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1. Mr. Kobi Jackson, a former staff member of the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA), contested a decision not to reimburse his tax payments.
2. By Judgment No. UNDT/2023/021, the United Nations Dispute Tribunal (UNDT) decided that the Secretary-General should reimburse to Mr

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advised of an obligation to pay New Jersey taxes thereafter, but as set forth below, resolution of that issue is unnecessary to our resolution of this matter.

7. In 2015, Mr. Jackson moved his family to the state of North Carolina, changing his domicile accordingly.<sup>9</sup> He did not pay income taxes to North Carolina because, he says, he assumed that state tax was not applicable when income was generated outside the United States.<sup>10</sup>

8. In October 2019, the North Carolina Department of Revenue (NCDOR) inquired with Mr. Jackson about his state tax.<sup>11</sup> NCDOR requested a tax return for 2015 and subsequently clarified th(a) 16 08b 0 s6 0 0 46 1259.052 -2405 Tm /TT4 quespec24 0 60(t) -1 48 SeCar SeStoet -13 (ta) -1(e)N

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(c) Based on an analysis, the actual amount due from the Organization was USD 70,131.61 comprising of USD 41,744.85 as per the NCDOR's statement and the reimbursement of USD 28,462.76 in taxes already paid by him.

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*The impugned Judgment*

16. By Judgment No. UNDT/2023/021 dated 28 March 2023, the UNDT granted the application in part. It decided that the Secretary-General should reimburse to Mr. Jackson his 2015-2018 state tax and any penalty and interest accrued on unpaid tax for 2015-2018 from 27 January 2022. The UNDT dismissed all the other claims.<sup>20</sup>

17. The UNDT found that after having been reassigned from Headquarters to the field and paying his tax for two years, Mr. Jackson was advised by the ITU that he was not required to pay state tax because his income was earned abroad.<sup>21</sup> This was confirmed by the Secretary-General's witness.<sup>22</sup>

18. Citing *Johnson*,<sup>23</sup> the UNDT

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third party, the state government. It is a burden on the staff member because it comes from the staff assessment.

20. The UNDT maintained that the 2016-2019 Information Circulars were at the bottom of the legal framework, and they could not be used to circumvent the intent of the legislative body.<sup>28</sup> The Administrative Instruction ST/AI/1998/1 refers to the information circular only with respect to procedure. An information circular is not law and the Secretary-General has not shown the law that Mr. Jackson was ignorant of in pursuing the claim.

21. The UNDT proceeded to hold that the Administration, having deprived Mr. Jackson a sum of money in the form of staff assessment on the principle that it would be used to meet his private tax obligations, was not allowed to turn around and claim that he ought to have known about his private legal obligations.<sup>29</sup> In any event, his claim does not concern his private obligations but the terms and conditions of his employment to be treated in an equitable manner. The Administration based the contested decision on an irrelevant factor which was contrary to the intent of the legislature.

22. The UNDT found that the Secretary-General had not provided any evidence of prejudice to

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of staff members is the penalty and interest levied by the state government, which he must personally bear.

24. The UNDT held that any penalty and interest that accrued on the unpaid tax for 2015-2018 from 27 January 2022 shall be borne by the Secretary-General.<sup>32</sup> The cause of the delay is attributed to the failure of the Administration to exercise discretion lawfully.

#### *Procedure before the Appeals Tribunal*

25. On 30 May 2023, the Secretary-General filed an appeal of the impugned Judgment with the Appeals Tribunal, to which Mr. Jackson filed an answer on 27 July 2023.

26. On 30 May 2024, the Appeals Tribunal directed the parties to submit documents and further information.<sup>33</sup> On 6 June 2024, each party submitted documents concerning prior communications between the parties. The Secretary-General also submitted further information on the staff assessment collected from Mr. Jackson, on which the latter filed comments on 13 June 2024.

### Submissions

#### The Secretary-General's Appeal

27. The Secretary-General requests the Appeals Tribunal to vacate the impugned Judgment and uphold the contested decision.

28. The Secretary-General argues that the UNDT erred in finding that the Administration had unlawfully exercised its discretion when it denied Mr. Jackson's request for an exception to Staff Rule 3.17(ii). The UNDT erred in fact and law by treating his federal and North Carolina state tax obligations differently. His state tax liability, like his federal tax liability, was created by his negligence and ignorance of his own private legal obligations, i.e. "self-inflicted", as the UNDT should have found. Granting exceptions is reserved for exceptional circumstances.

29. The Secretary-General submits that the UNDT manifestly erred in fact when it found that Mr. Jackson had been told by the ITU that he did not have to pay North Carolina state tax.

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36. Mr. Jackson submits that the Administration contributed to creating the situation as he was advised in 2006 that no state taxes were payable on foreign earned income with respect to new Jersey taxes. Until then, he had been fully compliant with the federal and New Jersey taxes. During the Chief/ITU's delay of almost two years in responding to him, penalties and interest accrued. Staff assessment had already been deducted and he received no financial gain from not paying the state tax. His move to North Carolina did not change the source of his income, therefore it was reasonable of him to continue to believe that it was not subject to state income tax.

37. Mr. Jackson points out that the Organization reviews the taxes before reimbursements. The ITU was aware of his change of domicile and should have prompted him to pay North Carolina state tax. The Administration apparently reimbursed him on the basis of incorrect information on taxable earnings. Staff Regulations are binding and the Secretary-General has no discretion in interpreting them. Pursuant to the United States Tax Code 6502, corrections or revisions can be made up to ten years after the relevant tax year. The General Assembly must have been cognizant of this reality when it placed no time limit on claiming reimbursements.

38. Mr. Jackson contends that the Administration has not provided any argument as to why one Staff Rule can be used to override another Staff Rule but has intended that this Tribunal authorize its flawed practice. Its misinterpretation has caused hardship to staff members who are liable for paying United States taxes from past years. Consistent misapplication does not justify itself but needs to be corrected.

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The Secretary-General has provided no reasoned argument as to how the approach underlying the contested decision would not violate Staff Regulation 3.3(f).

40. Mr. Jackson argues that there is a marked distinction between allowances or benefits, and the reimbursement of taxes. The reimbursement is simply repaying the staff assessment from the Tax Equalization Fund. By denying him the exception requested, the Administration violated the principle of parity which should ensure that every staff member, no matter his or her nationality, receives the same net pay. There is no financial burden on the Organization.

#### Considerations

41. The threshold issue before the Appeals Tribunal is whether or not then-Staff Rule 3.17(ii) applies to the type of tax reimbursement at issue here.<sup>38</sup> We find, as described herein, that it does not.

42. The General Assembly established the Tax Equalization Fund, which is

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45. As a preliminary matter to be addressed, Staff Rule 3.17(ii) does not by its express terms apply to tax reimbursement under Staff Regulation 3.3. Staff Rule 3.17 is concerned with a situation of a “staff member who has not been receiving an allowance, grant or other payment to which he or she is entitled”. And it is situated within a set of Rules which deal with matters such as dependency allowance, education grant and hardship allowance—none of which have any similarity with the tax reimbursement provision of Staff Regulation 3.3. Notably, where the Staff Rules do touch on the staff assessment from which tax reimbursements are paid (see Staff Rule 3.2), there is no mention of a time limit for reimbursement claims.

46. As written, Staff Rule 3.17(ii) would apply to tax reimbursement only if such

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assessment and in many cases is paid to the taxing authority directly, and not the staff member, it is unreasonable to treat such reimbursement as a “payment” under this Staff Rule.<sup>42</sup>

49. We further recall that the Staff Rules are subordinate to the Staff Regulations within the legislative and regulatory framework of the United Nations and must be interpreted so as to be consistent with the text and purpose of Staff Regulations and, by necessity, General Assembly resolutions as well. The applicable General Assembly resolutions and Staff Regulations do not limit the time for claiming tax reimbursement, nor does their language or the context of their adoption evidence any intention that rigid time limits should be applied. Accordingly, we find no basis to apply the generic language of Staff Rule 3.17(ii) to this context. The time restriction in that Rule is not found in, nor been shown to be intended by, the broader regime within which the Staff Rules operate.

50. We likewise must reject the notion that the Information Circulars issued each year setting “[d]eadlines for submission of requests for reimbursement”, and which state, in relevant part, that “there is a one-year limitation on filing a claim for tax reimbursement”, provide a basis to find that limitation applicable here. While information circulars are important methods to establish and communicate procedures, they are not the method by which substantive provisions may be added to Staff Regulations.

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denied the request for an exception) to the date of payment.<sup>44</sup> The rationale for requiring Mr. Jackson to pay interest and penalties for the period through 26 January 2022 was that he

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Judgment

55. The Secretary-General's appeal is dismissed, and Judgment No. UNDT/2023/021 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 28<sup>th</sup> day of June 2024 in New York, United States.

*(Signed)*

Judge Ziadé, Presiding

*(Signed)*

Judge Savage

*(Signed)*

Judge Colgan

Judgment published and entered into the Register on this 16<sup>th</sup> day of August 2024 in New York, United States.

*(Signed)*