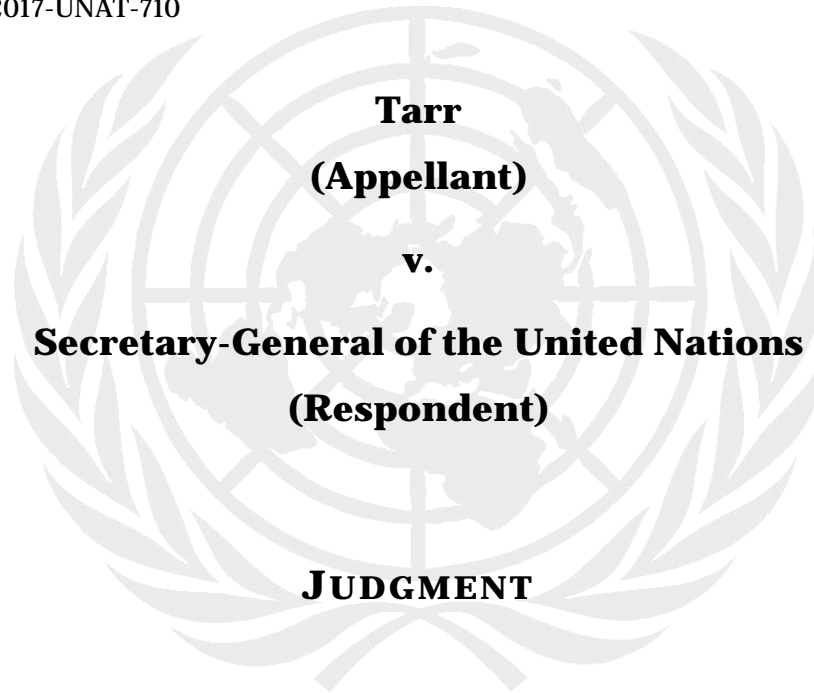




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2017-UNAT-710



**Tarr**

**(Appellant)**

**v.**

**Secretary-General of the United Nations**

**(Respondent)**

**JUDGMENT**

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Before:	Judge Sabine Knierim, Presiding Judge Deborah Thomas-Felix Judge John Murphy
Case No.:	2016-945
Date:	31 March 2017
Registrar:	Weicheng Lin

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Counsel for Ms. Tarr:	Self-represented
Counsel for Secretary-General:	Nathalie Defrasne

**JUDGE SABINE KNIERIM, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment on Receivability No. UNDT/2016/053, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 4 May 2016, in the case of *Tarr v. Secretary-General of the United Nations*. Ms. Emily Caroline Marie Tarr filed a complete appeal on 7 July 2016, and the Secretary-General filed an answer on 9 September 2016.

**Facts and Procedure**

2. Ms. Tarr entered the service of the Organization on 6 July 2013 as an Investigator with the Investigation Division (ID), Office of Internal Oversight Services (OIOS), assigned to the United Nations Mission in Liberia (UNMIL) in Monrovia, Liberia.

3. In the wake of the outbreak of the Ebola virus disease in West Africa, on 8 August 2014, the Director-General of the World Health Organization declared Liberia among others as a country affected by “a public health emergency of international concern”.

4. Also on 8 August 2014, the Deputy Director/Officer-in-Charge, ID, OIOS Vienna, sent an e-mail to Ms. Tarr and others, in which he advised that “the [Under-Secretary-General]/OIOS decided to relocate you all [from ID/Monrovia] to ID/Entebbe [Regional Service Centre in Entebbe (RSCE), Uganda] ... The Executive Office will make the necessary arrangements and will be in contact with you on the matter.”

5. On 12 August 2014, an Administrative Assistant, Executive Office, OIOS New York, sent an e-mail titled “Your entitlements in connection with the 6-month reassignment to RSCE, Entebbe ...” addressed to Ms. Tarr and one of her colleagues. In the e-mail, the Administrative Assistant provided information pertaining to their entitlements and benefits “[i]n connection with the recent decision from OIOS Management to laterally reassign you from OIOS UNMIL to OIOS RSCE, (duty station Entebbe) for six (6) months”. In particular, the e-mail in question contained the following:

**1. Effective date of lateral reassignment:** The effective date of your reassignment will be your travel date.

**2. Duty station:** RSCE is a family duty station under category “B”. The rate of Post Adjustment for Uganda is 35.4 per cent as of 01 August 2014. ...

...

**7. Assignment grant:** You will be entitled to an assignment grant (on a pro-rated basis) to compensate for the initial extraordinary costs incurred on moving to a new location, as well as the pre-departure expenses associated with relocation. The grant has two elements, a daily subsistence allowance (DSA) portion and a lump sum portion, both payable on arrival at the duty station.

a) The DSA portion of the assignment grant consists of 30 days DSA in respect of the staff member, at the rate applicable for your location (Entebbe), currently \$176 daily.

b) The lump sum portion is equivalent to one month's net base salary and post adjustment and it will be prorated to six months. Should your assignments in Entebbe be extended you will be paid the remaining lump-sum portion in proportion to the number of months the assignment is extended up until you've reached one year in the duty station.

6. On 8 September 2014, Ms. Tarr reported for duty in Entebbe, Uganda.

7. On 12 September 2014, a Personnel Action (PA) titled "Record Assignment" with an effective date of 4 September 2014 was finalized and approved, indicating that Ms. Tarr was on "assignment for six months eff[ective] 4/9/14 thr[ough] 3/3/15 from OIOS, UNMIL to OIOS, RSCE. [She is entitled] to \$1200 [relocation grant (RLG)] & [assignment grant (ASG)] (30 days DSA & 1 mo[nth] [lump sum (LS)] pro-rated)." Ms. Tarr received a copy of the PA on 13 September 2014.

8. On 6 November 2014, Ms. Tarr requested management evaluation of the "[d]enial of DSA beyond the initial 30-day period; denial of entitlements related to official duty station". She did not make specific reference to post adjustment, hardship allowance or additional hardship allowance. In a letter dated 31 December 2014, the Management Evaluation Unit informed Ms. Tarr that her request for management evaluation was not receivable, as it was time-barred.

9. Ms. Tarr appealed to the Dispute Tribunal contesting the refusal to pay her DSA beyond the initial period of 30 days of her assignment to RSCE, refusal to pay her post adjustment and hardship allowance at the Monrovia rate, as well as refusal to pay her additional hardship allowance.

10. In Judgment No. UNDT/2016/053 now under appeal, the UNDT rejected Ms. Tarr's application as not receivable, because she had failed to contest the terms of her reassignment to RSCE by requesting management evaluation of the decision within 60 days as of 12 August 2014. In that connection, the UNDT found that the 12 August 2014 e-mail from the OIOS Executive Office constituted a valid notification to Ms. Tarr of the benefits and entitlements relating to her assignment, and that the PA of 12 September 2014 was merely a reiteration of the decision conveyed to her on 12 August 2014.

### **Submissions**

#### **Ms. Tarr's Appeal**

11. The Dispute Tribunal committed a factual error resulting in a manifestly unreasonable decision when it found that the 12 August 2014 e-mail constituted a valid notification of an administrative decision. On 12 August 2014, Ms. Tarr was given notice of the entitlements and payments to be made to her, but not of her actual status in RSCE. The e-mail of 12 August 2014 notified her that she was being "laterally reassigned". But she was in fact sent to RSCE "on assignment". "Reassignment" and "assignment" are two "separate and distinct" statuses carrying different entitlements and benefits, the former being a move within a department from one post to another, and the latter being a type of movement that denotes a return to a parent post. In sum, the 12 August 2014 e-mail communicated a different administrative decision than the one that was actually taken on 12 September 2014. The 12 August 2014 decision of laterally reassigning her to Entebbe "never occurred". The UNDT's reliance on that e-mail notification was misguided.

12. Communication of entitlements and benefits cannot constitute notification of the underlying administrative decision concerning status. Such entitlements and benefits can be challenged only at the time of the communication of the underlying administrative decision, which was 13 September 2014.

13. The information communicated to Ms. Tarr on 13 September 2014 was not a mere reiteration of the information in the 12 August 2014 e-mail, as the Dispute Tribunal erroneously established. It comprised of notice of a different administrative decision, which results in different entitlements. Ms. Tarr filed her request for management evaluation within 60 days of 13 September 2014.

14. Ms. Tarr requests that the Appeals Tribunal overturn the impugned Judgment and remand her case for a hearing on the merits.

**The Secretary-General's Answer**

15. As the impugned Judgment is limited to the question of receivability and does not address the merits of the case, any argument put forward by Ms. Tarr about the merits of her case should be dismissed.

16. Ms. Tarr failed to establish any error of fact in the UNDT's findings. The UNDT correctly found that Ms. Tarr was notified of the terms of her relocation to Entebbe on 12 August 2014. The decision to temporarily relocate Ms. Tarr to Entebbe was taken in August 2014 and was never modified. Subsequent communications including the PA of 12 September 2014 merely reiterated the decision and its terms in the 12 August 2014 e-mail.

17. Contrary to Ms. Tarr's assertion, the PA of 12 September 2014 did not communicate a new decision. It was issued to record Ms. Tarr's temporary relocation from Monrovia to Entebbe and the terms of such relocation. The remarks in the PA reflected the decision to relocate and install Ms. Tarr in Entebbe with the entitlements and benefits that were communicated to her on 12 August 2014.

18. The Secretary-General requests that the Appeals Tribunal reaffirm the impugned Judgment and dismiss the present appeal.

**Considerations**

*Did the UNDT err on a question of law or fact resulting in a manifestly unreasonable decision in stating that the 12 August 2014 e-mail was the relevant notification of an administrative decision to trigger the time limits for a request for management evaluation?*

19. The UNDT did not err on a question of law or fact. It was correct for the Dispute Tribunal to hold that the 12 August 2014 e-mail constituted the relevant administrative decision to trigger the time limits for a request for management evaluation.

20. Ms. Tarr submits that the 12 August 2014 e-mail gave notice only of the entitlements and benefits to be paid during her stay in RCSE, but not of her actual status there. While the 12 August 2014 e-mail notified her of being "laterally reassigned", Ms. Tarr was in fact sent to

RSCE “on assignment”. “Reassignment” and “assignment”, in Ms. Tarr’s opinion, are two separate and distinct statuses carrying different entitlements and benefits. Thus, Ms. Tarr submits that the 12 August 2014 e-mail communicated a different administrative decision than the one that was actually taken on 12 September 2014 and communicated to her on 13 September 2014, and that the 12 August 2014 decision of laterally reassigning her to Entebbe “never occurred”.

21. We do not agree. Ms. Tarr’s argument that two different administrative decisions were notified to her (reassignment on 12 August 2014 and assignment on 13 September 2014) is without merit. There is no legal difference between the 12 August 2014 e-mail and the 12 September 2014 PA in this regard. Both documents informed Ms. Tarr of her (re)assignment to Entebbe for six months and her entitlements and benefits with regard to this (re)assignment. The 12 August 2014 e-mail used the terms reassignment as well as assignment. The relevant Staff Rules also use both terms.<sup>1</sup> This Tribunal cannot find any legal difference between an “assignment” and a “reassignment”. The only point which legally matters is the length of such a (re)assignment; different legal consequences result depending on the duration of an assignment (up to six months, longer than six months or longer than one year). Ms. Tarr was notified by the 12 August 2014 e-mail that Entebbe was to be her assigned duty station for six months and, consequently, that she was not on travel status during that period; the e-mail also informed her of the benefits and entitlements in connection with this (re)assignment. The 12 September 2014 PA, a copy of which Ms. Tarr received on 13 September 2014, contained the same information.

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<sup>1</sup> For instance, Staff Rule 3.7(c) reads: “While the salary of a staff member is normally subject to the post adjustment of his or her duty station during *assignments* for one year or more, alternative arrangements may be made by the Secretary-General under the following circumstances: ...”

Staff Rule 3.14(a) states: “Staff in the Professional and higher categories and in the Field Service category, and staff in the General Service category considered internationally recruited pursuant to staff rule 4.5 (c) who are appointed or *reassigned* to a new duty station may be paid a non-pensionable hardship allowance.”

And Staff Rule 4.8 provides:

“(a) A change of official duty station shall take place when a staff member is *assigned* from one duty station to another for a period exceeding six months or when a staff member is transferred for an indefinite period.

(b) A change of official duty station shall take place when a staff member is *assigned* from a duty station to a United Nations field mission for a period exceeding three months.

(c) *Assignment* of a staff member from his or her official duty station for a conference shall not constitute a change of official duty station within the meaning of the Staff Rules.”

(All emphases added.)

22. Ms. Tarr further submits that a communication of entitlements and benefits cannot constitute a notification of the underlying administrative decision concerning status. Such entitlements and benefits, she assumes, can only be challenged at the time of the communication of the underlying administrative decision, which, in her view, was 13 September 2014.

23. This argument is also without merit. Apart from the fact that, as stated above, there is no legal difference between “reassignment” and “assignment” and the 12 August 2014 e-mail contained not only a notification of the benefits and entitlements but also of Ms. Tarr’s status of (re)assignment to Entebbe, Ms. Tarr’s understanding of administrative decisions and their notification is erroneous. In order to specify the benefits and entitlements, the Administration issues administrative decisions, which can be independent of the underlying administrative decision concerning status. If, for example, the Administration notifies a staff member that he or she will receive certain benefits, when in reality he or she is entitled to greater or better benefits, the staff member would have to request management evaluation within the prescribed time limits; a failure to do so would result in the loss of any possibility to appeal such a decision even if it were unlawful.<sup>2</sup>

### **Judgment**

24. The appeal is dismissed and Judgment No. UNDT/2016/053 is hereby affirmed.

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<sup>2</sup> Staff Rule 11.2(c).

Original and Authoritative Version: English

Dated this 31<sup>st</sup> day of March 2017 in Nairobi, Kenya.

*(Signed)*

Judge Knierim, Presiding

*(Signed)*

Judge Thomas-Felix

*(Signed)*

Judge Murphy

Entered in the Register on this 26<sup>th</sup> day of May 2017 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar