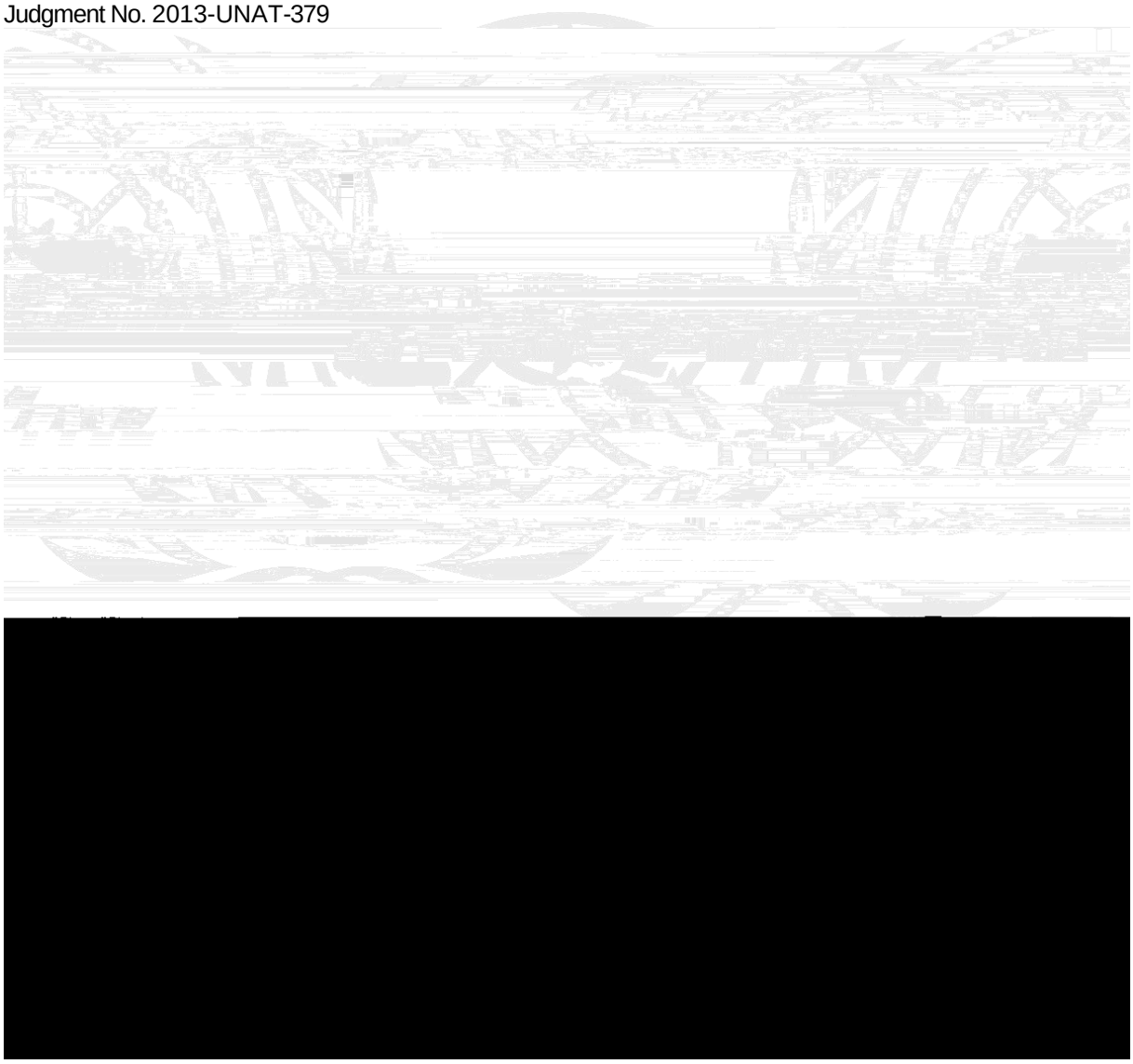

Counsel for Respondent/Applicant: Amal Oummih

Counsel for Appellant/Respondent: Paul Oertly

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General of the United Nations against Judgment No. UNDT/2012/164, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Geneva on 5 November 2012 in the case of *Andersson v. Secretary-General of the United Nations*. The Secretary-General's appeal was received

UNHCR staff that the 2009 annual promotio ns session would be held at the end of November 2010.

… The APPB convened from 23 Novembe r 2010 to 2 December 2010.

… By inter-office memorandum IOM/01 3-FOM/014/2011 of 1 March 2011, the High Commissioner published the list of pr omoted staff. [Mr. Andersson] was not among those promoted.

… On 14 March 2011, [Mr. Andersson] introduced a recourse before the APPB against the decision not to promote him at the 2009 annual promotions session.

… The APPB reviewed [Mr. Andersson's] request at its recourse session held from 16 to 19 May 2011. It found that there was no additional or new element allowing finding the recourse receivable. [Mr. An dersson] was consequently not recommended for promotion.

… By inter-office memorandum IOM/046-

4. According to the Secretary-General, UNHCR subsequently rescinded the contested decision, and after reconsideration, promoted Mr. Andersson with retroactive effect, with the payment of backdated salary and emoluments amounting to USD 11,585.67.

Submissions

The Secretary-General's Appeal

5. The Secretary-General clarifies that he does not dispute the UNDT's order for rescission of the contested decision or, in the alternative, compensation in the amount of CHF 10,000. In the present appeal, he only challenges the UNDT's award of CHF 4,000 as compensation for moral damages.

6. The Secretary-General submits that the Dispute Tribunal erred in law by using the same essential element of Mr. Andersson's high chance of promotion as a basis to justify its award of CHF 10,000 in lieu of rescission as well as its award of CHF 4,000 for moral damages. This is "double-counting".

7. The Secretary-General also submits that the UNDT's award of moral damages as a remedy under the circumstances of the present case is legally unsustainable and contradicts the UNDT's own reasoning. The UNDT rejected Mr. Andersson's claim for compensation for material harm on the ground that he would suffer no material harm as a result of the initial non-promotion decision if he were to be promoted with retroactive effect. The Secretary-General believes that the UNDT should have applied the same reasoning to Mr. Andersson's claim for loss of opportunity, which loss has been fully made good by Mr. Andersson's subsequent promotion and payment of backdated salary and emoluments.

8. The Secretary-General maintains that the UNDT's approach in the present case is inconsistent with the guidance on damages set forth by the Appeals Tribunal in *Akyeampong*,[2] in which Ms. Akyeampong's additional request for moral damages was rejected. The Secretary-General notes that the circumstances in the present case are materially identical to *Akyeampong*.

[2] *Akyeampong v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-192.

9.

Mr. Andersson is then heard to speak for at least 2 minutes without interruption, but

21. On the issue of the level of compensation awarded, we do not find reason to differ from the UNDT's determination. The UNDT's moderate award of CHF 4,000 was well within its discretion and does not constitute an error in fact or law.

Judgment

22. The appeal is dismissed and the Judgment of the UNDT is affirmed.

Original and Authoritative Version: English

Done this 17th day of October 2013 in New York, United States.

(*Signed*)	(*Signed*)	(*Signed*)
Judge Lussick, Presiding	Judge Weinberg de Roca	Judge Chapman

Entered in the Register on this 19th day of December 2013 in New York, United States.

(*Signed*)

Weicheng Lin, Registrar