

Eighth activity report
Office of Administration of Justice
1 January to 31 December 2014

CONTENTS

I. INTRODUCTION3

II. THE UNITED NATIONS DISPUTE TRIBUNAL4

A. COMPOSITION4

B. JUDICIAL WORK4

 1. Caseload 4

 2. Number of judgments, orders and court sessions5

 3. Sources of cases6

 4. Subject matter6

 5. Representation of staff members7

 6. Informal resolution8

 7. Outcomes8

 8. Referral for accountability9

 9. Jurisprudence.....9

III. THE UNITED NATIONS APPEALS TRIBUNAL.....10

A. COMPOSITION10

B. JUDICIAL WORK10

 1. Sessions.....10

 2. Caseload.....10

 3. Sources of cases11

 4. Outcomes12

 5. Representation of staff members14

 6. Referral for accountability.....15

 7. Jurisprudence.....15

IV.

I. Introduction

1. The eighth report of the Office of Administration o

The United Nations Dispute Tribunal

A. Composition

3. During the reporting period, the composition of the Dispute Tribunal was as follows:

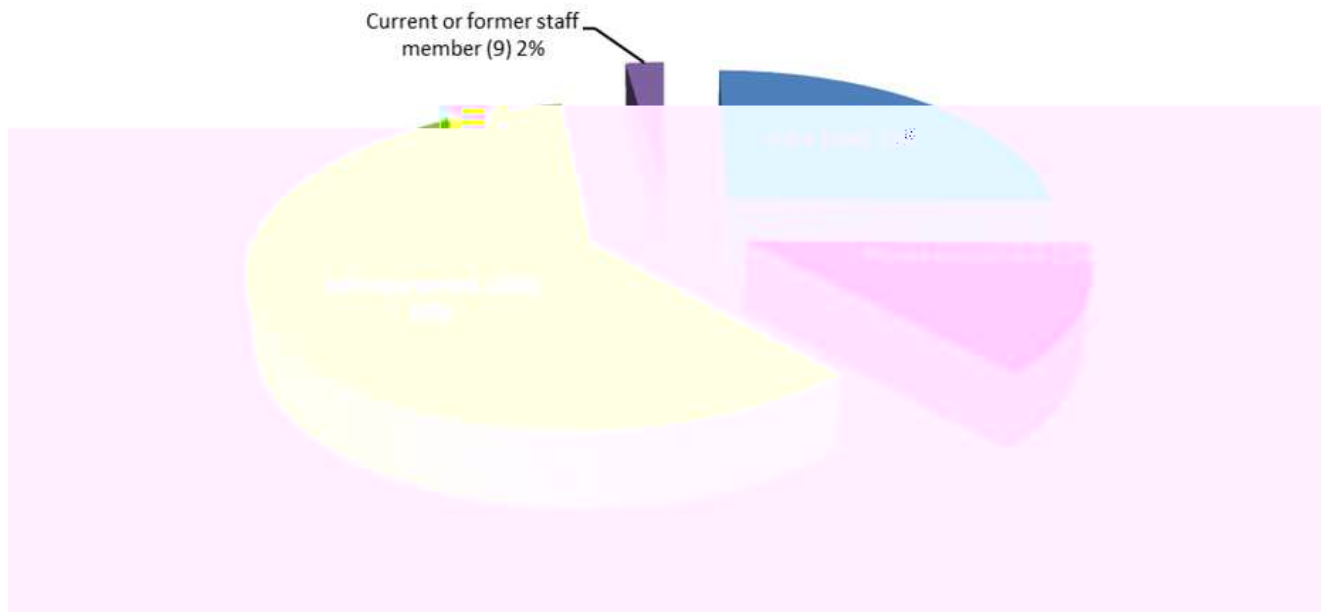
- (a) Judge Vinod Boolell (Mauritius), full-time judge based in Nairobi;
- (b) Judge Memooda Ebrahim-Carstens (Botswana), full-time judge based in New York;
- (c) Judge Thomas Laker (Germany), full-time judge based in Geneva;
- (d) Judge Goolam Hoosen Kader Meeran (United Kingdom), half-time judge;
- (e) Judge Coral Shaw (New Zealand), half-time judge;
- (f) Judge Jean-François Cousin¹

Table 2: Cases received, disposed of and pending by duty station

UNDT	Cases received			Cases disposed of			Pending (end of year)		
	GVA	NBI	NY	GVA	NBI	NY	GVA	NBI	NY
2009	108	74	99	57	19	22	51	55	77
2010	120	80	107	101	59	76	70	76	108
2011	95	89	97	119	59	93	46	106	112
2012	94	78	86	106	76	78	34	108	120
2013	75	96	118	77	103	145	32	101	93
2014	209	115	87	67	128	125	174	88	55
Total	701								

separation matters: 54 cases, (4) disciplinary matters: 14 cases, (5) classification: two cases, and (6) other: 91 cases. This is illustrated in Chart 2 below.

Chart 3: Representation of staff members in 2014



6. Informal resolution

14. During the reporting period, the UNDT identified, through case management, 37 cases as being suitable for informal resolution. Of these 37 cases, six were successfully mediated. Thirty-one cases were resolved informally by settlement between the parties with case management. A further 14 cases were resolved between the parties without case management, one of which was resolved in a formal mediation.

7. Outcomes

15. The outcomes of the 320 cases disposed of by the UNDT in 2014 are illustrated in Chart 4 below.

Chart 4: Outcome of cases disposed of in 2014



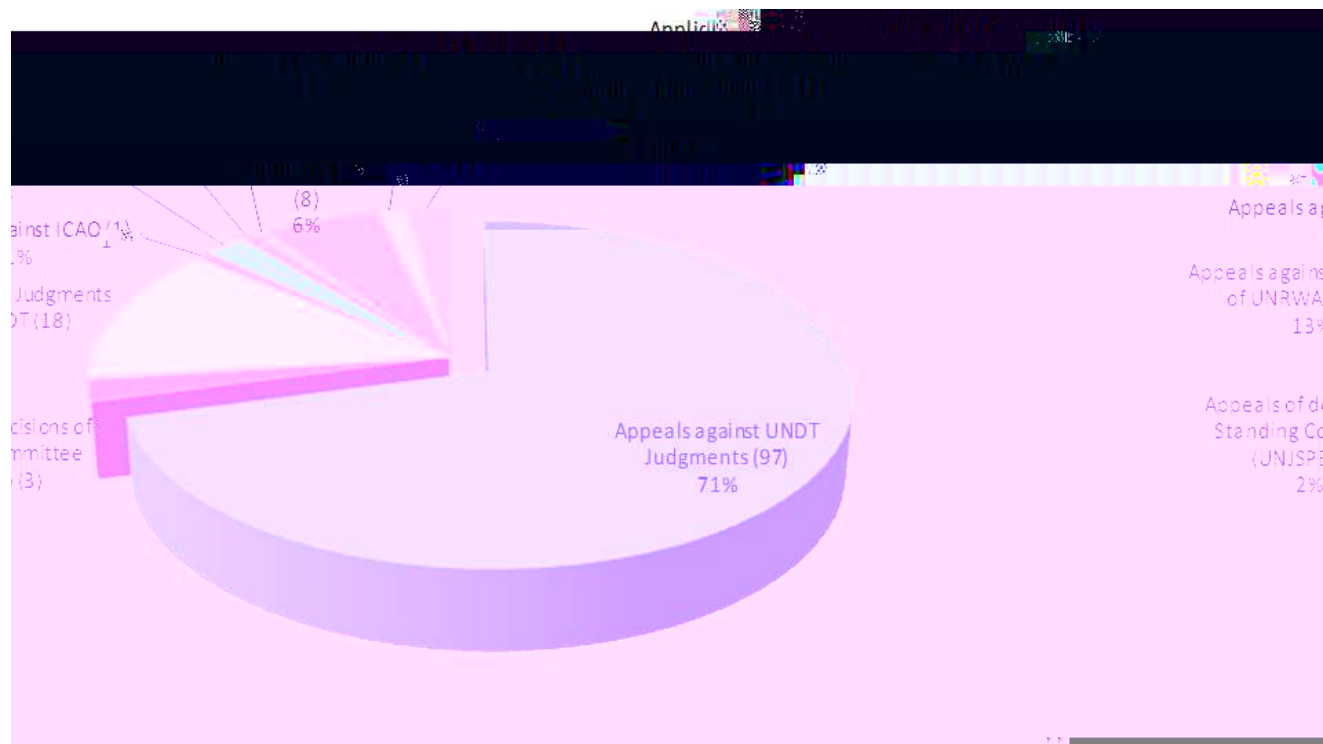
16. In 2014, 57 cases were decided in favour of the applicant either in full or in part. [REDACTED] financial compensation was ordered. In 26 cases, both financial compensation and specific performance were ordered. Specific performance mam

OAJ Report

execution of UNAT judgments. UNAT considered five cross-appeals which it disposed of in the respective judgments.

27. Chart 5 below provides a breakdown of the number of cases received between 1 January and 31 December 2014 by entity.

Chart 5: Cases received in 2014 by entity



28. Table 7 below reflects a breakdown of judgments, orders and hearings for UNAT for the period 2009 to 2014.

Table 7: UNAT judgments, orders and hearings: 2009 to 2014

UNAT	Judgments	Orders	Hearings
2009	N/A	N/A	N/A
2010	102	30	2
2011	88	44	5
2012	91	45	8
2013	115	47	5
2014	100	42	1
Total	496	208	21

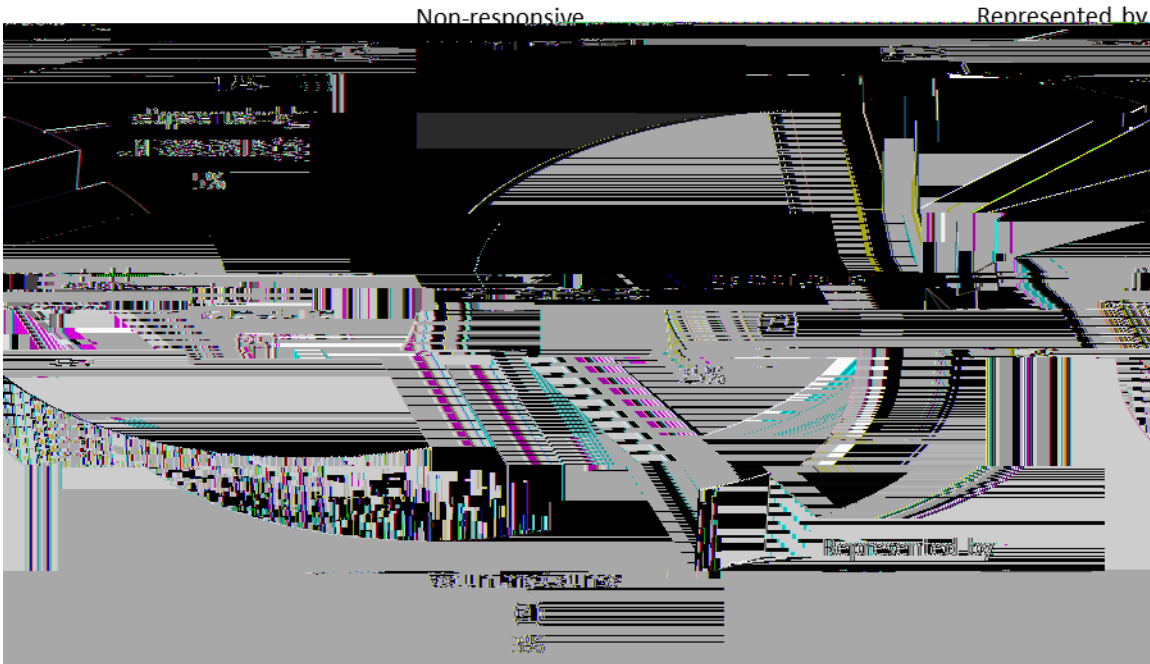
4. Outcomes

29. Of the 86 cases related to UNDT judgments, 40 were filed by staff members and 46 were filed on behalf of the Secretary-General. Of the 40 appeals filed by staff members, 30 (75 per cent) were

rejected and eight were granted in full or in part (20 per cent) and two were closed on withdrawal (5 per cent). Of the 46 appeals filed on behalf of the Secretary-General, 14 were rejected (30 per cent) and 32 were granted in full or in part (70 per cent). In addition, UNAT considered five cross-appeals by staff members, which it disposed of in the respective judgments.

30. UNAT issued two judgments on appeals of decisions taken by the Standing Committee, acting on behalf of the Pension Board. Both appeals were dismissed. UNAT rendered 13 judgments, disposing of 10 appeals filed by UNRWA staff members and four ap

Chart 8: Representation of staff members



6. Referral for accountability

36. In three judgments, UNAT found that the UNDT erred in making a referral for accountability to the Secretary-General under article 10.8 of its Statute.

7. Jurisprudence

37. In 2014 the UNAT rendered a number of legal pronouncements on a range of subjects, examples of which are set out in Appendix III in brief.

IV. The Office of Staff Legal Assistance

A. Framework

38. The Office of Staff Legal Assistance (OSLA) continued to provide legal advice and representation to UN staff world-wide, at all levels, in a wide range of employment matters, from non-appointment to termination, claims of discrimination/harassment/abuse of authority, pension benefits, disciplinary and misconduct cases, and other rights and entitlements under the staff rules. OSLA also provided advice and representation to former UN employees and their beneficiaries regarding rights that arose from their employment, including pension and post-separation entitlements claims.

B. Outreach and training activities

39. In 2014, OSLA visited MONUSCO, UNAMID, MINUSMA, UNOCI, MINUSTAH, UNGSC, UNIFIL, UNMIK, UNAMI and UN staff in Amman, Jordan facilitated by the Resident Coordinator's Office. Legal Officers gave presentations to staff members, UN staff associations and managers on the system of administration of justice at the UN, including the role of OSLA therein. OSLA participated in regular outreach and training activities for UN staff members in the five duty stations with an OSLA presence in addition to outreach and training activities organized by staff associations at those duty stations.

40. These activities provided invaluable opportunities to inform staff, staff associations and managers about the internal justice system, including OSLA's role. A recurring observation from these activities is that As agey.72 Td [(o)-

Table 8: Numbers and types of cases received: 2009 to 2014

OSLA	Summary legal advice	Management evaluation matters	Representation before the UNDT	Representation before the UNAT	Disciplinary cases	Other	Total
2009	172	62	128	10	156	73	601
2010	309	90	76	39	70	13	597
2011	361	119	115	21	55	10	681

Chart 11: Cases by gender

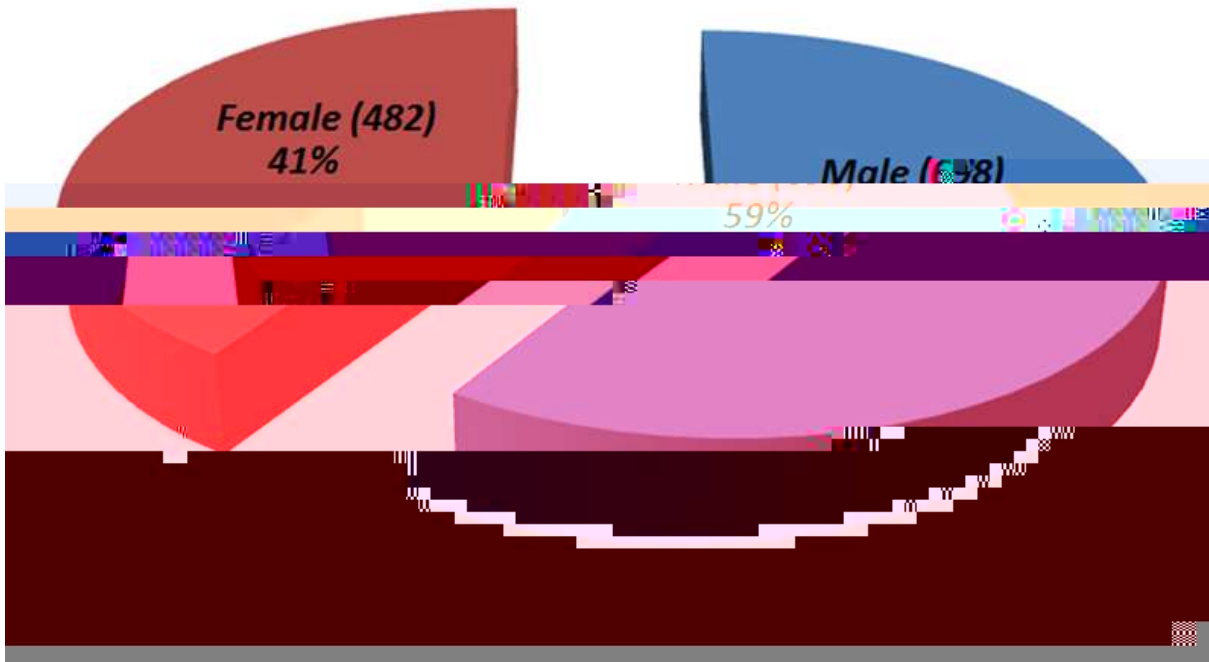
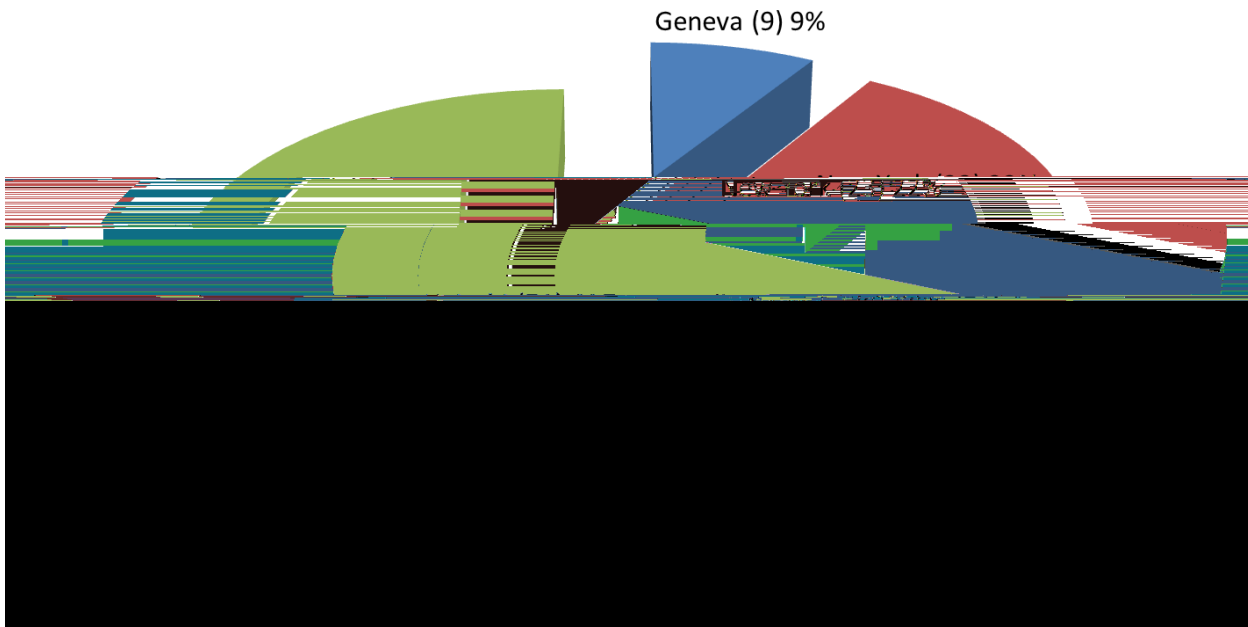


Chart 12: Cases before the UNDT by location



V. The Office of the Executive Director

47. The Office of Administration of Justice (OAJ) is an independent office responsible for the overall coordination of the formal system of administration of justice, and for contributing to its functioning in

APPENDIX I: UNDT CASES RECEIVED IN 2014 – BY EMPLOYMENT ENTITY

UN Secretariat (Headquarters)	DESA	7
	DGACM	28
	DM	7
	DPI	8
	DPKO	2
	DSS	6
	OAJ	4
	OCHA	1
	OIOS	4
	Other UN Secretariat (Headquarters)	4
	Total	71
UN Secretariat Offices Away from Headquarters	UNOG	17
	UNON	11
	UNOV	2
	Total	30
Peacekeeping missions	MINUSTAH	5
	MONUSCO (former MONUC)	23
	UNAMID	4
	UNFICYP	2
	UNIFIL	2
	UNLB	1
	UNMIK	1
	UNMIL	15
	UNMISS	6
	UNOCI	7
	UNSOA	3
	Other	5
	Total	74
Regional Commissions	ECA	5
	ESCAP	8

	ESCWA	5
	Total	18
Special political missions	UNAMA	8
	UNAMI	2
	UNIPSIL	2
	UNPOS	1
	UNSMIL	4
	Total	17
Tribunals	ICTR	4
	ICTY	12
	MICT	2
	UNAKRT	1
	Total	19
Agencies/Funds/Programmes/Other UN entities	UNCTAD	1
	UNDP	38
	UNEP	6
	UNFPA	36
	UN-Habitat	4
	UNHCR	40
	UNICEF	39
	UNODC	3
	UN-Women	5

decision at least in part, the applicant used up valuable resources and time that would otherwise have been devoted to other more urgent matters pending before the Tribunal. The Tribunal also rejected the applicant's reliance on his incarceration (following his arrest and conviction for financial crimes he committed against the Organization) as *force majeure*

Refusal of a lien – prohibited conduct and retaliation as a result of testifying as a witness before UNDT in another case

Organization by making a false claim for medical expenses. The Tribunal commenced its consideration of the case with a review of the Tribunal's role in disciplinary matters. The role of the Tribunal was to consider the facts of the investigation, the nature of the charges, the response of the staff member, oral testimony if available, and draw its own conclusions. In other words, the Tribunal was entitled to examine the entire case before it and to determine whether a proper investigation into the allegations of misconduct had been conducted.

17. With respect to the conduct of the investigation, the Tribunal referred to the jurisprudence and stressed that an investigation must be thorough and disclose an adequate evidential basis before a view is formed that a staff member may have committed misconduct. The Tribunal found that the subject investigation was poorly conducted.

18. The Tribunal then turned to the recommendation that disciplinary proceedings be initiated against the applicant and considered what evidence should satisfy a head of office or responsible officer that a report of misconduct was well-founded. The Tribunal noted that under ST/AI/371, it was the responsibility of the head of office or responsible officer to undertake a preliminary investigation where there was reason to believe that a staff member had engaged in unsatisfactory conduct and that the head of office or responsible officer appeared to be vested with wide discretion at the initial stage

OAJ Report

notice and with termination indemnities, as a disciplinary measure. Apparent irregularities in documents relating to his re-entry date to Afghanistan from leave prompted an investigation, on the basis of which it was found that the applicant had forged a stamp in a copy of his UNLP and provided false information in his annual leave report. The applicant did not contest the facts but rather the proportionality of the disciplinary measure.

31. The Tribunal examined whether the procedure followed was regular, whether the facts in question

Appendix III: Pronouncements of the UNAT

1. Summaries of selected legal pronouncements made by UNAT in judgments rendered in 2014 are provided below. They are for illustrative purposes only and are not authoritative, representative or exhaustive. The complete set of UNAT judgments issued in 2014 is available on the OAJ website (<http://un.org/en/oaj/appeals>).

Non-interference by management and judiciary in United Nations staff union election matters – prevailing party cannot appeal a judgment

2. In *Saffir and Ginivan v. Secretary-General, 2014-UN466*, the applicants voted in the elections for the 44th Staff Council and Leadership for the United Nations Staff Union (UNSU) on 7-9 June 2011 organized and conducted by UNSU polling officers. Both applicants alleged that polling officers and the chairperson committed numerous violations in the conduct of the election.

3. The UNSU Arbitration Committee reviewed their complaints and found that they were unsubstantiated. The applicants then requested the Secretary-General to conduct an investigation into the alleged irregularities of the elections, asserting inadequacy of the UNSU's internal arbitration mechanism. In the absence of a reply, the applicants filed requests for management evaluation. The

that the UNDT erred in law and failed to properly apply the correct definition of an appealable administrative decision. The dissenting opinion also considered that the appeal should have been heard

12.

the meaning of the UNDT Statute. The UNDT, in its judgment on liability,²¹ upheld the applicant's complaint of retaliation and found that the Ethics Office had not reviewed the investigation report. The UNDT considered that the Ethics Office did not make inquiries into factual inconsistencies in the report and its annexes and that it erred in law by simply accepting the report's conclusion. In a separate judgment on relief,²² the UNDT awarded the applicant USD 50,000 for moral damages and USD 15,000 as costs against the respondent for manifest abuse of proceedings.

19. The UNAT, with one Judge dissenting,²³ held that the Ethics Office was limited to making recommendations to the administration and therefore its recommendations were not administrative decisions subject to judicial review. The Tribunal further considered that the applicant had not been precluded from seeking management evaluation of several of the alleged retaliatory actions taken by the administration, yet had not done so. The award for moral damages was vacated. The award against the respondent for costs was upheld.

UNRWA – termination of appointment for misconduct by submitting a degree from a “diploma mill”

20. In *Walden v. Commissioner-General of the United Nations Relief and Works Agency*, 3186(n)-731.9855(h)-1

OAJ Report

35. The UNAT found no merit in the applicant's appeal of AJAB's rejection of the testimonies of her immediate supervisor and her second reporting officer. It considered that the approach of the AJAB was consistent with its jurisprudence in *Messinger*²⁴ and *Larkin*.²⁵ The UNAT held that the AJAB, in a position similar to that of an adjudicating tribunal or trier of fact, had broad discretion to determine the admissibility of any evidence and the weight to attach to such evidence. The UNAT affirmed the finding by the AJAB that the applicant could not adduce substantial evidence of harassment and threat by ICAO's Secretary General and that the applicant's claim that ICAO's Secretary General had targeted her for dismissal could not be supported.

24