugned Order)² in Case No. UNDT/GVA/2023/023 concerning the first contested decision, the United Nations Dispute Tribunal (UNDT) rejected BK's motion for anonymity and his motion to exclude the response to his request for management evaluation (MER) from the case record.

3. By Order No. 36 (GVA/2024) on case management (second impugned Order)³ in Case No. UNDT/GVA/2023/027 concerning the second contested decision, the UNDT rejected BK's other motion for anonymity.

4. BK lodged an appeal of each impugned Order with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).

5. For the reasons set out below, the Appeals Tribunal grants the appeals in part and modifies the impugned Orders.

Facts and Procedure⁴

6. BK served as Project Control Officer with UNHCR in Addis Ababa.⁵

7. On 12 September 2022, he was informed of the first contested decision and on 15 March 2023 he received the second contested decision.⁶

8. On 11 November 2022, BK filed an MER of the first contested decision.⁷ On 16 January 2023, the Deputy High Commissioner upheld the first contested decision.

² First impugned Order dated 18 April 2024.

³ Second impugned Order dated 19 April 2024.

⁴ Summarized from the impugned Orders as relevant to the appeals.

⁵ Impugned Orders, para. 1.

⁶ *Ibid.*

⁷ First impugned Order, paras. 2-3.

9. On 16 April 2023, BK filed his application in respect of the first contested decision and on 14 May 2023 his application in respect of the second contested decision.

10. On 30 August 2023, BK requested anonymity in both cases to “prevent the common retaliation against whistleblowers”.⁸

The impugned Orders

11. By each impugned Order, the UNDT rejected BK’s respective motion for anonymity. By the first impugned Order, the UNDT also rejected his motion to exclude the response to his MER from the case record. In addition, the UNDT directed the parties to file their respective closing submissions by specified dates, but those parts of the impugned Orders are not before us on appeal.

12. In both impugned Orders, the UNDT held that the internal justice system was governed by the principles of transparency and accountability.⁹ A deviation from these principles by means of anonymization requires that an applicant meets a high threshold for such a request to be granted. In BK’s case, he did not provide any valid reason to warrant anonymization. Indeed, he is not a recognized whistleblower, and neither is he discussing a potentially confidential matter. In view of the foregoing, the interest of anonymity does not override the need for transparency and accountability in his case.

13. In the first impugned Order, the UNDT also found that the failure by the Administration to meet the deadline for responding to the MER did not preclude BK from seeking judicial recourse before it, nor was that failure prejudicial to him in any way.¹⁰ Management evaluation does not impact the legal proceedings before the UNDT, which is not bound by responses given to the MER.

Procedure before the Appeals Tribunal

14. On 15 May 2024, BK filed an appeal of the first impugned Order with the Appeals Tribunal (registered as Case No. 2024-1921), and on 17 May 2024 an appeal of the second impugned Order (registered as Case No. 2024-1923). The Secretary-General filed answers to both appeals on 28 June 2024. In Order No. 590 (2025), the Appeals Tribunal consolidated the appeals.

⁸ *Ibid.*, paras. 6-7; second impugned Order, paras. 3-4.

⁹ First impugned Order, paras. 10-12; second impugned Order, paras. 7-9.

¹⁰ First impugned Order, paras. 13-14.

Submissions

BK's Appeals

15. In both appeals, BK requests the Appeals Tribunal to reverse the impugned Orders concerning the denial of his motions for anonymity. In Case No. 2024-1921, he also requests the Appeals Tribunal to declare that the first impugned Order concerning his motion to exclude the response to his MER from the case record had “not been legal, rational, procedurally correct and appropriate”.

16. In both appeals, BK argues that the UNDT erred on a question of fact, resulting in a manifestly unreasonable decision. Granting anonymity as well as full whistleblower protection would be essential and justified to avoid further retaliation.¹¹ The retaliation campaign against him culminated in the termination of his employment contract by UNHCR retroactively on 2 June 2023, right after the first case management discussion. Disclosing before the UNDT confidential medical information not relevant to the case is further evidence of retaliation. If his request for anonymization and whistleblower protection is not granted, UNHCR will be encouraged to continue the harassment and humiliation of whistleblowers.

17. In Case No. 2024-1923, BK additionally argues that granting anonymity and full whistleblower protection would also be justified because the case includes confidential data about his medical status and because the Secretary-General submitted to the UNDT confidential correspondence.

18. In Case No. 2024-1921, BK submits that it was unlawful to allow the Secretary-General to disregard the deadline for responding to his MER without any consequences. The deadline has no exemptions.

The Secretary-General's Answers

19. The Secretary-General requests the Appeals Tribunal to dismiss the appeals as not receivable.

¹¹ BK refers to Secretary-General's Bulletin ST/SGB/2017/2/Rev.1 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations).

20. The Secretary-General argues that the impugned Orders are rulings on case management, not final judgments. Furthermore, none of BK's claims are that the UNDT clearly exceeded its competence or assumed jurisdiction that it does not have. The matters could have waited until the UNDT delivered its substantive judgment.

Considerations

21. The threshold issue to be determined is whether the appeals of these interlocutory orders are receivable. As a rule, and as a matter of sound judicial practice, appeals challenging interlocutory orders are non-receivable. Instead, an appeal of an interlocutory order may, in the main, only be available as part of an appeal against a final judgment, consistent with Article 2(1) of the UNAT Statute.¹²

22. We recognize, however, that there are rare circumstances in which a purported error by the UNDT would be "effectively irremediable" by the time of a final judgment or appeal and it would be "manifestly unreasonable" for the UNDT's order to remain in effect, in which case such interlocutory order may be reviewable.¹³

23. The issue before us is whether the decisions challenged by BK fit within this narrow and exceptional category of reviewable interlocutory orders and, if so, whether they were erroneous.

24. We first address the rulings denying BK's requests for anonymity.

25. Article 20(2) of the UNAT Rules of Procedure provides that published judgments "will normally include the names of the parties". This rule serves the important interests of transparency and accountability within the United Nations' internal justice system.¹⁴ As we have repeatedly found, "names should be redacted 'in only the most sensitive of cases'".¹⁵ For example, this Tribunal has allowed anonymity in cases involving matters of disability or illness to preserve the fundamental privacy rights of affected persons.¹⁶

¹² *Olexandr Maruschak v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1282, para. 16.

¹³ *Ibid.*, para. 17.

¹⁴ *AAE v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1332, para. 155; *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, para. 34.

¹⁵ *AAE* Judgment, *op. cit.*, para. 155 (internal citation omitted).

¹⁶ *AAH v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1410, para. 14.

26. In denying BK's motions for anonymity, the UNDT concluded that he had not met his burden of establishing the exceptional grounds for such relief in those matters. In isolation, neither of those decisions appears to have been manifestly unreasonable. However, these decisions do not exist in isolation but are related to another proceeding involving BK which was considered by another Judge of the UNDT. The interaction of these proceedings renders this an exceptional case.

27. The other proceeding took place before the UNDT sitting in Nairobi.¹⁷ In that matter, the UNDT granted BK's motion for anonymity on account of medical issues raised in the application, and a judgment on the merits was issued in the case on 22 March 2024.¹⁸ Less than a month later, the UNDT sitting in Geneva issued the two impugned Orders denying anonymity to BK. While the underlying legal issues in the proceedings differ, there are overlapping facts in the three cases, and the application addressed in the second impugned Order No. 36 (GVA/2024) also raises medical issues.

28. It would defeat the purpose of anonymity that was granted for the application in the Nairobi UNDT proceeding if anonymity were to be denied for the applications in the Geneva UNDT proceedings. The lack of coordination between the Judges of the UNDT exercising their functions in different locations, while perhaps understandable from an administrative perspective, has led to inconsistent outcomes. In the unique circumstances of these proceedings, this inconsistency is prejudicial to the integrity of the internal justice system of the United Nations. It would be manifestly unreasonable and effectively irremediable by final UNDT judgments for the two impugned UNDT Orders to remain in effect, since the anonymity granted in the Nairobi UNDT proceeding would be breached in the meantime. To be sure, there is no reference in the impugned Orders to the Nairobi UNDT proceeding, but the application addressed in the second impugned Order raises medical issues *per se*, and it is very likely that the expected judgment on the application addressed in the first impugned Order would touch upon medical issues, and that the similarities in the accounts of the facts in the Geneva UNDT proceedings would likely lead to the risk of disclosing BK's identity in the anonymized case.

29. Considering the totality of the circumstances, we conclude that the appeals regarding anonymity are receivable, and that the impugned Orders denying the motions for anonymity should be reversed in the respective parts.

¹⁷ *BK v. Secretary-General of the United Nations*, Case No. UNDT/NBI/2023/001.

¹⁸ *Ibid.*, Judgment No. UNDT/2024/015.

30. BK also seeks interlocutory review of the UNDT's decision not to exclude the response to his MER from the case record. Without reviewing the merits of that portion of the appeal, we find that such an evidentiary ruling, even if erroneous, would be fully remediable on appeal of a final judgment. This issue therefore does not fall within the extremely narrow category of appealable interlocutory orders and the appeal of that ruling is therefore not reviewable at this stage of the proceedings.¹⁹

31. BK's appeals are granted as to the issue of anonymity, and dismissed as to the issue of the exclusion of the response to his MER.

32. In light of the resolution of these interlocutory appeals and our decision that BK is entitled to anonymity in these cases, we further direct that the UNDT should redact BK's name from the impugned Orders and any other published UNDT orders or judgments in these cases.

¹⁹ *Richard Loto v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1362, paras. 3 and 83.

Judgment

33. BK's appeals are granted as to the issue of anonymity and dismissed as to the issue of the exclusion of the response to the MER, and Order Nos. 35 (GVA/2024) and 36 (GVA/2024) are hereby modified. The Appeals Tribunal directs the UNDT to anonymize the identity of BK in the impugned Orders, any prior published orders in these cases, and in subsequent UNDT proceedings.

Original and Authoritative Version: English

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

(Signed)

Judge Ziadé, Presiding

(Signed)

Judge Forbang

(Signed)

Judge Colgan

Judgment published and entered into the Register on this 28th day of April 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar