



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2025-UNAT-1581

Waleed Ammar
(Respondent/Applicant)

v.

Secretary-General of the United Nations
(Appellant/Respondent)

JUDGMENT

Before:	Judge Kanwaldeep Sandhu, Presiding Judge Nassib G. Ziadé Judge Graeme Colgan
Case No.:	2024-1974
Date of Decision:	27 June 2025
Date of Publication:	4 September 2025
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Susanne Malmstrom
Counsel for Respondent:	Ron Mponda

JUDGE KANWALDEEP SANDHU, PRESIDING.

1. In Judgment No. UNDT/2024/078 (impugned Judgment)¹ rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT), the UNDT granted the application of Mr. Waleed Ammar, a former staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR), who challenged his separation from service with compensation in lieu of notice and with half termination indemnity (contested decision).
2. The disciplinary sanction of separation from service was based on the High Commissioner's conclusion that Mr. Ammar had "made a public comment in support of an honour killing" on the Facebook page of a news media entity, New Libya, using his personal Facebook account that referenced his employment with UNHCR.²
3. The Secretary-General appeals the impugned Judgment.
4. For the reasons set forth herein, the United Nations Appeals Tribunal (Appeals Tribunal or UNAT), grants the appeal and reverses the impugned Judgment.

Facts and Procedure³

5. On 1 January 2020, Mr. Ammar joined UNHCR on a temporary appointment as Human Resources Associate (G-6 Level) in Tripoli, Libya. On 1 July 2021, he was granted a Fixed-Term Appointment to this position and a Fixed-Term contract until 30 June 2022. On 1 July 2022, Mr. Ammar was granted a Fixed-Term contract expiring on 30 June 2024.
6. On 3 September 2022, a Facebook page called "New Libya" posted a video of a man who killed his ex-wife in an "honour killing" (the Video). According to the investigators, this post depicted a crime that was committed in February 2018.
7. On 3 September 2022, a Facebook comment supportive of the killer's actions was made on the New Libya Facebook page that said: "Since adultery is involved, she deserves to be slaughtered

¹ *Ammar v. Secretary-General of the United Nations*, Judgment No. UNDT/2024/078 (10 October 2024).

² *Ibid.*, para. 2.

³ Paragraphs 5-14 of this Judgment are adopted from the parties' consolidated list of agreed facts before the Dispute Tribunal. See answer, annex 2 (Joint Submission Pursuant to Order No. 129 (NY2023) on Case Management). The facts are edited in accordance with UNAT's practice of using the staff member's given name.

so women like her would learn their lesson. He is innocent of his act. He was defending his honour.”⁴ (the Comment). It is this Comment that is the subject of this case.

8. On 3 September 2022, Mr. Ammar left Tripoli for Tunis on mission.

9. On 3 September 2022, anonymous complaints were made to the Organization about Mr. Ammar making the Comment. The first complaint came approximately two hours after the Comment was posted on Facebook. On 6 October 2022, the Office of Internal Oversight Services (OIOS) referred this complaint to the Inspector General’s Office (IGO).

10. On 27 October 2022, Mr. Ammar was interviewed as the subject of investigation by members of the IGO. He was given an opportunity to respond to the allegations and to provide any documentation or names of witnesses in support of his version of events. Mr. Ammar proposed the name of his supervisor, Mr. AA, who he wanted to attest as to his character and personality. The IGO did not interview Mr. AA.

11. Mr. Ammar also informed the investigators that he could not immediately think of the identity of anyone who might have harboured ill motives against him on account of his role as a human resources person. He also raised the possibility of hacking of his Facebook account.

12. On 31 October 2022, Mr. Ammar sent the IGO five documents.

13. On 14 November 2022, the IGO conducted a second subject interview.

14. On 21 November 2022, the investigative findings were shared with Mr. Ammar; he responded on 23 November 2022, and the Investigation Report was finalized.

15. On 13 January 2023, the Director, Division of Human Resources (Director/HR), notified Mr. Ammar of allegations of misconduct (Allegations Letter). The Allegations Letter took note that Mr. Ammar acknowledged that the Comment had been posted from his Facebook account. The Allegations Letter noted that Mr. Ammar’s Facebook profile publicly mentioned his current employment as “Human Resources Associate” with UNHCR. In addition, the IGO found that “when hovering the computer mouse over the name Waleed Juma as author of the [C]omment, the link to UNHCR was visible”.⁵

⁴ Translated from the original Arabic.

⁵ Allegations Letter, p. 1.

16. The Allegations Letter acknowledged that Mr. Ammar denied having made the Comment and had principally argued that his Facebook account had been hacked, and that such a remark would be out of character.⁶ Mr. Ammar was invited to provide a response to the Allegations Letter.

17. On 22 May 2023, the Director/HR conveyed the decision of the High Commissioner to impose a disciplinary measure on Mr. Ammar (Disciplinary Measure Letter or contested decision).

18. In reviewing Mr. Ammar's response, several inconsistencies or unconvincing statements were noted. First, Mr. Ammar claimed that he rarely made comments on Facebook, but then he (inadvertently) provided evidence to IGO that he had earned a "top fan badge as one of New Libya's most engaged followers".⁷ Second, it was deemed not convincing that Mr. Ammar would ignore an alert, that he claimed to have received, that there had been an unfamiliar login into his Facebook account.⁸ Third, Mr. Ammar's submission of a comment in which he advocated non-violence in response to a different post on Facebook about the killing of an entire family in a land dispute, did not demonstrate that he did not make the Comment in question. The Comment was about honour killings, which is materially different.⁹

19. The Disciplinary Measure Letter stated that given the undisputed facts that the Comment was made using Mr. Ammar's Facebook account, it was very likely that he made the Comment. However, it was acknowledged that his Facebook account could have been accessed by a third party. This claim was carefully assessed, but ultimately rejected, because Mr. Ammar did not propose any names of a person who might have had a motive for hacking his account, he did not raise any other instances of suspicious Facebook activity on his account, and no family member could have been using his phone to access his Facebook account because he was away on travel when the Comment was posted.¹⁰

20. The Disciplinary Measure Letter also acknowledged Mr. Ammar's complaint that IGO failed to look into all possible scenarios, such as contacting Facebook. However, it was noted that Mr. Ammar's Facebook account was private, and only he had the authority to make such inquiries, as was explained to him by the IGO.

⁶ *Ibid.*

⁷ Disciplinary Measures Letter, p. 2.

⁸ *Ibid.*, p. 3.

⁹ *Ibid.*

¹⁰ *Ibid.*, p. 4.

21. Based on the foregoing, the High Commissioner determined that Mr. Ammar's actions constituted misconduct because the Comment "advocated the belief that cheating on a spouse is a legitimate reason to murder a woman, because the man's honour was tarnished".¹¹ Moreover, the apology of an honour killing in the Comment "severely clashed with the values of the Organization and displayed a complete disregard for fundamental human rights".¹² Further, this public pronouncement on a widely-followed Facebook page adversely affected the interests of the Organization.

22. In determining the appropriate disciplinary measure, the High Commissioner took into account as a mitigating factor, Mr. Ammar's "difficult personal circumstances". However, the aggravating circumstance was that "the public Comment supportive of an honour killing on a popular social media platform where [Mr. Ammar] presented [himself] as UNHCR staff created a significant risk of reputational damage to UNHCR".¹³ Accordingly, the High Commissioner imposed the disciplinary measure of separation from service with compensation in lieu of notice, and with half termination indemnity.

23. On 21 August 2023, Mr. Ammar filed an application with the UNDT challenging the contested decision.

Impugned Judgment

24. On 17 July 2024, the Dispute Tribunal held a hearing at which it heard testimony from Mr. Ammar, CK (the forensic expert of Mr. Ammar) and SY (the forensic expert of the Secretary-General).

25. The UNDT noted that Mr. Ammar did not dispute that if it was found that he made the Comment, that the Comment constituted misconduct, that the sanction was proportionate, and that his due process rights were respected.¹⁴ All that was at issue was whether the Administration had established by clear and convincing evidence that he posted the Comment.

26. At the hearing, Mr. Ammar categorically denied making the Comment. He testified that he informed the investigators that he disagrees with honour killings and such a comment is out of his character. Further, he would never put such a comment out in public because he has his family

¹¹ *Ibid.*, p. 5.

¹² *Ibid.*

¹³ *Ibid.*, p. 6.

¹⁴ Impugned Judgment, para. 22.

and friends on Facebook. Also, he testified that the investigators failed to inquire about his attitude and mindset with his coworkers and supervisor.¹⁵ He testified that he was the only one who had access to his mobile phone which he used to access his Facebook account.¹⁶ He also suggested that his Facebook profile had been “hacked” and testified to having received some Facebook alerts around that time that there was a login to his Facebook account from “an unfamiliar location or browser”. At the hearing, Mr. Ammar was asked in cross-examination if he had any evidence that someone else posted the Comment using his Facebook account and he answered “no”.¹⁷

27. The UNDT examined the various possibilities that Mr. Ammar advanced as to whether he wrote the Comment. First, the UNDT held that there was effectively no possibility that Mr. Ammar’s siblings wrote the Comment (as he had initially suggested), because at the time it was posted, Mr. Ammar was traveling and had his mobile phone with him.¹⁸

28. The UNDT noted that CK admitted that “astroturfing” was irrelevant to this case.¹⁹ In addition, CK admitted that the portion of his expert report that criticized the “cursor method” was not particularly relevant to this case. CK agreed that there was no need for a sophisticated method to identify the Facebook account from which the Comment was made, as the evidence showed that it was from Mr. Ammar’s account.²⁰

29. With regards to the possibility that Mr. Ammar’s Facebook account might have been stolen or hacked, the UNDT recognized that it was not disputed that without Mr. Ammar’s consent and collaboration, the IGO investigators could not request Facebook for the information that would be necessary to proceed with an in-depth analysis of his Facebook account.²¹ CK explained that there is a request channel in Facebook through which any user may request when a post or comment was made, and the device that was used to make it. However, this would need to be done by the owner of the Facebook account.²²

30. The UNDT observed that the IGO investigators, who are experts in these matters, did not ask Mr. Ammar if he would be willing to grant them access to his Facebook account or his mobile

¹⁵ UNDT Hearing, 17 July 2024, part 1, at 18:45 (testimony of Mr. Ammar).

¹⁶ *Ibid.*, at 1:23:24.

¹⁷ *Ibid.*, at 1:18:04.

¹⁸ Impugned Judgment, para. 25.

¹⁹ *Ibid.*, para. 39.

²⁰ *Ibid.*, para. 56.

²¹ *Ibid.*, para. 41.

²² *Ibid.*, para. 46.

phone. Moreover, the investigators did not refer him to a United Nations forensic expert in Libya who might have assisted him. They only informed him that they had a forensic expert in Amman, Jordan, but did not offer to put him in contact with that person.²³

31. During the investigation, Mr. Ammar did not have counsel and was repeatedly warned not to discuss the details with anyone. The UNDT found that: “Not being an IT specialist, he could not have known how to go about obtaining forensic evidence on his own but at the same time, he was prohibited from contacting any possible experts.”²⁴

32. The UNDT noted that Mr. Ammar’s own forensic expert at the hearing also did not conduct an Internet Protocol (IP) investigation or a forensic examination of Mr. Ammar’s mobile phone or Facebook account.²⁵

33. The UNDT found that the IGO investigators failed in their duty to check and verify the IP address and instead shifted the burden of proof to Mr. Ammar by requiring him to provide exculpatory information.²⁶

34. As a consequence, the UNDT found that the Administration had not clearly shown that he made the Comment, opining:²⁷

In this day and age when hacking and social engineering methods are commonplace, absent conclusive forensic evidence, the Tribunal cannot easily discount the possibility that the [C]omment was made by someone with malicious intent who gained unauthorized access to [Mr. Ammar’s] Facebook account.

35. Although the UNDT did not believe character evidence was necessary, the UNDT noted that Mr. Ammar had consistently vehemently denied making the Comment and had pointed to multiple instances on his Facebook account where his comments were fully in line with UNHCR values.²⁸

²³ *Ibid.*, para. 42.

²⁴ *Ibid.*, para. 47.

²⁵ *Ibid.*, para. 45.

²⁶ *Ibid.*, para. 50.

²⁷ *Ibid.*, para. 60.

²⁸ *Ibid.*, paras. 58 and 62.

36. The UNDT concluded that the Secretary-General had not been able to demonstrate that the facts on which the disciplinary measure was based were established by clear and convincing evidence.²⁹ Accordingly, there was no misconduct and the sanction was rescinded.³⁰

37. The UNDT ordered that Mr. Ammar be reinstated in service, or:³¹

In the event that [Mr. Ammar] cannot be reinstated in service, keeping with the law and practice of the Tribunal, it is ordered that he be paid two years' net base salary with full indemnity *in lieu* thereof.

38. The UNDT also ordered reimbursement of USD 500 for Mr. Ammar's costs in obtaining the expert services of CK. The UNDT further instructed the Administration to expunge this disciplinary measure from his personnel file.³²

Submissions

The Secretary-General's Appeal

39. The Secretary-General submits that the UNDT erred in law and fact in finding that the Administration had not met the standard of clear and convincing evidence on the basis that the IGO had not ruled out, through forensic analysis, the possibility that a malicious third party may have hacked Mr. Ammar's Facebook account to post the Comment.

40. The Secretary-General submits that the UNDT erred in law by requiring that all possible explanations, even those that are highly unlikely under the circumstances, are disproven to meet the standard of clear and convincing evidence. Effectively, the UNDT required the Organization to rule out entirely the possibility that Mr. Ammar's Information Technology (IT) resources had been hacked. The Secretary-General submits that clear and convincing evidence requires showing a high probability, it does not require that all possible explanations be investigated and disproved.

41. The Secretary-General further argues that the UNDT erred in law by concluding that "the Respondent shifted the burden of proof to him by requiring him to provide exculpatory information". The Secretary-General contends that the standard of clear and convincing evidence required the Administration to establish Mr. Ammar's misconduct as highly probable and

²⁹ *Ibid.*, para. 64.

³⁰ *Ibid.*, paras. 65-66.

³¹ *Ibid.*, para. 71.

³² *Ibid.*, para. 73.

Mr. Ammar bore the burden to prove his claim that he was hacked, and it was not for the Administration to disprove his claim.

42. The Secretary-General notes that it was undisputed that the Comment was posted from Mr. Ammar's Facebook account. Accordingly, the Secretary-General avers that it is highly probable that the Comment was posted by Mr. Ammar himself.

43. The Secretary-General contends that it is unlikely that any malevolent third party's actions would be limited to only making the Comment, especially since Mr. Ammar brought no evidence of unauthorized access by a third party of his Facebook account or phone, presented no evidence that his IP address might have been stolen or even attempted to seek further information from Facebook in that regard and did not indicate that he was hacked in any other respect other than the Comment.

44. The Secretary-General points out that to this day, Mr. Ammar has failed to make any inquiry with Facebook for evidence that he did not post the Comment, and only he has the power to make such inquiries concerning his private Facebook account.

45. The Secretary-General submits that the UNDT erred in fact in concluding that "the assertion that there was a real possibility of hacking, phishing and astroturfing, and the likelihood that [Mr. Ammar's] IP address might have been stolen, which were given prominence by his expert witness (CK), cannot be said to have been ruled out". The Secretary-General further submits that the UNDT's finding was incorrect as it was based only on general evidence from CK that such acts are a general possibility and the erroneous assumption that the Administration had the burden to show that such a possibility had been "ruled out". The Secretary-General submits that such an argument is manifestly unreasonable in the absence of any evidence by Mr. Ammar that the Comment may have been posted by a third party.

46. The Secretary-General states that the UNDT's reasons for placing the burden on the Administration to pursue every possible lead, e.g., that Mr. Ammar did not have counsel and was not an IT specialist, are unreasonable. The Secretary-General further states that there was no evidence that UNHCR's legal framework in relation to legal representation during the investigative process was not followed. The Secretary-General further states that the fact that Mr. Ammar was warned about the confidential nature of the investigative stage and his level of knowledge of or any

other topic are not reasons to shift the burden of proof to the Administration. Finally, Mr. Ammar had counsel and an IT forensic expert during the Dispute Tribunal proceedings.

47. The Secretary-General sums up that the UNDT erred in law and fact in finding that the Administration was required to disprove every possible claim by a staff member in order to meet the clear and convincing evidence standard. Not even the standard of beyond a reasonable doubt would require the Administration to disprove any possible alternative explanation, such as Mr. Ammar's bare assertion that he might have been hacked.

48. The Secretary-General contends that the contested decision was lawful and there was no basis for compensation or other remedies granted by the UNDT.

49. The Secretary-General avers that the UNDT failed to provide any reasoning or justification for the award of two years' net base salary as in-lieu compensation, a position contrary to previous Tribunal rulings.

50. The Secretary-General contends that Mr. Ammar separated from service effective 30 May 2023 and his fixed-term appointment was due to expire on 30 June 2024, and at the time of the contested decision, Mr. Ammar had 13 months remaining on his appointment. The Secretary-General further contends that the compensation in lieu awarded to Mr. Ammar should not exceed 13 months' net base salary to place him in the position he would have been in the absence of the contested decision.

51. The Secretary-General requests the Tribunal to vacate the impugned Judgment and to uphold the contested decision.

Mr. Ammar's Answer

52. Mr. Ammar submits that the Secretary-General's appeal is merely a reiteration of his arguments to the UNDT and fails to state valid factual or legal errors which would have led to illogical findings of fact or misapplication of the law. Mr. Ammar claims that the appeal is a classic exemplar of a disgruntled litigant who is relitigating his case at any cost.

53. Mr. Ammar submits that the Secretary-General's arguments are based on his ill-conceived interpretation of Article 9(4) of the UNDT Statute,³³ that the Administration has discretion to appraise the facts during the investigation. Mr. Ammar argues to the contrary that only when wrongdoing has been established, then the Administration can exercise its discretion regarding the type of and the degree of sanction which should be imposed.

54. Mr. Ammar further submits that the Administration's argument creates a new and false doctrine that a determination of wrongdoing by the Administration is sacrosanct and cannot or ought not to be questioned through an appeal or through an application to the UNDT, which is a dangerous assault on due process and violates the rights of a United Nations staff member under labour law.

55. Mr. Ammar states that the Secretary-General's use of the words "salient facts" is an unjustified attack on the UNDT and suggests that the Dispute Tribunal failed to examine and understand the evidence of the case.

56. Mr. Ammar avers that the Secretary-General's inference that he took no issue with whether the facts amounted to misconduct, is misleading and is not an admission of his misconduct and guilt.

57. Mr. Ammar argues that the reference to "endless possibilities" suggests there is an existence of "doubt", which means that the case must be resolved in his favour as the UNDT determined.

58. Mr. Ammar submits that the possibility of hacking is real and not a hypothesis, and there was no burden of proof on him to prove that his device or devices had been hacked.

59. Mr. Ammar avers that the UNDT's decision could also have been premised on the prejudicial analysis of the investigator.

60. Mr. Ammar contends that the Secretary-General neglected to present the basis for the fallacious argument that in lieu compensation should not exceed the length of time remaining before the expiration of his fixed-term appointment. Mr. Ammar further contends that this argument flouts the principle of the presumption of innocence and is premised on the erroneous

³³ The UNAT does not observe any arguments in the Secretary-General's appeal concerning Article 9(4) of the UNDT Statute.

assumption that in the absence of an allegation of wrong-doing, his fixed-term appointment would not have been renewed. Mr. Ammar further submits that this argument also ignores the fact that renewal of contracts is primarily based on performance and exigencies of service.

61. Mr. Ammar avers that there was always a seamless progression in his contract renewals with no adverse evaluations, so there should be no inference regarding the non-renewal of his fixed-term appointment on 1 July 2024.

62. Mr. Ammar contends that though an employer can elect not to continue an employer/employee relationship, even when the employee has been exonerated of wrongdoing, the Secretary-General does not reserve the right to oppose the rescission of the decision and impose imaginary factors on how in-lieu compensation should be calculated.

63. Mr. Ammar requests that the Appeals Tribunal (1) uphold the UNDT's decision in awarding two years' net base salary as compensation in lieu of rescission; (2) order the payment of all salaries, benefits and interest which was withheld from the date of the impugned Judgment to the date of the Tribunal's decision; and (3) order the payment of the Administration's contributions towards the Pension Fund and the Medical Insurance Plan.

Considerations

64. In reviewing the lawfulness of a finding of misconduct and disciplinary sanction, the UNDT must determine whether the Administration has met the burden of establishing the facts on which the sanction is based to the required standard (which is by clear and convincing evidence if termination is a possible outcome), whether the established facts qualify as misconduct under the Staff Regulations and Rules, whether the sanction is proportionate to the offence, and whether the staff member's due process rights were respected during the investigation and disciplinary process.³⁴

65. There is no dispute that the Comment was posted from Mr. Ammar's Facebook account or that the Comment, if made by Mr. Ammar, amounted to misconduct supporting termination.³⁵

³⁴ *Doreen Nimusiima v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1431, para. 88.

³⁵ Impugned Judgment, para. 22.

66. The Comment was posted on the public Facebook page called “New Libya” on 3 September 2022. The Comment was posted by the Facebook profile name “Waleed Juma” and the name and details of that Facebook profile matched Mr. Ammar’s, including his current job being recorded as “HR Associate at UNHCR”. In the investigation, he confirmed that the profile was his Facebook account. He also conceded that the Comment was posted from his Facebook account. Following the first investigation interview, he confirmed that he deleted the Comment from his Facebook account. However, Mr. Ammar denies making the Comment and said that either his device or account might have been “hacked” and that the hacker made the malicious Comment.

67. The UNDT found that the facts on which the disciplinary measure was based had not been established by the Administration on clear and convincing evidence because the IGO inappropriately discounted the possibility of unauthorized and illicit access to Mr. Ammar’s Facebook account and shifted the burden of proof to Mr. Ammar to provide exculpatory information. The issue then is whether the UNDT erred in arriving at this conclusion and in applying the evidentiary burden of proof in disciplinary matters both before the Dispute Tribunal and in the investigative process.

68. In the present case, the Administration has the burden of establishing that Mr. Ammar made the Comment by clear and convincing evidence. Clear and convincing evidence requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt. It means that the truth of the facts is “highly probable”.³⁶

69. We find that the Administration met its burden of establishing that it was highly probable that Mr. Ammar posted the Comment and thus publicly expressed support for an honour killing by clear and convincing evidence.

70. In *Negussie*, we explained this high evidential standard.³⁷ “Clear evidence” is evidence of misconduct that is “unequivocal and manifest”.³⁸ Here, it is unequivocal that the Comment was posted on the New Libya Facebook page from Mr. Ammar’s Facebook account. “Convincing evidence” requires that this clear evidence is “persuasive to a high standard appropriate to the

³⁶ *Samuel Bwalya v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1376, para. 59.

³⁷ *Neguisse v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1033.

³⁸ *Ibid.*, para. 45.

gravity of the allegation against the staff member and in light of the severity of the consequence of acceptance”.³⁹

71. The Secretary-General argues it is illogical that the convincing evidence standard would vary depending on the gravity of the allegation and consequence of its acceptance, because the establishment of the facts is a prior and independent step of review. This is a misapprehension of the standard. The standard does not vary. It requires the establishment of facts that are “highly probable” from the evidence. What may vary is what weight will be given to evidence in order to be “highly probable”. Therefore, what evidence is persuasive and given greater weight may depend on the circumstances of the case, including, the nature and gravity of the alleged misconduct and the severity of the consequences of the misconduct on both the perpetrator and the receiver of the misconduct. We have also held that “clear and convincing” evidence can be direct evidence or “may be of evidential inferences that can be properly drawn from other direct evidence”.⁴⁰

72. The Administration produced uncontradicted evidence that the Comment was posted from Mr. Ammar’s Facebook account. Further, Mr. Ammar deleted the Comment after his first investigation interview which strongly indicates that he had access and possession of his Facebook account at that time. Therefore, this is not a case of an individual taking over another’s Facebook account. The properly drawn inference from this unequivocal evidence (with no other evidence to contradict it) is that it is highly probable that Mr. Ammar posted the Comment.

73. It is then for Mr. Ammar to provide evidence otherwise. Mr. Ammar raises, as a defense, that he could have been “hacked” or another person took control of his Facebook account to post the Comment. In order to rebut the evidential inference that he posted the Comment, the onus shifts to Mr. Ammar to produce some evidence that someone else posted the Comment.

74. In arriving at the conclusion that there was a possibility Mr. Ammar’s account was hacked, the UNDT relied on Mr. Ammar’s denial that he posted the Comment and upon the evidence of forensic experts that testified at the oral hearing. Mr. Ammar’s expert, CK, testified that it was possible that the account was hacked. But he also testified in order to confirm this and track the sender of a Facebook post, one has to rely on information provided by Facebook itself as it involves accessing metadata like IP addresses, device information and activity log.⁴¹ He advised that it is

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ UNDT Hearing, 17 July 2024, part 1, at 1:35:03 (testimony of CK).

possible for the owner of a personal Facebook account to access the private data related to the account, including establishing the exact time when a post or comment was made and the device which was used.

75. The UNDT stated that there was no indication that the IGO investigators specifically requested Mr. Ammar to allow them access to his IT resources to aid the investigation or that he refused to cooperate. It further stated that the investigators did not check or verify the IP address from which the Comment came from and did not investigate the possibility that someone else had appropriated and remotely used Mr. Ammar's Facebook account without his authorization or knowledge through practices such as "hacking" or "phishing". The UNDT noted that the investigators did not physically inspect Mr. Ammar's mobile phone or conduct a forensic examination of the IT devices, tools or platforms in the case. Mr. Ammar was not informed that the Administration had forensic experts to assist in the search for exculpatory evidence.

76. The Dispute Tribunal found that, as a result, the investigators unreasonably shifted the evidentiary burden to Mr. Ammar to provide exculpatory evidence. The UNDT considered that this was unreasonable as he was not an IT specialist and did not have counsel.

77. We find that this was an error and misapplication of the obligation of investigators set out in the relevant investigation instructions. UNHCR/AI/2019/15 (Administrative Instruction on Conducting Investigations in UNHCR) provides, in pertinent part, that:⁴²

23. IGO investigations are conducted according to professional and internationally recognized investigative standards. The purpose of the investigation is to search for the truth of a matter, looking for both inculpatory and exculpatory evidence, so as to produce a report providing a full, fair and clear picture of all the facts involving the alleged misconduct.

(...)

56. *The investigator shall make every reasonable effort to search for relevant and obtainable inculpatory and exculpatory evidence.*

(...)

110. Persons performing the investigation function shall:

⁴² Emphasis added.

a. *Pursue all reasonable lines of enquiry*, and search for and record relevant information and evidence, both inculpatory and exculpatory, in order to establish the facts;

(...)

111. (...) Exculpatory evidence: Any evidence that is favourable to the subject and tends to exonerate the subject from allegations of misconduct. It is the opposite of inculpatory evidence.

78. Pursuant to the foregoing instructions, there is no requirement that the investigators pursue **all** lines of enquiry and search for any possible exculpatory evidence in a case. Rather, the requirement is that the investigators shall make every **reasonable** effort to search for relevant and obtainable inculpatory and exculpatory evidence. What constitutes reasonable effort will depend on the circumstances of each case. For example, in AAS, more effort from the investigators was necessary as there was some “indicia” that the staff member in that case did not have the mental capacity or free will to engage in the alleged misconduct due to a medical condition.⁴³

79. The question in the present case is whether the IGO made all reasonable efforts to search for relevant and “obtainable inculpatory and exculpatory evidence”. We find that they did. It is unreasonable, in these circumstances when there was no evidence or indicia of possible hacking or other persons possibly making the Comment, to obligate the investigators to do a forensic examination of the posting of the Comment either through an examination of Mr. Ammar’s device or his Facebook account. Mr. Ammar could not point to any other instance where any of his accounts or devices were hacked or compromised. There are no other comments or posts from his Facebook account that he says are not his. Mr. Ammar says that he recalls receiving text alerts about use from an unfamiliar location, but the screen shots of these alerts are from a time frame after the posting of the Comment. In any event, he did not pursue these alerts to determine if his account or phone was compromised. If he was hacked, it would have been reasonable for Mr. Ammar to immediately go to Facebook and notify them, but he did not. Rather he deleted the Comment after the first investigation interview. In the circumstances of this case, there was no indication at all of Mr. Ammar’s Facebook account being compromised or hacked.

80. The UNDT held that the “possibility” of unauthorized and illicit access to Mr. Ammar’s Facebook account could not be discounted and therefore it could not rule out the possibility that

⁴³ AAS v. Secretary-General of the United Nations, Judgment No. 2024-UNAT-1427/Corr.1., para. 50.

the comment was the work of a hacker. This finding is made without any evidence other than mere suggestion by Mr. Ammar.

81. Further the finding goes against the evidence at the hearing. Mr. Ammar's expert, CK, agreed that most actions taken from a Facebook account are done by the owner of the Facebook account and hacking is considered exceptional. He testified that in order to prove or disprove hacking, one would need to analyze the device or "you would need support of Facebook" to obtain IP addresses. He confirmed that Mr. Ammar's ability to delete meant that the Comment was made from his account. Finally, the expert himself did not do a forensic examination of Mr. Ammar's device or Facebook account or try to obtain the IP address from which the Comment was posted.

82. We also note that Mr. Ammar provided a video of his scrolling through notifications in which he received a notification that he had "earned a top fan badge as one of New Libya's most engaged followers", which is a badge given to a user who is one of the most active persons on a Facebook page or a profile.⁴⁴ This suggests that Mr. Ammar was an active follower of New Libya's Facebook page.

83. In these circumstances and without some evidence to support the possibility of someone else making the Comment or to show attempts by Mr. Ammar to obtain further information on the posting of the Comment from Facebook himself, it was reasonable for the IGO to not pursue the hacking line of enquiry and to not forensically examine Mr. Ammar's mobile phone or Facebook account.

84. Therefore, we find that the UNDT erred when it found that the IGO investigators failed in their duty to somehow compel Mr. Ammar to coordinate with Facebook to check and verify the IP address from which the Comment was made and instead shifted the burden to Mr. Ammar to provide the information. This is not a matter of shifting the burden of proof. The Administration still has the burden of establishing the facts underlying the disciplinary measure through clear and convincing evidence, which we found they have done. If a party raises a defence to the allegation, then they have the burden of proving their case. Mr. Ammar bears the burden to provide sufficient and credible evidence to substantiate his allegations adduced in his defense. It is a principle in

⁴⁴ Investigation Report, para. 52.

evidence law that the burden of proof lies with the party who presents a claim.⁴⁵ In this case, there is no dispute that the Comment came from Mr. Ammar's Facebook account, which established as a *prima facie* fact that Mr. Ammar posted the Comment. Mr. Ammar must then demonstrate this fact is wrong, which he failed to do.

85. Therefore, the UNDT misinterpreted the UNHCR investigation instructions and the burden of proof in this matter. We have previously found that the Administration met its burden of establishing that Mr. Ammar posted the Comment by clear and convincing evidence. We are also satisfied that this conduct constituted a serious breach of the Organization's Rules and Regulations.

86. In disciplinary matters, the Secretary-General has a broad discretion which will not be lightly interfered with on appeal by the Appeals Tribunal.⁴⁶ We have held that the disciplinary measure imposed on a staff member must be proportionate to the nature and gravity of the misconduct⁴⁷ and be lawful, reasonable and procedurally fair. We find that the sanction imposed on Mr. Ammar was lawful and not arbitrary, nor adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity.⁴⁸ The Secretary-General appropriately weighed aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose.⁴⁹ Moreover, it is clear that the Comment on a widely followed Facebook page, where Mr. Ammar presented himself as UNHCR staff, "severely clashed with the values of the Organization and displayed a complete disregard for fundamental human rights".⁵⁰ It created a significant risk of reputational damage to UNHCR, and the Organization deciding termination as the appropriate disciplinary sanction was not unreasonable.

87. It follows for these reasons that the appeal is granted and the Judgment of the UNDT is reversed.

⁴⁵ *Elmira Ela Banaj v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1357, para. 71.

⁴⁶ *Appellant v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1216, para. 56.

⁴⁷ Staff Rule 10.3(b).

⁴⁸ See, e.g., *George M'mbetsa Nyawa v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1024, para. 89; *Sall v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-889, para. 41; *Portillo Moya v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-523, para. 21.

⁴⁹ *Toukolon v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-407, para. 31.

⁵⁰ *Ibid.*

Judgment

88. The Secretary-General's appeal is granted, and Judgment No. UNDT/2024/078 is hereby reversed.

Original and Authoritative Version: English

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

(Signed)

Judge Sandhu, Presiding

(Signed)

Judge Ziadé

Judgment published and entered into the Register on this 4th day of September 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar

Judge Colgan's Dissenting Opinion

1. I have no disagreement with the conclusions that if Mr. Ammar did make the Facebook post doing so amounted to prohibited conduct and that the termination of his employment would have been justified. However, I respectfully disagree with the majority that the IGO's investigation and conclusions justified a finding of his liability to the clear and convincing evidential standard.

2. Mr. Ammar proposed to the IGO investigators that it interview staff with whom he worked, and in particular his supervisor. He said that these people would attest to his good character, his adherence to UN values and the absence of any previous suggestion of overt support for honour killings or like practices. The IGO declined to adopt this proposal to investigate exculpatory evidence.

3. Mr. Ammar conceded that the post was made on or from his Facebook account but denied making the post himself. When asked by the IGO investigators whom he thought might have done so and why, Mr. Ammar offered several speculations including members of his family, a disgruntled staff member with whom he had dealt in his HR role or indeed any other person who might have accessed his Facebook account without his consent. Family members were eliminated as a possibility, but other possibilities remained open if he was right that he had not done so himself.

4. What was the IGO investigation required to do in these circumstances? Its obligations were set out in explicit instructions and in a UNAT case which, although decided after this investigation was concluded, affirmed these.

5. The rules governing IGO investigations were set out in UNHCR/AI/2019/15. The following paragraphs or parts thereof are relevant and instructive:

23. IGO investigations are conducted according to professional and internationally recognized investigative standards. The purpose of the investigation is to search for the truth of a matter, looking for both inculpatory and exculpatory evidence, so as to produce a report providing a full, fair and clear picture of all the facts involving the alleged misconduct.

24. The IGO shall conduct investigations in a non-discriminatory and gender and culture sensitive manner. The IGO shall respect the rights of all participants, including the presumption of innocence toward the subject of an investigation (...)

(...)

29. The subject of an investigation has a right to procedural fairness also known as due process rights. (...)

(...)

56. The investigator shall make every reasonable effort to search for relevant and obtainable inculpatory and exculpatory evidence.

(...)

61. With the voluntary consent of the concerned party, the investigator (...) may seek access to personal items or records (e.g. DNA samples, medical records, bank and private telephone account statements) if there are reasonable grounds to believe that the evidence has relevance to an investigation. (...) Refusal to provide voluntary consent and any explanation given may be reflected in the investigation findings and the investigator may draw reasonable inferences depending on the circumstances and the reason given.

(...)

110. Persons performing the investigation function shall:

a. Pursue all reasonable lines of enquiry, and search for and record relevant information and evidence, both inculpatory and exculpatory, in order to establish the facts;

6. In AAS, the Appeals Tribunal confirmed these obligations in the following passages of its Judgment:⁵¹

48. Given the possible consequence of the loss of a staff member's employment, the IGO had serious obligations to investigate and report on exculpatory evidence, as well as that which was inculpatory of AAS. These obligations are referred to in the relevant IGO directions about investigating both inculpatory and exculpatory evidence in an equal and balanced way.

Exculpatory evidence is not simply evidence that may indicate that the conduct investigated did not occur. Explanations for conduct which did occur are important not only to potentially mitigate the ultimate consequences of it but may also mean that the misconduct was less serious than initially believed.

(...)

49. (...)With all misconduct allegations, the Administration has the onus of proving the commission of the alleged acts or omissions...

(...)

⁵¹ AAS Judgment, *op. cit.* (paragraph numbering from original).

52. The role of the IGO (or of any other similar investigative organ of the United Nations) is not to act as a neutral umpire in a contest of adversarial foes to determine what happened solely by reference to evidence placed before the investigator by the parties. The IGO's exercises are, by name and nature, "investigative" and aimed at ascertaining the probable truth of what happened. Investigators are given extensive powers to do so within fair process and natural justice limitations.

53. Nor does the IGO decide the outcome of the complaint(s): rather, the IGO investigates and reports comprehensively on allegations made against a staff member. The IGO must do so open-mindedly, neutrally, and comprehensively. Simply because AAS denied the existence of the misconduct alleged against him, this does not mean that the IGO should thereby have ignored relevant information (...)

54. But nor is this to say that IGO investigators are experts ...However, once alerted to such a situation (...) an investigator can and should be expected to inquire further into those factors. That can be done by seeking out available ... information from the Administration or the staff member. This may entail seeking the staff member's consent to obtain expert input from the staff member's advisers, and/or even to obtain the IGO's own expert advice (...)

7. Although AAS was a case of an investigation into the culpability of a staff member with medical/psychological health issues which may have impacted on their conduct, the principles stated in the Judgment apply equally to the investigation into Mr. Ammar's alleged misconduct.

8. It is clear that the IGO was obliged to investigate exculpatory explanations for alleged misconduct and Mr. Ammar had made such an explanation, that is that it was not he who committed the offensive conduct and he had proffered possible actors who might have done so, although these were necessarily speculative and vague suggestions. Was IGO obliged reasonably in all the circumstances to investigate his response (as the UNDT concluded)? Or did Mr. Ammar then bear an evidential burden to provide more information to rebut the assumption that he was responsible for what appeared on his Facebook page (as the majority consider to be the position in law)?

9. This was a circumstantial evidence case: that is, being one without direct evidence of Mr. Ammar's having posted the offensive message, the investigation had to rely on a combination of relevant circumstances to conclude whether he did so. A reasonable investigation of exculpatory factors should have included the investigation of the two factors I have identified. First, as invited by Mr. Ammar, IGO should have interviewed the person(s)

nominated by him to attest to his general character and to his past “track record” of public adherence, if any, to acceptable conduct affecting such sensitive issues as honour killing. His general character and conduct was a relevant consideration, among others, put in issue by him. The IGO’s refusal to consider this was unreasonable and in breach of its obligation to do so. Depending on the outcome of such investigations, the cases for or against him may have been strengthened or weakened and the clear and convincing evidential test better satisfied or failed. Such investigations could only have improved the quality of the evidence gathered.

10. The second factor omitted by the IGO was to undertake a reasonable investigation of the technical issues which could have resulted in either inculpatory or exculpatory conclusions of Mr. Ammar’s denial of responsibility for the offensive post. The IGO was assisted by an IT technical adviser during its investigations. Accepting that only Mr. Ammar could seek to persuade the Facebook organisation to release information to him about his account, it seems inexplicable that IGO did not request Mr. Ammar’s assistance and cooperation in attempting to so discover who might have made the post. A refusal by Mr. Ammar to cooperate could have been held against him evidentially. But this was not tested. As in the case of evidence of his character, evidence about who posted the offensive comments could have gone either way, that is it could have been inculpatory or exculpatory. But either way it would have improved importantly the standard of evidence gathered and complied with the IGO’s obligations set out above. The investigators did not seek his assistance and an opportunity to at least attempt to establish what had happened was lost, as was the opportunity to gather either inculpatory or exculpatory evidence as was IGO’s responsibility.

11. These two failings by IGO in breach of its obligations to objectively and reasonably investigate serious allegations against a staff member meant that it was, in my conclusion, unable to establish to the clear and convincing evidential standard as it was required to, that Mr. Ammar made the offensive post.

12. I consider that the effect of the majority’s Judgment is to both sanction an inadequate and unlawful investigation by IGO and, by going beyond a subject’s duty to cooperate and assist in an investigation, thereby to create an unwarranted onus on the staff member of proof of innocence of misconduct. I agree with the UNDT’s conclusions.

13. I would dismiss the appeal and affirm the Judgment of the UNDT.

Original and Authoritative Version: English

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

(Signed)

Judge Colgan

Judgment published and entered into the Register on this 4th day of September 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar