



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

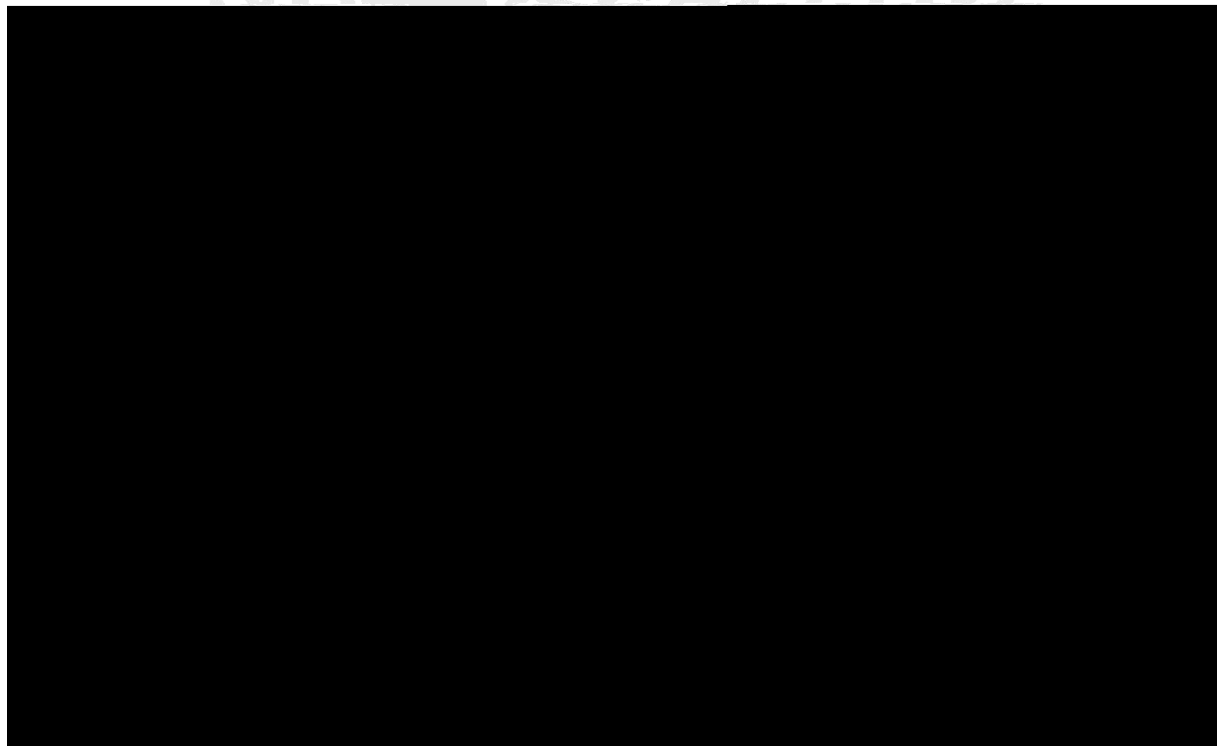
Judgment No. 2018-UNAT-816



Harris
(Appellant)

v.

Secretary-General of the United Nations



Counsel for Mr. Harris:

Self-represented

Counsel for Secretary-General:

Rupa Mitra

JUDGE SABINE KNIERIM , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Order No. 135 (NBI/2017), rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 4 August 2017, in the case of *Harris v. Secretary-General of the United Nations*. Mr. Bryan Galakpai Harris filed the appeal on 16 August 2017, and the Secretary-General filed an answer on 25 September 2017.

Facts and Procedure

2. Mr. Harris joined the United Nations Interim

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12. The proceedings for abandonment of post were ceased on 8 February 2017 upon receipt of the approved medical certificate for the period from 28 January to 17 February 2017. HRMS/UNIFIL, however, placed Mr. Harris on Special Leave without Pay (SLWOP) for the periods of unauthorized absence from 8 October 2016 to 8 December 2016 and 4 January 2017 to 22 January 2017. On 27 March, UNIFIL, however, placed Mr. Harris on Special Leave without Pay (SLWOP) for the periods of unauthorized absence from 8 October 2016 to 8 December 2016 and 4 January 2017 to 22 January 2017.

19. On 25 July 2017, Mr. Harris filed a management evaluation request contesting the decision to separate him from service on the grounds of abandonment of post. On 28 July 2017, he filed an application for suspension of action (SOA), pending management evaluation, challenging the Secretary-General's decision to separate him from service.

20. On 31 July 2017, Mr. Harris received notification that no approval for SLWFP had been received from the United Nations Headquarters in New York.

21. On 4 August 2017, the UNDT issued Order No 135 (NBI/2017) in which it refused to order a suspension of action. The UNDT was of the view that while Mr. Harris's application was receivable as the administrative decision had not yet been implemented it was not successful on

27. Mr. Harris contends that during his nine years of service he has never taken any certified or uncertified sick leave. It was only in April 2016 that he took sick leave for the first time in his entire career for intramedullary nail fixation surgery and severe stress disorder weeks following the surgery. While on certified sick leave, his insurance was terminated and his salary withheld. He subsequently requested special leave, but was not given an appropriate response to his request and instead received a notice of separation from service.

28. Mr. Harris submits that the Organization's allegation of his authorized absences from 8 October 2016 to 8 December 2016 and from 4 January to 22 January 2017 lacks evidence and that there are "about 50 plus emails and records of tasks [he] physically performed in Sector East, until the report of [his] deteriorated health in

32. The Secretary-General asks that the Appeals Tribunal reject the Annex attached to Mr. Harris's appeal entitled "Full medical report ". This Annex includes documents that were created after the impugned Order was issued and that were not part of the UNDT case record. Under Article 10 of the Appeals Tribunal's Rules of Procedure (Rules), a party may seek to submit, with an appeal, documentary evidence in addition to that contained in the written record. However, the Appeals Tribunal may receive such additional evidence only in exceptional circumstances and where the facts are likely to be established with such additional documentary evidence. Mr. Harris made no motion before the Appeals Tribunal seeking leave to submit additional documentary evidence. Furthermore, the attached documents do not relate to Mr. Harris's failure to report to duty prior to July 2017 nor do they pertain in any other way to the contested decision or relate to any error in the UNDT Order.

33. The Secretary-General requests that the Appeals Tribunal affirm the Order of the UNDT and dismiss the appeal in its entirety.

Considerations

Preliminary matters

34. As a preliminary matter, Mr. Harris filed a request for an oral hearing. Oral hearings are governed by Article 8(3) of the Appeals Tribunal's Statute and Article 18(1) of its Rules. The factual and legal issues arising from this appeal have already been clearly defined by the parties and there is no need for further clarification. Moreover, we do not find that an oral hearing would "assist in the expeditious and fair disposal of the case", as required by Article 18(1) of the Rules. Thus, the request for an oral hearing is denied.

35. Further, we reject the Annex "Full Medical Report" attached to Mr. Harris's appeal, as requested by the Secretary-General. Pursuant to Articles 2(5) and 8(1) of the Appeals Tribunal's Statute and Article 10(1) of its Rules of Procedure, the Appeals Tribunal may receive additional evidence in exceptional circumstances, if it is in the interest of justice and the efficient and expeditious resolution of the proceedings. As Mr. Harris filed no motion and we do not find that the admission of the documents is in the interest of justice and the efficient and expeditious resolution of the proceedings, the Annex "Full Medical Report" will not be included as part of the case file.

36. For the same reasons as stated above, Mr. Harris's e-mails dated 13 and 21 February 2018 will not be included as part of the case file.

Receivability of Mr. Harris's appeal

37. Mr. Harris's appeal against the UNDT Order must fail because it is not receivable. The UNDT's authority on applications requesting suspension of action is governed by Article 2(2) of the Dispute Tribunal Statute which reads as follows:¹

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. *The decision of the Dispute Tribunal on such an application shall not be subject to appeal.*

38. Article 10(2) of the Dispute Tribunal Statute provides:²

At any time during the proceedings, the Dispute Tribunal may order an interim measure, *which is without appeal*, to provide temporary relief to either party, where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

39. Further, Article 13 of the UNDT Rules of Procedure (Suspension of action during a management evaluation) provides, in part:

1. The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.

...

4. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

¹ Emphasis added.

² Emphasis added.

40. Articles 2(2) and 10(2) of the UNDT Statute, in unequivocal terms, provide that the decision of the Dispute Tribunal on an application for suspension of action shall not be subject to appeal. Consequently, appeals against such decisions are not receivable.

41. However, there is one exception to this rule: In the past, we have held that an appeal against interlocutory decisions can be receivable in cases where the UNDT clearly

Judgment

43. The appeal is dismissed.

Original and Authoritative Version: English

Dated this 22nd day of March 2018 in Amman, Jordan.

(Signed)

Judge Knierim, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Thomas-Felix

Entered in the Register on this 23rd day of May 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar