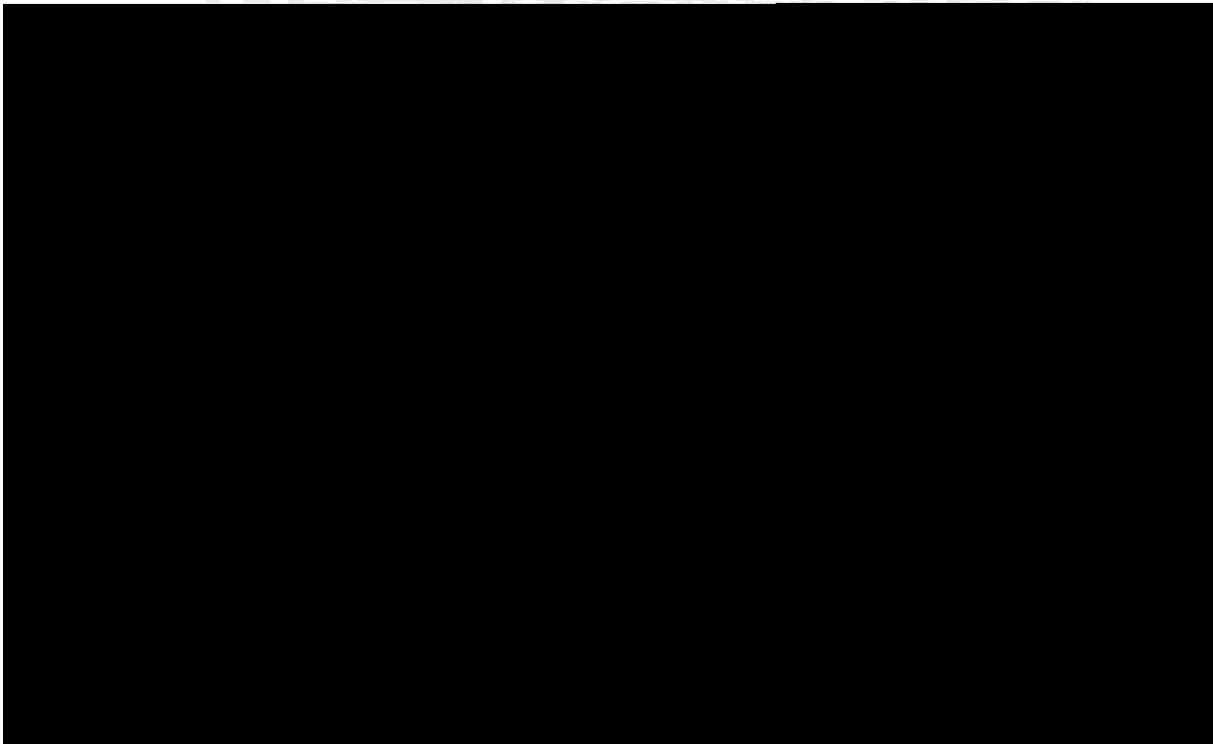


Judgment No. 2017-UNAT-720



Counsel for Ms. Haroun:

Robbie Leighton, OSLA

JUDGE MARTHA HALFELD

be transferred internationally. As a result, she was subsequently separated from the Organization on 26 January 2015.¹

7. In Judgment No. UNDT/2016/058 issued on 11 May 2016 and now under appeal, the Dispute Tribunal found that the decision to reassign Ms. Haroun was unlawful as it was “ill-conceived, clumsily effected and most certainl

10. As stated above, the Secretary-General filed an appeal against the UNDT Judgment on 25 July 2016, and Ms. Haroun filed her answer on 23 September 2016.

11. On 17 October 2016, the Secretary-General submitted to the Appeals Tribunal a “Motion to Reject Additional Evidence” with regard to the information contained in Ms. Haroun’s submission of 17 February 2015 before the UNDT. Ms. Haroun filed her response to the motion on 7 November 2016.

Submissions

The Secretary-General’s Appeal

12. The Secretary-General does not challenge the UNDT’s determination that the reassignment decision was unlawful, nor the award of compensation in lieu of rescission and for breach of appointment and “unfair treatment”. The appeal is limited to contesting the award of three months’ net base salary as compensation for damage to Ms. Haroun’s career prospects.

13. The Secretary-General submits that the UNDT erred in law and procedure by relying on the fact of Ms. Haroun’s separation from service when it awarded compensation for damage to career prospects. This fact was not in evidence before the UNDT as it was communicated to the UNDT on 17 February 2015, after closing submissions. Ms. Haroun’s separation from service entailed new issues which were neither presented nor discussed in the proceedings, so that the Secretary-General did not have a chance to examine or contest them. By deciding a case based on an “independently obtained” fact, the UNDT violated the parties’ right to due process and a fair hearing.

14. In addition, the UNDT erred in inferring a link between the reassignment decision and the decision to separate Ms. Haroun from service without such connection having been argued by Ms. Haroun or without any evidence having been presented to this effect. In fact, Ms. Haroun filed a separate application before the UNDT contesting the non-renewal of her appointment.

15. Therefore, the Secretary-General requests the Appeals Tribunal to vacate the UNDT Judgment of 14 November 2016 and to award Ms. Haroun the compensation requested in her appeal.

Ms. Haroun's Answer

16. Ms. Haroun submits that the fact of her separation and the reasons therefor were properly in evidence before the Dispute Tribunal and part of the court record and were thus not "independently obtained".

17. Ms. Haroun further asserts that "the [Secretary-General's] claim that [he was] robbed of any opportunity to examine or contest this information is plainly incorrect" since the filing of 17 February 2015 was automatically served on several counsel for the Secretary-General via the Court Case Management System. Therefore, the UNDT could rely on the information contained therein when awarding compensation.

18. She also claims that the question of the effect of the reassignment decision on her career prospects was properly before the UNDT. In fact, it was the Secretary-General who introduced the issue before the Dispute Tribunal by presenting witnesses who argued that the transfer actually benefited Ms. Haroun's career prospects.

19. Moreover, the filing of 17 February 2015 clearly indicates that the reason for her separation was the relocation of her post and the fact that she could not be transferred internationally as a national staff member. Thus, "it must follow from pure logic that the transfer to that post has had a negative effect on [her] career prospects. Had she not been unlawfully transferred to that post its movement to Erbil in Iraq would not have had an effect on her career prospects. Both damage and causation were apparent to the [Dispute] Tribunal from the documents before it."

20. Ms. Haroun asks for the award to be upheld and the appeal to be dismissed.

The Secretary-General's Motion and Ms. Haroun's Response

21. In his motion the Secretary-General respectfully requests the Appeals Tribunal not to consider Ms. Haroun's submission of 17 February 2015, or, if the Appeals Tribunal decides to allow its introduction, to be permitted to comment on the submission.

22. In her response, Ms. Haroun states that the 17 February 2015 submission was in fact part of the UNDT written record or should, in the alternative, be included in the proceedings before the Appeals Tribunal.

Considerations

23. The only issue on appeal is the award of three months' net base salary as compensation for damage to Ms. Haroun's career prospects.

24. The relevant timeline is better displayed in the following table:

Document	Date
Closing submissions filed by parties	16 December 2013
Separation from service	Letter dated 15 November 2014, effective 1 January 2015
Additional submission on change in circumstances subsequent to closing submissions	17 February 2015
Notification of the submission	18 February 2015

27. The Appeals Tribunal notes that the separation from service was the sole ground for awarding compensation for damage to career prospects!¹⁰ However, there is no evidence on the record with respect to the exact reasons for separating Ms. Haroun from service and the circumstances of such separation. The Secretary-General, in violation of his right to due process and a fair hearing, was not given an opportunity to present his views on the possible reliance of the UNDT on the separation for an award of damages. In fact, the separation decision is challenged in a separate application pending before the UNDT under Case No. UNDT/NBI/2015/051. It will be incumbent upon the Dispute Tribunal to determine in that case whether the separation was lawful and whether Ms. Haroun suffered harm including to career prospects as a result.

28. In view of the foregoing, we grant the Secretary-General's motion to reject additional evidence. In any event, however, we find that the UNDT erred in law by awarding damages for loss of career prospects on the grounds of Ms. Haroun's separation from service.

Judgment

29. The appeal is upheld and Judgment No. UNDT/2016/058 is vacated to the extent that it awards compensation for damage to career prospects.

¹⁰ Ibid., para. 211.

Original and Authoritative Version: English

Dated this 31st day of March 2017 in Nairobi, Kenya.