



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/086/R1
Judgment No.: UNDT/2025/092
Date: 21 November 2025
Original: English

Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Wanda L. Carter

MARUSCHAK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Jacob van de Velden, DAS/ALD/OHR, UN Secretariat
Sergei Gorbylev, DAS/ALD/OHR, UN Secretariat

Introduction and background

1. The Applicant is a former Field Security Officer with the United Nations Interim Force in Lebanon (“UNIFIL”). In his initial application to the United Nations Dispute Tribunal (“UNDT”) dated 24 June 2019, he challenged his separation from service for misconduct, with compensation in lieu of notice and without termination indemnity, having been found to have driven his personal vehicle after consuming alcohol and causing his vehicle to collide with an Italian contingents’ United Nations Armoured Vehicle (“the contested decision”).

2. On 20 December 2023, UNDT issued Judgment No. UNDT/2023/140 deciding that:

a. The application was partially successful in so far as the facts on which the contested decision was based were not established under the applicable standard;

b. Through his conduct in the proceedings, the Applicant undermined his integrity particularly as an international civil servant and in his functional capacity as Chief in the field of Security. He had destroyed the mutual trust and confidence necessary in an employment relationship. For these reasons, rescission of the contested decision was declined; and

c. The Tribunal awarded USD500 costs against the Applicant for manifest abuse of proceedings.

3. The Applicant appealed the Judgment to the United Nations Appeals Tribunal (“UNAT”). On 2 May 2025, UNAT published *Maruschak* 2025-UNAT-1529 (“remand Judgment”).

4. In the remand judgment, UNAT held, at para. 94, that the Dispute Tribunal had committed an error of law for not awarding the Applicant the remedy of rescission in accordance with the UNDT Statute:

Once the contested decision is held to be unlawful, the only remedies available to the UNDT are set out in Article 10(5) of the UNDT

Statute, namely rescission of the contested decision with compensation in lieu of rescission and, if applicable, an award for damages for harm. The UNDT clearly failed to exercise jurisdiction vested in it and committed an error of law. Therefore, we reverse the UNDT's Judgment and remand the case back to the UNDT for determination of an appropriate remedy in accordance with our Judgment.

5. Regarding the finding of abuse of process, UNAT was satisfied that the UNDT correctly found that Mr. Maruschak manifestly abused the judicial process. However, UNAT found that the UNDT erred in determining that USD500 was an appropriate quantum of award for costs for abuse of process, finding it “minimal.” UNAT ordered a redetermination of the award of costs to reflect the gravity of the Applicant's behavior.

6. UNAT concluded that the Dispute Tribunal had failed to exercise its full jurisdiction and, at para. 104 of the remand Judgment, UNAT held that;

[a]fter the UNDT makes its determination on the Article 10(5) remedy for the unlawful administrative decision and the appropriate quantum for costs pursuant to Article 10(6), the UNDT will then have exercised its full jurisdiction and have finalized its judgment. The UNDT may wish to seek additional submissions from the parties on these points.

Considerations

7. In the remand Judgment, UNAT reversed UNDT Judgment No. UNDT/2023/140 and directed the UNDT to order an appropriate statutory remedy and also to redetermine the amount of costs for abuse of judicial proceedings.

8. At a case management discussion (“CMD”) held on 18 August 2025, the parties agreed on the issues for determination and on any additional information to be furnished to the Tribunal pursuant to paragraph 112 of the UNAT judgment.

9. In *Maruschak* 2025-UNAT-1582, UNAT ruled that Judgment No. UNDT/2023/140 and this current Judgment are appealable on both the merits and reliefs.

Appropriate remedy for unlawful separation

10. The relevant part of art. 10.5(a) of the UNDT Statute provides that the Tribunal may order rescission of the contested administrative decision, provided that, where the contested administrative decision concerns termination, the Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision.

11. Rescission is a discretionary remedy that must be exercised judiciously: *Ross* 2019-UNAT-926, paras. 49 and 50.

12. Rescission might not be a practical and/or proportionate remedy in all cases: *Blythe* 2023-UNAT-1404, paras. 68 and 69, *Ross Id.*, *Dualeh* 2011-UNAT-175.

13. In *Maruschak* 2022-UNAT-1282 (“*obiter dictum* Judgment”), para 22, UNAT opined that should the Respondent prove that the Applicant had lost credibility and reputation through his conduct during Tribunal proceedings, the Tribunal may exercise its discretion to deprive him of any remedy even after a finding that his separation was wrongful.

If the Secretary-General is successful in persuading the UNDT that these documents are forgeries perpetrated deliberately by Mr. Maruschak and/or that he has otherwise abused the judicial process, any resulting loss of his credibility and reputation may deprive Mr. Maruschak of remedies even if he establishes that his separation from service was wrongful.

14. Although this opinion was held to have been made in *obiter dictum* in the remand Judgment, para. 95, the Tribunal finds it persuasive for pragmatic reasons. It would offend the United Nations’ core value of integrity; therefore, it would be inappropriate to order rescission.

15. Article 101.3 of the United Nations Charter provides that the paramount considerations for recruitment, and by implication, retention of a staff member in the United Nations shall be efficiency, competence and integrity. This provision is codified under staff regulation 4.2, providing that:

The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

16. The Respondent states that the United Nations Security Council decided to extend, for a final time, the mandate of UNIFIL as set out by resolution 1701 (2006) until 31 December 2026, and to start an orderly and safe drawdown and withdrawal from that date and within one year (S/RES/2790 (2025)); therefore, rescission would not be practical.

United Nations Security Council resolution 2790 (2025)

17. The Respondent's argument is not sustainable considering that the Applicant held a fixed-term appointment which would have expired before the effective date of the drawdown and withdrawal. In any event, it is speculative to base such a claim on a future event whose implementation and legal effect on any individual staff member is yet to be ascertained. See generally, *Blythe, op. cit.*

18. However, the remand direction at para. 112 of *Maruschak* 2025-UNAT-1529 is clear that rescission should be ordered. It is so ordered. The Respondent may opt to pay compensation in lieu of rescission as an alternative remedy.

Compensation in lieu of rescission

19. The purpose of in-lieu compensation is to restore the staff member to the position he would have been in had the contested decision not taken place. As a general rule, therefore, a staff member whose fixed-term appointment has been improperly terminated may be awarded no more than the compensation they would have received for the remainder of their term. This limitation is consistent with the legal framework in which fixed-term contracts carry no expectancy of renewal and comports with the prohibition on punitive damages: *Valle* 2025-UNAT-1575, para. 133.

20. The exception is where a staff member establishes that s/he had legitimate expectation of renewal. For instance, in *Valle, Id.* para. 134, compensation in lieu

of reinstatement was awarded beyond the expiry date of the fixed-term appointment because the staff member had not received a notice of non-renewal 18 days before its expiry.

21. *Valle* is distinguishable from the case at bar. The Applicant through Annex 3 “Allegations memorandum”, concedes that he held a fixed-term appointment. The Respondent confirmed this status through Annex R/1, “Personnel Action Form”. The record does not disclose any expectancy of renewal.

22. The Applicant’s appointment was expiring on 30 June 2019 (Personnel Action Form) and his separation was effective 21 March 2019 (sanction letter). Accordingly, he would be entitled to the equivalent of three months’ net base salary as compensation in lieu of rescission.

23. The Respondent urged the Tribunal to consider mitigating factors when determining the in-lieu compensation. He argued that the Applicant’s LinkedIn profile showed that he had mitigated his loss by securing alternative employment.

Mitigation

24. In lieu compensation is not compensatory damages based on economic loss. As such, there is no legal basis to require mitigation: *Nega* 2023-UNAT-1393, para. 62. See also *Robinson* 2020- UNAT-1040, para. 23; *Fasanella* 2017-UNAT-765; *Eissa* 2014-UNAT-469. Therefore, when assessing in lieu compensation, mitigation of loss is an irrelevant factor.

25. The yardstick is to award compensation that is as equivalent as possible to what the staff member would have received had the illegality not occurred: *Nega*, *op. cit.*, para. 65.

26. The Respondent further asked the Tribunal to deny the Applicant damages for moral harm.

Damages for moral harm

27. Through a motion dated 2 June 2021, the Applicant withdrew his claim for damages for moral harm. The Applicant abandoned the claim and never pursued it throughout the proceedings, hence, the Respondent's submission under this head of compensation is moot.

Abuse of process

28. Article 10.6 of the UNDT Statute stipulates that where the Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against that party.

29. Awarding costs for abuse of judicial proceedings remains exceptional, reserved for the rare cases that warrant sanction: *Mohammad* 2024-UNAT-1421, para. 62.

30. In the remand Judgment, para. 102, UNAT held that the quantum of costs for abuse of judicial process should fully reflect the gravity of Mr. Maruschak's behaviour.

31. In *Chhikara* 2020-UNAT-1014, para. 30, UNAT noted the Dispute Tribunal's observation that, if a party provides the Tribunal with decisive information that is wrong and misleading, this amounts to a manifest abuse of process of a very serious nature. Basically, such action puts the entire integrity of the judicial system at risk - it may not only lead to undue and costly delays but also lead to straightforwardly incorrect decisions: UNDT/2019/150, para. 46.

32. The Respondent requests the Tribunal to award him USD48,270.00 as a consequence of the Applicant's manifest abuse of process. The Respondent has computed the costs as constituting the Budgetary Standard Costs of staff members involved in this case including a 13% overhead cost-rate due to the Organization to cover expenses such as administrative support, office space, and other operational costs.

33. In Order No. 131 (NBI/2025), the Applicant had 30 days within which to review the Respondent's Bill of Costs after it was served on him and make representations if any. He did not file any submission either to confirm or to contradict the computations.

34. Further, the record shows that the Applicant undertook to comply with any computation of costs against him as long as the computation was compiled with the involvement of the Finance Division of the Organization. (See Minutes 43:56 and 1:07:24 of CMD transcript).

35. The Tribunal finds that the USD48,270.00 claimed by the Respondent is unjustifiable. After assessing the Bill of Costs, the Tribunal finds USD31,496.49 to be a fair and reasonable estimation, taking into account actual costs spent on prosecuting the abusive conduct from when it was triggered on 19 January 2021 to 30 September 2025, when the last activity was recorded in the Dispute Tribunal, and an additional 13% overhead cost-rate.

36. The Respondent indicates that the costing was prepared with the support of the Office of Programme Planning, Finance and Budget.

37. Therefore, an award of USD31,496.49 is justifiable and represents a true reflection of the gravity of the Applicant's abusive behaviour.

38. The Respondent requested the Tribunal to make an order to set off any amount of compensation due to the Applicant against the costs awarded to the Respondent for abuse of process.

Set off

39. Staff rule 3.18(c)(ii) (applicable in 2019) entitles the Respondent to set off any amount due to the Applicant from the in lieu compensation, against the costs awarded to the Respondent for abuse of process. This is because this is a debt owed to the Organization.

Conclusion

40. In view of the foregoing:

- a. The application is granted.
 - i. The decision to separate the Applicant from service is rescinded.
 - ii. As an alternative, the Respondent shall pay the Applicant three months' net base salary in lieu of rescission.
- b. The Respondent's motion for an award of costs for abuse of process against the Applicant is granted.
- c. The Respondent is awarded USD31,496.49.
- d. The Respondent may set off the compensation due to the Applicant against the costs awarded in the Respondent's favour.

(Signed)

Judge Rachel Sophie Sikwese

Dated this 21st day of November 2025

Entered in the Register on this 21st day of November 2025

(Signed)

Wanda L. Carter, Registrar, Nairobi