



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

Judgment No. 2021-UNAT-1082

**Yolla Kamel Kanbar
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Dimitrios Raikos, Presiding Judge Graeme Colgan Judge Kanwaldeep Sandhu
Case No.:	2020-1400
Date:	19 March 2021
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	André Luiz Pereira de Oliveira

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. Yolla Kamel Kanbar (Ms. Kanbar) contested the decision of the Administration to reassign her from CHINCEU 2-31 (the Chinese Constructing Engineering Unit) to INDOBATT 7-1 (the Indonesian Battalion). The United Nations Dispute Tribunal (Dispute Tribunal or UNDT) rejected her application as without merit.¹ In June 2020, Ms. Kanbar filed an appeal with the United Nations Appeals Tribunal (Appeals Tribunal). For reasons set out below, we reject the appeal and affirm the UNDT Judgment.

Facts and Procedure

2. Ms. Kanbar has served as a Language Assistant at the Language Support Unit (LSU) of the United Nations Interim Force in Lebanon (UNIFIL) since August 2016. LSU provides support services to military units over the entire geographic area operated by UNIFIL. Ms. Kanbar was initially assigned to the Chinese Constructing Engineering Unit in Shamaa, Lebanon.

3. On 6 September 2017, Ms. Bahaa El-Hage (the OiC) informed Ms. Kanbar that she would be reassigned from the Chinese Constructing Engineering Unit to the Italian Battalion due to a shortage of language assistants in that sector. However, on 26 September 2017, due to operational requirements, Ms. Kanbar was instead redeployed to the Indonesian Battalion, effective 2 October 2017.

4. On 26 September 2017, the OiC also sent redeployment letters to eight other language assistants who were reassigned to different stations.

5. On 27 September 2017, Ms. Kanbar contacted the OiC, informing the latter that she would contest her redeployment, and a meeting took place on the next day to address her concerns. The OiC explained that the redeployment was due to operational necessity. The OiC also reminded Ms. Kanbar that she was required to perform language assistant services throughout the UNIFIL area. Ms. Kanbar was also furnished a copy of her job description.

¹ *Kanbar v. Secretary-General of the United Nations*, Judgment No. UNDT/2020/046 dated 1 April 2020 (Impugned Judgment).

6. On 2 October 2017, Ms. Kanbar started working at the Indonesian Battalion, where she remains to date. This placement involves an additional commute of 17 km for her.
7. On 24 November 2017, Ms. Kanbar sought a management evaluation review of the decision to redeploy her with the Management Evaluation Unit (MEU). The contested decision was upheld, and the MEU concluded that the redeployment was lawful since there is no legal requirement to consult a staff member about a proposed reassignment. The MEU also stated that the decision was taken in the context of an operational need, and Ms. Kanbar had failed to show that the redeployment stemmed from improper motives.
8. Ms. Kanbar applied to the Dispute Tribunal on 6 April 2018, challenging the decision to redeploy her from the Chinese Constructing Engineering Unit to the Indonesian Battalion.
9. On 1 April 2020, the Dispute Tribunal, after finding the application was receivable, dismissed it on the grounds that the contested decision was lawful, rational, procedurally correct and proportionate.
10. Additionally, in the view of the Dispute Tribunal, the contested decision was neither irrational nor perverse. Regarding the averment of improper purpose and the allegation that the decision was taken to harass Ms. Kanbar, the UNDT found that the events cited by appellant “even if taken as true, are incapable of proving a harassment intent on the part of the author of the impugned decision.”²
11. In conclusion, the UNDT found that the impugned decision was a lawful exercise of discretion and there was no basis for rescinding it nor for awarding compensation.
12. Ms. Kanbar filed an appeal on 13 June 2020, and the Secretary-General filed his answer on 20 August 2020.

² Impugned Judgment, para. 29.

Submissions

Ms. Kanbar's appeal

13. Ms. Kanbar alleges that she received threats from her First Reporting Officer (FRO) and from the OiC, warning her to keep her mouth shut. She contends that certain incidents that purportedly occurred prior to her redeployment were the actual reasons for her reassignment to the Indonesian Battalion.

14. She argues that she was trying to escape “from being harassed sexually and morally” and “she avoided to be in any place which could bring any damage to her” and her focus was to “continue her good service (...) with her military day-to-day colleagues and officers.”

15. Ms. Kanbar posits that the UNDT overlooked her complaints against the Conduct and Discipline Office and against her harassers at UNIFIL. She further contends that the Dispute Tribunal erred by accepting the redeployment decision as an administrative action in response to operational requirements when it was arguably an action intended to suppress her complaints. Her main contention is thus that the redeployment was not based on operational requirements but was rather an action based on improper motives and the personal leverage of the OiC.

16. Ms. Kanbar argues that “many staff members irrelevant to the administrative process” were involved and conducted meetings with the FRO and the OiC regarding her redeployment. She further argues that during those meetings discussing redeployment, nothing was mentioned about operational requirements. It is thus her contention that the only reason that she was redeployed was because the OiC wanted her to be reassigned for her own personal reasons.

17. Ms. Kanbar also claims that the operational requirements justification was being used as a pretext to validate the redeployment decision.

The Secretary-General's answer

18. The Secretary-General (Respondent) requests the Appeals Tribunal to dismiss the appeal and affirm the UNDT Judgment. He submits that “the UNDT found that the Contested Decision was a legitimate exercise of the Organization's discretion and that it had been taken in compliance

with the relevant legal framework” pursuant to Staff Regulation 1.2(c) and Section 2.5 of Administrative Instruction ST/AI/2010/3 (Staff selection system).

19. The Secretary-General also argues that the UNDT was correct in finding that Ms. Kanbar had been hired to perform language assistant functions throughout UNIFIL’s area of operation, and the Administration even annexed a job description detailing such requirement. Additionally, the Respondent also posits that LSU only had 88 of 109 language assistants prescribed to support 29 different military units and due to budgetary constraints, a continual redeployment of language assistants was necessary in order to meet the force’s operational requirements. He submits in this regard that the UNDT was correct in finding that Ms. Kanbar’s reassignment was part of a more comprehensive redeployment exercise within UNIFIL, which also involved eight other language assistants.

20. Regarding the allegation of bias or improper motive, the Secretary-General submits that the UNDT found no evidence showing such against Ms. Kanbar, and “the events cited by the Applicant, even if taken as true, are incapable of proving a harassment intent on the part of the author of the impugned decision.”

Considerations

Preliminary issues

Oral hearing

21. Ms. Kanbar requests an oral hearing, which she believes will be of assistance to the Appeals Tribunal. Oral hearings are governed by Article 8(3) of the Appeals Tribunal Statute (Statute) and Article 18(1) of the Appeals Tribunal Rules of Procedure (Rules). Under Article 18(1) of the Rules, a request for an oral hearing may be granted when it would “assist in the expeditious and fair disposal of the case.” As the Appeals Tribunal does not find that an oral hearing would assist it any further in resolving the issues on appeal, the request for an oral hearing is denied.

Additional Pleadings

22. Next, as a preliminary matter, Ms. Kanbar's motion for leave to file additional pleadings is refused. Neither the Statute nor the Rules of this Tribunal provide for an appellant to file an additional pleading after the respondent has filed his or her answer. Article 31(1) of the Rules and Section II.A.3 of Practice Direction No. 1 of the Appeals Tribunal allow the Appeals Tribunal to grant a party's motion to file additional pleadings only if there are exceptional circumstances justifying the motion. Ms. Kanbar has not demonstrated any exceptional circumstances which would justify the Appeals Tribunal exercising its discretion to allow her to file additional pleadings, especially when the requested pleadings essentially consist in the rebuttal of the pleadings comprised in the Respondent's answer.

Merits of the appeal

23. The issue on appeal is whether the UNDT erred in law or fact resulting in a manifestly unreasonable decision when it concluded that the administrative decision to reassign Ms. Kanbar was lawful.

24. Ms. Kanbar raises a variety of challenges to the correctness of the Dispute Tribunal's conclusions and additionally criticizes the justness and fairness of the UNDT's general approach and management of her case, i.e. by alleging that the UNDT erred when it considered her complaint was confined to an arbitrary redeployment order, and used a "principle of self-distancing" regarding her harassment complaint. Possibly because of her unrepresented status and hence her unfamiliarity with the requirements of pleading and the procedural rules, Ms. Kanbar might not have been fully able to figure out how to limit her grounds of appeal to any of the five ones set out in Article 2(1) of the Statute. From the considerable number of arguments she raises with this Tribunal, many of which concern immaterial issues falling outside the competence of the present jurisdiction, we glean only those which can be construed as demonstrating that the UNDT has committed an error of fact or law warranting intervention by the Appeals Tribunal.

25. The Appeals Tribunal emphasizes that the appeals procedure is of a corrective nature and, thus, is not an opportunity for a dissatisfied party to reargue his or her case. A party cannot merely repeat on appeal arguments that did not succeed before the lower court. The function of the Appeals Tribunal is to determine if the Dispute Tribunal made errors of fact or

law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as prescribed in Article 2(1) of the Statute. An appellant has the burden of satisfying the Appeals Tribunal that the judgment he or she seeks to challenge is defective. It follows that an appellant must identify the alleged defects in the impugned judgment and state the grounds relied upon in asserting that the judgment is defective.³

26. On appeal, Ms. Kanbar appears to be restating the claims which she made before the UNDT. She has failed to demonstrate that the UNDT committed any error of fact or law in arriving at its decision.

27. In the first place, we note that it was not within the remit of the UNDT to pronounce on the exercise of the Administration's discretion in deciding on the redeployment, unless there was evidence that the discretion was exercised arbitrarily or unlawfully. There is no evidence in the instant case to support the allegation of arbitrary and unlawful exercise of discretion by the Administration as it relates to the contested reassignment decision. Further, it was also not within the remit of the UNDT, as it is not for this Tribunal, to investigate harassment complaints under Article 2 of the Dispute Tribunal Statute (UNDT Statute).⁴ Quite different, however, is the issue that for the purpose of determining if the impugned administrative decision was improperly motivated, it is indeed within the competence of the UNDT to examine allegations of harassment. Therefore, this Tribunal will accordingly examine such claims.

28. We recall the Appeals Tribunal's jurisprudence confirming the Administration's discretion to appoint, transfer and promote staff. The Appeals Tribunal has held that as a matter of general principle, in exercising its judicial review, the Dispute Tribunal will not lightly interfere with the exercise of managerial discretion in matters such as staff transfers.⁵

³ *Cherneva v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-870, para. 30; *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, para. 19.

⁴ *Mashhour v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-483, para. 45.

⁵ See *Orabi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-884, para.19, citing *Beidas v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-685, para 18; *Abdullah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-482, para. 59.

29. Nevertheless, an administrative decision not to appoint, promote or transfer can be challenged on the grounds that the Administration has not acted fairly, justly or transparently. The staff member has the burden of proving such factors played a role in the administrative decision.⁶

30. When judging the validity of the Administration's exercise of discretion in administrative matters, as in the case of the above-mentioned decision, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The first instance Judge can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Administration amongst the various courses of action open to it. Nor is it the role of the Dispute Tribunal to substitute its own decision for that of the Administration.⁷ As we stated in *Sanwidi*, when the Dispute Tribunal (and the Appeals Tribunal) conducts a judicial review, it does not engage in a merit-based review:⁸

(...) Judicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision. This process may give an impression to a lay person that the Tribunal has acted as an appellate authority over the decision-maker's administrative decision. This is a misunderstanding of the delicate task of conducting a judicial review because due deference is always shown to the decision-maker, who in this case is the Secretary-General.

31. In the present case, the UNDT very thoroughly conducted a judicial review of the administrative decision under challenge. It properly reviewed the legality of the contested administrative decision from any possible angle in accordance with the applicable law and established the critical facts of the case. The lower tribunal was cognizant of the Appeals Tribunal's relevant jurisprudence governing the exercise of discretionary authority by

⁶ *Orabi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-884, para.20, citing *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, para. 26; *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-311, para. 32.

⁷ *Orabi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-884, para.21, citing *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, para. 27.

⁸ *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 42.

the Administration and applied correctly the right test that the latter had to pass, without substituting its own assessment for that of the Administration.

32. Firstly, following its review of the formal legality of the challenged decision, the UNDT thereafter examined its rationality, whereupon it reached the conclusion that due to budget constraints, a continual redeployment of language assistants was needed in order to meet the requirements of the military force. Ms. Kanbar's redeployment was part of a wider redeployment exercise within UNIFIL that also involved several other language assistants. Moreover, various considerations had been taken into account, as demonstrated by the initial proposal to have Ms. Kanbar move to the Italian Battalion instead of the Indonesian Battalion. As such, there were operational reasons for moving the language assistants around, and Ms. Kanbar had not been "targeted".⁹

33. We find that the evidence on record supports that finding. This Tribunal is satisfied with the detailed analysis of the totality of the evidence by the UNDT Judge and agrees with the well-reasoned conclusion reached. Ms. Kanbar's redeployment had, indeed, been taken on the grounds that the Organization had identified the need for additional support at the Indonesian Battalion, and the Chinese Constructing Engineering Unit had a female language assistant with the skills needed to provide that support.

34. Ms. Kanbar, as successfully submitted by the Secretary-General, and held by the UNDT, had been hired to perform her functions as a Language Assistant within the entire area of operations of UNIFIL. She was also not the only employee to be reassigned, as the Administration had also decided to reassign eight other language assistants, taking into account UNIFIL's operational priorities and needs. Therefore, we reject as without merit Ms. Kanbar's assertion to the contrary, namely that the contested reassignment was allegedly not in furtherance of the mission's operational requirements, because arguably there was no mail or administrative memo tasking LSU to redeploy her.

35. Next, the Appeals Tribunal finds no error in the UNDT conclusion that Ms. Kanbar had failed to establish that the decision to reassign her was tainted by improper motives, resulting from bias and animus based on an alleged ongoing harassment from her FRO regarding her work and sexual harassment from another coworker. Rather, the reassignment decision, as correctly determined by the UNDT, was a legitimate exercise of the Administration's

⁹ Impugned Judgment, para. 28.

discretion. It was based on the operational realities faced by UNIFIL and was justified in view of the deficiency in the number of the language assistants, which was such that it was not unreasonable or inappropriate to reassign Ms. Kanbar to the Indonesian Battalion.

36. Ms. Kanbar submits that the UNDT erred by finding that the challenged decision was an administrative action that complied with operational requirements, and by disregarding her complaint of harassment and abuse of authority.

37. The appellant asserts that the UNDT disregarded “the very heavy substantiated complaint details and points of harassment and abuse of authority which [had] been exercised for several months and years against [her].” In this regard, Ms. Kanbar contends that she had been “subjected to a very substantiated systematical line of bad actions, rumors, bad signs about her contract continuity, [d]aily harassment about her working details by her colleagues and her FRO Mr. [S.], and still yes the sad thing was that [she had been] still subjected to the sexual harassment of Mr. [J.]” Further, she argues that the reaction of UNIFIL regarding her complaint was not consistent with the mission of the United Nations and the regular calls of the Secretary-General regarding the prohibited conduct of harassment and discrimination and the Organization’s zero tolerance against sexual harassment.

38. In this regard, Ms. Kanbar submits that “[t]he mission operational requirements must not be used as a tool to justify and emplace personal leverage towards certain staff members or to justify decisions which harms or embarrasses other staff members.” The contested decision, she argues, “was taken in a unique manner against [her] with clear intentions, unprofessional, and unequal manner. It is malicious enough to describe the decision meets mission operational requirements.”

39. We do not agree. First of all, the UNDT addressed in detail each of the parameters of the alleged ulterior motives and found them unsound. It examined all of the critical facts, including the alleged work harassment and sexual harassment and came to the conclusion that Ms. Kanbar failed to meet the burden of proof that the decision was based on ulterior motives.¹⁰

40. We hold that the evidence supports these findings. As already noted, the comprehensive record, as established by the UNDT, demonstrates that the reassignment decision was objectively based on the operational needs and realities within the Organization

¹⁰ Impugned Judgment, para. 29.

whereas Ms. Kanbar has not made out her case about the improper motives. The mere allegations by Ms. Kanbar of her work harassment and sexual harassment by those mentioned in her complaint, as well as the impact and causal link of these alleged facts with the issuance of the challenged administrative decision, do not amount to proof of such motives. Last but not least, as rightly held by the UNDT:¹¹ “[t]o the extent the Applicant complains of having suffered harassment, including of a sexual nature, from other United Nations staff members, she remains to have in her disposal avenues provided under ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority). These allegations, however, have no relevance for the matter at hand.” We are satisfied with the above conclusions by the UNDT Judge.

41. Finally, the UNDT reviewed the legality of the contested reassignment decision even from the perspective of its compliance with the principle of proportionality, coming to the sound conclusion that Ms. Kanbar’s “additional commuting distance of 17 kilometers to INDOBATT does not present onerousness that would render the contested decision disproportionate. Commute and associated investment of time is commonplace. Undisputedly, many from among the language assistants have to spend time commuting to work.”¹²

42. It is obvious that Ms. Kanbar was not satisfied with the UNDT’s decision. She has failed, however, to demonstrate any error in the UNDT’s finding that the Administration’s decision to reassign her from the Chinese Constructing Engineering Unit to the Indonesian Battalion was not a valid exercise of its discretionary power. She similarly failed to show that the administrative action was tainted by improper motives or was otherwise unlawful. She merely voices her disagreement with the UNDT’s findings and resubmits her arguments to this Tribunal.

43. Ms. Kanbar has not met the burden of proof in demonstrating an error in the Impugned Judgment such as to warrant its reversal. The first instance Judge has broad discretion to determine the admissibility of evidence and the weight to accord evidence before him or her.¹³ The findings of fact made by the UNDT can only be disturbed under Article 2(1)(e) of the

¹¹ *Ibid*, para. 29.

¹² *Ibid*, para. 31,

¹³ *Verma v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-829, para.29.

Statute when there is an error of fact resulting in a manifestly unreasonable decision, which is not the case here. We hold that the UNDT gave careful and fair consideration to Ms. Kanbar's arguments regarding the legality of her reassignment.

44. For all these reasons, the Appeals Tribunal finds that the UNDT did not make errors of law and fact when it concluded that the reassignment of Ms. Kanbar was lawful.

45. Our conclusion that the UNDT did not make any errors of law or fact in dismissing Ms. Kanbar's challenge of the decision to reassign her precludes the Appeals Tribunal from awarding compensation. Since no illegality was found, there is no justification for the award of any compensation. As this Tribunal stated before, "compensation cannot be awarded when no illegality has been established; it cannot be granted when there is no breach of the staff member's rights or administrative wrongdoing in need of repair".¹⁴

46. Accordingly, the appeal fails.

¹⁴ *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, para. 34, citing *Kucherov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-669, para. 33.

Judgment

47. The appeal is dismissed, and Judgment No. UNDT/2020/046 is affirmed.

Original and Authoritative Version: English

Dated this 19th day of March 2021.

(Signed)

Judge Raikos, Presiding
Athens, Greece

(Signed)

Judge Colgan
Auckland, New Zealand

(Signed)

Judge Sandhu
Vancouver, Canada

Entered in the Register on this 7th day of April 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar