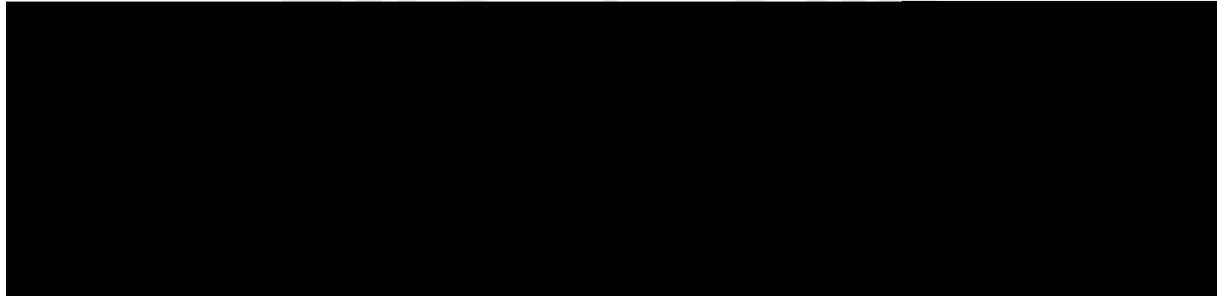

UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

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:

) orota *ost-%"em"ns+a

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 30 May 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, following

THE U

4. Mr. Barbato submits that the AB and For the reason - (General of the MO: 34 failed to exercise Bur'sd"t"onE 3"4 erred on ?uest"ons of la9E 3"4 &omm"tted errors of #ro&edure- su& as to affect the de&"s"on of the &aseE and 3": 4 &omm"tted errors of fa&ts lead"ng to the ree "n&orre&t f"nd"ngs b' the AB.

' () *

5. The AB was asked to #ro: "de a de&"s"on on the substan&e of Mr. Barbato's &om#la"nts and grant remedies "n res#e&t to the m. In the 10 Jul' 2020 AB =) e&"s"on> ! o9e: er- the AB onl' &on&luded the a##eal s! ould be #art"all' granted and some remedies #ro: "ded- not"ng the the ree-member board was able to rea& &onsensus onl' "n se:en of the 11 re#orted "n&"dents of #ro! "b"ted &ondu&t. In doing so- the AB o#erated more l"+e a Bur' on determ"nat"ons of fa&t "nstead of a&t"ng as a f"rst "nstan&e de&"s"on-ma+er- ta+"ng "nto a&&ount the total"t' of the matters before the and the en a##! "ng "ts f"nd"ngs of fa&t to la9. In &onf"n"ng "ts obl"gat"on to fa&t-f"nd"ng- the AB the us abd"&ated "ts res#ons"b"l"t' of address"ng the mer"ts of the &om#la"nt as a 9! ole and to #ro: "de a remed' to the staff member. In so doing- the AB made errors of la9 as "t &learl' m"sunderstood "ts role and fun&t"ons and the us failed to exer&"se the Bur"sd"t"on : ested "n "t.

6. The a##ellant also notes that there was not a s"ngle legal' tra"ned #erson s"tt"ng on the ree-member board- and there was an ob:"ous &onfl"t of "n"terest emanat"ng from staff members s"tt"ng on the board 9! o #ur#orta '

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 wages 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 not incurred by staff members of the 5MO, as well as access to legal assistance as OPA.

The OSG's General's Answer

2. The 5MO's 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 2017.¹⁰ 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 Burden of the Appeals Tribunal.

3. On 10 July 2020, the 5MO's General issued a memorandum that suspended the application of staff rules 111.1, 111.3 and 111.4. The general suspension called for the AB to make final decisions instead of making recommendations to the 5MO's 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's competence and on the other, arguing that the AB's decisions should be overturned.

57. Mr. Barbato argues that the relevant potential

THE UNITED NATIONS

THE U

+/d) (ent

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.

. " /

Judge, a co-residing