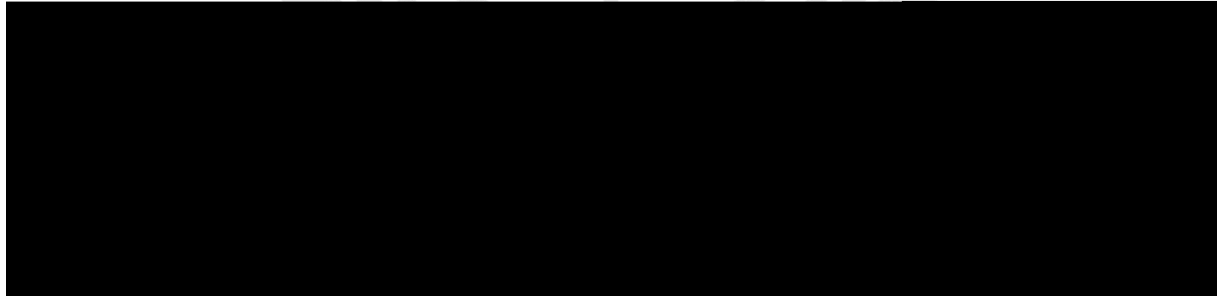

UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2021-UNAT-1150



Andrea Barbato

(Appellant and Respondent on Cross-Appeal)



Counsel for Mr. Andrea Barbato:

Alexandre !"###e \$a"nes

Counsel for t! e %e&retar' - (eneral:

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UD#E DI' ITRIOS RAI, OS- PRESIDIN#

1. Andrea Barbato (Mr. Barbato) is a former staff member of the International Maritime Organization (IMO), as a consultant. On 7 February 2017, Mr. Barbato filed a complaint with the Internal Oversight Board (IOB) concerning alleged misconduct by the then Director of the Administration Services Section of the IMO. Following an investigation conducted by an external service provider, the IOB concluded that the allegations against the Head of the IOB were unfounded and dismissed the case and accordingly informed Mr. Barbato on 10 March 2017.

2. Mr. Barbato appealed the decision of the Staff Appeals Board (SAB) of the IMO on 2 August 2017. On 10 July 2020, the SAB followed

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4. Mr. Barbato submits that the AB and For the return - (General of the MO: 34 failed to exercise jurisdiction on questions of law and committed errors of procedure - such as to affect the decision of the case and 3: 4 committed errors of fact leading to the erroneous findings by the AB.

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5. The AB was asked to refer to the decision on the substance of Mr. Barbato's complaints and grant remedies in respect to them. In the 10 July 2020 AB decision, the AB only included the appeal should be partially granted and some remedies referred to the appeal board was able to reach a consensus only in seven of the 11 reported incidents of the "battered and bruised". In doing so, the AB operated more like a jury on determinations of fact instead of acting as a first instance decision-maker, taking into account the total of the matters before it and the findings of fact to law. In confining its obligation to fact-finding, the AB thus abdicated its responsibility of addressing the merits of the complaint as a whole and to refer to a remedy to the staff member. In so doing, the AB made errors of law as to the learned misunderstand its role and functions and thus failed to exercise jurisdiction: stated in the

6. The appellant also notes that there was not a single legal person sitting on the appeal board and there was an obvious conflict of interest emanating from

the non-binding recommendator - non-binding and la' nature of the AB and the inherent
conflicts of interest in the constitution of the board.)es#te the oral pronouncements of the

Cases cited on 25 October 2017/ ! "g! "g! t"ng the la+ of a neutral element "n the
first instance #ro&ess- the MO referf nomssr ura e t noO re -2 1 5. 52 ("") 2 5 1 80 9 1 8 ((e)) 2 5 9 8 3 7 ((s)). 8. 10 4 7 1

1. Mr. Barbato seeks the following remedies:

3a4 an award for compensation in an amount equivalent to not less than 90% of his net base salary

3b4 compensation for loss of income during the period of absence from work due to the Organization not having provided him with the necessary medical services

3c4 an award for damages in recognition of the failures in the 5MO's internal grievance system despite being notified after the judgments in the Cases

3d4 an award of legal costs incurred by staff members of the 5MO, as well as access to legal assistance as of right.

The Secretary-General's Answer

2. The 5MO Secretary-General submitted the judgments in the Cases were orally pronounced on 25 October 2017 and the full written judgments were not transmitted to the 5MO until 20 December 2017.^D The respondent argues these judgments necessitated a revision of the Organization's %, %, and a renegotiation of the agreement between the United Nations and the 5MO- affecting the Burundian staff of the Appeals Tribunal.

3. On 10 July 2020, the 5MO Secretary-General issued a memorandum that suspended the application of rules 111.1, 3gg4 and 3⁴. The applicant's substantial suspension called for the %AB to make final decisions instead of making recommendations to the 5MO Secretary-General. Additionally -

47. As none of the alleged failures have been established, the request for remedies and damages has no legal basis and must be rejected. The causal link between the appellant's illness and the acts of the respondent has not been established. Additionally, the appellant's request for compensation for moral harm.

50. The respondent submits that UNAT's order to award costs is restricted to cases in which a party has manifestly abused the proceedings. It is not the case here.

51. In conclusion, the respondent requests that Appeals Tribunal to dismiss the appellant's application.

The Office of the General's Cross-Appeal

52. The MO requests that Appeals Tribunal to overturn the AB's findings that the OACO's investigation was flawed because of an alleged conflict of interest and as a result of other errors. As such, the respondent asks that Tribunal to confirm the decision of the Board of the MO to lose the case.

53. The respondent also argues that the AB erred on a question of law and fact in determining that OACO had a conflict of interest. The respondent submits that the OACO managing partner did not participate or advise on the investigation.

54. The respondent argues that the AB erred on a question of law and fact resulting in a manifestly unreasonable decision in that it included that there were errors in the investigation.

55. Finally, the respondent submits that the AB erred on a question of law in that it decided on the request for relief regarding an outstanding agreement in that such claim had become moot.

Mr. Barbato's Answer to Cross-Appeal

5D. Mr. Barbato submits that the Organization's making simultaneous contradictory submissions: on one hand, defending the AB and on the other, arguing that the AB's conclusions should be overturned.

57. Mr. Barbato argues that the relevant content of

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7<. The case is remanded to the AB. Mr. Barbato's appeal to the AB must be reconsidered and decided by a neutral process that produces a written record of the decision. The record must include reasons for the decision as well as a statement of the relevant facts and of the relevant law.

Original and Authenticated Versions ; ngls!

Dated this 2nd day of October 2021.

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Judge, a co-residing