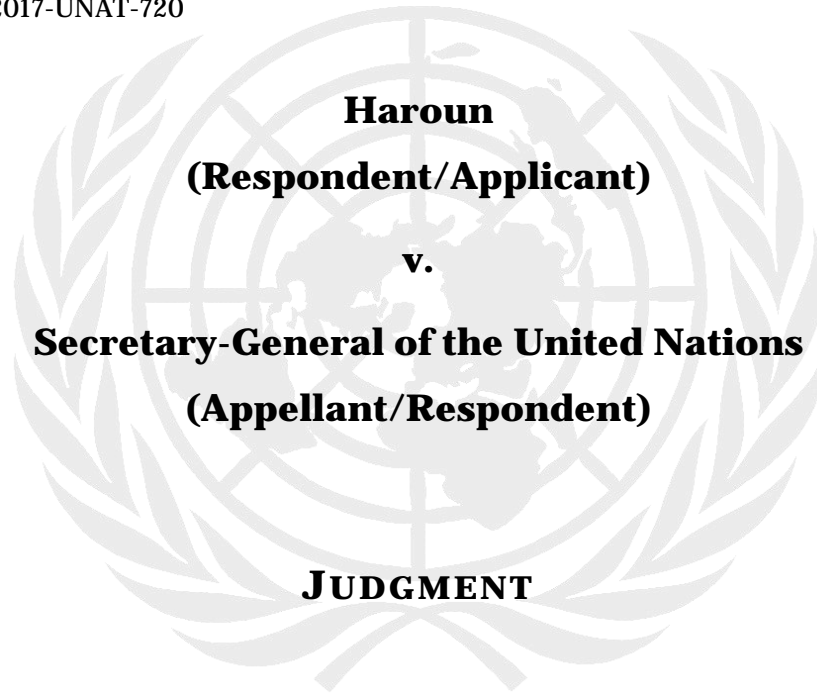




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2017-UNAT-720



**Haroun
(Respondent/Applicant)**

v.

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

JUDGMENT

Before:	Judge Martha Halfeld, Presiding Judge Richard Lussick Judge Sabine Knierim
Case No.:	2016-955
Date:	31 March 2017
Registrar:	Weicheng Lin

Counsel for Ms. Haroun:	Robbie Leighton, OSLA
Counsel for Secretary-General:	Nathalie Defrasne Stéphanie Cartier

Reissued for technical reasons on 15 June 2017

JUDGE MARTHA HALFELD, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2016/058, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 11 May 2016, in the case of *Haroun v. Secretary-General of the United Nations*. The Secretary-General filed the appeal on 25 July 2016, and Ms. Mariam Haroun filed her answer on 23 September 2016.

Facts and Procedure

2. Ms. Haroun entered into the service of the United Nations in 2005 as an Administrative Assistant in the Office of the Chief Administrative Services of the United Nations Assistance Mission for Iraq (CAS Office, CAS and UNAMI, respectively) and was based in Kuwait. At the time of filing the application before the UNDT, she held a fixed-term appointment at the G-5/8 level.

3. By memorandum dated 10 July 2012, the Chief, Human Resources Section, UNAMI, informed Ms. Haroun of the decision of the Acting Chief of Mission Support and the CAS to laterally reassign her from the CAS Office to the Supply Section of UNAMI as Administrative Assistant, effective 1 August 2012.

4. Ms. Haroun filed a request for management evaluation contesting the reassignment decision and, on 10 September 2012, was informed by the Management Evaluation Unit that the decision would be upheld.

5. On 11 December 2012, Ms. Haroun filed an application before the UNDT challenging the decision to reassign her from the CAS Office to the Supply Section in UNAMI. The UNDT held oral hearings from 18 September 2013 through 13 November 2013. The parties filed their closing submissions on 16 December 2013.

6. In a submission on change of circumstances of 17 February 2015, Ms. Haroun informed the UNDT that she was advised on 15 November 2014 that her contract with UNAMI would be terminated effective 1 January 2015. Counsel explained that her post in the Supply Section had been proposed for relocation to Erbil, Iraq and, as a locally recruited staff member, she could not

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 certainly made on the basis of extraneous factors” and “tainted with bad faith and improper motive”.² It was the UNDT’s finding that Ms. Haroun was “moved not so much in the interest of the Organization, or in the pursuit of using the best resources of the Organization, but in the interest of [her managers]”³ who reassigned her to a “post not commensurate with her training and qualifications, as a punitive measure”⁴ following a fallout with one of them and the ensuing “personal differences”.⁵

8. Since “the [UNDT] Registry was informed” that Ms. Haroun was separated from service “[w]hile the judgment was pending”, the UNDT held that the reassignment decision could no longer be rescinded.⁶ Instead, it ordered compensation in the amount of 12 months’ net base salary in light of the “gross injustice” meted out to Ms. Haroun by her managers.⁷ In addition, the Dispute Tribunal awarded compensation in the amount of three months’ net base salary for moral damages related to a breach of the terms of Ms. Haroun’s appointment and three months’ net base salary for “damage to career prospects” and it further ordered payment of USD 5,000 for “unfair treatment” at the hands of the then Acting Chief of Mission Support and Ms. Haroun’s direct supervisor.⁸ The UNDT based its finding of damage to career prospects on the fact of Ms. Haroun’s separation from service which led “the [Dispute] Tribunal to the irresistible conclusion that the [re]assignment was a colourable device to teach [Ms. Haroun] the ultimate lesson that is the loss of her job and livelihood”.⁹

9. The UNDT Judgment was rendered on 11 May 2016 and, due to technical difficulties, it was transferred to the parties only on 24 May 2016.

¹ The fact of Ms. Haroun’s separation is uncontested but the Secretary-General moved for its exclusion by motion of 17 October 2016.

² Impugned Judgment, paras. 195 and 209.

³ *Ibid.*, para. 195.

⁴ *Ibid.*, para. 204.

⁵ *Ibid.*, para. 209.

⁶ *Ibid.*, para. 201.

⁷ *Ibid.*, para. 205.

⁸ *Ibid.*, paras. 209-215.

⁹ *Ibid.*, para. 211.

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’s award of compensation for damage to career prospects.

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
UNDT Judgment	Issued on 11 May 2016, communicated on 24 May 2016
Appeal on compensation for damage to career prospects	15 July 2016
Answer to appeal	23 September 2016
Motion to reject additional evidence filed with the answer to appeal	17 October 2016
Answer to motion	27 October 2016

25. In his appeal, the Secretary-General claims that the justification for such an award of compensation for damage to Ms. Haroun's career prospects was the separation from service, of which the UNDT Registry was informed while the Judgment was pending. The Secretary-General also claims that the UNDT erred on a question of law and procedure by taking into account the separation from service, since its connection with the contested decision was established as an inference not previously argued, nor proved or commented on by the other party. To the Secretary-General, this amounts to a breach of his right to due process and a fair hearing.

26. We agree with the Secretary-General's submissions. The Appeals Tribunal understands that Ms. Haroun's communication of change in circumstances demonstrates good faith in the system of administration of justice, particularly considering the length of time between the filing of the closing submissions and the issuance of the UNDT Judgment (nearly two and a half years). However, we find that the UNDT committed an error in law by awarding compensation for damage to career prospects on the basis of Ms. Haroun's separation from service.

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.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Knierim

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

(Signed)

Weicheng Lin, Registrar