



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/026

Judgment No.: UNDT/2023/067

Date: 30 June 2023

Original: English

**Before:** Judge Agnieszka Klonowiecka-Milart

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

JR

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for the Applicant:**

Self-represented

**Counsel for the Respondent:**

Nicole Wynn, AS/ALD/OHR, UN Secretariat

Maureen Munyolo, AS/ALD/OHR, UN Secretariat

## Introduction

1. The Applicant is a former staff member of the United Nations Economic and Social Commission for Western Asia (“ESCWA”), based in Beirut, Lebanon.<sup>1</sup> At the time of the filing of the application, he was serving as a Senior Advisor on Innovation and Technology, at the D-1 level, on a permanent appointment.<sup>2</sup> He commenced his retirement effective 1 September 2022.<sup>3</sup>

2. By an application filed on 7 March 2022, the Applicant challenges a decision of the Executive Secretary of ESCWA to reassign him from the former position that he encumbered as D-1 Chief of Statistics to the position of D-1 Senior Advisor on Innovation and Technology, effective 21 September 2021.<sup>4</sup> The main claim to have the decision rescinded has been rendered moot by the Applicant’s retirement, thus, the matter remaining for adjudication concerns compensation for the financial and moral harm.

3. The Respondent filed a reply on 7 April 2022 in which it is argued that the contested decision was legal, rational, and procedurally correct.<sup>5</sup>

4. The Tribunal held a case management discussion (“CMD”) on 17 October 2022. During the CMD, the parties declared readiness to explore the possibility of informally settling the case and indicated that suspension of proceedings for a period of three months would be needed to explore suitable options. The Tribunal, accordingly, suspended the proceedings until 16 January 2023.

5. On 13 January 2023, the Respondent informed the Tribunal that the parties had failed to reach an agreement to informally resolve the case. The Respondent, accordingly, requested the Tribunal to proceed to determine the case on its merits.

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<sup>1</sup> Application, section I.

<sup>2</sup> *Ibid.*

<sup>3</sup> Applicant’s submission during the case management discussion held on 17 October 2022.

<sup>4</sup> Application, section VII.

<sup>5</sup> Reply, para. 2.

6. Further submissions were received pursuant to Order Nos. 014 (NBI/2023) and 079 (NBI/2023) and a second CMD was held on 27 April 2023. The Tribunal held a hearing on the merits on 24 and 25 May 2023.

7. The parties filed their closing submissions on 5 June 2023.

### **The question of legality of the impugned decision**

#### **Facts**

8. The Applicant served in the position of Director, Statistics Division, ESCWA since 19 January 2009.<sup>6</sup> When Ms. RD arrived as the Executive Secretary in February 2019, she embarked on a reform of ESCWA, which, among others, included modernization, developing new tools, and working toward a greater visibility. Regarding management, the reform involved flattening of the structure and putting emphasis on internal collaboration. Divisions were practically abolished and replaced by clusters. Thus, the Statistics Division and Technology Division were merged into Cluster Four. The Applicant was chosen as Cluster Leader whereas the Director of the Technology Division, Mr. HF, was reassigned, with his post, to the Office of the Executive Secretary as Special Adviser on Technology. Mr. HF's new role, according to Ms. RD, was to advise on different technology-related strategies.<sup>7</sup>

9. The Applicant's working relations with Ms. RD was positive at the beginning but became strained shortly later.<sup>8</sup>

10. The Applicant maintains that, initially, the disagreements were about approaches to work. The Division used to have a discrete sub-programme, created upon the Member States' request in 2009 and aimed at capacity development in the Region, whereas Ms. RD removed it from ESCWA programme and it only became restored upon the intervention of the Applicant.<sup>9</sup> The Applicant defended quality and accuracy

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<sup>6</sup> Applicant's response to Order No. 014 (NBI/2023), annex 1, p. 2.

<sup>7</sup> Ms. RD's testimony, 25 May 2023

<sup>8</sup> Applicant's testimony, 24 May 2023.

<sup>9</sup> Applicant's testimony, 24 May 2023.

in gathering data, whereas Ms. RD was critical of the effort and time invested in verifying and validating the data and insisted only on visibility. These disagreements had not yet led to a breakdown of the work relationship. What he found, however, unsupportable, were attacks on Statistics' staff performance and denying any value in their hitherto accomplishments.

11. The Tribunal heard from Witness No. Two that in May 2019, at her initial meeting with the Cluster Four staff, Ms. RD used threatening language, telling them that they were not aware of what was awaiting them from New York.<sup>10</sup> The Applicant testified that Ms. RD showed no interest in the substance of the work and only insisted that she needed "something that she could show". She also said that she would be removing underperforming staff and that she had information as to who was underperforming.<sup>11</sup> This was contradicted by Ms. RD who maintains that she could not have used threatening language against the Cluster Four staff as she was still new and could not have been judgmental at the first meeting; rather, she largely listened to the staff as they presented their activities and their future expectations.<sup>12</sup>

12. The Applicant further testified that, on 16 August 2019, when he had presented to Ms. RD a report prepared by the external evaluators praising the success of the Development Account Programme on Statistics and Data (with a budget of USD11 million) to which the Applicant was one of the co-leaders, Ms. RD threw the report in the middle of the meeting table saying "this is nothing" and "it cannot go like this".

13. The Applicant testified and indeed supports with documents<sup>13</sup> that Ms. RD's reform plans circulated in ESCWA in December 2019 included the following statement:

Placing much of the programme and resource decision making control on individual Directors or Chiefs has:

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<sup>10</sup> Testimony of Witness No. Two, 24 May 2023.

<sup>11</sup> Applicant's testimony, 24 May 2023.

<sup>12</sup> Ms. RD's testimony, 25 May 2023.

<sup>13</sup> Applicant's submissions filed on 25 May 2023.

- 1) stymied innovation by staff members;
- 2) created unnecessary opaque spheres of influence;
- 3) motivated the existence of siloes, leading to ineffective and inefficient use of human and financial resources;
- 4) trapped talent and expertise in corners
- 5) generated a lack of accountability for delivering results;
- 6) reduced the impact that ESCWA programmes should have.

14. The Applicant testified that after objections from the affected staff members, including his written opposition, this statement was removed.

15. In February 2021, Ms. RD insisted on inserting fictitious information regarding the start date of the implementation of a new management structure by antedating reassignment of the first and second reporting officers for the performance evaluation (“ePAS”) period running from April 2020 to March 2021. According to the Applicant, her directive, notwithstanding the temporal misrepresentation, would have had a significant impact on his managerial work; he, therefore, filed a request for management evaluation and an application for suspension of action (“SOA”). After the filings were notified to ESCWA, Ms. RD repeatedly called the Applicant in his free time requesting him to withdraw the filings. The Applicant did so, but the United Nations Dispute Tribunal (“UNDT”) Judge had already ruled on the suspension of action.<sup>14</sup> Ms. RD withdrew from her decision. The Applicant maintains that although both the management evaluation request (“MER”) and the SOA had been withdrawn, his attempt to challenge Ms. RD would later contribute to the tension between them.<sup>15</sup>

16. By way of example, the Applicant avers that as part of her reforms, in April 2021, Ms. RD decided to abolish the Library at ESCWA. The Applicant opposed her decision. Ms. RD approached the Applicant requesting he not put his protest in writing, which the Applicant rejected. Ms. RD, then accused the Applicant of listening to

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<sup>14</sup> Order No. 032 (NBI/2021).

<sup>15</sup> Applicant’s testimony, 24 May 2023.

rumours.<sup>16</sup> Her email goes on to say “Also, please note that not every decision I take will go through EAT for discussion”.<sup>17</sup>

17. Ms. RD agrees that she had a disagreement with the Applicant on reforming the library. She maintains that the Applicant was however, misinformed, as her plan was to renovate the floor that hosted the library. The plan was also to replace the old materials and make the library to a greater extent digitalised. Ms. RD affirms that the renovations are over, and the library is expected to reopen soon.<sup>18</sup>

18. On 27 April 2021, Ms. RD made an allegation of underperformance against Ms. NH, to whom the Applicant served as the Second Reporting Officer. The Applicant supported his final rating of “A-exceeds expectations”.<sup>19</sup> In return, Ms. RD accused both the Applicant and Ms. NH of twisting the facts.<sup>20</sup> Ms. RD accepts that she raised the issue of Ms. NH’s performance. Her concern was that Ms. NH was working on Road Transport and Road Safety matters without involving the experts and other stakeholders in the sector.

19. On 1 May 2021, the Applicant proposed a meeting between Ms. RD and other senior staff under the Applicant’s supervision to address the simmering tension. In his email, copied to senior staff, the Applicant stated:

Dr. RD,

I request a meeting between you and the senior staff of Cluster 4. We are concerned about the lack of appreciation and understanding of the cluster’s work and of differences in understanding the mandates given by the intergovernmental bodies. I am personally concerned about your collection of information through meetings and consultation taking place without my knowledge. The work environment at ESCWA is toxic, in general, and it impacts badly on the moral and job satisfaction of staff. By this request, I would like to address this with respect to

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<sup>16</sup> Applicant’s testimony, 24 May 2023; Application, annex 2 (management evaluation request) attachment 18, p. 65.

<sup>17</sup> *Ibid.*

<sup>18</sup> Ms. RD’s testimony, 25 May 2023.

<sup>19</sup> Application, annex 2 (management evaluation request), p. 58.

<sup>20</sup> *Ibid.*, p. 56.

Cluster 4.<sup>21</sup>

20. In her reply dated 2 May 2021, Ms. RD declined the meeting proposal and vehemently denied Applicant's "false accusation and inaccurate statements". Her response, copied to senior staff, contains, inter alia, the following language:

" , [L]et me clarify to you and whoever "...the We ...." you represent.... The current work environment at ESCWA is not toxic. If you and a very small minority has this feeling due to accumulated negativity from past years that you are not able to overcome; does not give you the right to generalize how the rest of the organization feel about our new work environment .... Positive thinking, trust, effectiveness, open communication, collaboration, coordination forward looking, and creativity are part of the new work environment that apparently you and the whoever "...the We ...." you represent have difficulty in adopting."....

"I say hard work is necessary but not enough to deliver in our mandates, we need to do work effective and efficient. Requiring staff to be efficient and effective in delivering their work does not mean at all there is a lack of appreciation for their hard work. And you being in management position should know the difference."...

"Reading this statement made me pity you and the whoever "...the We ...." you represent for the level of professionalism you have reached...."

"...I was expecting you to inform me about these needs, but unfortunately your thinking where to position the cluster was narrow and limited..."

"I collect information the way I see fit whether in your presence, with your knowledge, or without your knowledge... Further, to ease your concern, do not expect that I will ever notify you beforehand about the mode of my information gathering."<sup>22</sup>

21. The Applicant submits that bypassing his authority in collection of statistical data was contrary to the United Nations Fundamental Principles of Official Statistics and the Principles Governing International Statistical Activities with the written acceptance by ESCWA.<sup>23</sup>

22. On 4 May 2021, Ms. RD made an oral offer of agreed termination to the

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<sup>21</sup> *Ibid.*, p. 55.

<sup>22</sup> *Ibid.*, pages 53 and 54.

<sup>23</sup> Applicant's submission pursuant to CMD, para. 10 and references cited therein.

Applicant and asked the Applicant to discuss the matter with the ESCWA Director of Administration.<sup>24</sup> After consultations between the Applicant and the Director of Administration, the Applicant declined the offer stating that this was not the way he wanted to finish his career.<sup>25</sup> Ms. RD expounds that the Applicant declined the agreed termination because he had wanted payment equivalent to 18 months, yet ESCWA was offering 15 months, as applicable to all staff members who opted for an agreed termination. However, she maintains that agreed termination had been a modality frequently availed of by ESCWA staff members and making such an offer to the Applicant was not exceptional.

23. At a meeting held on 24 May 2021, attended by the Applicant, the Director of Human Resources and the Director of Administration, Ms. RD accused the Applicant of approving a payment to a consultant who did not deliver. Ms. RD's concern was that the consultant's report was not complete because it had not been printed nor published and the evaluation by Ms. NH was not signed. This was countered by the Applicant who availed a final consultancy report and clarified that the matter of printing and publishing the report was not the consultant's task, but an internal matter to be handled at ESCWA.<sup>26</sup> Ms. RD announced that she would have the issue investigated.

24. Indeed, allegations of fraudulent activities against the Applicant and Ms. NH were filed with OIOS around June 2021, of which the Applicant became aware only a year later.<sup>27</sup> His interview was scheduled but subsequently cancelled. Upon inquiry with OIOS on 23 November 2022 the Applicant obtained the following response:

“Regarding Case 0606/21 for which you were initially contacted and invited for a subject interview, ahead of that interview, OIOS identified evidence that quite clearly showed that there were no grounds to interview you as no wrongdoing on your part was identified. Accordingly, the interview was cancelled and I sincerely apologize that we did not further revert to you to better explain the cancellation.”<sup>28</sup>

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<sup>24</sup> Application, annex 2 (management evaluation request), attachment 14, at p. 49.

<sup>25</sup> *Ibid.*, p. 47; application, section VIII.

<sup>26</sup> Applicant's testimony, 24 May 2023; Applicant's response to Order 014, para. 20, annex 11.

<sup>27</sup> Applicant's response to Order No. 014 (NBI/2023), para. 14, annex 8.

<sup>28</sup> Applicant's response to Order No. 014 (NBI/2023), para 19, annex 7.



25. OIOS also cleared Ms. NH.<sup>29</sup> The Applicant contends that since the consultancy had been managed by Ms. NH, an accusation arises from his defence of the latter's performance evaluation and was aimed at discrediting the Applicant and removing him from the position.<sup>30</sup> Ms. RD's position is that it was appropriate for her, as a manager, to raise a concern.

26. Undisputedly, Ms. RD insisted that Mr. HF act as Officer-in-Charge ("OIC") during the Applicant's leave. Ms. RD testified that this was because some staff were reluctant to implement the reform, and she needed supervision. The staff took it as unusual because this function would normally be performed by a section head.<sup>31</sup> Witness No. three testified that during the Applicant's leave, Mr. HF criticized the Applicant for not controlling time and attendance of staff. The witness found it strange for an OIC to intervene in this. She stated:

[As] OIC, HF kept telling me that [the Applicant] was not managing Cluster 4 well; that [the Applicant] never monitored the staff attendance. This was not true because we had never had an issue with attendance. [The Applicant] was in control. I am the one who served as the leave monitor.<sup>32</sup>

27. In August 2021, while the Applicant was on leave, Ms. RD instructed an assistant to convene a Cluster 4 meeting. The meeting took place on 14 September 2021, after the Applicant had returned from leave. All Cluster Four staff were summoned, notwithstanding flexible working arrangements in place. Mr. HF, then Special Adviser, was also present, even though at the time he was not holding any function in Cluster Four.

28. According to Witnesses Nos. Two and Three, the meeting was an outright accusation of the Applicant, delivered in a threatening manner.<sup>33</sup> Three particular issues were raised: First, upon inquiry about a delay in project reviews, which rested in the

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<sup>29</sup> *Ibid.*, annex 10.

<sup>30</sup> Applicant's additional submissions filed on 8 May 2023, para. 12.

<sup>31</sup> Applicant's testimony, 24 May 2023; testimony of Witness No. Three, 24 May 2023.

<sup>32</sup> Testimony of Witness No. Three, 24 May 2023.

<sup>33</sup> Testimonies of Witnesses Nos. Two and Three, 24 May 2023.

sole competence of Ms. RD, Ms. RD replied that it was a fault of the cluster leader who had not submitted the projects on time. This was untrue, because the Applicant had collected all the projects, had the staff review them and submitted to Ms. RD approximately nine months before.<sup>34</sup> Second, staff in the General Service Category raised concerns regarding their career growth. Some had applied for senior positions and succeeded while others had stagnated in their positions. Ms. RD blamed the Applicant for the non-promotion of staff in the General Service Category and the limited budget support. These accusations were unjustified because the matters of budget and staff promotions had been centralised in Ms. RD's office, whereas the Applicant had always been supportive of staff.<sup>35</sup> As a third issue, Ms. RD accused Cluster Four senior staff of not holding regular meetings and not monitoring staff. This was also untrue, because section meetings had been held regularly; the senior staff, however, did not consider that they were expected to report on them.<sup>36</sup> The Applicant was interrupted every time he tried to explain anything; he was terribly upset.<sup>37</sup>

29. Ms. RD denies making such accusations at the meetings. She, however, admits having confronted the staff on their performance, stating that hard work was not enough if it was ineffective. She elaborates that some staff members were reluctant to implement the reforms at ESCWA and she had to remind them of their mandate and the need to change their work culture. On the issue of promotion opportunities, Ms. RD emphasizes that she explained to the staff that to be more competitive, the Cluster leader needed to ensure that there was career skilling, re-skilling, and up-skilling in his Cluster, and this was his responsibility, not hers. On the issue of lack of cooperation among the Clusters, Ms. RD insists that she reminded the Project Leaders to meet more regularly, discuss their work plans and agree on the deliverables. She gave an example of an incident that happened during the COVID-19 period, when two project leaders had published conflicting information on the pandemic, thus causing confusion to ESCWA stakeholders; another time trade statistics had been using obsolete software

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<sup>34</sup> Testimony of Witness No. Two, 24 May 2023.

<sup>35</sup> Testimonies of Witnesses Nos. Two and Three, 24 May 2023.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

because they did not speak with the technology people. She maintains that at the meeting she was emphasizing better collaboration of the leaders to avoid recurrency of such a scenario. This was constructive criticism.<sup>38</sup>

30. Despite the Applicant's refusal to accept agreed termination, in an email exchange of 9 September 2021, Ms. RD continued to refer to his imminent retirement.<sup>39</sup>

31. In a private meeting held on 16 September 2021, Ms. RD informed the Applicant of her decision to reassign him from the position of Chief of Cluster to the D-1 Chief of Data position where he would be dealing exclusively with data.<sup>40</sup>

32. By a memorandum dated 21 September 2021, Ms. RD reassigned the Applicant to the post of Senior Advisor on Innovation and Technology in the office of the Executive Secretary<sup>41</sup>, a position thus far held by Mr. HF. In her memorandum, Ms. RD informed the Applicant that:

the decision to reassign you [Applicant] is in accordance with staff regulation 1.2(c) on lateral reassignments and ST/AI/2010/3 paragraph 2.5 whereby Heads of Departments/Offices retain the authority to transfer staff members within their departments or offices. Please note that your current benefits and entitlements will remain the same. Your contractual modality will not be affected by this reassignment.

33. The same memorandum laid out several points as a workplan for the position.<sup>42</sup>

34. Ms. RD assigned Mr. HF as Chief of Cluster Four.<sup>43</sup>

35. Admittedly, the task of the Applicant was to work on the data ecosystem. It is also admitted<sup>44</sup> and documented<sup>45</sup> that the Applicant had worked on the Data Ecosystem already in early 2021, as part of the Data Strategy Action Group, comprising

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<sup>38</sup> Ms. RD's testimony, 25 May 2023.

<sup>39</sup> Application, annex 2 (management evaluation request), Attachment 15(e-mail exchange on 9 September 2021).

<sup>40</sup> Application, section VIII, para. 10.

<sup>41</sup> *Ibid.*, para. 2; application, annex 1.

<sup>42</sup> Application, annex 1, para. 2.

<sup>43</sup> Application, section VIII, para. 3.

<sup>44</sup> Ms. RD's testimony, 25 May 2023.

<sup>45</sup> Reply, annex 2.

data, technology and information technology pillars, with the Applicant, and Messrs. HF and AAA being responsible for the pillars, respectively.<sup>46</sup> The data strategy was nearly finalised at the date of the Applicant's separation.

36. Notwithstanding the swap of positions, the Applicant's personnel action issued on 21 September 2021, still indicated the Applicant's former position number and title as "30400230 Chief of Service, Statistics,"<sup>47</sup> even though it had already been occupied by Mr. HF.<sup>48</sup> When the Applicant requested Mr. AD, the Director of Administration for the Personnel Action on his reassignment, the Director of Administration sent the Applicant an excerpt from the Personnel Action which indicated the title of Adviser. Nevertheless, when the Applicant downloaded the Personnel Action from Umoja, it indicated the old job title as Chief of Service, Statistics.

37. It is admitted that the Applicant had been moved to the Office of the Executive Secretary with his post.<sup>49</sup> The Respondent confirms that the position of Adviser on Innovation and Technology has not been classified, as it was an "innovation".<sup>50</sup> The Respondent explains that there was no need to reclassify the post given that the Data Strategy was a temporary project scheduled to end in December 2022.<sup>51</sup> Ms. RD testified that the position would need to be classified, to respond to the need to oversee the Data Strategy.<sup>52</sup> The Respondent further indicates that the position is still vacant. Since the Applicant took early retirement, if he so wishes, he can return and occupy it, but he cannot be returned to Head of Cluster Four.<sup>53</sup>

38. The Applicant's case is that in the new role he had no managerial functions. He documents that, indeed, the supervisory functions of the first and the second reporting officer over all regular staff of Cluster Four: Statistics, Information Society and

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<sup>46</sup> Testimony of Mr. AAA on 25 May 2023.

<sup>47</sup> Application, annex 2 (management evaluation request, attachment 12, at p. 38).

<sup>48</sup> Application, section VIII, para. 3, undisputed.

<sup>49</sup> Applicant's testimony, 24 May 2023; Ms. RD's testimony, 25 May 2023.

<sup>50</sup> Case management discussion held on 17 October 2022 and on 27 April 2023.

<sup>51</sup> Respondent's closing submissions, para. 6; reply, annex 3.

<sup>52</sup> Ms. RD's testimony, 25 May 2023.

<sup>53</sup> Ms. RD's testimony, 25 May 2023.

Technology had been transferred to Mr. HF.<sup>54</sup> The Tribunal heard from witness, Mr. AAA, that the Applicant, in his new role, was to be supported by two officers, namely Mr. HT (individual contractor) and Mr. MA, the United Nations Volunteer (“UNV”).<sup>55</sup> The Applicant, however, maintains that none of the two reported to him and that Mr. HF was the supervisor for both Mr. HT and Mr. MA. The Tribunal notes that submitted e-mail exchanges demonstrate that contract extension for the UNV was decided between Mr. HF and Mr. AAA, as the UNV was supposed to work mainly for ICTS; it also shows that Mr. HT would discuss substantive issues with Mr. HF while the Applicant was just a passive participant in their correspondence.<sup>56</sup>

39. The Respondent submits that Ms. RD invited the Applicant to make a request for resources, but the Applicant did not do so.<sup>57</sup> He further seeks to document that the Applicant “led collaborations and discussions towards the implementation of the ESCWA Data Ecosystem” by presenting two emails from October 2021.<sup>58</sup>

40. Witness No. Two describes a meeting on data in November 2021 where Mr. AAA blamed the Applicant for a delay. The Applicant explained that data needed to be verified, as Member States do not accept otherwise. Mr. AAA reportedly pointed his finger at the Applicant saying, “this man does not deliver”, causing the Applicant to walk out of the meeting.<sup>59</sup> Mr. AAA admits to a disagreement.<sup>60</sup>

41. On 26 September 2021, the Applicant filed a complaint against Ms. RD alleging misconduct.<sup>61</sup> The matters raised in the complaint are still under investigation by OIOS.<sup>62</sup>

42. On 18 October 2021, the Applicant wrote to Ms. RD and challenged his

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<sup>54</sup> Trial bundle, correspondence and staffing table, pp. 550-552.

<sup>55</sup> Testimony of Mr. AAA, 25 May 2023.

<sup>56</sup> Trial bundle, pp. 555-561.

<sup>57</sup> Reply, annex 8 (email from April 2022).

<sup>58</sup> Reply, annex 11.

<sup>59</sup> Testimony of Witness No. Two, 24 May 2023.

<sup>60</sup> Testimony of Mr. AAA, 25 May 2023.

<sup>61</sup> Applicant’s response to Order No. 014 (NBI/2023), annex 1 (filed on 25 January 2023).

<sup>62</sup> Applicant’s response to Order No. 014 (NBI/2023), para. 12; Applicant’s testimony, 24 May 2023, Respondent’s response to Order No. 094 (NBI/2023).

reassignment. In the letter, the Applicant emphasized that the intent of his reassignment was to force him to resign, which if it happened, would be categorized as a constructive dismissal.<sup>63</sup>

43. On 28 October 2021, the Applicant requested management evaluation challenging the reassignment decision.<sup>64</sup> On 21 December 2021, the Management Evaluation Unit decided to uphold the contested decision citing presumption of the absence of ulterior motive.<sup>65</sup>

44. On 2 November 2021, the Applicant contacted the Ethics office concerning protection against retaliation.<sup>66</sup> In the letter, the Applicant stated:

I make this advanced contact, because I was subjected to retaliatory acts for the actions that I took as a manager (that are not protected activities) in protecting the substantive work programme and the staff under my supervision, and these retaliatory acts led to my reassignment from a managerial position.

45. On 11 November 2021, the Ethics Office advised that the Office could only get involved pursuant to sec. 5 of ST/SGB/2017/2/Rev. 1 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations) if informed by OIOS of a report identified as a prospective retaliation risk.<sup>67</sup>

46. In the period July-September 2022, the OIOS conducted an audit of financial and administrative management in the ESCWA. The objective was to assess the adequacy and effectiveness of the management of its financial and administrative processes. On the human resources management component, among others, the OIOS established that:

as part of its reforms and to renew the skill set of the workforce, ESCWA took a number of human resources management decisions. However, these were not implemented within the context of a strategic or operational workforce planning exercise that was based on an

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<sup>63</sup> Application, annex 6.

<sup>64</sup> Application, annex 2.

<sup>65</sup> Application, annex 3.

<sup>66</sup> Applicant's response to Order No. 014 (NBI/2023), annex 18.

<sup>67</sup> *Ibid.*, annex 19.

analysis of the secretariat's mandates, programme priorities and implementation methodologies, and resulting in the determination of the competencies required of the workforce. ESCWA had also not developed a strategy or action plan to align staffing capacities with its operational requirements through recruitment, learning and development, agreed terminations and non-staff modalities.

In 2021, ESCWA effected 31MPIs, all of which were for staff members who never changed roles but remained in their sections/clusters doing the same job. In 19 of these cases, new posts and titles were unrelated to the jobs that they were doing.<sup>68</sup>

47. The Applicant took his early retirement in September 2022 at the age of 61, even though his normal retirement date would be at the age of 62 in 2023 and his obligatory retirement in 2026.<sup>69</sup>

## **Submissions**

### *Applicant's submissions*

48. The Applicant maintains that the decision was not in the interest of the Organization: his reassignment as the Senior Advisor on Innovation and Technology was not justified by the need of the work programme and created a situation where his expertise and experience were not utilized. Reassignment had a negative impact on his contractual situation. It was taken upon improper motives.<sup>70</sup>

49. The Applicant submits that he lacks experience for the position he was reassigned to. Almost his entire work experience in the United Nations consists of work in official statistics. He only worked in the information technology field for a temporary period of nine months on a reassignment at the P-4 level. This, therefore, made his position vulnerable considering that he was expected to deliver in the areas of innovation and technology at the senior level of D-1.<sup>71</sup>

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<sup>68</sup> *Ibid.*, annex 20, para. 32 and para 40.

<sup>69</sup> Applicant's averment at the CMD held on 27 April 2023.

<sup>70</sup> Applicant's closing submissions, filed on 4 June 2023.

<sup>71</sup> Application, section VIII, para. 7.

50. The Applicant relies on the OIOS Audit Report<sup>72</sup> dated 27 December 2022, to further highlight how his reassignment was irregularly done. The Audit report, among others, established numerous loopholes in how the staff were reassigned in ESCWA. One example was moving a human resources officer to an economics officer position.<sup>73</sup> Although his position is not specifically mentioned, however, based on the findings contained in this audit report, the Applicant maintains that his reassignment was among these not regularly processed in line with the established criteria.<sup>74</sup> The reassignment exposed him to a vulnerable contractual situation because he was transferred to a post that was not properly established in the system. In addition, the position to which he was reassigned was only on a temporary loan to the Office of the Executive Secretary until 31 December 2021.

51. On claim two, the Applicant avers that the contested decision was taken based on improper motives. The purpose was to coerce him into retirement or separation. Ms. RD invoked his health concerns to justify an unsolicited agreed termination, which was an intimidating and a coercive manner of dealing with him.<sup>75</sup> Further, the ill motive of reassignment is evidenced by the actions taken by Ms. RD before and after the contested decision, such as continuous accusations of the Statistics Division of underperformance and a complaint against him to OIOS. The unbalanced nature of the broadcast announcing the Applicant's reassignment creates an impression of a punitive action, where only his name is mentioned in the subject line, yet the reassignment affected two other staff members. Further, in the broadcast, Ms. RD did not thank the Applicant, after leading the statistics activities for 13 years, an act contrary to good practice.

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<sup>72</sup> Application, annex 20.

<sup>73</sup> *Ibid.*, para. 40.

<sup>74</sup> Applicant's additional submissions filed on 28 January 2023, in response to Order No. 014 (NBI/2023).

<sup>75</sup> *Ibid.*, p. 8, para. Xii.



*Respondent's submissions*

52. The Respondent's position is that the Secretary-General has broad discretion to reassign staff members. The Executive Secretary determined that the reassignment was in the best interest of the Organization. The Secretary-General's 2020-2022 Data Strategy required ESCWA to review existing workforce and to realign functions to address its implementation. Ms. RD considered ESCWA's mandate to implement the Secretary-General's Data Strategy and Data Ecosystem initiative, and the value that the Applicant, given his experience, education, and skillset, would contribute to the mandate in that position.<sup>76</sup>

53. The Respondent submits that the position to which the Applicant was reassigned is at the same D-1 grade and level and is commensurate with his skills and competencies, as evidenced by the Applicant's Personal History Profile ("PHP").<sup>77</sup> In addition to his prior involvement in developing the Organization-wide Data Strategy, the Applicant has extensive experience in managing and analyzing data. His entire educational training up to the PhD. level concentrated on mathematics and statistics. This would naturally include experience working with and managing complex data, relevant to the role of the position, which includes the responsibility to "advise on the development of statistical innovation systems, frontier technology, data analytics and visualization standards supporting the roll out and implementation of such standards at the cluster level". The Applicant's work experience includes over 28 years at the United Nations in analyzing socioeconomic development issues through statistical data.<sup>78</sup>

54. The Respondent avers that the decision had no impact on the Applicant's job security as the funding of the Applicant's position did not change<sup>79</sup>. He was reassigned

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<sup>76</sup> Respondent's response to Order No. 014 (NBI/2023), para. 3.

<sup>77</sup> Reply, annex 3.

<sup>78</sup> Reply, para. 11.

<sup>79</sup> Reply, annex 1 (Applicant's personnel action).

with the post that he encumbered and continued to serve on a permanent appointment funded by regular budget at the D-1 level until his retirement.<sup>80</sup>

55. Regarding the Applicant's claim that he was stripped of managerial responsibilities, the Respondent submits that it was the Applicant's responsibility to establish such a need and submit a request for necessary resources to the Executive Secretary. The Applicant has not produced any evidence that the Executive Secretary rejected any requests by him to recruit additional staff to support him in the position.<sup>81</sup>

56. Regarding the claim that the contested decision was tainted by improper motives, the Respondent argues that the Applicant has produced no evidence to support it. The reassignment was in line with the ongoing work reforms within ESCWA.<sup>82</sup> There was no ill will, nor is there evidence that the contested decision is related to the Applicant's performance. In fact, his most recent performance appraisal rated him as "successfully meets expectations".<sup>83</sup>

57. The request to OIOS to investigate the possible misconduct against the Applicant, is not evidence of improper motive. Pursuant to staff rule 2.1(c), the Executive Secretary had a duty to report any breach of the Organization's regulations and rules. The duty to report is independent of the result of any subsequent investigations.<sup>84</sup>

58. Concerning the OIOS Audit report dated 27 December 2022 which established some shortcomings at ESCWA, the Respondent opines that it is irrelevant to the contested decision. It does not mention the Applicant's post or reassignment because he had not been affected by the post modifications cited in the report as he was reassigned with his permanent post. In any case, the ESCWA management has since placed the affected staff members on correct posts as recommended by the report.<sup>85</sup>

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<sup>80</sup> *Ibid.*

<sup>81</sup> Respondent's response to Order No. 014 (NBI/2023), para. 9.

<sup>82</sup> Application, annex 1.

<sup>83</sup> Reply, para. 19-20.

<sup>84</sup> Respondent's response to Order No. 014 (NBI/2023), para. 12.

<sup>85</sup> *Ibid.*, para. 14.

59. On the Applicant's retaliation allegations, the Respondent submits these allegations are unsubstantiated. The Respondent maintains that should the Applicant believe that he has been the subject of retaliation, he must exhaust the internal procedures as provided for in sec. 6 of ST/SGB/2017/2/Rev.1.

60. The Respondent, therefore, submits that the application should be denied.

### **Considerations**

61. At the outset, in reference to the Respondent's averment that the Applicant must exhaust the internal procedures as required by section 6 of ST/SGB/2017/2/Rev.1<sup>86</sup>, the Tribunal reiterates that the competence of the Tribunal is determined by the UNDT Statute alone and this competence does not fall to be modified by administrative issuances; likewise, the latter must not be attributed legal effect inconsistent with the Statute. Article 2 of the UNDT Statute determines expressly and exhaustively the impact of administrative proceedings on matters falling under UNDT jurisdiction. The UNDT Statute provides that the impugned decision must be submitted for management evaluation, where required. The UNDT Statute does not, however, require "exhausting internal remedies ST/SGB/2017/2/Rev.1".

62. ST/SGB/2017/2/Rev.1, on the other hand, concerns itself with a procedure designed for protection against retaliation and administrative action or inaction upon recommendation of the Ethics Office. This procedure, therefore, has a specific focus and purpose and is different from challenging an administrative decision taken outside of the context of ST/SGB/2017/2/Rev.1, even if the retaliatory motive is alleged. As confirmed by the United Nations Appeals Tribunal ("Appeals Tribunal/UNAT"), "[a]s part of its judicial review, it is necessary to determine whether the decision was vitiated by bias or bad faith, that is, if it was taken for an improper purpose".<sup>87</sup> The operation of the same principle is "reminded" to staff in section 10.2 of the ST/SGB/2017/2/Rev.1, as well as expressed by the Appeals Tribunal in *Messinger* in

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<sup>86</sup> Para. 59 *supra*.

<sup>87</sup> *Toure* 2016-UNAT-660, para.30.

relation to ST/SGB/2008/5 proceedings, which retains actuality under section 5.6 of ST/SGB/2019/8 (Addressing discrimination harassment, including sexual harassment, and abuse of authority):

It is clear that the UNDT is not clothed with jurisdiction to investigate harassment complaints under Article 2 of the UNDT Statute. *However, for the purpose of determining if the impugned administrative decisions were improperly motivated, it is within the competence of the UNDT to examine allegations of harassment (emphasis added).*<sup>88</sup>

63. Last, an applicant before UNDT, who has interest in challenging an administrative decision is bound to bring his/her action within the statutory deadlines, and thus, not only is not obligated, but simply has no time to institute ST/SGB/2017/2/Rev.1 proceedings, let alone wait for the outcome. As illustrated by the present case, the Ethics Office had not taken the Applicant's case at all while OIOS has been investigating his complaint of harassment for two years now. The outcome of the latter may become an appealable decision in the future; the application against the present reassignment decision, however, has a procedural course in its own right and has properly been put before the Tribunal.

64. The remedy initially requested, i.e., the rescission of the impugned decision is no longer maintained, as it has been rendered moot upon the Applicant's retirement. The live issue remaining is compensation for financial and moral harm, for which the lawfulness of the decision will be examined as a predicate for deciding on the compensation.<sup>89</sup>

65. Staff regulation 1.2(c) provides that:

staff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations.

66. There is well settled jurisprudence of the Appeals Tribunal that the reassignment of a staff member's functions falls within the broad discretion of the

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<sup>88</sup> *Messinger* 2011-UNAT-123, para 25.

<sup>89</sup> *Kallon* 2017-UNAT-742 ; *Lahoud* UNDT-2017-009.

Organization to use its resources and personnel as it deems appropriate.<sup>90</sup> This discretion is not unfettered and is subject to examination pursuant to the *Sanwidi* test, *i.e.*, “the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse.”<sup>91</sup> In the reassignment cases, the jurisprudence usually focused on the question of qualifications, to wit:

an accepted method for determining whether the reassignment of a staff member to another position was proper is to assess whether the new post was at the staff member’s grade; whether the responsibilities involved correspond to his or her level; whether the functions to be performed were commensurate with the staff member’s competence and skills; and, whether he or she had substantial experience in the field.<sup>92</sup>

67. In the case at hand, the generality of the job description and the evidence submitted do not allow the Tribunal to make an in-depth assessment whether or not the position was commensurate with the Applicant’s competence and skills. Whereas it would seem that he was not patently unqualified, he was, however, obviously more qualified for the position previously held, that is, Chief of the Statistics Division. Rather, the issue is about rationality of the post in the first place. In all due deference to the Secretary-General’s discretion in management, the Tribunal has not been convinced that the good of the Organization animated the creation of the post.

68. First, the Tribunal agrees that the description of duties is general and vague and is replete with functionalities expressed as “co-lead”, “assist” and “support”, which do not correspond with vesting responsibilities appropriate to a D-1 level position. The workplan devised for the period April 2022-March 2023<sup>93</sup> is similarly vague and copiously lists tasks such as “report progress”, “maintain dialogue”, “ensure synergy”, “link with”, “liaise with” and, finally, “prepare briefing notes, talking points and

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<sup>90</sup> *Gehr* 2012-UNAT-236; *Kamunyi* 2012-UNAT-194; *Allen* 2011-UNAT-187; *Kaddoura* 2011-UNAT-151; *Hepworth* 2015-UNAT-503.

<sup>91</sup> 2010-UNAT-084.

<sup>92</sup> *Awe* 2016-UNAT-667, para. 27; *Rees* 2012-UNAT-266, par. 58; *Allen* 2011-UNAT-187, para. 8.

<sup>93</sup> Reply, annex 5.

speeches for the Executive Secretary”, which indicate that the position had few substantive autonomous functions. The Tribunal recalls, moreover, that the title of the post changed, basically overnight and without explanation, from Chief Data Officer, one discussed with the Applicant, to Senior Advisor on Innovation and Technology, the latter having been the portfolio of Mr. HF, with whom the Applicant was made to play “musical chairs” even though the job description for Mr. HF under the same title was admittedly different from the description of tasks in the Applicant’s reassignment memo.<sup>94</sup> One plausible explanation for the change is that Chief Data Officer implies supervisory responsibilities over data staff, whereas an adviser may be a stand-alone position. The fact, however, remains that the Applicant was indeed stripped of any managerial responsibility that would be normally expected at the D-1 level. Regarding the Respondent’s reliance on an email inviting the Applicant to state his staffing needs, the Tribunal notes that it was issued in April 2022, several months after the Applicant had filed a harassment complaint to OIOS and the present application. The self-serving purpose of that email is thus apparent.

69. Furthermore, it is not just that the post was not ever classified, it never received an official job description and was not entered in Umoja. To the extent it has been argued by the Respondent that the post was committed to the work on the data ecosystem strategy, the timeline belies this justification. As the Applicant rightly points out and was confirmed by Ms. RD and Mr. AAA in the hearing, the post had not been created at the beginning of the work on data strategy and remained vacant after the Applicant’s separation from service. Ms. RD had sufficient time to prepare and issue a vacancy notice for the post of Senior Advisor prior to the Applicant’s separation from service or any time after. Yet, it was never advertised. The Tribunal, further notes that there is a contradiction between the Respondent’s claim that the Applicant’s position was not in any way rendered precarious on the one hand, and, on the other hand, the justification advanced for not classifying the post, according to which it had only been

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<sup>94</sup> Testimony of Mr. Ahmed AAA, 25 May 2023.

a temporary project scheduled to end in December 2022. This, in turn, contradicts the testimony of Ms. RD that the post is to be classified soon.

70. Of note are also different justifications for the post. In the first place, according to the Executive Secretary, it had been created following the merger of divisions into Cluster Four because she needed a position to place Mr. HF. In the reply, the Respondent emphasizes the operational need to implement the data strategy and the Applicant's specific qualifications for it. Finally, the Executive Secretary testified that the purpose of the Applicant's reassignment was to remove managerial responsibilities from him as she could no longer tolerate delays in implementing her reforms and "needed the Applicant to focus". The latter justification would imply performance concerns that are, on the other hand, denied.<sup>95</sup>

71. The aforementioned facts indicate that there was no operational need for such a post at ESCWA at the date of the Applicant's reassignment. To the extent Ms. RD maintains that the reforms were approved by all the appropriate organs, including the Executive Council of ESCWA (comprised of member states), the United Nations Economic and Social Council ("ECOSOC") and then the General Assembly, the budget documents submitted<sup>96</sup> do not demonstrate the need for the position of a Special Adviser. Rather, the impugned reassignment fits snugly in the description of arbitrary and chaotic human resources management decisions described by the OIOS Audit Report. Additionally, however, in relation to the Applicant, there are indications of an ulterior motive on the part of the Executive Secretary.

72. The Tribunal would be prepared to concede that the first meeting with the staff of the Statistics Division, as testified to by Witnesses Nos. Two and Three, only gave an impression of a threatening and intimidating attitude, possibly caused by the aggressive communication style of the Executive Secretary, which the Tribunal had an opportunity to experience directly at the hearing, without necessarily a negative intention on her part. However, subsequent email communications described *supra* in

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<sup>95</sup> Para. 56 *supra*.

<sup>96</sup> Respondent's submissions pursuant to the Tribunal's directions dated 25 May 2023.

this judgment clearly show that there was a mounting animosity between her and the Applicant. The December 2019 statement in a draft reform plan constitutes an outright attack on the Directors and Section Chiefs, followed by further confrontations in February 2021 and April 2021, where the Applicant stood his ground on management issues in his area of responsibility.

73. As of May 2021, there was open hostility toward the Applicant, including the Executive Secretary's aggressive communication of 2 May 2021, followed by the June 2021 reporting the Applicant to OIOS under the allegations of fraud. The 2 May 2021 response is disproportionate in the tone and expressions used, especially given its distribution to multiple recipients; moreover, it admits to sidelining the Applicant in the collection of data, his area of responsibility. As concerns reporting the Applicant to OIOS, the Tribunal considers that the duty to report under staff rule 2.1(c) arises upon *prima facie* evidence of misconduct. Accusing a senior staff member of fraud in approving a report should not have been done without examining the substance of the report, which was accessible to the Executive Secretary in terms of both the substance and the language, and without a minimal inquiry about the aspects that she deemed irregular. The Executive Secretary apparently did neither. That OIOS dismissed the case without even interviewing the Applicant, indicates that a plausible explanation had been easily available. The Tribunal considers that in both instances the Executive Secretary's actions demonstrate ill will.

74. Other actions of the Executive Secretary demonstrate that she was marching the Applicant to the door: the offer for agreed termination, inserting Mr. HF as OiC of Cluster Four and, finally, the meeting of 14 September 2021 where the Applicant was publicly accused of underperformance and impeding staff advancement. There is no dispute about the substance of the issues discussed in this meeting. As to the derogatory tenor of it, the Tribunal gives credence to Witnesses Nos. Two and Three. The Tribunal considered that the witnesses do not report to the Applicant since September 2021, do not remain in any professional relationship with him, have no interest in the outcome of the case and through testifying before the UNDT took the risk of straining their work relations with the Executive Secretary. The witnesses' testimony is moreover credible



in light of the style of the Executive Secretary's email communications addressed to the Applicant.

75. All considered, the reassignment emerges as a repressive act in response to the Applicant's criticism of the Executive Secretary's work methods, possibly aimed also at discouraging the Applicant's proponents within Cluster Four. A dry announcement of the Applicant's reassignment, without a word of appreciation for the work done, and disparaging comments dispensed by the Applicant's peers fit the overall picture of the Applicant having fallen out of grace.

76. Conversely, the Tribunal has not been presented with evidence of any unlawful or otherwise inappropriate conduct on the part of the Applicant, and no such conduct is alleged.

77. The Tribunal, therefore, concludes that the impugned decision had an improper motive and improper purpose and was therefore, unlawful.

### **The question of harm and compensation**

#### **Submissions**

78. The Applicant requests the Tribunal by way of remedy to:

- a. Award him financial compensation due to the negative impact the decision has had on his health; and
- b. Award him financial compensation for the financial damage as the situation forced him to retire.

79. Regarding the allegation of harm, the Respondent contends that the Applicant suffered no pecuniary harm or harm to his career as a result of the contested decision. He was reassigned with the post he encumbered and continued to serve on a permanent appointment funded by the regular budget at the D-1 level until the date of his retirement.<sup>97</sup>

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<sup>97</sup> Respondent's response to Order No. 014 (NBI/2023), para. 15.

80. On the Applicant's allegation of poor health due to the contested decision, the Respondent stresses that the Applicant's evidence does not show a causal link between the alleged harm and the contested decision.

81. His claim of moral harm is not corroborated by reliable independent evidence.

### **Considerations**

82. The Tribunal recalls that Article 10.5(b) of the Dispute Tribunal's Statute stipulates that, as part of its judgment, the Dispute Tribunal may order:

(b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

83. The evidence should demonstrate three elements: an illegality, the harm, and a nexus between them.<sup>98</sup>

84. As concerns the claim for compensation for the financial loss, the Tribunal accepts that the reassignment may have played a role in the Applicant's decision to take early retirement. It is, however, not persuaded that the Applicant had been forced to retire. It is admitted and documented already before the reassignment decision the Applicant had been considering agreed termination, as well as whether to take early or regular retirement.<sup>99</sup> In his workplan for the period April 2022-March 2023, the Applicant signals: "In order to seek new motivation and fresh ideas, I seek a transfer to another duty station"<sup>100</sup>, while his retirement notice states:

*My decision to opt for an early retirement is in part motivated by my current position not having senior management responsibilities for staff and relations with member states, while my past records show that I was successful in people management and building relationship with member states and regional organizations. My decision is in another part motivated by a weak work-life balance, as the international staff members in Beirut do not benefit from facilities that are usually offered*

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<sup>98</sup> *Kebede* 2018-UNAT-874, para. 20; *Dieng* 2021-UNAT-1118, para. 74; *Laasri* 2021-UNAT-1122.

<sup>99</sup> Reply, annex 10.

<sup>100</sup> Reply, annex 5, *in fine*.

*to staff at duty stations with a comparable level of hardship* [emphasis added].<sup>101</sup>

85. Just as it is apparent that there were many factors weighing on the Applicant's decision, and calculations of the financial implications must have played a role in it, under the applicable legal framework there were also alternatives to early retirement, such as, indeed, a transfer to another duty station; a sabbatical; to the extent mental or somatic health concerns would have been relevant – sick leave; eventually - awaiting the outcome of the complaint and the present application. The Applicant, moreover, does not allege that there would have been harassing or retaliatory actions against him after he had filed his grievances, while his 2022-2023 workplan documents that he had made the best of the Special Adviser position. His dissatisfaction with the work and the feeling of being unutilized being obvious, they do not necessarily render the situation unbearable and without options capable of providing a remedy, or at least a relief, such as improving health and/or gaining a new perspective, which could have allowed him to last until the regular retirement age. As such, the Tribunal cannot confirm the necessary causality between the impugned decision and the financial consequences of early retirement.

86. As concerns the compensation for moral harm, the Applicant testified that in 2020 he consulted the Stress Counsellor/Psychologist at the United Nations Headquarters Medical Service, because of the issues with the Executive Secretary. The contested decision had a further negative impact on his health. Beginning from October 2021, he has experienced loss of concentration and loss of memory. He gives an example that during his travel from Geneva to Bern in October 2021, he forgot to change trains in Neuchatel and travelled to Solothurn instead of Bern. Further, he forgot his bag with a computer, office phone and documents on another train. He provides a Notice of Loss that he had filed with the relevant authorities.<sup>102</sup>

87. Following the incident, in November 2021, the Applicant consulted the Stress Counsellor/Psychologist of the United Nations Headquarters Medical Service and the

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<sup>101</sup> Reply, annex 13.

<sup>102</sup> Trial bundle, p. 631.

ESCWA Head of Medical Service, who directed him to a neuropsychiatrist.<sup>103</sup> The Applicant further documents that he had consultations, on several occasions, with the neuropsychiatrist based in Beirut on 11 November 2021, 20 January 2022, and 12 May 2022. The neuropsychiatrist had the Applicant undergo several tests to exclude a neurological reason for the lapse of memory, and eventually prescribed Brintellix, an anti-depressant.<sup>104</sup> The Applicant testified that it was only after he retired that the doctor agreed to withdraw the medicine.

88. The Tribunal heard from witnesses on the Applicant's health problems. Witness No. Two testified that because of work relations with the Executive Secretary the Applicant developed a lot of stress. He frequented doctors and carried blood pressure medicine with him.<sup>105</sup> Witness No. Three testified that she had worked closely with the Applicant. She knew that he suffered from high blood pressure, observed him take medicine, and noted that he had lost weight. At some point, after the reassignment decision, the Applicant called that he would not be coming to work as he had to call at the Emergency Ward at a hospital because of a high blood pressure incident. The witness went there to assist as an interpreter and to support him. She heard him say in the office that he had suffered minor bleeding in the brain.<sup>106</sup>

89. The Tribunal finds that the exchanges convincingly document that the Applicant: a) sought medical help against stress and loss of concentration/memory; b) was diagnosed with stress and anxiety; and c) was prescribed an anti-depressant. The Respondent submits that emails between the Applicant and the former United Nations Stress Counsellor do not refer to the reassignment decision as the underlying cause of his stress, memory loss or anxiety. With this respect, the Tribunal considers that it would be unreasonable to expect from a medical practitioner to pronounce on the cause of stress, memory loss and anxiety in pinning it down on a concrete administrative decision. The time sequence, however, supports the causal link with the reassignment

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<sup>103</sup> *Ibid.*, pp. 633-635; 638.

<sup>104</sup> *Ibid.*, pp. 643-646.

<sup>105</sup> Testimony of Witness No. Two, 24 May 2023.

<sup>106</sup> Testimony of Witness No. Three, 24 May 2023.

decision. The Tribunal further considers, based on its experience with similar cases and generally in work relations, that every reassignment, even a desirable one, is stressful. An unwanted reassignment, in particular one that is improperly motivated, accompanied by humiliating circumstances, and raising doubts as to job security, as in the present case, would usually cause moral suffering in a staff member. Overall, the Tribunal is satisfied that the reassignment decision had caused the Applicant stress and anxiety requiring a medical intervention, notwithstanding that it may “only” have aggravated the condition resulting from the aggressive and retaliatory climate at work.

90. The Respondent seeks to discredit the testimony of the witnesses; Witness No. Three in particular, on the ground that she lacks the medical expertise to determine if the Applicant’s alleged high blood pressure or bleeding in his brain was caused by the contested decision. In this regard, it is not maintained that Witness No. Three had medical expertise, neither has it been confirmed that the Applicant suffered bleeding in the brain. Witness No. Three, however, witnessed the Applicant having been admitted in the hospital because of high blood pressure, again, in a time sequence with the impugned decision. She also plausibly described that the Applicant displayed a typical symptom of stress, which is weight loss. These elements are consistent with the totality of evidence on the impact that the impugned decision had on the Applicant’s health. The Tribunal recalls that the witnesses testified independently from each other on the Applicant’s stress and blood pressure. They had not been proposed by the Applicant on these circumstances, but rather requested by the Tribunal *ex officio*. The hospitalization of the Applicant was volunteered by Witness No. Three, the Applicant had not alleged it. The Tribunal has no doubts as to their testimony being honestly given.

91. The Tribunal further finds the Applicant’s testimony credible. The Applicant gave a candid account of all events, demonstrating a far-reaching effort to maintain objectivity. His narration regarding health problems, be it in the testimony to the Tribunal or in the email chain with medical practitioners, is restrained, avoiding any kind of drama, including that he had failed to mention the hospitalization incident and confirmed it only after prompted by the testimony of Witness No. Three.

92. The Tribunal is further satisfied that the Applicant suffered damage to his reputation, given the humiliating circumstances of his reassignment, and as evidenced by instances of belittling of the Applicant by his fellow staff members. He also experienced impossibility to fully utilize his qualifications.

93. Based on the aforesaid, the Tribunal is satisfied that the reassignment decision had a negative impact on the Applicant's well-being, caused him moral suffering and damage to his health.

94. There were no submissions on the amount of the compensation. The Tribunal recalls that, as confirmed by the Appeals Tribunal<sup>107</sup>, assessing compensation for moral harm is not an exact science and requires weighing of the particular circumstances. The Tribunal considers, on the one hand, that the Applicant had not lost his job and insecurity with this respect was relative. On the other hand, given the Applicant's seniority in service and uncontested professional achievements, the suffering inflicted upon him must have been significant. This damage to his health did not entail a longer hospitalization or sick leave, the Tribunal is however, mindful that, in all appearances, seeking sick leave, unless absolutely necessary, would be out of character for the Applicant. The damage to the reputation was short-lasting and, it is hoped, will be compensated through this judgment.

95. In the entirety of the circumstances, and taking into consideration jurisprudence on point<sup>108</sup>, the Tribunal considers that compensation of five month's net base salary will be appropriate.

## **JUDGMENT**

96. By way of compensation for non-pecuniary damages, the Respondent shall pay the Applicant an equivalent of five months' net base salary at the level of the Applicant's grade and step at the time of his retirement.

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<sup>107</sup> *Asariotis* 2013-UNAT-309, para. 36.

<sup>108</sup> *Dieng* 2021-UNAT-1118; *Kallon* 2017-UNAT-742; *Maslei* 2016-UNAT-637; *Civic* 2020-UNAT-1069.

97. This amount shall be paid within 60 days from the date this judgment becomes executable. If the sum is not paid within the 60-day period, an additional five percent shall be added to the US Prime Rate until the date of payment.

98. All other pleas are dismissed.

*(Signed)*

Judge Agnieszka Klonowiecka-Milart

Dated this 30<sup>th</sup> day of June 2023

Entered in the Register on this 30<sup>th</sup> day of June 2023

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi