



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2025-UNAT-1549

Aileen Baraza

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Gao Xiaoli Judge Katharine Mary Savage Judge Leslie F. Forbang
Case No.:	2024-1937
Date of Decision:	27 June 2025
Date of Publication:	15 July 2025
Registrar:	Juliet E. Johnson

Counsel for Appellant: Sètonджи Roland Adjovi and Anthony K. Wilson

Counsel for Respondent: Amanda Stoltz

JUDGE GAO XIAOLI, PRESIDING.

1. Ms. Aileen Baraza (Ms. Baraza), a staff member of the Office of the United Nations Environment Programme (UNEP), contested the decision of the Administration to close her complaint filed with the Office of Internal Oversight Services (OIOS), in which she alleged harassment and abuse of authority by her Second Reporting Officer (SRO) (contested decision).
2. On 30 April 2024, by Judgment No. UNDT/2024/026 (impugned Judgment),¹ the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissed Ms. Baraza's application as not receivable *ratione materiae*.
3. Ms. Baraza 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 grants the appeal and reverses the impugned Judgment.

Facts and Procedure

5. Ms. Baraza joined UNEP in 2018 as a Team Assistant, Administrative Services, Ecosystems Division, at the G-4 level, in Nairobi, Kenya.
6. In February 2021, Ms. Baraza was responsible for coordinating the competency-based interviews for candidates applying for the position of Chief of Branch, at the D-1 level, in Nairobi, advertised under Job Opening (JO) 140108. On 16 February 2021, her SRO, the Chief of Administrative Services, Ecosystems Division, requested Ms. Baraza to provide her with a copy of the draft of the interview report.
7. On 17 and 18 February 2021, Ms. Baraza communicated with three senior colleagues, one of whom was part of the interview panel, to seek their opinion on whether she should share the requested documentation with her SRO, given that her SRO was not part of the interview panel for JO 140108. Ms. Baraza ultimately denied her SRO's request.
8. On 8 April 2021, Ms. Baraza filed a complaint with OIOS, alleging harassment and abuse of authority from her SRO. Specifically, she claimed that her SRO retaliated against her for

¹ *Baraza v. Secretary-General of the United Nations*, Judgment No. UNDT/2024/026.

refusing to provide a copy of the draft of the interview report. Ms. Baraza further alleged that “[e]ver since, [her SRO] has made every effort to shield [her] participating in interviews especially where [their] Director is participating and [has] gone further to re-assign some current tasks under [her] portfolio to a newly on-boarded colleague”.²

9. On 9 and 12 April 2021, Ms. Baraza provided additional information to OIOS regarding her allegations.

10. On 17 May 2021, OIOS communicated with Ms. Baraza by e-mail stating, *inter alia*, the following:³

Kindly note that OIOS management has carefully reviewed your report to this office, dated 8 April 2021, and considers that your complaint falls within the application of ST/SGB/2019/8 “Addressing discrimination, harassment, including sexual harassment, and abuse of authority”. In accordance with that bulletin, OIOS would like to refer your complaint to the Executive Director, United Nations Environment Program (ED/UNEP), copying the persons responsible for monitoring ST/SGB/2019/8 complaints within the Department of Management Strategy, Policy and Compliance (DMSPC).

To allow ED/UNEP to thoroughly review and assess this matter, please let us know as soon as possible, but on or before 21 May 2021, if you consent to our sharing with ED/UNEP, your identity and the information you submitted to OIOS.

...

If, at any stage, you believe that retaliatory action has been taken against you as a result of engaging in a protected activity, and you would like to file a retaliation complaint, we would advise contacting the Ethics Office directly.

11. On 26 May 2021, Ms. Baraza requested that OIOS put her case on hold.

12. On 6 July 2021, Ms. Baraza was informed during a MS Teams meeting that she would be reassigned to the Programme Support Unit because her position was no longer needed in the Administrative Service Branch, Human Resources Administration Unit.

13. On 9 July 2021, Ms. Baraza informed OIOS by e-mail of the Administration’s decision to reassign her laterally, which she described as a “backlash” from her SRO as a result of the issue she had previously reported.⁴ On the same day, OIOS acknowledged receipt of the additional

² UNDT Application, Annex 2d), E-mail from Ms. Baraza to OIOS dated 8 April 2021.

³ UNDT Application, Annex 14, E-mail from OIOS to Ms. Baraza dated 17 May 2021.

⁴ UNDT Application, Annex 18, E-mail from Ms. Baraza to OIOS dated 9 July 2021.

information and asked Ms. Baraza “to confirm if she still wished not to reopen the case and whether the additional information was merely for record purposes”.⁵

14. On 13 July 2021, Ms. Baraza was formally informed by e-mail of her reassignment. The attached Memorandum stated:⁶

Following a review of the needs within the Administrative Services, and as has been discussed with you, you will be reassigned along with your position from the HR and Administrative Unit to the Programme Support Unit (PSU).

The move will take effect on 16 July 2021.

You will continue to execute your duties as Team Assistant. As has been discussed with you, and given your written and analytical expertise, you will provide support to the Programme Support Unit as will be addressed with your supervisor.

15. On 13 July 2021, Ms. Baraza responded to OIOS by e-mail, confirming that the additional information she provided on 9 July 2021 was for the record of her case and that she “would definitely re-visit once [she] deem[ed] it safer to re-open”. She also attached the Memorandum she received on the same day.⁷

16. In May 2022, Ms. Baraza was promoted to a G-5 position in New York, United States.

17. On 15 July 2022, Ms. Baraza requested OIOS to reopen her case.

18. On 29 July 2022, OIOS sought Ms. Baraza’s consent to refer her complaint to the UNEP Executive Director for his review, which Ms. Baraza provided on the same day.⁸

19. On 3 August 2022, OIOS forwarded Ms. Baraza’s complaint to the UNEP Executive Director.

20. In accordance with Sections 5.4 and 5.5 of Administrative Instruction ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process) and Secretary-General’s Bulletin ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority), upon receipt of the matter from OIOS, the UNEP Executive Director

⁵ Impugned Judgment, para. 24.

⁶ UNDT Application, Annex 19a), Memorandum from the Administration to Ms. Baraza dated 8 July 2021.

⁷ UNDT Application, Annex 21, E-mail from Ms. Baraza to the Administration dated 13 July 2021.

⁸ UNDT Application, Annex 24, E-mail exchange between Ms. Baraza and OIOS dated 29 July 2022.

requested the Corporate Services Division (CSD) to conduct a preliminary assessment of Ms. Baraza's complaint.

21. On 17 October 2022, the CSD finalized the preliminary assessment of Ms. Baraza's complaint, and informed OIOS of its findings and conclusions on 21 October 2022. The Memorandum attached to the e-mail stated:⁹

- a. There was no violation of confidentiality as regard the sharing of the panel report with [Ms. Baraza's SRO], as [she] was listed as one of the Hiring Managers for the position and had access to the report in INSPIRA. UNON-HRMS also confirmed this.
- b. There was no delay in the extension of Ms. Baraza's appointment. The extension of her appointment was subject to the completion of her e-pas. Once her e-pas was completed on 7 May 2021, her contract was extended on 10 May 2021.
- c. The readvertisement of Ms. Baraza's position is a legitimate decision made by Ecosystems Division, considering the needs within the concerned Office.
- d. An investigation will not be initiated.
- e. The matter has been close[d].

22. On 22 November 2022, Ms. Baraza was informed by e-mail from the Legal Unit of the CSD of the Administration's decision to close the matter.¹⁰

23. On 26 December 2022, Ms. Baraza requested management evaluation of the contested decision.

24. On 27 January 2023, the Management Evaluation Unit (MEU) informed Ms. Baraza by letter of its decision to uphold the contested decision.

Procedures before the Dispute Tribunal

25. On 26 April 2023, Ms. Baraza filed an application with the Dispute Tribunal challenging the contested decision. The application also included a motion for an oral hearing, in which she requested to call twelve witnesses to testify before the UNDT, as well as a motion for production of evidence.

26. On 27 March 2024, by Order No. 41 (NBI/2024), the UNDT denied Ms. Baraza's requests for an oral hearing and for production of additional documents, concluding that such requests were

⁹ UNDT Reply, Annex 3, Memorandum from the UNEP Executive Director to OIOS dated 21 November 2022.

¹⁰ UNDT Application, Annex 1, E-mail from the Administration to Ms. Baraza dated 22 November 2022.

aimed at litigating the substance of her allegations of harassment. The UNDT further ordered the parties to address, in their closing submissions, “the issue of receivability in light of UNAT’s recent decision in *O’Brien*”.¹¹

Impugned Judgment

27. On 30 April 2024, the Dispute Tribunal issued the impugned Judgment, dismissing Ms. Baraza’s application as not receivable *ratione materiae*. The UNDT first rejected Ms. Baraza’s request for an oral hearing and for production of evidence, finding that her requests were aimed at litigating the substance of her allegations of harassment before the Dispute Tribunal. The UNDT recalled that it was “beyond the Tribunal’s authority to make independent findings or to order the Administration to conduct an investigation, and to micromanage that investigation by directing who should be interviewed”.¹² The UNDT also granted the Secretary-General’s request to anonymize the name of Ms. Baraza’s former SRO.¹³

28. Turning to the issue of receivability of the case, relying on *O’Brien*, the UNDT first recalled that the denial of an investigation does not constitute a reviewable administrative decision unless the denial is “shown to adversely affect the rights or expectations of the staff member and have a direct legal effect”.¹⁴ In the present case, the UNDT found that Ms. Baraza failed to identify such an effect, despite having been specifically requested to do so in Order No. 41 (NBI/2024).¹⁵ On the contrary, the UNDT emphasized that Ms. Baraza had been promoted and reassigned to a new duty station and was consequently no longer under the authority of her former SRO.¹⁶ Referring to Ms. Baraza’s closing arguments, the UNDT found that she had erroneously contended that “[w]hile the goal described that ‘the impact or consequences of a disputed decision must be based on objective elements that both parties can accurately determine’ is ideal, it can at best be described as aspirational” and that “the Tribunal must consider that every administrative issuance promulgated (...) directly impact the rights and the terms and conditions of a staff member’s contractual relationship with the [O]rganization”.¹⁷ Therefore, in the absence of any direct and

¹¹ *Baraza v. Secretary-General of the United Nations*, Order No. 41 (NBI/2024), para. 18 referring to *John O’Brien v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1313.

¹² Impugned Judgment, para. 48.

¹³ *Ibid.*, para. 61.

¹⁴ *John O’Brien* Judgment, *op. cit.*, para. 30.

¹⁵ Impugned Judgment, paras. 65-66.

¹⁶ *Ibid.*, para. 75.

¹⁷ UNDT Application, paras. 16 and 18.

adverse effect on Ms. Baraza from the contested decision, the UNDT concluded that it “lacked jurisdiction” to hear the case.¹⁸

29. In any event, the UNDT held that even if Ms. Baraza’s application had been receivable, it would have been dismissed on the merits, as the contested decision was lawful. The UNDT observed that the UNEP Executive Director had properly exercised her discretion in assessing whether an investigation was necessary.¹⁹ Although the UNEP Executive Director did not expressly reference the factors listed in Section 5.5 of ST/AI/2017/1, the Dispute Tribunal found it “clear from the record that they were considered”.²⁰ Specifically, the UNDT found that the Administration correctly determined that: i) there had been no breach of confidentiality when the SRO of Ms. Baraza requested a copy of the draft of the interview report; and ii) any delay in approving the extension of her appointment or in her reassignment was the result of valid administrative issues. In this regard, the UNDT also noted that Ms. Baraza did not object in a timely manner to her reassignment.²¹

30. Therefore, the UNDT concluded that, as there had been no retaliation, “there [could] be no unsatisfactory conduct to investigate” and, accordingly, found the contested decision to be lawful.²²

Procedure before the Appeals Tribunal

31. On 28 June 2024, Ms. Baraza filed an appeal against the impugned Judgment with the Appeals Tribunal, to which the Secretary-General responded on 3 September 2024.

Submissions

Ms. Baraza’s Appeal

32. Ms. Baraza requests the Appeals Tribunal to grant the appeal, reverse the impugned Judgment and remand the case to the Dispute Tribunal for consideration on the merits.²³

33. First, Ms. Baraza submits that the UNDT erred in law, in fact, and committed an error in procedure by denying her request for an oral hearing. Specifically, she claims that the UNDT

¹⁸ Impugned Judgment, paras. 68 and 76.

¹⁹ *Ibid.*, para. 81.

²⁰ *Ibid.*, para. 82.

²¹ *Ibid.*, paras. 83-86.

²² *Ibid.*, para. 87.

²³ Appeal form.

erroneously addressed her request for an oral hearing as a “preliminary matter”, when it should have considered it only after determining that her application was receivable. By failing to do so, Ms. Baraza argues that the UNDT demonstrated bias. She further contends that the denial of her request for an oral hearing violated her due process rights.

34. Second, Ms. Baraza contends that the UNDT erred in law and in fact, resulting in a manifestly unreasonable decision, by disregarding several facts and arguments she submitted, and by making “several factually wrong statements to support its analysis of the case”.

35. In this regard, Ms. Baraza asserts that the UNDT erroneously referred to her SRO as a “secondary Hiring Manager”.²⁴ She also argues that the UNDT failed to acknowledge that one of the panel members “specifically advised [her] not to share the draft panel report”, as well as the fact that the colleagues she consulted were senior colleagues.²⁵

36. Ms. Baraza further submits that the UNDT improperly disregarded some of her arguments regarding irregularities that tainted her reassignment, “which was actually a retaliation covertly framed as a restructure”.²⁶

37. Ms. Baraza argues that the UNDT erroneously concluded that the CSD considered the factors listed in Section 5.5 of ST/AI/2017/1, without identifying or analyzing them in its reasoning.²⁷

38. Ms. Baraza contends that the UNDT erred by “blaming” her for accepting her reassignment while ignoring the fact that she had no other choice but to accept it.²⁸

39. Referring to her closing submissions, Ms. Baraza submits that the UNDT ignored her arguments regarding how the contested decision had a direct and adverse impact on her. She specifically highlights that, following her reassignment, her “technical skills were never utilized during the 11 months she served in PSU” and that “[a]part from discharging general clerical tasks, [she] was also subjected to performing such menial work as packaging old, dusty, mite-infested files into cartons, without requisite protective gear”.²⁹

²⁴ Impugned Judgment, para. 12.

²⁵ *Ibid.*, para. 14.

²⁶ *Ibid.*, para. 19.

²⁷ *Ibid.*, para. 82.

²⁸ *Ibid.*, para. 86.

²⁹ Ms. Baraza’s response in compliance with paragraph 5 of Order No. 098 (NBI/2023).

40. Ms. Baraza contends that the UNDT misconstrued her argument, as the case “is not a case seeking disciplinary proceedings against a staff member, [i.e., her] SRO” but a challenge to “the refusal to thoroughly investigate the allegation”.

41. Last, Ms. Baraza submits that the UNDT failed to exercise jurisdiction vested in it by considering her application on the merits after concluding that it was not receivable *ratione materiae*. Additionally, she claims that the UNDT’s conclusion that “[g]iven no retaliation, there can be no unsatisfactory conduct to investigate”³⁰ is erroneous and that an oral hearing “would have allowed the Tribunal to gather and establish evidence consistent with the documentary evidence adduced by [her]”.

The Secretary-General’s Answer

42. The Secretary-General requests the Appeals Tribunal to dismiss the appeal in its entirety and affirm the impugned Judgment.

43. The Secretary-General submits that, in light of Ms. Baraza’s failure to identify a clear and reviewable administrative decision – i.e., a decision that had a direct and adverse impact on her – the UNDT correctly dismissed her application as not receivable *ratione materiae*. Nevertheless, the Secretary-General recognizes that Section 5.6 of ST/SGB/2019/8 “would ordinarily provide an ‘affected individual’ with a limited entitlement to certain administrative procedures with respect to the handling of a formal report of discrimination, harassment and/or abuse of authority”.

44. The Secretary-General contends that the UNDT also correctly determined that the contested decision was lawful. In particular, the Secretary-General argues that the Administration properly used its broad discretion by conducting a preliminary assessment of Ms. Baraza’s complaint before determining that the allegations raised by Ms. Baraza did not amount to prohibited conduct by her SRO and closing the case without further action. In this regard, he emphasizes that “preliminary assessment allows the Administration to avoid commencing resource-intensive investigations into frivolous or unfounded complaints or those, as in this case, that do not involve prohibited conduct but rather concern work-related matters”.

³⁰ Impugned Judgment, para. 87.

45. Turning to the arguments raised by Ms. Baraza in her appeal, the Secretary-General submits that Ms. Baraza failed to demonstrate any error warranting the reversal of the impugned Judgment, but instead merely disagrees with the outcome of the case.

46. In this regard, the Secretary-General first contends that Ms. Baraza failed to demonstrate that the UNDT erred by denying her request for an oral hearing. Contrary to her assertions, the Secretary-General argues that the UNDT did not demonstrate any bias and rendered its decision at an appropriate time. The Secretary-General also submits that the denial of an oral hearing neither affected the outcome of the case nor violated Ms. Baraza's due process rights. In particular, the Secretary-General notes that "the main facts were undisputed and the question of whether or not those facts provided sufficient grounds to initiate an investigation would not have been assisted by an oral hearing".

47. Second, the Secretary-General asserts that Ms. Baraza failed to demonstrate that the UNDT erred in law or in fact, resulting in a manifestly unreasonable decision.

48. In this respect, the Secretary-General contends that Ms. Baraza failed to elaborate on the impact or relevance of: i) the UNDT's alleged erroneous reference to her SRO as a "secondary Hiring Manager"; ii) its failure to acknowledge that one of the panel members advised her not to share the draft panel report; and iii) the fact that the colleagues she consulted were "senior colleagues". He argues that this part of the appeal should be dismissed on this ground alone. In any event, the Secretary-General clarifies that "the extent of [Ms. Baraza]'s efforts to obtain clarity on whether to share the draft panel report with her then SRO were irrelevant when determining the lawfulness of the Administration's decision not to investigate her complaint of harassment or abuse of authority against her SRO".

49. Similarly, the Secretary-General submits that Ms. Baraza's mere assertions – that the UNDT improperly disregarded some of her arguments regarding irregularities tainting her reassignment or improperly blamed her for accepting the reassignment – do not demonstrate that any of these alleged errors had an impact on the outcome of the impugned Judgment. In any event, the Secretary-General maintains that her allegations of irregularities were unfounded and adds that the UNDT correctly declined to interfere with the Administration's discretion in determining that the reassignment did not amount to harassment and abuse of authority by her SRO.

50. With regard to Ms. Baraza’s claim that the UNDT erred in concluding that the CSD considered the factors listed in Section 5.5 of ST/AI/2017/1, without identifying or analyzing them, the Secretary-General contends that she failed to explain how this alleged error affected the outcome of the case. He further asserts that the Administration’s preliminary assessment of Ms. Baraza’s claim complied with the applicable legal framework, in particular with Section 5.5 of ST/AI/2017/1, which provides a “non-exhaustive list of factors that the responsible official *may* consider when conducting the preliminary assessment to determine whether there are sufficient grounds to initiate an investigation”.³¹

51. The Secretary-General contends that the UNDT properly addressed Ms. Baraza’s submissions regarding the alleged direct and adverse impact she suffered as a result of the contested decision at paragraphs 65 to 74 of the impugned Judgment, and that her mere disagreement with its conclusions does not establish an error in the impugned Judgment.

52. The Secretary-General argues that Ms. Baraza failed to demonstrate the impact or relevance of the alleged error that the UNDT misconstrued her argument to the effect that this case “is not a case seeking disciplinary proceedings against a staff member, [i.e., her] SRO” but a challenge to “the refusal to thoroughly investigate the allegation”. He adds that her “characterisation on appeal of her arguments as seeking only a ‘new assessment’ is (...) both disingenuous and inconsistent with her repeated requests for the UNDT to make a finding that [she] had been harassed – a finding that the UNDT correctly determined it was not competent to make”.

53. Finally, the Secretary-General submits that Ms. Baraza failed to demonstrate that the UNDT failed to exercise the jurisdiction vested in it. He argues that, even if the UNDT was not required to consider the merits of the case, it did so properly and that, in any event, Ms. Baraza failed to demonstrate how this could amount to a failure to exercise jurisdiction.

Considerations

54. The issues for consideration in this case are: i) whether the UNDT erred in finding that Ms. Baraza’s application was not receivable *ratione materiae*; and ii) whether the UNDT exceeded

³¹ Emphasis in original.

its jurisdiction by considering the merits of Ms. Baraza’s application after having determined that it was not receivable *ratione materiae*.

Whether the UNDT erred in finding that Ms. Baraza’s application was not receivable ratione materiae

55. Article 2(1)(a) of the Dispute Tribunal Statute (UNDT Statute) provides that the UNDT is competent to hear and pass judgment on an application filed by an individual against the Secretary-General to appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and relevant administrative issuances in force at the time of alleged non-compliance.³²

56. In the present case, Ms. Baraza contested the decision of the Administration to close her complaint filed with OIOS, in which she alleged harassment and abuse of authority by her SRO. The Administration determined that Ms. Baraza’s complaint fell within the scope of ST/SGB/2019/8, which forms part of the “relevant administrative issuances in force at the time of alleged non-compliance”.

57. Section 5.6 of ST/SGB/2019/8 provides that “[w]here an affected individual or alleged offender has grounds to believe that the procedure followed in respect of the handling of a formal report of prohibited conduct was improper upon being informed of the outcome of the matter in accordance with section 5.5 (i) above, *the affected individual or alleged offender may contest the matter pursuant to chapter XI of the Staff Rules*”.³³

58. In *Nwuke*, we held:³⁴

... When a staff member files a complaint and makes accusations about administrative violations of law, the Administration can exercise its discretion and decide whether or not to undertake an (at least preliminary or summary) investigation. The investigation into management and administrative practices in general or into disciplinary cases is a matter within the discretion of the Administration. But that does not mean that the administrative decision to undertake, or not to undertake, an investigation cannot be subject to judicial review. Whether or not the UNDT may review such a decision depends on whether it falls into the UNDT’s jurisdiction pursuant to Article 2(1) of the UNDT Statute.

³² *Abboud v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-100, para. 32.

³³ Emphasis added.

³⁴ *Nwuke v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-099, para. 26.

59. In *Tabari*, we further held that “not taking a decision is also a decision” subject to judicial review under Article 2(1)(a) of the UNDT Statute.³⁵

60. In light of ST/SGB/2019/8, Chapter XI of the Staff Rules, and the UNDT Statute, we reiterate that where claims concern issues covered by ST/SGB/2019/8, the staff member is entitled to certain procedural guarantees. If the staff member is dissatisfied with the outcome of the matter, he or she may request judicial review of the administrative decision taken. The UNDT has jurisdiction to examine the administrative activity (act or omission) following a request for investigation and to decide if it was conducted in accordance with the applicable legal framework. The UNDT can also determine the legality of the investigation process.

61. In this case, in paragraph 36 of his answer, the Secretary-General himself acknowledged that Section 5.6 of ST/SGB/2019/8 “would ordinarily provide an ‘affected individual’ with a limited entitlement to certain administrative procedures with respect to the handling of a formal report of discrimination, harassment and/or abuse of authority”.

62. We conclude that Ms. Baraza did in fact challenge an administrative decision which she claimed was in non-compliance with her terms of employment.

63. Accordingly, the UNDT had jurisdiction to decide whether or not to order the conduct of an investigation or take other courses of action concerning Ms. Baraza’s allegations and complaints. In finding that her application was not receivable, the UNDT acted in contravention of Section 5.6 of ST/SGB/2019/8 and departed from the consistent and well-established jurisprudence affirming the receivability of applications challenging administrative decisions not to investigate allegations of harassment and abuse of authority.³⁶

64. Furthermore, the UNDT’s reliance on *O’Brien* is misplaced. That case concerned the “review of an investigation that produced an intermediate recommendation (without direct effect) that was *not implemented* (hence without external, legal effect)”.³⁷ Moreover, the staff member’s claim in *O’Brien* did not fall under ST/SGB/2019/8, further underscoring the inapplicability of that Judgment to the present case.

³⁵ *Tabari v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees*, Judgment No. 2010-UNAT-030, para. 17.

³⁶ *Duparc et al. v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1245, para. 42; *Nwuke Judgment*, *op. cit.*

³⁷ *John O’Brien Judgment*, *op. cit.*, para. 29 (emphasis added).

65. For these reasons, we conclude that the UNDT erred in finding that Ms. Baraza's application was not receivable *ratione materiae*.³⁸

Whether the UNDT exceeded its jurisdiction by considering the merits of Ms. Baraza's application after having determined that it was not receivable ratione materiae

66. In *Wu*, we said:³⁹

... Since Mr. Wu's application was not receivable *ratione materiae*, the UNDT had no jurisdiction or competence to address the merits of the claims in the application and those claims are not properly before this Tribunal for consideration. Therefore, this Court should dismiss Mr. Wu's appeal.

67. Similarly, in *Faye*, we held that "[i]t is settled law that the Dispute Tribunal would be exceeding its competence were it to rule on the merits of an application that was found to be non-receivable".⁴⁰

68. In line with our jurisprudence, we are of the view that the UNDT exceeded its competence by proceeding to assess the merits of the case after having determined that Ms. Baraza's application was not receivable *ratione materiae*. Once such a finding was made, the UNDT lacked jurisdiction to consider the merits of the case.

69. Although the UNDT prefaced its analysis on the merits with the statement "[e]ven if the application were receivable", this does not cure the contradiction between its finding of non-receivability and its subsequent consideration of the merits of the case.⁴¹

70. Accordingly, the appeal should be granted and the case should be remanded to the Dispute Tribunal for consideration by a judge who has not previously reviewed the merits of the case.

71. Since we grant the appeal on these grounds, it is unnecessary to analyse Ms. Baraza's other arguments pertaining to the merits of the case.

³⁸ *Nwuke Judgment, op. cit.*, para. 38.

³⁹ *Wu v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-306/Corr. 1, para. 27.

⁴⁰ *Faye v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-657, para. 19.

⁴¹ *Impugned Judgment*, para. 77.

Judgment

72. Ms. Baraza's appeal is granted, and Judgment No. UNDT/2024/026 is hereby reversed. The case is remanded to the Dispute Tribunal for consideration by a different judge.

Original and Authoritative Version: English

Decision dated this 27th day of June 2025 in New York, United States.

(Signed)

Judge Gao, Presiding

(Signed)

Judge Savage

(Signed)

Judge Forbang

Judgment published and entered into the Register on this 15th day of July 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar