



**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2014-UNAT-463

**Slade  
(Appellant)**

**v.**

**Secretary-General of the United Nations  
(Respondent)**

**JUDGMENT**

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Before:	Judge Rosalyn Chapman, Presiding Judge Richard Lussick Judge Sophia Adinyira
Case No.:	2013-533
Date:	17 October 2014
Registrar:	Weicheng Lin

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Counsel for Appellant:	Daniel Trup/OSLA
Counsel for Secretary-General:	Amy Wood

**JUDGE ROSALYN CHAPMAN, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it the appeal filed by Ms. Mary Grace Slade of Judgment No. UNDT/2013/121 issued by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Nairobi on 8 October 2013, in the case of *Slade v. Secretary-General of the United Nations*. Ms. Slade filed her appeal on 23 October 2013, and the Secretary-General filed his answer on 6 January 2014.

**Facts and Procedure**

2. Effective 10 February 2006, Ms. Slade joined the United Nations Organization Mission in the Democratic Republic of Congo as an Information Technology Assistant with an appointment of limited duration at the FS-4 level, grade 1, under the former 300 series of the Staff Regulations and Rules. She was given several extensions of the limited duration appointment.

3. By memorandum dated 30 April 2009, the Officer-in-Charge, Chief of Civilian Personnel Office (CCPO), sent Ms. Slade a memorandum entitled “New Contractual Arrangements for International Staff holding 300 Series Mission Appointments in Special Missions” (Memorandum). The Memorandum advised Ms. Slade that 300 series appointments would be discontinued as of 1 July 2009, and “[s]taff members holding 300 series appointments of limited duration will be transitioned to either the new fixed-term appointment or temporary appointment”.

4. Paragraph 3 of the Memorandum provided, in part:

The new conditions of service for internationally-recruited staff in non-family missions will be applied with effect from the date of any new fixed-term ... appointment ... . In the case of reappointment to a new fixed-term appointment, a staff member will be eligible for payment of post adjustment, mobility and hardship allowance and rental subsidy instead of [mission subsistence allowance (MSA)], in addition to existing allowances and benefits under the 100 series of staff rules ... . A Personal Transition Allowance [(PTA)] will be paid to mission staff reappointed under a new fixed-term ... contract where the monthly amount of the after 30-day MSA rate for their regular duty station payable on 30 June 2009 is more than the sum of the post adjustment, mobility and hardship allowance and rental subsidy. The [PTA] will be adjusted by any increase in the amount of post adjustment, mobility and hardship allowance and rental subsidy and will be gradually phased out as described in the attached note.

5. The note attached to the Memorandum described the planned phasing-out of the PTA: (i) 1 July 2009 through 30 June 2011 - 100% of the PTA will be paid; (ii) 1 July 2011 through 30 June 2012 – 70% of the PTA will be paid; (iii) 1 July 2012 through 30 June 2013 – 40% of the PTA will be paid; and (iv) the PTA will be discontinued completely effective 1 July 2013.

6. The Memorandum required Ms. Slade’s supervisor, or Section Chief, to indicate his or her “recommendation for the ... type and duration of new appointment” for Ms. Slade. Ms. Slade’s supervisor checked the recommendation box for a “[n]ew fixed-term appointment for one year eff. 1 July 2009” and signed and dated the Memorandum on 8 May 2009. Ms. Slade counter-signed and dated the Memorandum the same day, indicating that she had “been informed of the recommendation”.

7. Ms. Slade signed a letter of appointment for each of her one-year fixed-term appointments from 1 July 2009 through 30 June 2012. Each of these letters of appointment incorporated the Staff Regulations and Rules and none of them referred to either the Memorandum or the PTA.

8. Ms. Slade was paid the PTA for two years, covering her fixed-term appointments from 1 July 2009 through 30 June 2011. The PTA was not paid starting 1 July 2011, to the present.

9. On 24 December 2010, the General Assembly adopted resolution 65/248, approving the Secretary-General’s recommendations, which included the discontinuance of the PTA. The General Assembly also requested the Secretary-General to absorb the costs of the reform from within resources without impacting on operational costs or undermining mandated activities and programmes.

10. In early 2011, the Administration published information and held town hall meetings with all the missions to discuss the discontinuance of the PTA.

11. On 31 January 2011 and 29 March 2011, Ms. Slade, along with several other staff members, requested management evaluation of the decision to discontinue the PTA. On 18 April 2011, the Management Evaluation Unit (MEU) informed her that it would not accept a collaborative request and she would have to submit a signed individual request setting out the basis for her challenge to the contested decision.

12. On 19 April 2011, Ms. Slade filed an individual request for management evaluation of the decision to discontinue paying her the PTA. That same day, Ms. Slade also filed an application for suspension of action. On 27 June 2011, the United Nations Field Staff Union (FSU) filed a motion to be permitted to file an *amicus curiae* brief. The Secretary-General timely filed his replies to the application and the motion. On 1 July 2011, the UNDT issued Order No. 64 (NBI/2011), in which it granted, *inter alia*, the FSU's application to file an *amicus curiae* brief.

13. On 8 July 2011, the Dispute Tribunal issued Order No. 71 (NBI/2011) rejecting the application for suspension of action. On 29 July 2011, the UNDT rendered its reasoned Judgment No. UNDT/2011/136, rejecting the application on the grounds that none of the statutory requirements for granting a request to suspend action had been met: she had not shown that the disputed decision was *prima facie* unlawful, that there was "the element of urgency", and that she would suffer irreparable damage. The UNDT then transferred the application for suspension of action "to the general cause list to be heard on the merits" on an accelerated basis since "the impugned decision will impact on a large number of staff members and ... the present case serves as a test case in this regard".

14. On 27 July 2011, the MEU advised Ms. Slade that it considered the UNDT's decision "to remain seized of the matter on the merits rendered [her] request for management evaluation to be moot" and her file would be closed. Ms. Slade then filed a motion before the UNDT to withdraw her application for suspension of action.

15. On 1 September 2011, the UNDT issued Order No. 109 (NBI/2011) granting Ms. Slade's motion to withdraw her application for suspension of action, and ordered Ms. Slade to file an application addressing the merits no later than 19 September 2011.

16. On 22 September 2011, Ms. Slade filed an application on the merits before the UNDT, and the Secretary-General filed his reply on 24 October 2011. On 8 October 2013, the UNDT rendered Judgment No. UNDT/2013/121, denying Ms. Slade's application. The UNDT determined, *inter alia*, that: (a) the Memorandum of 30 April 2009 did not incorporate the PTA into the terms and conditions of Ms. Slade's employment contract; (b) Ms. Slade had "a legitimate expectation that the Organization would honour" the proposals in the Memorandum "barring further policy decisions by the General Assembly"; (c) General Assembly resolution 65/248 affected the continuation of the PTA; and (d) terminating the PTA did not breach any international labour

standards or the United Nations' Charter in that it did not demonstrate "inequality in the payment for work of equal value".

### **Submissions**

#### **Ms. Slade's Appeal**

17. The UNDT erred in concluding that the PTA did not form part of her terms and conditions of employment. The circumstances in which the Organization communicated the payment of the PTA to her, the automatic nature of the PTA payments for more than two years, and the reasonable expectation of future PTA payments stemming from this regular practice show that the Organization agreed to be contractually bound to pay the PTA, as set forth in the Memorandum. Thus, the PTA became an implied part of the terms and conditions of the Appellant's employment contract.

18. The UNDT erred in concluding that resolution 65/248 directly affected the continuation of the PTA and that it served to terminate the PTA. The General Assembly resolution does not specifically call for discontinuance of the PTA; to the contrary, the resolution requires the Secretary-General to mitigate any unintended consequences to staff. Moreover, the resolution provides a distinction between new and existing staff, and affords the Secretary-General discretion regarding existing staff.

19. The Appellant seeks to set aside the Judgment and requests an order requiring the Administration "to disburse the outstanding PTA payments".

#### **The Secretary-General's Answer**

20. The UNDT correctly concluded that continued payment of the PTA was not part of Ms. Slade's essential terms and conditions of service. Staff Rule 4.1 provides that the letter of appointment "contains expressly or by reference all the terms and conditions of employment". Ms. Slade's letter of appointment incorporates the Staff Regulations and Rules. However, neither of Ms. Slade's letters of appointment for the one-year terms starting 1 July 2011 and 1 July 2012, nor the Staff Regulations and Rules, mention the PTA or the Memorandum. Thus, the PTA was not a term or condition of Ms. Slade's service. To the contrary, Ms. Slade's Personnel Action forms state that all "standard amounts," including the PTA, "are subject to review and adjustment".

21. The UNDT correctly concluded that Ms. Slade did not have a legitimate expectation of continued payment of the PTA beyond 30 June 2011. Resolution 65/248 authorized a new hardship allowance and the discontinuance of the PTA as of 30 June 2011. And that date coincided with the end of a fixed-term appointment for Ms. Slade. Ms. Slade was paid the PTA for the period between 1 July 2009 and 30 June 2011, as reflected by her Personnel Action forms issued during that time. Staff members were informed repeatedly by the Administration in January through March 2011 that the PTA would be discontinued as of 1 July 2011.

22. The UNDT correctly concluded that the PTA was discontinued as a direct result of a policy decision by the General Assembly. Proposals for an additional hardship allowance were recommended to the General Assembly by the International Civil Service Commission (ICSC), the Secretary-General and the Advisory Committee on Administrative and Budgetary Questions (ACABQ) premised upon an offset by the discontinuance of the PTA. The General Assembly approved the new hardship allowance with the understanding that the PTA would be discontinued once the new allowance came into effect. Thus, termination of the PTA was a direct consequence of the passage of resolution 65/248.

23. Finally, the Secretary-General contends that Ms. Slade's appeal merely reiterates her arguments before the UNDT and is not sufficient to explain any error of fact or law by the UNDT.

### **Considerations**

24. The "legal act by which the Organization legally undertakes to employ a person as a staff member is a letter of appointment signed by the Secretary-General or an official acting on his behalf. The issuance of a letter of appointment cannot be regarded as a mere formality".<sup>1</sup>

25. Staff Rule 4.1 recognizes these maxims:

The letter of appointment issued to every staff member contains expressly or by reference all the terms and conditions of employment. All contractual entitlements of staff members are strictly limited to those contained expressly or by reference in their letters of appointment.

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<sup>1</sup> *Gabaldon v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-120, para. 22.

26. The terms and conditions of the employment contract of a staff member are set forth in the letter of appointment and its express incorporation by reference of the Organization's Regulations and Rules and all pertinent administrative issuances.<sup>2</sup> In this regard, "[t]he employment contract of a staff member subject to the internal laws of the United Nations is not the same as a contract between private parties".<sup>3</sup> The letters of appointment issued to Ms. Slade for the period of 1 July 2009 through 30 June 2012 do not refer to either the Memorandum or the PTA.

27. The PTA also is not a benefit or entitlement under the Staff Regulations and Rules, which "embody the conditions of service and the basic rights and duties and obligations of United Nations staff members".<sup>4</sup> Similarly, it is not an "administrative issuance[]" in application of, and consistent with, the said Regulations and Rules".<sup>5</sup>

28. Since neither the Memorandum nor the PTA is incorporated into Ms. Slade's terms and conditions of employment through the letters of appointment or the Staff Regulations and Rules, the UNDT did not err in determining that discontinuance of the PTA did not breach Ms. Slade's employment contract.

29. The Memorandum, as well as other Organization publications, explained the temporary nature of the PTA and included the planned schedule for its reduction in amount over four years and its eventual discontinuance, effective 1 July 2013. Based in part on this, the UNDT found that "even though the PTA was not part of the terms and conditions of [Ms. Slade's] contract of employment, a legitimate expectation that the Organization would honour [the four-year] proposal[] ... could be inferred in the circumstances[,] *barring further policy decisions by the General Assembly*".<sup>6</sup> The UNDT further determined that payment of the PTA to Ms. Slade was lawfully discontinued prior to 30 June 2013, *as a direct result* of the General Assembly passing resolution 65/248.

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<sup>2</sup> *Abboud v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-100; *Badawi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2012-UNAT-261.

<sup>3</sup> *Gabaldon v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-120, para. 22, quoting *James v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-009.

<sup>4</sup> *Egglesfield v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-399, para. 21, quoting *Valimaki-Erk v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-276, para. 42.

<sup>5</sup> *Ibid.*

<sup>6</sup> Emphasis added.

30. Ms. Slade, however, contends that the UNDT erred in concluding that the PTA was lawfully discontinued as a direct result of action by the General Assembly. Rather, she argues, the General Assembly resolution did not specifically call for the discontinuance of the PTA and, in any event, the Secretary-General had discretion to continue it. On the other hand, the Secretary-General notes that resolution 65/248 stemmed from proposals by the Secretary-General, the ICSC and the ACABQ, all of which posited that a new hardship allowance approved by the General Assembly would be offset by the discontinuance of the PTA. Thus, the Secretary-General argues, it is clear that the General Assembly gave direction to the Secretary-General to eliminate the PTA and the Secretary-General could not ignore that direction.

31. The Appeals Tribunal finds that the UNDT did not err in concluding that the Secretary-General discontinued payment of the PTA to Ms. Slade as a direct result of a policy decision by the General Assembly. In light of this, there is no merit to Ms. Slade's argument that she had a legitimate expectation to receive the PTA for the two contract years of 1 July 2011 and 1 July 2012.

32. For all these reasons, there is no merit to Ms. Slade's appeal and the Judgment should be affirmed.

### **Judgment**

33. The appeal is dismissed and Judgment No. UNDT/2013/121 is affirmed.



Original and Authoritative Version: English

Dated this 17<sup>th</sup> day of October 2014 in New York, United States.

*(Signed)*

Judge Chapman, Presiding

*(Signed)*

Judge Lussick

*(Signed)*

Judge Adinyira

Entered in the Register on this 22<sup>nd</sup> day of December 2014 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar