



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2025-UNAT-1552

Catalin Gicu Tomeci
(Appellant)

v.

Secretary-General of the United Nations
(Respondent)

JUDGMENT

Before:	Judge Gao Xiaoli, Presiding Judge Leslie F. Forbang Judge Graeme Colgan
Case No.:	2024-1956
Date of Decision:	27 June 2025
Date of Publication:	21 July 2025
Registrar:	Juliet E. Johnson

Counsel for Appellant:	George G. Irving
Counsel for Respondent:	Francisca Lagos Pola

JUDGE GAO XIAOLI, PRESIDING.

1. Mr. Catalin Gicu Tomeci (Mr. Tomeci), a former staff member of the United Nations Mission in South Sudan (UNMISS) contested the decision to impose on him the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity, in accordance with Staff Rule 10.2(a)(viii) (contested decision).
2. On 25 September 2024, by Judgment No. UNDT/2024/064 (impugned Judgment),¹ the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissed Mr. Tomeci's application.
3. Mr. Tomeci 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. Mr. Tomeci joined the United Nations in 2011 as a Security Officer with the United Nations Assistance Mission in Liberia. At the relevant time of events, he was serving as a Close Protection Officer with UNMISS in Juba, South Sudan, a post he had held since August 2016.
6. On 17 July 2017, the Administration imposed on Mr. Tomeci a written reprimand for allowing a Ugandan national cleaner, employed by a United Nations contractor, to stay overnight in his UNMISS-provided accommodation without authorization.²
7. According to Mr. Tomeci, in 2018, he began a romantic relationship with A.T., an UNMISS national staff member.³
8. On 5 October 2019, Mr. Tomeci married A.T.
9. On 18 October 2019, Mr. Tomeci submitted a request by e-mail to the Administration to be permitted to share his UNMISS-provided accommodation with A.T.⁴

¹ *Tomeci v. Secretary-General of the United Nations*, Judgment No. UNDT/2024/064.

² Sanction letter dated 17 July 2017.

³ Appeal brief, para. 6.

⁴ E-mail from Mr. Tomeci to the Administration dated 18 October 2019.

10. On 4 December 2019, the UNMISS Director of Mission Support (DMS) denied the request by letter and outlined two alternatives: i) Mr. Tomeci could continue living in his assigned accommodation while his spouse would reside outside the compound; or ii) he could move with his spouse to a private residence authorized by the United Nations Department of Safety and Security (UNDSS).⁵

11. On 5 December 2019, Mr. Tomeci informed his supervisor, J.D., a Close Protection Coordination Officer, that he “felt too stressed out to work and would like to be replaced on duty. The supervisor promised to replace him as soon as possible, told [Mr. Tomeci] to contact the [UNDSS Staff] Counsellor to discuss his issues, and gave him the counsellor’s contact information”.⁶

12. On 10 December 2019, Mr. Tomeci and A.T. met with J.M., a UNDSS Staff Counsellor. On 11 December 2019, J.M. submitted a report to G.M., Mr. Tomeci’s supervisor and the Principal Security Advisor (PSA). The report noted the following:⁷

In a joint session with both of them, Mr. [Tomeci] verbally threatened his wife of (1) killing her should he find out that she is cheating on him and (2), he will kill anyone to protect their marriage and the need to live together. (...)

As a protocol in any counselling session, I started by explaining to both that the discussions would remain confidential with exception of when there is threat to life or safety. I further reminded Mr. [Tomeci] of this when he made the threats. In reaction, he even became suspicious about me that I may be recording his conversation. He showed me his gun and insisted that killing someone would not be a problem for him.

In a separate session with the wife, she confirmed that Mr. [Tomeci] has in the past expressed anger outbursts, been overly jealous and suspicious that she may be unfaithful to him and threatened her with aggressive behavior.

I have discussed this with my technical supervisor (...) and we have agreed that due to the paranoid ideas that he is frankly expressing and his access to a firearm, the issue is very serious and needs to be escalated to you, in order to get specialist assessment and care for Mr. [Tomeci], ensure the safety of his wife, and protect the organization.

Based on the above, we would like to make the following technical recommendations:

⁵ Letter from the UNMISS DMS to Mr. Tomeci dated 4 December 2019.

⁶ Impugned Judgment, para. 42.

⁷ UNDT Reply, Annex R-2, Confidential Report dated 11 December 2019.

1. We need to refer Mr. [Tomeci] urgently to the medical section, to arrange for assessment by a specialist psychiatrist. These paranoid ideas may be signs of a psychiatric disorder and need to be assessed and treated accordingly.

2. His access to firearms should be restricted in light of these ideas, and until the expert assessment is done and he is cleared.

3. Safety of his wife needs to be ensured.

13. G.M. subsequently withdrew Mr. Tomeci's firearm and referred him for psychiatric evaluation.⁸

14. On 16 and 17 December 2019, Mr. Tomeci requested that A.T. be allowed to stay overnight as a "guest" in his accommodation. On 16 December 2019, the Administration denied the request, noting that the matter had already been "settled from [their] perspective and [Mr. Tomeci] ha[d] been referred to PSA (...) for options to live outside with his wife". On 17 December 2019, in response to Mr. Tomeci's request for clarification, the Administration reiterated that his request concerned his wife, not a guest, and that prior decision had already been communicated to him. The Administration emphasized that it trusted that Mr. Tomeci understood the importance of complying with the applicable legal framework.⁹

15. On 4 January 2020, Mr. Tomeci underwent a psychiatric assessment. The psychiatrist concluded that his threats during the 10 December 2019 counselling session were "not motivated by pathological processes and could be explained as existing within a normal range of reactions for someone who's experiencing stress and frustration" and recommended, among other things, Mr. Tomeci's "[r]esumption of work in full capacity".¹⁰

16. On 6 January 2020, based on the psychiatric assessment of Mr. Tomeci's condition, the weapons restriction was lifted.¹¹

17. On 23 March 2020, Mr. Tomeci was interviewed by the UNMISS Special Investigation Unit (SIU) concerning allegations that he had allowed A.T. to stay overnight without authorization.¹²

⁸ Impugned Judgment, para. 48.

⁹ E-mail exchange between the Administration and Mr. Tomeci from 16 to 17 December 2019.

¹⁰ Medical report dated 4 January 2020.

¹¹ Letter of allegations of misconduct dated 28 April 2022, para. 20.

¹² Impugned Judgment, para. 33.

18. On 3 April 2020, the Office of Internal Oversight Services (OIOS) received a report of allegations of misconduct against Mr. Tomeci and opened an investigation. OIOS interviewed several witnesses, including Mr. Tomeci, on 4 May 2021. After his interview, Mr. Tomeci continued permitting A.T. to stay in his accommodation; she remained there continuously between 25 January 2021 and 19 May 2021.¹³

19. On 25 June 2021, the Administration imposed on Mr. Tomeci the disciplinary measure of loss of two steps in grade for allowing A.T. to stay overnight in his UNMISS-provided accommodation up to 31 different times, between December 2018 and September 2019, without obtaining the necessary clearance and authorization.¹⁴

20. On 17 February 2022, OIOS issued its Investigation Report, in which it found that the following allegations had been substantiated:¹⁵

OIOS's investigation found that Mr. Tomeci, knowing he had been specifically refused authorization in December 2019, permitted his local staff wife to reside overnight in his UNMISS accommodation on an estimated 230 occasions, between October 2019 and May 2021. He received no permission and made no payment for any of these days.

In December 2019, Mr. Tomeci threatened his wife in front of a Staff Counsellor to whom he had been referred by supervisors for stress, as well as erratic and aggressive behavior. On an unconfirmed date, Mr. Tomeci brought two local women into the UNMISS compound and took one to his accommodation, later reporting she was a masseuse.

21. Regarding the counselling session held on 10 December 2019, OIOS upheld J.M.'s account of the event and summarized the relevant parts as follows:¹⁶

55. (...) Mr. Tomeci was nervous and started to question if his wife were cheating on him when she was away from the UNMISS compound, saying, "Should I know that you are cheating on me, I will slaughter, kill you like a chicken". [J.M.] reminded Mr. Tomeci that counselling confidentiality may be breached if there was a threat to life and tried to calm the situation.

56. Mr. Tomeci said to his wife, "let me know what I can do for us to maintain the marriage. Even if it takes killing anyone in the Organization for us to have the marriage, I will do it for you". [J.M.] again advised him about his comments and Mr. Tomeci expressed

¹³ Investigation Report, paras. 1 and 12. See also impugned Judgment, para. 33.

¹⁴ Sanction letter dated 25 June 2021.

¹⁵ *Ibid.*, paras. 3-4.

¹⁶ *Ibid.*, paras. 55-56.

his disappointment with the [United Nations] at being prevented from living with his wife. Mr. Tomeci stood and again told his wife, “Should I suspect that you are cheating on me, I will actually kill you like a chicken”, pulling up his shirt with his right hand, revealing his firearm holster and pointing his fingers in imitation of a gun, saying “paf, paf, paf”. [J.M.] could not tell if Mr. Tomeci was carrying a weapon in his holster but reminded him again that his words were a threat to kill somebody. (...)

22. OIOS recommended that the Administration take appropriate action and recover the financial loss incurred.¹⁷

23. On 28 April 2022, the Director, Administrative Law Division, Office of Human Resources (ALD/OHR), notified Mr. Tomeci by letter of the following allegations of misconduct issued against him and the initiation of a disciplinary process:¹⁸

- a. On one or more occasions, and up to 116 different times between 8 October 2019 and 11 April 2020, you permitted [A.T.] to reside in your UNMISS provided accommodation without permission and without paying due accommodation fees;
- b. On one or more occasions, and continuously for up to 114 nights between 25 January 2021 and 19 May 2021, you permitted [A.T.] to reside in your UNMISS provided accommodation without permission and without paying due accommodation fees;
- c. During a session with a Staff Counsellor on 10 December 2019, you:
 - i. Threatened to kill [A.T.];
 - ii. Threatened to kill anyone in the Organization;
- d. On one or more occasions, you threatened to stab and/or injure your colleague, [F.B.];
- e. In 2017, you failed to follow [C.C.]’s instructions to remove from the UNMISS premises two women you had previously signed in as masseuses and your guests.

24. Mr. Tomeci was also provided with a copy of the Investigation Report and afforded an opportunity to respond to the allegations within one month, which he did on 16 July 2022.¹⁹

25. By letter dated 30 June 2023, the Assistant Secretary-General for Human Resources (ASG/HR) informed Mr. Tomeci that the Under-Secretary-General for Management Strategy,

¹⁷ *Ibid.*, para. 97.

¹⁸ Sanction letter dated 28 April 2022.

¹⁹ *Ibid.*

Policy and Compliance (USG/DMSPC) had determined that the following allegations raised against him had been established:²⁰

[T]he USG/DMSPC has concluded that it has been established by clear and convincing evidence that:

(a) On at least 105 different times, between 8 October 2019 and 11 April 2020, you permitted [A.T.] to reside in your UNMISS-provided accommodation without permission and without paying due accommodation fees;

(b) On 114 nights, between 25 January 2021 and 19 May 2021, you permitted [A.T.] to reside in your UNMISS-provided accommodation without permission and without paying due accommodation fees;

(c) On 10 December 2019, during a session with a Staff Counsellor, you threatened to kill [A.T.] and threatened to kill anyone in the Organization to protect [your] marriage and the need to live together.

The USG/DMSPC has further concluded that it has been established by a preponderance of the evidence that:

(a) In February or March 2017, you engaged in a verbal altercation with [F.B.] during a barbecue at [A.C.]’s accommodation;

(b) During that altercation, you left and came back half an hour later and beckoned [F.B.] from the dark some 10 meters from the gathering;

(c) Some time later, you ran into [F.B.] and told him that if [he] would have come when you beckoned him from the dark, you would have stabbed him;

(d) Afterwards, one day when [F.B.] was picking you up at your accommodation to change cars for service the next day, you told him: “ok, just remove your things cause otherwise I am going to drag you behind the car”.

26. The USG/DMSPC concluded that Mr. Tomeci’s actions constituted misconduct, in respect of which the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity was imposed. Additionally, the USG/DMSPC required Mr. Tomeci “to reimburse the Organization for the financial loss suffered of USD 9,417, in accordance with Staff Rules 10.1(b) and 10.2(b)(ii), as [his] actions were determined to be willful or, at the least, reckless or grossly negligent”. The letter stated that the amount would be recovered “to the extent possible by deducting that amount from [his] final entitlements or emoluments, in accordance with Staff Rule 3.18(c)(ii), and by delaying the issuance of [his] P.35 form, in accordance with paragraph 12 of ST/AI/155.Rev.2 (Personnel Payroll Clearance Action), if the

²⁰ Sanction letter dated 30 June 2023.

financial loss to the Organization [could not] be fully recovered by deducting it from [his] final entitlements or emoluments, until [he had] fully settled [his] indebtedness to the Organization”.²¹

27. In reaching its decision, the USG/DMSPC considered Mr. Tomeci’s long service in mission environments as a mitigating factor. Conversely, the compound and repeated nature of his misconduct, his position and access to firearms, as well as the fact that the threat to kill was issued to his wife in relation to potential infidelity, within the broader context of violence against women, were considered as aggravating factors.²²

28. On 22 August 2023, Mr. Tomeci filed an application with the Dispute Tribunal challenging the contested decision.

Impugned Judgment

29. On 19 and 20 August 2024, the UNDT held a hearing on the merits of the case, during which it heard oral evidence from Mr. Tomeci, A.T., and G.M.²³

30. On 25 September 2024, the UNDT issued its impugned Judgment, concluding that the contested decision was lawful and dismissing Mr. Tomeci’s application.

31. First, regarding the allegation that Mr. Tomeci had allowed his wife to live in his UNMISS-provided accommodation, the UNDT found that it was undisputed that his duty station was designated as a non-family duty station and that “the purpose of the rule regarding non-family duty stations is to ensure safety and security of dependants”.²⁴ The UNDT concluded that Mr. Tomeci was fully aware of the legal framework²⁵ prohibiting unauthorized guests – having previously been reprimanded for violating those same rules – but nevertheless persisted in his conduct. It held that his “continued violations over a year and one-half, despite a prior reprimand, numerous warnings, a clear directive, and a new investigation, clearly show[ed] that he willfully

²¹ Annex to the sanction letter dated 30 June 2023, paras. 72-76.

²² *Ibid.*, paras. 66-69.

²³ Impugned Judgment, para. 7.

²⁴ *Ibid.*, para. 19.

²⁵ The UNDT referred specifically to Section 2.1 of Administrative Instruction No. 005/2011 (Camp Regulations for UNMISS-provided accommodation), Sections 2.3 and 5.3 of the Missive Directive No. 2017/12 (Camp Rules for Persons on UNMISS Premises) and paragraph 5 of the Standard Operating Procedure for UNMISS-Provided Accommodation and Rental Deduction.

disregarded the applicable rules prohibiting his wife from living with him in a non-family duty station”.²⁶

32. Second, regarding the allegation that Mr. Tomeci threatened to physically harm others, the UNDT found that there was clear and convincing evidence that he made threats to kill both his wife and others during the counselling session with J.M. on 10 December 2019. The UNDT found J.M.’s account of the events credible, noting that she had no motive to lie, had never met Mr. Tomeci before, and faced professional risk by breaching counselling confidentiality to report the threats.²⁷ In contrast, the UNDT found that the testimonies of Mr. Tomeci and A.T. lacked credibility and were inconsistent “with the other evidence or even with each other”.²⁸ In particular, the UNDT highlighted that A.T.’s statement – “that time probably I saw the belt there. I thought it was a weapon, but my husband was not having any weapon with him” – was inconsistent with Mr. Tomeci’s testimony denying that he had a holster with him at the counselling session and was consistent with J.M.’s statement that he did.²⁹

33. The UNDT rejected Mr. Tomeci’s claim that J.M. fabricated her account because she had been recommended by J.D., whom he alleged disliked him. The UNDT found that J.D. became involved only after Mr. Tomeci himself had requested him to be relieved of duty due to stress. The UNDT also rejected G.M.’s testimony that he believed that Mr. Tomeci was not armed during the counselling session, finding that his subsequent actions – namely, withdrawing Mr. Tomeci’s weapons – were inconsistent with his testimony. The UNDT further noted that G.M. acknowledged during his testimony, that Mr. Tomeci was “not quite the guy that [he] could remember” and was “quite tense” at the relevant time of events, even displaying aggressive attitude toward both his wife and even G.M. himself.³⁰

34. The UNDT also found that it had been demonstrated by a preponderance of the evidence that Mr. Tomeci had threatened F.B. in 2017. The UNDT relied on the Administration’s findings, which were based on F.B.’s statement and corroborated by A.C., V.B., and J.D. – Mr. Tomeci’s former colleagues – to conclude that:³¹

²⁶ Impugned Judgment, para. 40.

²⁷ *Ibid.*, para. 65.

²⁸ *Ibid.*, para. 76.

²⁹ *Ibid.*, paras. 78-80. See also Informal hearing transcripts, 20 August 2024, A.T.’s testimony.

³⁰ Impugned Judgment, paras. 72-74. See also Informal hearing transcripts, 20 August 2024, G.M.’s testimony.

³¹ Impugned Judgment, paras. 97 and 99.

... (...) [I]t [was] more likely than not that [Mr. Tomeci] threatened F.B. F.B., A.C., and [Mr. Tomeci] all agree that there was an incident at A.C.'s accommodation where [Mr. Tomeci] argued with F.B. [Mr. Tomeci] has no other recollection of that night, but A.C. remembers [Mr. Tomeci] having a lot to drink and threatening to beat F.B. He also recalls that [Mr. Tomeci] threw something, then left for a while before returning and calling F.B. to come into the dark where he was.

... F.B. says that, a few days later, [Mr. Tomeci] told him that he would have stabbed F.B. if he had come into the shadows when beckoned. A.C. and V.B. both said F.B. reported this statement to them soon thereafter. In addition, J.D. corroborates F.B.'s story that he asked to be removed from [Mr. Tomeci]'s team because of an unspecified incident.

35. The UNDT found that Mr. Tomeci's threats and repeated violations of the housing rules constituted serious misconduct.³²

36. The UNDT held that the sanction imposed on Mr. Tomeci was proportionate to his misconduct. It emphasized that the Administration had properly considered his "pattern of behavior", including threatening "various people under various circumstances", as well as his continuous and knowing violations of the rules on restricted access to housing on the compound.³³ The UNDT concluded that his failure to be deterred by the existing rules or previous disciplinary measures, combined with the seriousness of the threats and his access to firearms, justified the disciplinary measure imposed on him.³⁴

37. Last, the UNDT rejected Mr. Tomeci's contention that the contested decision violated the principle of *ne bis in idem*.³⁵ The UNDT noted that this principle was generally applied in criminal proceedings. In any event, the UNDT held that even if it were to be applied, it would not preclude the Organization from bringing the present allegations, as they related to a period after Mr. Tomeci's marriage and were separate from the period covered by prior disciplinary measures.

Procedure before the Appeals Tribunal

38. On 29 October 2024, Mr. Tomeci filed an appeal against the impugned Judgment with the Appeals Tribunal, to which the Secretary-General responded on 6 January 2025.

³² *Ibid.*, para. 103.

³³ *Ibid.*, paras. 109 and 111.

³⁴ *Ibid.*, para. 112.

³⁵ Latin for "not twice for the same".

Submissions

Mr. Tomeci's Appeal

39. Mr. Tomeci requests the Appeals Tribunal to grant the appeal, rescind the contested decision and award him compensation for harm to his career and *dignitas* in the amount of two years' net base salary.

40. Mr. Tomeci submits that the UNDT reached conclusions that were not warranted by the established facts.

41. Relying on *Radu*,³⁶ Mr. Tomeci emphasizes that the Secretary-General did not call any witness and relied solely on hearsay evidence – namely, the Investigation Report – leaving the conclusion that he committed misconduct unsupported by clear and convincing evidence.

42. Concerning the finding that he allowed A.T. to reside in his UNMISS-provided accommodation, Mr. Tomeci submits that the UNDT failed to consider that, although Juba is a non-family duty station, his case was “exceptional”, as his spouse was a national staff member, and exceptions are made for spouses working at the same duty station. He further argues that their marriage “fundamentally changed” the situation, as “he could not live outside the compound and his wife could not live outside the country given her [United Nations] employment”.

43. Mr. Tomeci contends that the UNDT erred in considering the 4 December 2019 response from the DMS as a definitive denial of his request to share his UNMISS-provided accommodation with A.T. He argues that the testimony of G.M. showed otherwise and that the Administration explicitly advised him to seek further clarification or to formally request a review of the decision.

44. Mr. Tomeci claims that the UNDT mischaracterized an incident during which he permitted a Ugandan national cleaner, employed by a United Nations contractor, to stay overnight in his accommodation. He argues that the UNDT erroneously suggested that he was accused of sexual exploitation, when his action was solely for humanitarian reasons.³⁷

45. Regarding the allegation that he committed threats to physically harm A.T. and others, Mr. Tomeci submits that the UNDT failed to address inconsistencies in J.M.'s statements.

³⁶ *Gheorghe Catalin Radu v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1440, paras. 122-123.

³⁷ Impugned Judgment, para. 26.

Specifically, he points out that J.M. stated in her report dated 11 December 2019 that he showed her his gun, whereas in her OIOS interview, she said that he was wearing a gun holster. Mr. Tomeci also asserts that the UNDT did not adequately consider the testimony of A.T. and himself, nor did it address the possibility that J.M. may have been “mistaken about what she overheard”. He further notes that no evidence of J.M.’s credentials was produced, and that the counselling session itself was not recorded. Mr. Tomeci emphasizes that both he and A.T. denied the statements attributed to him during the counselling session and adds that the UNDT failed to explain why their testimonies were deemed less credible than J.M.’s. He also argues that the UNDT did not take into account A.T.’s limited English proficiency and her “ability to recollect events in proper sequence” when assessing her credibility.

46. Mr. Tomeci submits that the UNDT overlooked the conclusion of the psychiatrist, which found that his threats fell “within a normal range of reactions for someone who’s experiencing stress and frustration”. He claims that this assessment is directly relevant to the question of whether his conduct amounted to a “real threat and hence, a serious misconduct”.³⁸

47. With respect to the allegation that he threatened F.B. in 2017, Mr. Tomeci challenges the UNDT’s reliance on the Administration’s findings, which were based on F.B.’s statement corroborated by A.C., V.B., and J.D., his former colleagues. He contends that the UNDT improperly relied on hearsay evidence – particularly F.B.’s account of events collected several years after the incident and even though no complaint had been raised. He also argues that the UNDT erroneously lowered the evidentiary standard for separation of service from clear and convincing evidence to a mere preponderance of the evidence.

48. Last, Mr. Tomeci submits that the UNDT failed to assess the reasonableness of imposing on him the disciplinary measure of separation from service with compensation in lieu of notice, and without termination indemnity, “in light of the long exemplary service he had been providing (...) and the full support of [G.M.] who testified on his behalf”.

³⁸ Medical report dated 4 January 2020.

The Secretary-General's Answer

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

50. The Secretary-General submits that the UNDT correctly concluded that the contested decision was lawful.

51. The Secretary-General contends that Mr. Tomeci failed to demonstrate any error warranting a reversal of the impugned Judgment.

52. Specifically, the Secretary-General argues that the UNDT did not err in finding that there was clear and convincing evidence that Mr. Tomeci repeatedly and knowingly violated the rules by having A.T. stay overnight in his UNMISS-provided accommodation located in a non-family duty station. He notes that both the access records to the UNMISS compound and the testimonies of Mr. Tomeci and A.T. confirm that she stayed overnight without authorization on multiple occasions, despite Mr. Tomeci's awareness that national staff members were not permitted to reside inside the compound.

53. Addressing Mr. Tomeci's submissions on this point, the Secretary-General submits that they are disingenuous and unfounded. He emphasizes that there is no evidence in the record of a national staff member being permitted to live in UNMISS-provided accommodation after marrying an international staff member. Furthermore, the Secretary-General maintains that Mr. Tomeci clearly lacked permission for A.T. to stay overnight in his accommodation. He asserts that the 4 December 2019 decision from the DMS in this regard was definitive and underscores that "it is not for a staff member to determine if a decision is final/definitive or not". He adds that the circumstances in which the DMS reached that decision are irrelevant in these proceedings, noting that the contested decision is the sanction imposed on Mr. Tomeci, not the decision dated 4 December 2019.

54. The Secretary-General submits that the UNDT did not err in finding that there was clear and convincing evidence that Mr. Tomeci threatened to kill his wife and others during the counselling session. In this regard, he highlights that G.M., one of Mr. Tomeci's own witnesses, testified that Mr. Tomeci "was consumed about the fact that A.T. could not live with him in his UNMISS accommodation so much so that his appearance became bedraggled and he was very agitated, which led [G.M.] to be concerned about his stability and remove his weapons". G.M. also

testified that “right after the Counselling Session, [Mr. Tomeci] was ‘much more aggressive than he had been before’ and that when he called [Mr. Tomeci] and his wife to his office to discuss, [Mr. Tomeci] pushed his wife ‘quite hard in the back’, enough to push her forward and then he laughed”.³⁹ The Secretary-General argues that this testimony corroborates J.M.’s statement that Mr. Tomeci was aggressive and stressed out because of the decision not allow A.T. to reside with him.

55. Responding to Mr. Tomeci’s arguments in this regard, the Secretary-General contends that they are disingenuous and should be dismissed. Specifically, he argues that Mr. Tomeci’s attempt to undermine J.M.’s credibility is unfounded, noting that her statements were not materially inconsistent despite the passage of time. Regarding whether Mr. Tomeci had a gun at the counselling session, the Secretary-General observes that although J.M. initially reported seeing a gun, she clarified in a meeting with G.M. on 11 December 2019 that it was, in fact, a gun holster.⁴⁰ He argues that this clarification resolved the alleged inconsistency contemporaneously. The Secretary-General also submits that the UNDT did, in fact, address the credibility of both Mr. Tomeci and A.T. and provided reasons for finding J.M.’s statements more credible. He notes that A.T. had an interest in ensuring that her husband would not be separated from service, while Mr. Tomeci had an interest in denying the threats to preserve his employment. In any event, the Secretary-General recalls that it is well established that the UNDT is not required to address each and every claim made by a litigant.

56. The Secretary-General further submits that Mr. Tomeci’s contention – that J.M.’s statements were less reliable because she did not testify before the UNDT – lacks merit. He emphasized that J.M.’s statement to OIOS was given under oath, which is an indicator of reliability or truthfulness.⁴¹

57. Regarding Mr. Tomeci’s claim that the UNDT disregarded the psychiatrist’s conclusions, the Secretary-General reiterates that the UNDT is not required to address each and every claim made by a litigant. In any event, he argues that the psychiatrist’s report did not contradict the finding that Mr. Tomeci had made threats.

³⁹ Answer brief, para. 30. See also Informal hearing transcripts, 20 August 2024, G.M.’s testimony.

⁴⁰ The Secretary-General highlights that this information was confirmed by G.M. during his testimony. See Informal hearing transcripts, 20 August 2024, G.M.’s testimony.

⁴¹ *Nyambuza v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-364, para. 35.

58. Last, the Secretary-General submits that the UNDT did not err in finding that the disciplinary measure imposed on Mr. Tomeci was proportionate to his misconduct. He contends that the sanction was reasonable and consistent with past practice of the Organization in similar cases. The Secretary-General rejects Mr. Tomeci's claim that the UNDT lowered the evidentiary standard for separation from service. He clarifies that, although the threats made to F.B. were established only by a preponderance of the evidence, the threats made to A.T. and others during the counselling session, as well as Mr. Tomeci's repeated violations of housing rules by allowing A.T. to stay overnight in his UNMISS-provided accommodation, were established by clear and convincing evidence and were sufficient to justify his separation from service.

Considerations

59. In disciplinary cases, the role of the UNDT is to conduct a judicial review of an administrative decision to impose a disciplinary measure. We affirm that, in exercising such judicial review, the UNDT "is not conducting a merit-based review" and that "[j]udicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision".⁴²

60. In this vein, in disciplinary cases, under Article 2(1)(b) of the Dispute Tribunal Statute (UNDT Statute), the UNDT will examine the following: i) whether the facts on which the disciplinary measure is based have been established (by a preponderance of 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.⁴³

61. Concerning the standard of proof, we hold that, clear and convincing proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt – it means that the truth of the facts asserted is highly probable.⁴⁴ Furthermore, as we stated in *Negussie*, "[e]vidence, which is required to be clear and convincing, can be direct evidence of events, or may be of evidential inferences that can be properly drawn (...) from other direct evidence".⁴⁵

⁴² *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 42.

⁴³ *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.

⁴⁴ *Molari v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-164, paras. 2 and 30.

⁴⁵ *Sisay Negussie v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1033, para. 45.

Whether the UNDT erred in finding that it had been established by clear and convincing evidence that Mr. Tomeci committed misconduct by: i) repeatedly violating the rules by allowing A.T. to stay overnight in his UNMISS-provided accommodation located in a non-family duty station; and ii) threatening to physically harm others during the counselling session on 10 December 2019

i) Whether Mr. Tomeci repeatedly violated the UNMISS rules by allowing A.T. to stay overnight in his UNMISS-provided accommodation located in a non-family duty station

62. Section 2.1 of Administrative Instruction No. 005/2011 (Camp Regulations for UNMISS-provided accommodation) provides:

Use of UNMISS-provided accommodation assets, facilities, services and resources is exclusively restricted to authorized personnel checked-in and registered with General Services Section Facility Management Unit (GSS-FMU).

63. Further, Sections 2.3 and 5.3 of Mission Directive No. 2017/12 (Camp Rules for Persons on UNMISS Premises) provide:

2.3 Authorized persons who are assigned an accommodation by GSS-FMU shall exclusively occupy the assigned accommodation as prescribed by GSS-FMU. The authorized person may submit to the GSS-FMU a written request for permission to allow a temporary occupant to register/check-in in order to share the assigned accommodation. The categories of persons permitted to reside in UNMISS premises/accommodation are listed in Mission Directive 2015/013, at the applicable rates established therein. UNMISS Management may, at its sole discretion, waive requirement of an advance written authorization, in cases of emergency.

...

5.3 Authorized personnel residing on UNMISS premises who wish to have their guests stay overnight in UNMISS premises, shall request and obtain security clearance from the UN Security Section and the Approval of CGSS or the Field Administrative Officer, 72 working hours in advance of the expected stay. Guests shall register at GSS-FMU during normal working hours and pay the relevant accommodation charges to Finance Section in advance.

64. Paragraph 5 of the Standard Operating Procedure for UNMISS-Provided Accommodation and Rental Deduction states:

The use of UNMISS-provided accommodation assets, facilities, services and resources is exclusively restricted to authorized personnel who checked-in and registered with GSS

Facility Management Unit (FMU). The following categories of personnel are eligible for UNMISS-provided Accommodation:

5.1 UNMISS personnel, i.e., international civilian personnel, international-UN Volunteers, Military Staff Officers, UNPOLs, MLOs, Correction Officers and UNMISS International Individual Contractors. This SOP does not apply to members of Troop Contributing Countries (TCCs) and Police Contributing Countries (PCCs). (...)

5.2 Personnel of UNMISS Contractors, UN AFPs which have MOUs with UNMISS and other Organizations with which UNMISS has contractual obligations to accommodate their personnel (...)

5.3 Other individuals as approved by DMS. Personnel from other organizations who wish to stay in UNMISS-provided accommodation must receive prior written approval from the DMS before he/she can submit a request for accommodation to GSS.

65. The UNDT clarified at the outset of its consideration that Mr. Tomeci's duty station was designated as a non-family duty station, meaning that staff members serving at UNMISS are not permitted to have their family present at the duty station.⁴⁶ The UNDT then thoroughly examined the applicable rules and regulations concerning UNMISS accommodation, including the aforementioned legal framework.⁴⁷ We fully agree with the UNDT's interpretation of the relevant provisions.

66. In this appeal, Mr. Tomeci argues that the prohibition on family members from residing at the duty station applies only to non-staff spouses and children residing in other locations. He further claims that spouses employed at the same duty station are allowed to reside together with the international staff in the compound. However, he provides no specific examples or supporting evidence, nor does he cite any legal or factual grounds to support his claim. In relation to whether there is any precedent or expectation, as Mr. Tomeci argues, the Secretary-General submits that no precedent exists for national staff members being allowed to live in the compound upon marrying an international staff member. There is, however, precedent for international staff members with similar roles residing outside the compound.⁴⁸

67. Mr. Tomeci questions the competency of the DMS to issue a decision in December 2019 rejecting his request to share his UNMISS accommodation with A.T. and accuses the United Nations Headquarters of ignoring the exceptional circumstances he believes warranted special consideration. He argues that the UNDT did not address these issues and instead treated

⁴⁶ Impugned Judgment, paras. 19-20.

⁴⁷ *Ibid.*, paras. 23-28.

⁴⁸ Secretary-General's closing submission before the UNDT, para. 5.

the DMS's response as definitive. Mr. Tomeci's argument cannot stand. If he was dissatisfied with the DMS's decision, he should have challenged it by requesting management evaluation. As he failed to do so, that decision falls outside our scope of review in the case at hand.

68. Mr. Tomeci testified during the UNDT hearing that he was aware of the rules and regulations governing accommodation in the UNMISS compound, which he acknowledged "were built especially for international staff and, with some exception for security reasons, for national staff and their dependents".⁴⁹ Aware of these rules, he requested permission from the DMS to share his accommodation with A.T. While his request was pending, Mr. Tomeci should have awaited formal authorization. His self-deemed "exceptional" circumstances do not justify the breach of the Organization's rules on this matter.

69. During the investigation and before the UNDT, Mr. Tomeci and A.T. admitted that she stayed overnight in his UNMISS accommodation on multiple occasions, without authorization and without paying due accommodation fees.

70. Therefore, the UNDT correctly held that Mr. Tomeci's "continued violations over a year and one-half, despite a prior reprimand, numerous warnings, a clear directive, and a new investigation, clearly show[ed] that he willfully disregarded the applicable rules prohibiting his wife from living with him in a non-family duty station".⁵⁰ Consequently, we find that the fact that Mr. Tomeci repeatedly violated the rules by having A.T. stay overnight in his UNMISS-provided accommodation located in a non-family duty station has been established by clear and convincing evidence, which constitutes misconduct.

ii) Whether Mr. Tomeci threatened to physically harm others during the counselling session on 10 December 2019

71. Concerning the allegation that Mr. Tomeci's threat to kill A.T. and others in the Organization during a session with a UNDSS Staff Counsellor, J.M., the UNDT found J.M.'s statements to be credible. Mr. Tomeci submits the following arguments in his appeal: i) the UNDT failed to address the evidence presented at the hearing, including the contradictory witness accounts; ii) J.M. only overheard his alleged threats and the UNDT improperly relied on hearsay evidence from J.M.; iii) the UNDT gave no reason why Mr. Tomeci and A.T.'s consistent accounts

⁴⁹ Impugned Judgment, para. 26.

⁵⁰ *Ibid.*, para. 40.

of the incident were deemed less credible than that of J.M., who was not called to testify; and iv) the UNDT ignored the most persuasive evidence – namely, the medical report by a professional psychiatrist addressing whether the threat was real.

72. We find these arguments to be without merit. Contrary to Mr. Tomeci's contention, the UNDT not only examined in detail the statements of J.M. but also the oral testimonies of G.M. and A.T. The UNDT found that G.M.'s testimony and recent statements were contradicted by contemporaneous records and were therefore not credible.⁵¹ Likewise, the UNDT analyzed A.T.'s testimony at the hearing against her earlier statement to OIOS and concluded that she was neither a credible nor reliable witness.⁵²

73. J.M. was present at the counselling session on 10 December 2019 and was thus an eyewitness. She did not merely overhear the conversation between Mr. Tomeci and A.T.; instead, she was an active participant in the session. Although J.M. did not testify before the UNDT, the Dispute Tribunal has no obligation to call every witness to testify or to rehear all statements made to OIOS. Moreover, J.M.'s statements to OIOS were made under oath, which enhances their reliability or truthfulness. As we held in *Nyambuza*, "[w]ritten witness statements taken under oath can be sufficient to establish by clear and convincing evidence the facts underlying the charges of misconduct to support the dismissal of a staff member".⁵³ In addition, J.M.'s statements to OIOS were substantively consistent with her report to G.M. on 11 December 2019. The alleged inconsistency regarding whether she saw a gun or a holster was resolved by her contemporaneous clarification with G.M. We further agree with the UNDT's conclusion that J.M. had no motive to lie and risk her professional reputation by breaking the confidentiality of the counselling session to disclose the threats.

74. As to the medical report dated 4 January 2020, Mr. Tomeci himself admitted that the psychiatrist's assessment did not resolve the dispute concerning the precise words spoken at the counselling session. Consequently, this report is irrelevant to determining whether Mr. Tomeci made the alleged threats during the counselling session. Therefore, the UNDT's omission to analyze the medical report does not affect the impugned Judgment.

⁵¹ *Ibid.*, paras. 68-75.

⁵² *Ibid.*, paras. 79-83.

⁵³ *Nyambuza Judgment, op. cit.*

75. In light of the above, we find that the UNDT did not err in finding that there was clear and convincing evidence to establish that Mr. Tomeci made threats to kill his wife and others during the counselling session with J.M.

Whether the UNDT erred in concluding that it had been established by a preponderance of the evidence that Mr. Tomeci threatened F.B. in 2017

76. Mr. Tomeci contends that F.B.’s account was not corroborated by any of the witnesses he cited and that the UNDT erroneously considered this hearsay as evidence of threatening behavior. He argues that the UNDT improperly lowered the evidentiary standard for separation from service to something “less than clear and convincing”.

77. F.B.’s account of Mr. Tomeci’s alleged threat to harm him constitutes a direct witness statement. F.B. gave sworn testimony during his interview with OIOS and the UNDT cited his statements directly from the OIOS record of interview.⁵⁴ Mr. Tomeci denied making any threat to F.B. In such circumstances, the Dispute Tribunal was required to make factual findings based on its assessment of the credibility of the parties, determining which of the conflicting versions was more reliable.

78. The latest version of Article 9(4) of the UNDT Statute provides, in relevant part, that:⁵⁵

(...) In conducting a judicial review, the Dispute Tribunal *shall consider the record assembled by the Secretary-General* and may admit other evidence to make an assessment on whether the facts on which the disciplinary measure was based have been established by evidence (...)

79. In the present case, the UNDT made a correct assessment of the credibility of F.B. and Mr. Tomeci based on the record of the Administration. Specifically, the UNDT found that the Administration’s finding of misconduct was based on F.B.’s “credible statement”, corroborated by A.C., V.B., J.D., and Mr. Tomeci’s own admission that he had argued with F.B. one night at A.C.’s house. While A.C., V.B. and J.D.’s statements were indeed hearsay, they were used only to corroborate the account of F.B. Contrary to Mr. Tomeci’s submission, the UNDT examined

⁵⁴ Impugned Judgment, footnote 2.

⁵⁵ Emphasis added.

carefully all the witnesses' statements before concluding that it had been established by a preponderance of the evidence that he had threatened F.B.⁵⁶

80. As for the evidentiary standard, we cannot accept Mr. Tomeci's argument. The Administration made it clear that threats of harm have attracted sanctions ranging from demotion to written censure.⁵⁷ In this sense, the Administration was merely required to prove by a preponderance of the evidence that Mr. Tomeci had threatened to harm F.B. From the outset, the Administration distinguished between Mr. Tomeci's threat to kill and threat to harm, as each entail differing sanctions and may warrant different evidentiary standards. It was the misconduct of threatening to kill that warranted the imposition of the sanction of separation from service.

81. Regarding the UNDT's approach concerning the alleged threat to harm, it did not treat the incident in isolation but considered it alongside the threat to kill, viewing the threat to harm as part of a "pattern of behavior". This approach cannot be interpreted as lowering the standard of evidentiary proof, even when termination is a possible outcome.

82. Therefore, we find that, contrary to Mr. Tomeci's contention, the UNDT did not improperly lower the evidentiary standard for separation from service.

Whether the UNDT err in finding that the sanction imposed on Mr. Tomeci was proportionate to the nature and gravity of his misconduct

83. Mr. Tomeci contends that the UNDT failed to properly assess the reasonableness of the sanction imposed on him, particularly in light of his long exemplary service, as affirmed by G.M.'s testimony. He argues that the UNDT erroneously concluded that his continued service was incompatible with the standards of conduct expected within the United Nations.

84. We find that, when determining the appropriate sanction, both the Administration and the UNDT conducted a thorough assessment of the gravity and nature of the misconduct, the past practice of the Organization in comparable cases, and the relevant mitigating and aggravating factors. The Administration undertook a proportionality analysis in accordance with the factors listed in *Kennedy*.⁵⁸ The UNDT also considered Mr. Tomeci's arguments concerning

⁵⁶ Impugned Judgment, paras. 86-99.

⁵⁷ Annex to the sanction letter dated 30 June 2023, para. 64.

⁵⁸ *Ibid.*, para. 65 citing *Kennedy v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1184.

proportionality, including his claim that his threat was merely a “conditional statement”, his long record of service and his alleged “full cooperation” with the investigation.

85. Mr. Tomeci did not produce any evidence to support his assertion that the UNDT failed to address the reasonableness of the sanction imposed on him. His long record of service was considered by the Organization and the UNDT as a mitigating factor. Furthermore, although G.M. made positive comments on his past performance, competence, and character, such testimony nonetheless does not, in itself, constitute a mitigating factor.

86. We recall our finding in *Sall*:⁵⁹

... (...) According to the established jurisprudence, the matter of the degree of the sanction is usually reserved for the Administration, who has discretion to impose the measure that it considers adequate to the circumstances of the case and to the actions and behaviour of the staff member involved. For that reason, it is only if the sanction imposed appears to be blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity, that the judicial review would conclude its unlawfulness and change the consequence.

87. In this vein, we find that Mr. Tomeci’s contentions on proportionality are meritless.

Whether Mr. Tomeci’s due process rights have been respected

88. Mr. Tomeci submits that several potential witnesses, including his former colleagues V.B., A.C. and N.K. – whose written statements he had submitted to the UNDT – were not called to testify.

89. We find that, on 18 July 2024, the UNDT held a case management discussion (CMD), during which it was agreed that a trial would take place from 19 to 20 August 2024. The parties further agreed that Mr. Tomeci would file witness statements, after which the Secretary-General would determine which witnesses he wished to cross-examine. On 19 July 2024, Mr. Tomeci submitted witness statements from G.M., V.B., A.C., N.K. and his wife, A.T.⁶⁰ The Secretary-General subsequently requested that Mr. Tomeci, G.M. and A.T. be available for cross-examination during the hearing. As for V.B. and A.C., the Secretary-General considered that their statements merely repeated what had already been stated to OIOS. The Secretary-General

⁵⁹ *Sall v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-889, para. 41.

⁶⁰ *Tomeci v. Secretary-General of the United Nations*, Order No. 90 (NBI/2024), paras. 7-8.

further deemed N.K.'s statement unrelated to Mr. Tomeci's conduct under review. Accordingly, V.B., A.C., and N.K. were not requested by the Secretary-General to appear before the UNDT.⁶¹

90. We recall that Article 9(2) of the UNDT Statute provides:

The Dispute Tribunal shall decide whether the personal appearance of the applicant or any other person is required at oral proceedings and the appropriate means for satisfying the requirement of personal appearance.

91. Article 17(1) and (6) of the Dispute Tribunal Rules of Procedure (UNDT Rules) further stipulates the relevant procedures concerning the calling of witnesses:

1. The parties may call witnesses and experts to testify. The opposing party may cross examine witnesses and experts. The Dispute Tribunal may examine witnesses and experts called by either party and may call any other witnesses or experts it deems necessary. The Dispute Tribunal may make an order requiring the presence of any person or the production of any document.

...

6. The Dispute Tribunal shall decide whether the personal appearance of a witness or expert is required at oral proceedings and determine the appropriate means for satisfying the requirement for personal appearance. (...)

92. It is clear that the parties may call witnesses to testify and the UNDT also has the authority to call any other witnesses it deems necessary. If a party wishes to call a witness, it must make an explicit request to the UNDT, which "shall [then] decide whether the personal appearance of [the] witness (...) is required (...) and determine the appropriate means for satisfying the requirement for personal appearance", as provided by Article 17(6) of the UNDT Rules.

93. Our jurisprudence states that the UNDT is not required to re-hear all witnesses previously interviewed by investigators or to hear new witnesses. If there is sufficient and substantial evidence in the written record, the UNDT may base its findings on this record.⁶² The attendance of a witness can be dispensed with so long as the Tribunal is satisfied that the staff member accused of misconduct is given a fair and legitimate opportunity to defend his or her position.⁶³

⁶¹ Secretary-General's submission regarding Mr. Tomeci's written witness statement before the UNDT, paras. 6-8.

⁶² *Sall* Judgment, *op. cit.*, para. 39.

⁶³ *Majut v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-862, para. 74.

94. In the present case, we find no indication that Mr. Tomeci requested the UNDT to call his witnesses to testify during the hearing. Rather, the parties agreed that Mr. Tomeci would file written witness statements, followed by the Secretary-General's designation of witnesses to be cross-examined. A party cannot make a procedural choice and then refuse to accept the consequences of that decision.

95. The Secretary-General accepted the written witness statements from V.B. and A.C. submitted by Mr. Tomeci and the UNDT fully considered those statements in its impugned Judgment. As for N.K.'s statement, while the UNDT did not reference it in the impugned Judgment, we infer that the UNDT agreed with the Secretary-General that it was irrelevant to the allegations of misconduct and thus excluded it from its consideration. In any event, we recall that the UNDT is not required to address each and every claim made by a litigant.⁶⁴

96. In light of the foregoing, we do not find any errors in the UNDT's decision not to call certain witnesses. Mr. Tomeci's due process rights were respected throughout the investigation and disciplinary process as well as during the first instance trial.

Request for Compensation

97. On appeal, Mr. Tomeci requests compensation for harm to his career and *dignitas* in the amount of two years' net base salary. As we have consistently held, compensation shall be supported by three elements: the harm itself, an illegality, and a nexus between both.⁶⁵ Accordingly, compensation cannot be awarded when there has been no breach of the staff member's rights or administrative wrongdoing warranting repair. In the instant case, since there is no illegality affecting the contested decision, we cannot grant compensation to Mr. Tomeci.

⁶⁴ *Mizyed v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-550, paras. 34 and 35.

⁶⁵ *Kebede v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-874, para. 20.

Judgment

98. Mr. Tomeci's appeal is dismissed, and Judgment No. UNDT/2024/064 is hereby affirmed.

Original and Authoritative Version: English

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

(Signed)

Judge Gao, Presiding

(Signed)

Judge Forbang

(Signed)

Judge Colgan

Judgment published and entered into the Register on this 21st day of July 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar