



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2025-UNAT-1575

**Ivan Aguilar Valle
(Respondent)**

v.

**Secretary-General of the United Nations
(Appellant)**

JUDGMENT

Before:	Judge Nassib G. Ziadé, Presiding Judge Graeme Colgan Judge Kanwaldeep Sandhu
Case Nos.:	2024-1915 & 2024-1939
Date of Decision:	27 June 2025
Date of Publication:	26 August 2025
Registrar:	Juliet E. Johnson

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

JUDGE NASSIB G. ZIADÉ, PRESIDING.

1. The Secretary-General of the United Nations has filed appeals of two Judgments rendered by the United Nations Dispute Tribunal (UNDT) concerning an application filed by Mr. Ivan Aguilar Valle, a former staff member of the United Nations Department of Safety and Security (UNDSS). Before the UNDT, Mr. Aguilar Valle contested the Secretary-General's decision to impose on him the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity (contested decision).

2. In Judgment No. UNDT/2024/007 (Judgment on Liability),¹ the UNDT granted Mr. Aguilar Valle's application, finding that the Secretary-General failed to establish by clear and convincing evidence that Mr. Aguilar Valle had sexually harassed a female colleague, created a hostile work environment, or abused his authority.

3. In Judgment No. UNDT/2024/032 (Judgment on Relief),² the UNDT rescinded the contested decision and held that as in-lieu compensation, Mr. Aguilar Valle should be financially placed as if the contested decision had never been taken and his fixed-term appointment had been extended until 22 April 2024. Further, the UNDT awarded him USD 5,000 as compensation for moral damage.

4. Given that the Judgment on Liability and the Judgment on Relief arose from the same UNDT case, the Secretary-General's appeals of both Judgments were consolidated for decision in this Judgment.³

5. For the reasons set forth below, the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) dismisses the appeal of the Judgment on Liability and affirms that Judgment. In addition, the UNAT grants in part the appeal of the Judgment on Relief and modifies that Judgment.

¹ *Aguilar Valle v. Secretary-General of the United Nations*, Judgment No. UNDT/2024/007 (dated 26 February 2024).

² *Aguilar Valle v. Secretary-General of the United Nations*, Judgment No. UNDT/2024/032 (dated 10 May 2024).

³ *Ivan Aguilar Valle v. Secretary-General of the United Nations*, Order No. 598 (2025) (dated 9 April 2025).

Facts and Procedure

6. Before the UNDT, the parties agreed to the following facts:⁴

... Following a distinguished career in the Colombian navy, [Mr. Aguilar Valle] entered [United Nations] service with the ... Department of Security and [S]afety (UNDSS), Peru in 2009. In September 2014, he undertook duties as Field Security Specialist in Bolivia where he remained until September 2017 when he was transferred to UNDSS South Sudan and in June 2021 reassigned to UNDSS Panama as Regional Security Adviser.

... During his 13 years of service, he has consistently been rated as exceeding performance expectations.

... Since 2014 due to the proximity of the offices, [Mr. Aguilar Valle] and [AM, the alleged victim of sexual harassment (name redacted for privacy reasons)] were known to each other but had little personal contact.

... On 18 August 2016, [AM] telephoned [Mr. Aguilar Valle]. At that time, she was serving with [the United Nations Industrial Development Organization] in Bolivia, and her extant contract was due to expire. At a time subsequent to her recruitment by UNDSS, [AM's] former post in [the United Nations Industrial Development Organization] was abolished.

... On 19 August 2016, [AM] attended a birthday celebration held at the UNDSS office premises.

... On 12 September 2016, [AM] took up her new duties.

... From 2 to 17 October 2016, [Mr. Aguilar Valle] was absent from La Paz on a field trip.

... On 24 October 2016, [AM] submitted her letter of resignation effective 31 October 2016, citing a desire for career development.

... On 24 February 2017, [AM] submitted a formal complaint of sexual harassment to [the United Nations Development Programme's Office of Audit and Investigations, "UNDP/OAI"] against [Mr. Aguilar Valle].

...

... On 21 April 2017, [Mr. Aguilar Valle] filed a formal complaint to [UNDP/OAI] against [RV (name redacted for privacy reasons)], then UNDP Resident Coordinator and Designated Official for Security.

⁴ Judgment on Liability, para. 6.

7. The parties further agree that OAI interviewed Mr. Aguilar Valle, shared a draft investigation report with him, reviewed his extensive comments and 15 attachments, and then issued an amended investigation report on 25 May 2018 (Investigation Report).⁵

8. In the Investigation Report, OAI recounted that they received allegations from AM concerning four interactions with Mr. Aguilar Valle.

9. First, on 18 August 2016, before joining UNDSS, [AM] made a work-related telephone call to Mr. Aguilar Valle, during which he allegedly asked her:⁶

... what kind of underwear [she] wore, because with [her] ballerina body, [she] should at least be wearing a thong or Brazilian underwear”, given [her] astonishment [she] did not know what to reply at the time and [she] only mentioned that [she] needed to make a decision regarding [her] contract at UNIDO, to which he told [her] that there was no problem as [she] had to be in a training for 3 months exclusively with him.

The next day, it was the birthday of a colleague and [she] went to meet the UNDSS colleagues to go to lunch and when [she] arrived at their offices, Mr. Aguilar told [her] to follow him to his office and told [her] that the comment he made the day before was to de-stress [her] and that [she] should take it jokingly.

10. Mr. Aguilar Valle denied the foregoing allegation as utterly false and without foundation.⁷

11. Second, on 14 September 2016, AM stayed in the office to work following a meeting. On her way to the office kitchen:⁸

Mr. Aguilar asked [her] why in Bolivia we kiss on the cheek when we greet each other, and he told [her] that he was going to explain to [her] how we really greet, then he asked [her] to close [her] eyes and got closer to [her], at that moment [she] moved to the side, he told [her] that he was testing [her] to see what level of resistance [she] had. Immediately [she] went to [her] office and he followed [her] grabbing [her] by [her] hips with his hands and told [her] that it looked like [she] was following his advice about [her] underwear, to which [she] replied that [she] thought his comment was inappropriate.

⁵ Investigation Report into Allegations of Sexual Harassment at UNDSS Bolivia, Report No. S-R-18/25.

⁶ *Ibid.*, para. 19.

⁷ *Ibid.*, para. 20.

⁸ *Ibid.*, para. 24.

12. AM also stated that Mr. Aguilar Valle told her that he “should not have made those comments to [her] because now [she was] working with [him]”.⁹

13. Mr. Aguilar Valle had no recollection of any talking involving improper or offensive language and stated that the mentioned physical contact never happened.¹⁰

14. Third, on 23 September 2016, AM alleged that:¹¹

[She] was in the office’s file room trying to reach for a folder, when [she] felt that Mr. Aguilar was getting closer to [her] and grabbed [her] by [her] waist and told [her] ‘should [he] lift [her]?’ to which [she], annoyed, replied no.

15. Mr. Aguilar Valle stated that the alleged incident never took place and that he would never make such advances.¹²

16. Fourth, on 20 October 2016, AM alleged that when organizing a food delivery order for staff at the office, she asked:¹³

Mr. Aguilar what he wanted for lunch, to which he replied that he only wanted a chicken leg and if he didn’t like it, then he would change it for [hers]. To which, [she] replied that [she] would give him his chicken portion that they would request from the restaurant. That same day, in the afternoon, he told [her] that he was very happy because: ‘[she] will be [his] during the whole week’, [she] replied surprised that [she] did not understand what he meant.

17. Mr. Aguilar Valle had no recollection of the foregoing alleged offensive conversation with AM.¹⁴

18. OAI concluded that “on four different occasions Mr. Aguilar Valle made unwanted sexual remarks and advances to Ms. [AM].”¹⁵

⁹ *Ibid.*, para. 25.

¹⁰ *Ibid.*, para. 26.

¹¹ *Ibid.*, para. 31.

¹² *Ibid.*, para. 30 [sic].

¹³ *Ibid.*, para. 37.

¹⁴ *Ibid.*, para. 38.

¹⁵ *Ibid.*, para. 68.

19. OAI found [AM] “to be more credible than Mr. Aguilar Valle because she consistently described the facts of the harassment she suffered to the people she communicated with. OAI did not find any evidence that Ms. [AM] lied to OAI or had any reason for lying.”¹⁶

20. OAI concluded that the allegations were substantiated and referred the matter for further action to the Legal Office of the United Nations Development Programme (UNDP).¹⁷

21. On 27 May 2020, Mr. Aguilar Valle’s case was transferred to the United Nations Secretariat owing to a change in his employment.¹⁸

22. On 1 April 2022, the Under-Secretary-General for Management Strategy, Policy and Compliance (USG/DMSPC) issued the contested decision. The USG/DMSPC found that it has been “established by clear and convincing evidence that Mr. Aguilar Valle sexually harassed Ms. [AM], and thus created a hostile work environment for her during her short tenure in UNDSS Bolivia.”¹⁹

23. In addition, the USG/DMSPC found that it was:²⁰

[E]stablished by clear and convincing evidence that Mr. Aguilar Valle created a hostile work environment for other staff members. This hostile work environment was the result of the cumulative effect of Mr. Aguilar Valle’s denigrating, humiliating and offensive remarks and comments with regards to Ms. [VM], Mr. [BP], and Mr. [AJ], and of his greeting female staff members with unwelcomed physical contact and salutations, such as ‘my love’, ‘my life’, ‘my princess’, etc.

24. The USG/DMSPC concluded that Mr. Aguilar Valle’s actions constituted misconduct in violation of Staff Regulations 1.2(a) and 1.2(b), and Staff Rule 1.2(f), as well as Section 3, paragraphs 23 and 24(c) of the UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct, read in conjunction with Sections 1, 2, 5, 6, and 16 of the UNDP HR User Guide on Workplace Harassment and Abuse of Authority.²¹

25. In determining the appropriate sanction, the USG/DMSPC considered Mr. Aguilar Valle’s long service in hardship duty stations and the time it took to dispose of this case as mitigating

¹⁶ *Ibid.* para. 70.

¹⁷ *Ibid.*, para. 74.

¹⁸ Judgment on Liability, para. 6 (joint agreed facts).

¹⁹ Sanction Letter, annex, p. 8, para. 3.

²⁰ *Ibid.*, p. 13, para. 18.

²¹ Sanction Letter, p. 2.

factors. However, aggravating factors in his case were (1) his failure to act as a role model and to discharge his duty as a manager to create a harmonious work environment, (2) his retaliatory actions towards at least two staff members, and (3) the multiple resignations of staff members serving under him in a short period of time. On the basis of these considerations, the USG/DMSPC imposed on Mr. Aguilar Valle 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).²²

Dispute Tribunal proceedings

26. On 20 June 2022, Mr. Aguilar Valle filed an application with the UNDT requesting rescission of the contested decision.

27. From 6 to 10 November 2023, the UNDT held a hearing at which 13 witnesses gave testimony.

28. The Secretary-General requested that AM provide testimony, but she did not wish to do so. As AM was no longer a United Nations staff member, the Secretary-General could not compel her presence.

29. At the hearing, RV, the Resident Coordinator, testified that AM told him that Mr. Aguilar Valle said “something related to the use of her underwear, something that such a pretty lady should be wearing a thong” and “there was also a situation where [AM] felt very harassed and badly harassed”.²³ RV gave her information about how to file a complaint.

30. As to the allegations of hostile work environment, RV testified that when he arrived in Bolivia, he was advised by his predecessor and by GC²⁴ that the environment was poor and attributable to Mr. Aguilar Valle.²⁵ RV further stated that AJ “had to withdraw from the organization” due to “abuse . . . at the hands of Mr. Aguilar [Valle]”.²⁶ RV also had many meetings with BP regarding his complaints of “intimidation and humiliation” against Mr. Aguilar Valle.²⁷

²² *Ibid.*

²³ UNDT Hearing transcript, 9 November 2023, p. 6:15-18 (testimony of RV).

²⁴ GC was the Chief of the Asia-Pacific Division of UNDSS who came to investigate workplace issues in UNDSS Bolivia.

²⁵ Judgment on Liability, para. 33.

²⁶ UNDT Hearing transcript, 9 November 2023, p. 10:16-24 (testimony of RV).

²⁷ *Ibid.*, p. 10:1-10.

RV, however, did not explore informal conflict resolution to address Mr. Aguilar Valle's problems with VM, AJ and BP. RV also reported to Mr. Aguilar Valle's supervisors in New York that Mr. Aguilar Valle had created a hostile work environment in the UNDSS office in Bolivia.²⁸

31. In the hearing, VM testified that AM confided in her about Mr. Aguilar Valle's behavior. VM testified that AM told her that Mr. Aguilar Valle said something like: "what kind of underwear do you wear with your ballerina body, minimum, you used a thong." Or also "I will show you how to kiss, not – not the way you guys do in Bolivia, in the air, and then – and then he wanted to kiss her." Further, VM testified that AM told her that Mr. Aguilar Valle "put his hand on her waist and asked her if she wanted him to lift her up to reach some file cabinets".²⁹

32. VM also testified that Mr. Aguilar Valle was "harassing" her, "making comments like, 'It is not possible that I have a 60 year old assistant'". She also said that he "ma[d]e fun of [her] by saying that [she] was losing hair at team meetings and that [her] opinions were grandma's opinions".³⁰ However, when VM confronted him about how she needed to be respected, VM testified that Mr. Aguilar Valle immediately "became a wonderful boss" because he knew "that [she] was going to be a danger for him",³¹ in terms of potentially escalating a complaint.³² VM also testified that Mr. Aguilar Valle abused his authority, especially towards BP, whom he always insulted in front of everyone else, and mistreated and discriminated against.³³

33. FD testified that AM told her that Mr. Aguilar Valle "asked her what sort of underwear she wore, saying that due to her figure, she should be wearing thongs. He also commented on another occasion – when she was ordering lunch that he wanted to eat her leg, and he also grabbed her by the waist at one stage so that she could reach a folder or some sort of archive." FD advised her to speak to senior officials about her complaint and also gave her the tools to file a complaint.³⁴

34. FD further testified that AJ resigned from his position because "there were issues of abuse and harassment from his supervisor, who was Mr. Aguilar [Valle]".³⁵ In addition, BP made many

²⁸ Judgment on Liability, para. 33.

²⁹ UNDT Hearing transcript, 8 November 2023, p. 38:15-21 (testimony of VM).

³⁰ *Ibid.*, p. 34:14-19.

³¹ *Ibid.*, p. 47:4-14.

³² *Ibid.*, p. 51:20-22.

³³ Judgment on Liability, para. 27.

³⁴ UNDT Hearing transcript, 9 November 2023 (testimony of FD) p. 27-11-12.

³⁵ *Ibid.*, p. 28:15-19.

reports to her that Mr. Aguilar Valle “humiliated him, didn’t treat him very well, was always saying that he didn’t speak English well, that his performance was bad”.³⁶

35. AJ testified that he resigned from UNDSS because Mr. Aguilar Valle “pushed [him] to his limits in terms of his harassment [and] workplace ill-treatment”.³⁷ AJ explained that Mr. Aguilar Valle harassed and mistreated him, talked to him in an aggressive voice, and hit the table when talking to him.³⁸ He cited “interpersonal problems” in his resignation letter so as not to create problems for himself.³⁹

36. BP stated that he was Mr. Aguilar Valle’s “main victim”. Mr. Aguilar Valle “discredited [his] work”, humiliated him, and there were “even physical threats sometimes or insults” such as that BP “was bald”.⁴⁰ Mr. Aguilar Valle was also sending him “unmotivated notices of caution”.⁴¹

37. As a follow-up from complaints from BP, the Chief of the Asia-Pacific Division of UNDSS, GC, came to Bolivia to conduct a review. According to BP, Mr. Aguilar Valle told the team that it was because BP “was speaking badly of the office” and after that BP’s colleagues were afraid to speak to GC.⁴²

38. BP testified that Mr. Aguilar Valle “treated [VM] badly due to her age” and “he looked down on her because she was a nurse and wondered why she should be working in the administration”.

39. AB and LC, the UNDSS officials based in New York, generally testified that Mr. Aguilar Valle had improved the work environment in the UNDSS office in Bolivia and that his performance was exemplary. They further testified that BP was a difficult person with performance issues.⁴³

40. Mr. Aguilar Valle testified that his interaction with AM “was limited, always courteous and office related, with no personal communication of any kind”. He said that she “was flirtatious,

³⁶ *Ibid.*, p. 29:11-15. See also Judgment on Liability, para. 34.

³⁷ UNDT Hearing transcript, 7 November 2023, p. 9:3-8 (testimony of AJ).

³⁸ Judgment on Liability, para. 28.

³⁹ UNDT Hearing Transcript, 7 November 2023, p. 9:13-15 (testimony of AJ).

⁴⁰ *Ibid.*, p. 36:11-21 (testimony of BP).

⁴¹ *Ibid.*, p. 38:7-12.

⁴² *Ibid.*, p. 37:7-17. GC produced an “Activity Report”, and only BP’s questionnaire (out of the nine given) found that Mr. Aguilar Valle had harassed and abused his authority. See Judgment on Liability, para. 30.

⁴³ Judgment on Liability, paras. 37-38.

always trying to get attention”.⁴⁴ He said that when AM called with the news that she had been selected for a position in UNDSS, he reacted by questioning how she had such confidential information and nothing more. The next day, when they both attended a birthday celebration, Mr. Aguilar Valle denied that they had spoken in his personal office.⁴⁵ Mr. Aguilar Valle denies that he encountered AM in the office kitchen on 14 September 2016.⁴⁶ He further denies that he ever “offer[ed] any help . . . to reach any folder” in the file room and says that the shelf was empty on the day in question and there were no files on the top shelf.⁴⁷ Mr. Aguilar Valle also testified that he did nothing other than give his food order to AM and VM on 20 October 2016.⁴⁸

41. Mr. Aguilar Valle testified that he received a report from VF that AM’s training did not go well and that she “verbally mistreat[ed] the security guards on the phone”. He said that VF told him that AM may have made the wrong decision to join UNDSS. A couple of days later, AM came to Mr. Aguilar Valle and told him she was resigning in order to start a master’s degree program.⁴⁹

42. As to other allegations, Mr. Aguilar Valle testified that he did not address UNDSS female staff with phrases, such as “my love” or “princess”.⁵⁰ He said he does kiss on the cheek in greeting, but this is part of the Bolivian cultural context.⁵¹ He testified that he “always praised” VM’s performance and that “there was never any hint of dissatisfaction”.⁵² He testified that AJ “was well recognized by his constant verbal confrontation with the UNDSS staff members” and that he was always threatening to resign.⁵³ Mr. Aguilar Valle claimed that BP had “underperformance” issues but at no time did BP express disagreement with any of his feedback.⁵⁴ Lastly, Mr. Aguilar Valle testified that RV was threatened by him, because unlike himself, RV had no background or experience in managing United Nations security at the country level.⁵⁵

⁴⁴ UNDT Hearing transcript, 6 November 2023, p. 16:11-17 (testimony of Mr. Aguilar Valle).

⁴⁵ *Ibid.*, pp. 17:5-18:3. This refers to the events of 18-19 August 2016.

⁴⁶ *Ibid.*, p. 18:12-13.

⁴⁷ *Ibid.*, pp. 20:21-21:2.

⁴⁸ *Ibid.*, p. 21:16-24.

⁴⁹ *Ibid.*, p. 22:16-25.

⁵⁰ *Ibid.*, p. 24:17.

⁵¹ *Ibid.*, p. 25:7-13.

⁵² *Ibid.*, p. 26:12-15.

⁵³ *Ibid.*, p. 27:5-13.

⁵⁴ *Ibid.*, p. 29:7-15.

⁵⁵ *Ibid.*, p. 30:13-15.

Judgment on Liability

43. On 26 February 2024, the Dispute Tribunal issued the Judgment on Liability.

44. The UNDT was “mindful” that the General Assembly adopted Article 9(4) to the Dispute Tribunal Statute (UNDT Statute), but that this “only took effect subsequent to the holding of the hearing and the parties being ordered to file their closing statements”. The UNDT stated that: “In any event, the provision would have made no decisive difference to the Tribunal’s management of the case or any of its substantive findings”.⁵⁶

45. The UNDT took note that pursuant to the Appeals Tribunal Judgment in *Appellant*, the UNDT is ordinarily obliged to hold a hearing in disciplinary cases so that “the alleged wrongdoer will be afforded an opportunity to face and cross-examine those who accuse him or her of misconduct”.⁵⁷ The UNDT further observed that the Appeals Tribunal has recognized that “the failure to call witnesses by the Secretary-General and the denial to the applicant of an opportunity to cross-examine his or her accusers, especially in serious cases, may very well result in a finding that the Secretary-General has failed to meet his burden of proof”.⁵⁸

46. The UNDT found that in this case, the alleged victim of sexual harassment, AM, declined to testify, thus Mr. Aguilar Valle did not have the opportunity to face and cross-examine his accuser. The only evidence from AM was in the case file, e.g., the written summary of her statement to the OAI investigators.⁵⁹ The UNDT noted that the testimony of others at the hearing (VM, VF, HA, RV and FD), and their knowledge of the allegations were based solely on what AM told them. The UNDT found: “In other words, the Respondent’s case before the Tribunal is solely based on hearsay evidence.”⁶⁰

47. The UNDT thus concluded:⁶¹

Considering the Appeals Tribunal’s unequivocal holdings in *Appellant*, *Applicant*, *AAC*, *Wakid* and *AAO* and the lack of any direct evidence before the Tribunal, it therefore finds that the [Secretary-General] has not managed to prove with clear and convincing evidence,

⁵⁶ Judgment on Liability, para. 8.

⁵⁷ *Ibid.*, para. 16 (citing *Appellant v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1210, para. 38).

⁵⁸ *Ibid.*, para. 17 (citing *Applicant v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1187, para. 59).

⁵⁹ *Ibid.*, para. 18.

⁶⁰ *Ibid.*, para. 20.

⁶¹ *Ibid.*, para. 21.

or even with the preponderance of [the] evidence, the factual allegations leading to the USG/DMSPC's conclusion that [Mr. Aguilar Valle] sexually harassed AM. In the same vein, the [Secretary-General] has also failed to demonstrate that [Mr. Aguilar Valle] created a hostile work environment for AM.

48. The UNDT accordingly dismissed these claims against Mr. Aguilar Valle.

49. As to the factual allegations of a hostile work environment for other staff members, the Dispute Tribunal found that the Secretary-General had established with the requisite evidentiary burden four key points.

50. First, the UNDSS office environment was hostile during Mr. Aguilar Valle's tenure, but this was not solely attributable to him, as some individual team members had personal and/or professional conflicts and issues. Some problems, such as those with BP, predated Mr. Aguilar Valle. Moreover, the UNDT found that RV did not address these issues with Mr. Aguilar Valle, but instead downgraded his performance and guided AM in filing the complaint against him.⁶²

51. Second, the UNDT found that the relationship between Mr. Aguilar Valle and both AJ and BP was "unfriendly, if not even antagonistic". This was, in part, "a reflection of [Mr. Aguilar Valle's] perception of BP's suboptimal work performance," Mr. Aguilar Valle's "managerial style and attitude", and dissatisfaction by AJ and BP with their roles in the UNDSS office.⁶³

52. Third, Mr. Aguilar Valle "made inappropriate comments about VM's age and professional skills, but stopped doing so as soon as she confronted him".⁶⁴

53. Fourth, Mr. Aguilar Valle "greeted some female colleagues in flattering and affectionate ways" and it was "not always welcome" but "such behavior was considered socially acceptable and normal in the cultural context, and when asked to stop, [Mr. Aguilar Valle] immediately did so".⁶⁵

54. As to whether the established facts constituted misconduct, the Dispute Tribunal held that:⁶⁶

⁶² *Ibid.*, para. 53(a).

⁶³ *Ibid.*, para. 53(b).

⁶⁴ *Ibid.*, para. 53(c).

⁶⁵ *Ibid.*, para. 53(d).

⁶⁶ *Ibid.*, para. 69.

[W]hereas [Mr. Aguilar Valle's] actions and behavior towards, in particular BP but also VM, was not up to the standard to be expected of a supervisor working for the United Nations, they did not amount to misconduct in the given circumstances.

55. As the UNDT determined that Mr. Aguilar Valle did not commit misconduct, there was no need to consider the proportionality of the sanction.⁶⁷

56. The UNDT also considered and rejected the Secretary-General's arguments that he had "not been afforded a fair and equal opportunity to present his case to the Tribunal".⁶⁸

57. The UNDT also considered a motion filed by Mr. Aguilar Valle alleging that BP, one of the Secretary-General's witnesses, approached MU, one of Mr. Aguilar Valle's witnesses, at a United Nations Staff Day celebration on 24 October 2023. Purportedly, BP attempted to intimidate MU with respect to his forthcoming testimony before the UNDT. Both men testified at the hearing, from which the UNDT concluded that it was "not possible to ascertain what actually transpired" between them. The UNDT declined to formally refer the issue to the Secretary-General for possible action to enforce accountability but left it in the hands of the Administration to decide on any future action.⁶⁹

Judgment on Relief

58. Following the issuance of the Judgment on Liability, the Dispute Tribunal requested the parties' submissions on remedies and costs.

59. The UNDT decided that because the alleged counts of misconduct were unfounded, the most appropriate remedy was to rescind the contested decision.⁷⁰

60. As to the amount of in-lieu compensation, should the Secretary-General elect not to reinstate Mr. Aguilar Valle, the UNDT considered the nature and level of his post, the remaining time on his contract, and the chances of renewal.⁷¹

⁶⁷ *Ibid.*, para. 70.

⁶⁸ *Ibid.*, para. 71. *See also id.*, paras. 72-99.

⁶⁹ *Ibid.*, paras. 49-52.

⁷⁰ Judgment on Relief, paras. 5-6.

⁷¹ *Ibid.*, para. 9.

61. The UNDT recognized that Mr. Aguilar Valle was separated from service on 4 April 2022, and that his two-year fixed-term appointment was coming to an end 18 days later, on 22 April 2022.⁷²

62. Nonetheless, the UNDT observed that it was “standard practice and courtesy in the Organization that, albeit fixed-term appointments, per definition, do not carry any expectancy of renewal under staff rule 4.13(c), a staff member whose fixed-term appointment is not to be renewed” typically receives notice of the non-extension at least 30 days before expiry.⁷³

63. Based on the foregoing and given that Mr. Aguilar Valle had not received notice of a non-extension, the UNDT concluded that his fixed-term appointment was likely to have been renewed for another two years on 23 April 2022, with an expiry on 22 April 2024.⁷⁴

64. The UNDT held that under the Appeals Tribunal’s settled jurisprudence, Mr. Aguilar Valle should be placed in a situation as if there had been no infringement of his rights. Therefore, he was entitled to net base salary, post adjustment, pension, grants, subsidies, allowances and all other payments relevant to him from the date of his separation until 22 April 2024.⁷⁵

65. The UNDT further held that Mr. Aguilar Valle had attempted to mitigate his income loss but had been unable to find alternative employment. Since his name was in the United Nations Clear Check database, his employment opportunities within the United Nations system, where he had worked since 2009, were non-existent.⁷⁶

66. The UNDT accepted the medical report and invoice submitted by Mr. Aguilar Valle as genuine evidence of the stress and anxiety he experienced after receiving the second harshest disciplinary sanction from the Organization. The UNDT thus awarded him USD 5,000 for his non-pecuniary and moral damages.⁷⁷

⁷² *Ibid.*, para. 13.

⁷³ *Ibid.*, para. 14.

⁷⁴ *Ibid.*, para. 16.

⁷⁵ *Ibid.*, paras. 24-25 (referring to *Yasmina Laasri v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1122, para. 63).

⁷⁶ *Ibid.*, paras. 20-21.

⁷⁷ *Ibid.*, paras. 29 and 34.

67. The UNDT noted that the Administration had an obligation to remove Mr. Aguilar Valle's name from the Clear Check database, as this followed logically from the rescission of the contested decision.⁷⁸

68. Finally, the UNDT held that if the aggregated compensation exceeded two years' net base salary of Mr. Aguilar Valle, the exceptional circumstances of the case warranted exceeding the limit stated in Article 10(5) of the UNDT Statute.⁷⁹

Procedure before the Appeals Tribunal

69. On 26 April 2024, the Secretary-General filed an appeal of the Judgment on Liability with the Appeals Tribunal. Two weeks later, the UNDT issued the Judgment on Relief.

70. On 28 June 2024, the Secretary-General filed a motion to withdraw the appeal of the Judgment on Liability and sought leave to file a revised appeal of both Judgments.

71. For reasons elaborated in its Order, the Appeals Tribunal denied the motion and the parties submitted separate pleadings on both Judgments.⁸⁰

Submissions

Judgment on Liability

The Secretary General's Appeal

72. The Secretary-General requests that the UNAT vacate the Judgment on Liability with the exception of the UNDT's determination regarding possible witness intimidation.

73. The Secretary-General submits that the UNDT committed an error of law and exceeded its jurisdiction in finding that the amendment to Article 9(4) of the UNDT Statute was not applicable to this case.

74. The Secretary-General points out that the General Assembly amended Article 9(4) of the UNDT Statute on 22 December 2023, which was two months *prior to* the UNDT rendering the

⁷⁸ *Ibid.*, para. 38.

⁷⁹ *Ibid.*, para. 41(d).

⁸⁰ *Ivan Aguilar Valle v. Secretary-General of the United Nations*, Order No. 568 (2024) (dated 15 July 2024).

Judgment on Liability. The UNDT is bound to operate within the confines of the UNDT Statute and thus should have applied the amended Article when it rendered the Judgment on Liability. This is consistent with the Appeals Tribunal Judgment in *Gueben et. al*, in which the UNAT held that the UNDT erred in law by not applying the UNDT Statute as it existed at the time it rendered its judgment.⁸¹

75. The Secretary-General contends that the General Assembly did not give any instructions to defer the date of implementation of the amended Article 9(4) and did not specify that the Article would not apply to cases that were already underway.

76. The Secretary-General avers that the UNDT justifies the non-applicability of Article 9(4) by finding that it “would have made no decisive difference” to its findings. The Secretary-General refutes this characterization of the amendment and argues that the amendment reflects the General Assembly’s decision to change the UNDT’s role in reviewing administrative decisions imposing disciplinary measures.

77. The Secretary-General submits that pursuant to Article 9(4) of the UNDT Statute, the UNDT is mandated to conduct a judicial review of an administrative decision imposing a disciplinary measure, and in conducting this review “*shall consider the record assembled by the Secretary-General*”.⁸²

78. The Secretary-General argues that the word “shall” means that the UNDT has an obligation to consider evidence that was before the Secretary-General when he took the administrative decision imposing the disciplinary decision. This record includes evidence collected during the investigation (which often includes sworn witness statements) as well as all the material and responses provided by the staff member during the disciplinary process.

79. The Secretary-General submits that because the UNDT is obliged to consider the record before the Secretary-General when the disciplinary decision was taken, a witness that has provided a sworn witness statement during the investigation need not testify before the UNDT in order for the evidence to be considered by the UNDT. The evidentiary value of the evidence in the record before the Secretary-General is not diminished by the fact that it is not presented in court.

⁸¹ The Secretary-General refers to *Gueben et. al v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-692, paras. 50 and 52.

⁸² Emphasis in the original.

80. The Secretary-General submits that the UNDT violated Article 9(4) by failing to consider the record assembled before the Secretary-General and dismissing it on the basis that it was not presented orally before the UNDT. The UNDT did so by relying on UNAT jurisprudence that predated the amendment.⁸³ This cannot stand.

81. The Secretary-General submits that the record before him when he took the contested decision included evidence that was in the OAI report, namely: (i) the written complaint from AM; (ii) the sworn witness statement of AM; and (iii) the sworn witness statements of six staff members of UNDSS Bolivia at the relevant time. This evidence clearly shows that AM was sexually harassed by Mr. Aguilar Valle.

82. The Secretary-General argues that if the Judgment on Liability is allowed to stand, it would seriously frustrate the Secretary-General's implementation of his zero tolerance policy against sexual harassment. If the Tribunals are to uphold disciplinary measures only when the victim or witnesses are present in court, like the UNDT did in the present case, the Secretary-General's ability to hold staff members accountable for sexual misconduct will be compromised, particularly when the complainant is not a United Nations staff member or is a former United Nations Staff Member and the Secretary-General cannot compel the person to appear before the UNDT.

83. The Secretary-General submits that the UNDT erred in law in concluding that Mr. Aguilar Valle's actions and behavior towards his colleagues did not constitute misconduct.

84. The Secretary-General points out that the UNDT found that there was clear and convincing evidence that Mr. Aguilar Valle made inappropriate ageist comments about VM and denigrated her skills, and that the UNDT erred in excusing this behavior because Mr. Aguilar Valle stopped it.

85. The Secretary-General acknowledges that the UNDT found clear and convincing evidence that the UNDSS office was hostile during Mr. Aguilar Valle's tenure but then erred by excusing his behavior because there were other strong personalities in the office.

86. The Secretary-General submits that the UNDT erred in on the one hand, finding that there was clear and convincing evidence that Mr. Aguilar Valle greeted some female colleagues in flattering and affectionate ways that was not always welcome, but on the other hand, concluding

⁸³ The Secretary-General refers to the UNDT's reliance on the UNAT Judgments in *Appellant, Applicant, AAC, AAO* and *Wakid*.

that this was “culturally normal in Bolivia”. Mr. Aguilar Valle has to follow the rules and regulations of the Organization, not what is supposedly normal in Bolivia.

87. The Secretary-General avers that the UNAT should confirm that Mr. Aguilar Valle’s conduct towards his colleagues constituted misconduct in violation of Staff Regulations 1.2(a) and (b) and Staff Rule 1.2(f), that the disciplinary measure was proportional, and that Mr. Aguilar Valle’s due process rights were respected.

88. The Secretary-General requests that the UNAT vacate the Judgment on Liability with the exception of paragraphs 49 to 52 and uphold the contested decision.

Mr. Aguilar Valle’s Answer

89. Mr. Aguilar Valle requests that the UNAT affirm the Judgment on Liability.

90. Mr. Aguilar Valle questions why the Secretary-General requests the reversal of the Judgment on Liability except for the paragraphs concerning the very serious issue of intimidation of one of Mr. Aguilar Valle’s witnesses by one of the Secretary-General’s principal complainants. On information and belief, Mr. Aguilar Valle states that he is aware of no action taken to address the issue of witness intimidation as recommended in the Judgment.

91. Mr. Aguilar Valle wishes to note that the Secretary-General has filed his appeal on the Judgment on Liability before the Judgment of Remedies has been rendered. This is contrary to the Appeals Tribunal Judgment in *Heurtematte*,⁸⁴ which amounts to an abuse of process by the Secretary-General.

92. Mr. Aguilar Valle presents the jurisprudence of the UNAT on the review of disciplinary decisions,⁸⁵ the meaning of clear and convincing evidence,⁸⁶ and the conduct of hearings on disciplinary cases.⁸⁷ He submits that the UNDT correctly followed the foregoing jurisprudence.

⁸⁴ *Mauricio Eliecer Heurtematte v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1430, para. 69.

⁸⁵ *Mahdi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-018.

⁸⁶ *Sisay Negussie v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1033.

⁸⁷ *AAC v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1370, paras. 45 and 47.

93. Mr. Aguilar Valle contends that the appeal in essence argues that because the UNDT did not accept the case put forward by the Secretary-General, the UNDT acted beyond its mandate.

94. Mr. Aguilar Valle asserts that the Secretary-General has abused the appeals process by misstating the Judgment on Liability. The UNDT never said that Article 9(4) was not applicable. It merely noted that the amendment had no specific impact on the process followed by the UNDT or the outcome of the case. This is essentially because the amendment does not change in any substantive way the manner in which the UNDT has generally dealt with disciplinary cases. The existing Statute does not prescribe what weight Judges should attach to various forms of evidence.

95. Mr. Aguilar Valle submits that while testimonies obtained in the course of the investigation are invariably included in the course of the judicial review, they may not carry the same evidentiary weight as *viva voce* testimony that can be tested and evaluated directly.

96. Mr. Aguilar Valle submits that AM's only affirmed statement was a brief written summary produced by OAI essentially repeating her complaint, and the only corroboration was colleagues repeating what she told them. There were no direct witnesses to any of her claims.

97. Mr. Aguilar Valle submits that AM admitted in her testimony to OAI that she was guided by the Resident Coordinator and an HR assistant in filing her complaint. The role of the Resident Coordinator was central. It is no coincidence that most of the negative comments about Mr. Aguilar Valle occurred after the Resident Coordinator returned from New York where he had been trying to convince UNDSS New York officials to act on his own complaint against Mr. Aguilar Valle.

98. Mr. Aguilar Valle points out that compelling testimony was given by the UNDSS New York officials that the allegations against Mr. Aguilar Valle were inconsistent with their observations, and they exposed the hostile work environment created by the Resident Coordinator.

99. Mr. Aguilar Valle argues that the UNDT properly weighed the totality of the evidence, including the credibility of witnesses. Mr. Aguilar Valle objects to the Secretary-General's argument which appears to be that whatever a witness states in an investigation has to be accepted as *prima facie* evidence of what is asserted.

100. Mr. Aguilar Valle submits that the allegations other than that of sexual harassment were deliberately solicited and encouraged by the Resident Coordinator. The UNDT correctly found

that these isolated examples of behaviour or verbal conduct, some going back many years, should be addressed through performance management.

101. Mr. Aguilar Valle contends that given the underlying weakness of the claims of sexual harassment, it was necessary to portray him as a serial harasser. The negative commentary consists of repeating hearsay and gossip. There is no reasonable explanation why numerous supervisors and managers, none of whom were interviewed, never criticized Mr. Aguilar Valle's managerial capacities in their performance assessments of him, or why a hostile work environment was not perceived by them. The UNDSS NY officials confirmed that he had a positive impact with his managerial approach in subsequent assignments in South Sudan and Panama.

102. Mr. Aguilar Valle submits that for a behaviour to be misconduct, it must be considered unwelcome and generally egregious or repeated to be seen as harassment. This evidence was entirely absent.

103. Mr. Aguilar Valle submits that the UNDT correctly recognized that the Resident Coordinator did not handle the workplace issues well and it was evident that he intended to scapegoat Mr. Aguilar Valle.

104. Mr. Aguilar Valle requests that the Appeals Tribunal reject the appeal and affirm the Judgment on Liability in its entirety.

Judgment on Relief

The Secretary General's Appeal

105. The Secretary-General submits that because the Judgment on Liability should be set aside, there is no basis for any award of compensation to Mr. Aguilar Valle.

106. The Secretary-General avers that, without prejudice to its principal argument that the Judgment on Liability should be vacated, the UNDT also erred in the award of compensation in the Judgment on Relief.

107. The Secretary-General submits that the UNDT erred in fact and law in awarding in-lieu compensation based on the erroneous assumption that Mr. Aguilar Valle's fixed-term appointment would be renewed beyond the expiration date of his appointment.

108. The Secretary-General claims that the UNDT erred in fact and law in assuming that Mr. Aguilar Valle's appointment would be renewed because he had not received a 30-day notice of non-renewal.

109. The Secretary-General submits that contrary to the UNDT's assumptions, staff members on fixed-term appointments do not receive notices of non-renewal. The legal framework provides that a fixed-term appointment expires automatically and without prior notice on the expiration date in the letter of appointment.

110. The Secretary-General submits that, based on the legal framework and UNAT jurisprudence,⁸⁸ the UNDT should have considered the time from the contested decision (i.e., 4 April 2022) to the expiration date of the fixed-term appointment (i.e., 22 April 2022), or 18 days, for calculating compensation in lieu, and not two years plus 18 days.

111. The Secretary-General submits that the UNDT erred in finding that Mr. Aguilar Valle's case was exceptional so as to justify payment over the two-year maximum set out in Article 10(5) of the UNDT Statute.

112. The Secretary-General contends that the factors cited by the UNDT as making the case exceptional, e.g., the "seriousness" of allegations of sexual harassment, the severity of termination, and Mr. Aguilar Valle's proven moral harm, are present in almost every case of termination for disciplinary reasons.

113. The Secretary-General requests that the UNAT deny all compensation because the Judgment on Liability should be vacated; or in the alternative, adjust the in-lieu compensation so that it is calculated based on the expiration date of his actual appointment on 22 April 2022, rather than on the assumption that his fixed-term appointment would be extended for another two years.

Mr. Aguilar Valle's Answer

114. Mr. Aguilar Valle requests that the UNAT affirm the Judgment on Relief and award him costs in the amount of USD 10,000.

115. Mr. Aguilar Valle argues that there are many UNAT Judgments in which similarly-situated staff members were awarded two-years' net base salary. For example, in *Lucchini*, the UNAT

⁸⁸ The Secretary-General refers to *Laasri* Judgment *op. cit.*

awarded the staff member the maximum compensation in lieu due to the “evident unfairness” of the case.⁸⁹ In *Cohen*, the UNAT also cited an unjust termination on disciplinary grounds as a case reflecting exceptional circumstances.⁹⁰

116. Mr. Aguilar Valle submits that he was on successive two-year appointments with no indication that his highly valued services in Panama, in a regional security capacity, were going to end in a few days.

117. Mr. Aguilar Valle submits that whether or not notice is formally required under the legal framework, it is invariably the practice. Apart from this, the notion that the effective remedy for being unfairly terminated for sexual misconduct is 18 days’ pay is patently absurd.

118. Mr. Aguilar Valle argues that the UNDT did consider what made his case exceptional in making the award, including the seriousness of the charges, the severity of the penalty, and moral harm. Moreover, it remains unchallenged that dismissal for sexual misconduct which includes public dissemination via the Clear Check system is a penalty with long-term implications.

119. Mr. Aguilar Valle submits that the Secretary-General created additional legal work to address his submissions, because of the separate appeal of the Judgment on Relief. Accordingly, he considers an award of costs in the amount of USD 10,000 for abuse of process to be justifiable.

Considerations

120. The first issue for determination is whether Article 9(4) of the UNDT Statute applied to the proceedings before the Dispute Tribunal.

121. Article 9(4) was adopted by the General Assembly on 22 December 2023,⁹¹ after the UNDT hearings were held in November 2023, and after Mr. Aguilar Valle and the Secretary-General had filed their closing statements on 4 December and 18 December 2023, respectively, but before the UNDT issued its Judgment on Liability in February 2024. This provision clarifies the nature of the “judicial review” to be conducted by the UNDT:

In hearing an application to appeal an administrative decision imposing a disciplinary measure, the Dispute Tribunal shall pass judgment on the application by conducting a

⁸⁹ *Alex Lucchini v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1121, paras. 60-64.

⁹⁰ *Cohen v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-131, para. 18.

⁹¹ General Assembly resolution 78/248, para. 14.

judicial review. 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; whether the established facts legally amount to misconduct; whether the applicant's due process rights were observed; and whether the disciplinary measure imposed was proportionate to the offence.⁹²

122. The Secretary-General contends that this provision applies to the UNDT Judgments under consideration, and that by disregarding the written testimony contained in the investigative record on hearsay grounds, the UNDT breached its obligation under Article 9(4) to "consider the record assembled by the Secretary-General".

123. While the UNDT noted the adoption of Article 9(4), it declined to grapple with its terms because the provision "only took effect subsequent to the holding of the hearing and the parties being ordered to file their closing statements".⁹³

124. We conclude that Article 9(4) did not apply to the present case. Crucially, Article 9(4) was adopted after the hearing had already been held. The parties presented their evidence, including a chronology of agreed facts as well as live testimony, and made their respective post-hearing submissions, under a legal framework where Article 9(4) was not operative. In this procedural context, it would be inappropriate, and a denial of due process, to apply a new evidentiary framework at the point of decision, *ex post facto*. Nothing in the new Article 9(4) expressly mandates its application to cases which have already been heard, and this Tribunal will not assume that the General Assembly intended such an application.⁹⁴

125. Having concluded that Article 9(4) of the UNDT Statute does not apply, we turn to the substantive question of whether the UNDT erred, as a matter of fact or law, in its findings regarding the alleged misconduct of Mr. Aguilar Valle. We address, first, the determination as to the allegations of sexual harassment and hostile work environment specific to AM, and second, the determination as to the hostile work environment for other staff members. We then address the issue of remedy.

⁹² UNDT Statute, Art. 9(4).

⁹³ Judgment on Liability, para. 8.

⁹⁴ We recall that a prior UNAT decision declined to address what it referred to as "the vexed question [of] whether ... new Article 9(4) ... which took effect during the time when the proceeding was before the Tribunals, was applicable to the decision of the case," but suggested some skepticism that it would. *AAO (No. 2) v. Secretary-General of the United Nations*, Judgment No. 2025-UNAT-1542, paras. 128-129.

126. Regarding AM, the Secretary-General produced her written complaint. Based on paragraphs 16 and 17 of the Investigation Report, which outline the methodology of the investigation, it appears that AM was not formally interviewed in the same manner as the accused. The investigators relied on her written complaint of 24 February 2017, and then apparently asked her some follow-up questions which produced an amended statement of complaint on 3 April 2017. There is, however, no transcript of an interview with her, as there is for Mr. Aguilar Valle. OAI prepared written statements for other witnesses, but these statements were overall more detailed than those of AM, and most of these witnesses appeared at the hearing for further examination. While AM's resignation explains the inability to compel her attendance at a hearing, it does not justify the paucity of information from her at the investigatory stage. If the Secretary-General seeks to rely solely on the investigation record, there must be more substance in the record from the complainant than appeared in this case, preferably a recording or a written transcript of the interview.

127. In addition to the written complaint by AM, the UNDT heard testimony from several staff members who recounted that AM had verbally told them information consistent with the written statements. These staff members did not observe the alleged harassment of AM but testified only to what AM had told them. As noted above, AM declined to testify at the UNDT hearing. On the other side of the ledger, Mr. Aguilar Valle testified that he did not engage in the conduct ascribed to him by AM's complaint and offered several witness statements to contradict the allegations of harassment. The UNDT had the full opportunity to assess the credibility of Mr. Aguilar Valle and to weigh it against the evidence presented by the Secretary-General.⁹⁵ Based on our review of the record, we cannot say that the UNDT erred in its conclusion that the Secretary-General had failed to establish by clear and convincing evidence the factual allegations behind the disciplinary findings of sexual harassment or hostile work environment with respect to AM.

128. We emphasize that this ruling is based on the particular facts and procedural posture of this case. We do not hold that an oral hearing is required in every case, nor that hearsay evidence from an investigative record may not be considered in the appropriate circumstances. There is no requirement for the complainant to testify in every case for the disciplinary measure to be upheld, provided that the requisite burden of clear and convincing proof is met by the Secretary-General, based on all the facts and circumstances of the case, and with due regard for the rights of the

⁹⁵ Judgment on Liability, paras. 20-21.

accused.⁹⁶ The weight to be given to the investigation report will depend on the circumstances of the case and on an assessment of the totality of evidence. In the present case, there existed material factual disputes on key issues which led the Dispute Tribunal, in its discretion, to give less weight to the investigation report when it made that assessment, and we find no error in its doing so.

129. Our finding with respect to this particular case, based on the evidence presented, must also not be read to diminish either the seriousness of the allegations, or the strong indication that Mr. Aguilar Valle may have engaged in conduct unbecoming his position with the United Nations. Rather, our finding is based on a failure by the Secretary-General to meet his burden of proving, by clear and convincing evidence, that conduct tantamount to sexual harassment or creation of a hostile work environment took place. The hearsay evidence provided did not, in the present case, meet that burden when viewed in light of the entire record.

130. Nor should this decision be read to be in any way critical of the decision of AM not to testify before the UNDT. That was her undeniable right. At the same time, the accused has the right under the United Nations internal justice system to receive due process in the face of serious accusations, which includes the protection of the clear and convincing burden of proof.

131. With regard to the charge of hostile work environment regarding staff members other than AM, the UNDT concluded that while Mr. Aguilar Valle engaged in limited inappropriate behavior towards certain staff members, it did not give rise to a hostile work environment nor was it properly classified as misconduct warranting discipline. That determination was supported by the record and we see no basis to reject it. Mr. Aguilar Valle's cessation of the offending conduct, the lack of any formal complaint by any staff member besides AM, and the repeated failure of Mr. Aguilar Valle's manager, RV, to take appropriate actions consistent with his own obligations to develop a harmonious workplace, all support the UNDT's determination. The evidence taken as a whole did not support the conclusion that Mr. Aguilar Valle's missteps constituted abuse or created a hostile work environment in violation of applicable rules as illustrated by our precedents.⁹⁷

⁹⁶ *AAY v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1493, paras. 51-54; *Applicant* Judgment, *op. cit.*, para. 58.

⁹⁷ *See, e.g., Mubashara Iram v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1340, paras. 58-59, 62, 67-68, and 72; *Simone Monasebian v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1476, paras. 64-66, 69, and 71.

132. Finally, we address the issue of remedy. The UNDT found rescission of the contested decision to be the most appropriate remedy and also determined the appropriate amount of in-lieu compensation, under Article 10(5)(a) of the UNDT Statute to be the amount due to Mr. Aguilar Valle had he commenced a new two-year appointment in April 2022 rather than being terminated.⁹⁸ We find this extraordinary remedy to be excessive under the circumstances.

133. The purpose of in-lieu compensation is to restore the staff member to the position he would have been in had the contested decision not taken place. As a general rule, therefore, a staff member whose fixed-term appointment has been improperly terminated may be awarded no more than the compensation they would have received for the remainder of their term. This limitation is consistent with the legal framework in which fixed-term contracts carry no expectancy of renewal,⁹⁹ and comports with the prohibition on punitive damages.¹⁰⁰

134. The UNAT does not lightly interfere with UNDT awards of compensation. In the present case, the UNDT had a special proceeding to consider this issue in detail and accepted additional evidence and submissions from the parties. The UNDT justified its departure from the general rule based on its determination that since Mr. Aguilar Valle had only 18 days left on his contract term when he was terminated, and had not received any notice of non-extension, it was likely that his appointment was planned to be extended and that but for the improper termination, his fixed-term appointment would have been extended by another two years.¹⁰¹ There is some support for this assumption, and we agree that but for the incorrect determination of sexual harassment, there was a potential that he would have his contract renewed. We also consider that, after determining Mr. Aguilar Valle had engaged in sexual harassment, the Secretary-General entered his name on the Clear Check database, effectively precluding him from further employment with the United Nations until at least the Judgment on Liability was issued in February 2024.¹⁰²

135. Nonetheless, had Mr. Aguilar Valle not had his employment opportunities curtailed by the Clear Check listing, his prospects were still potentially impaired. Compensatory remuneration for the period of two years must be discounted by a factor reflecting several possible contingencies, including retirement, ill-health, retrenchment, abolition of post, and his questionable workplace

⁹⁸ Judgment on Relief, para. 41.

⁹⁹ *Miriam Nalugya Kiingi v. Secretary-General of the United Nations*, Judgment No. 2025-UNAT-1541, paras. 56-59; *Wassim Saleh v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1368, paras. 69-71.

¹⁰⁰ *Kiingi* Judgment, *op. cit.*, para. 57.

¹⁰¹ Judgment on Relief, para. 15.

¹⁰² *Ibid.*, paras. 36-38.

conduct coming to notice and being sanctioned. Taking all these considerations into account, we find that an award of 16 months of compensation (plus the 18 days remaining on his contract provided they had not yet been paid) is the appropriate result in this factual context.

136. Lastly, we address Mr. Aguilar Valle's request for an award of costs of USD 10,000 because the Secretary-General filed separate appeals for the Judgment on Liability and the Judgment on Relief, thereby requiring Mr. Aguilar Valle to spend extra resources to file two answers. We reaffirm our view set forth in Order No. 568 on this point.¹⁰³ Although it is true that the UNAT has encouraged parties to await the issuance of the Judgment on Remedies from the UNDT before filing an appeal in a particular case, given that the time-limits set forth in Article 7(1)(c) of the UNAT Statute do not distinguish between types of judgments, we cannot fault the Secretary-General for seeking to preserve his rights of appeal. We do not think the Secretary-General's cautious approach meets the high bar of abuse of process. We note that these situations would be best avoided by the UNDT issuing one judgment, inclusive of liability and remedy, rather than two. Mr. Aguilar Valle's request for an award of costs is denied.

¹⁰³ Order No. 568, *op. cit.*, paras. 17-18.

Judgment

137. The Secretary-General's appeal as to the Judgment on Liability is dismissed, and Judgment No. UNDT/2024/007 is hereby affirmed.

138. The Secretary-General's appeal as to the Judgment on Relief is granted in part, and Judgment No. UNDT/2024/032 is hereby modified.

Original and Authoritative Version: English

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

(Signed)

Judge Ziadé, Presiding

(Signed)

Judge Colgan

(Signed)

Judge Sandhu

Judgment published and entered into the Register on this 26th day of August 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar

Judge Colgan and Judge Sandhu's Concurring Opinion

1. We agree with the result expressed in the principal Judgment but respectfully wish to add the following remarks about one element of the reasoning expressed in our judgment.

2. This is the important issue of what is the purpose of compensation in lieu, in particular whether Staff Rule 4.13(c) (no expectancy of renewal or continuation of a fixed-term appointment) limits compensation in lieu to compensation only for the balance of the staff member's existing fixed-term appointment irrespective of the probability of renewal or continuation. The jurisprudence of the UNAT should provide guidance to first instance tribunals when addressing the application of the general principles to determine the appropriate compensation in lieu in specific circumstances. However, that jurisprudence is not entirely clear nor consistent. That is illustrated by our Judgment in the instant case in which the balance of Mr. Aguilar Valle's fixed-term appointment was 18 days, but we have provided compensation in lieu beyond that short period of the remaining 18 days.

3. The Appeals Tribunal has set out general principles in the determination of compensation in lieu. The purpose of in-lieu compensation is to place the staff member in the same position he or she would have been in, had the unlawful decision not been made. Although the Appeals Tribunal exercises discretion in establishing the amount of in-lieu compensation, it shall ordinarily provide justification for that and set an amount that it considers is an appropriate substitute for rescission or specific performance in the circumstances. In other words, compensation must be set following a principled approach and on a case-by-case basis. The determination of the amount of in-lieu compensation will depend on the circumstances of each case, but some relevant factors to be considered, among others, are the nature of the post formerly occupied, the remaining time to be served by a staff member on their appointment, and their expectancy of renewal.¹

4. At paragraphs 133 and 134 of our Judgment, we refer to what we describe as "the general rule" on this issue and some particular exceptions to this, of which this case is one. However, the application of this rule and its exceptions has not always been clearly applied in specific judgments.

5. For example, the Appeals Tribunal in *Mihai* held that: "Ms. Mihai's chance that the appointment would have been renewed *may not be taken into account* for the in-lieu

¹ *Wassim Saleh v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1368, paras. 70-71; *Ashour v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-899, para. 18; *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-712, para. 16.

compensation as this would be a violation of Staff Regulation 4.5(b) and Staff Rule 4.12(c), both of which provide that ‘a temporary appointment does not carry any expectancy, legal or otherwise, of renewal’.”² This illustrated the “general rule” referred to in the present Judgment.

6. This case also emphasizes that the purpose of compensation in lieu is to compensate for the actual economic or pecuniary loss suffered by the staff member (namely the loss suffered during the remaining term of their appointment). If so, compensation for actual economic loss would also require mitigation by the staff member. However, we have held in other judgments that “[in-lieu] compensation is not compensatory damages based on economic loss. Thus, there is no reason to reduce this award by the amount of the termination indemnity or to require mitigation”.³ Further we have held that compensation in lieu can include compensation for loss of opportunities beyond actual economic loss. In *Faraj*, we held that it was “apt to determine compensatory damages in this case to cover loss of earnings and loss of opportunities.”⁴

7. While on one hand the principle prohibiting any expectation of renewal of a fixed-term appointment limits the period of compensation for loss of remuneration, on the other the purpose of compensation in lieu being to restore the staff member to the position he or she would have been in had the unlawful sanction imposed on him or her had not occurred, is at the heart of these different approaches to this important remedial issue. For the sake of consistency and transparency, it is important for the Tribunals, through principled analysis, to clearly set out what the specific exceptions are and how they determined the quantum of the compensation awarded.

8. It is not appropriate to undertake this analysis here. We do, nevertheless, wish to signal our concern at inconsistencies in the jurisprudence on this important issue and our recommendation that in an appropriate case, the Tribunal has the opportunity to consider detailed argument and reach a considered decision of the question. We also recognize our consistent jurisprudence that “[c]ontemplating the particular situation of each claimant... carries a certain degree of empiricism to evaluate the fairness of the ‘in lieu compensation’ to be fixed”; however, “compensation must be set by the UNDT following a principled approach and on a case by case basis”.⁵ The concern is to ensure a consistent principled approach and analysis in considering the

² *Mihai v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-724, para. 20 (emphasis added).

³ *Zachariah v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-764, para. 36; *Eissa v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-469, para. 27.

⁴ *Faraj v. v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-587, para. 30.

⁵ *Krioutchkov* Judgment, *op. cit.*, para. 16 (emphasis added).

purpose of compensation in lieu and determining quantum of compensation so that the determination of compensation does not become an arbitrary exercise.

Original and Authoritative Version: English

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

(Signed)

Judge Colgan

(Signed)

Judge Sandhu

Judgment published and entered into the Register on this 26th day of August 2025 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar