



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

Judgment No. 2021-UNAT-1087

**Paul Ories
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge John Raymond Murphy Judge Sabine Knierim
Case No.:	2020-1404
Date:	19 March 2021
Registrar:	Weicheng Lin

Counsel for Appellant:	George G. Irving
Counsel for Respondent:	Noam Wiener

JUDGE GRAEME COLGAN, PRESIDING.

Nature of Appeal

1. Paul Ories (Mr. Ories or Appellant), since 2009 an Associate Security Officer with the United Nations Mission in Iraq (UNAMI), appeals against the Judgment of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal). The UNDT dismissed Mr. Ories' challenge to the Secretary-General's (Respondent's) refusal to agree to his transfer to another duty station on medical grounds, and the Respondent's alleged negligent failure to comply with the duty of care owed to him by continued delay and ultimately refusal of his transfer request.¹ We will refer to these two causes of action as "Contested Decisions #1 and #2" respectively.
2. For the reasons set out in this Judgment, we refuse Mr. Ories' appeal.

The Relevant Facts and Procedure

3. On 6 December 2013, Mr. Ories was attacked and severely injured by a colleague while on duty in Erbil, Iraq. Six days later, he was repatriated to his home country, USA, for medical treatment and recovery. He was on certified sick leave until his return to Erbil on 18 September 2014, having then exhausted his sick leave entitlements. During this period of convalescence and recovery, in February 2014, Mr. Ories began treatment for Post-Traumatic Stress Disorder (PTSD) under the care initially of a psychologist (Dr. JB) and subsequently a psychiatrist (Dr. BS). Dr. BS completed several sick leave certifications for Mr. Ories, which included the psychiatrist's prognoses for his condition and a recommendation from the psychologist, Dr. JB. At all times, also, Mr. Ories was under the care of his primary physician (Dr. S), who provided medical reports on his condition and prognosis, which were influential in his treatment by UNAMI. It is significant for the decision of this case that for much of the period from 2014 shortly after his injury to early to mid 2019, Mr. Ories' medical assessments and prognoses assessed him as unfit for continued duties and recommended his retirement from United Nations security officer work.
4. Mr. Ories nevertheless returned to Erbil in September 2014. On 11 October 2015 and with the support of Dr. JB, his psychologist, Mr. Ories requested a transfer from Erbil to Kirkuk or Baghdad. This transfer was approved on 26 January 2016 with a recommendation that he be

¹ *Ories v. Secretary-General of the United Nations*, Judgment No. UNDT/2020/076 dated 28 May 2020 (Impugned Judgment).

moved to Kirkuk, but this decision was later rescinded (on 5 February 2016) because UNAMI said that it did not have a P2 post in that city under its approved budget for 2016. Mr. Ories made several subsequent requests for transfers to other duty stations, but none eventuated.

5. Also in 2014, Dr. BS, Mr. Ories' psychiatrist, recommended that his patient not return to Erbil so as to ensure he did not re-live the events of the attack on him. Dr. BS repeated this recommendation again in 2016. During that time, however, Mr. Ories continued to serve intermittently as his health permitted but otherwise took further sick leave on half-pay.

6. On 30 September 2018, Mr. Ories was advised of the latest refusal of his request to transfer, including that as from the end of August 2018 there had been no medical documentation supporting his request for reassignment to a duty station other than Erbil. This was the first decision of the Respondent challenged by the Appellant (Contested Decision #1). He again went on full-time sick leave from 9 September 2018 until 30 April 2019, using a combination of sick and annual leave entitlements. Mr. Ories sought management evaluation of Contested Decision #1 on 26 November 2018. On 24 May 2019, almost five months later, he was advised that, subject to medical clearance, his request to be reassigned to another duty station would be approved.

7. On 17 April 2019, Mr. Ories informed UNAMI's Chief Security Officer (CSO) that he had been cleared by the Medical Services Division (MSD) in New York to return to work as from 30 April 2019, but at a duty station other than Erbil. He re-expressed his wish, first conveyed in an earlier discussion with the CSO, to be placed in a vacant post in Baghdad. Four days later however, on 21 April 2019, the CSO announced to all relevant staff that someone else had been appointed to that post, known as Head of the Guard Force Unit in Baghdad. Mr. Ories regarded this as the rejection of his request to be assigned to the post, and it formed the basis of his second complaint to the UNDT (Contested Decision #2).

8. On 23 April 2019, Mr. Ories sought management evaluation of Contested Decision #2. This was refused, also on 24 May 2019, because in the view of the Management Evaluation Unit (MEU), the CSO's announcement of another as appointee to the Baghdad post did not constitute a negative decision of his request for reassignment.

9. On 25 June 2019, Dr. BS, Mr. Ories' psychiatrist, certified in writing that, because of the delays in relocating him to another duty station despite medical recommendations that this be done, Mr. Ories then suffered from "chronic PTSD and chronic major depressive disorder." It was

said that the residual effects of this had caused a partial degree of impairment of 10 percent of “the whole person” and which was permanent or likely to continue until his separation from service.

10. With effect from 11 July 2019, Mr. Ories resumed duties on reassignment to Basra but remained working from home in the USA pending the issue of an Iraqi visa, until, on a date that is unclear, he became able to take up his duties again with UNAMI in Basra.

11. Mr. Ories had claimed compensation for his injuries from the Respondent’s Advisory Board for Compensation Claims (ABCC) which, on 10 November 2015, recommended that these injuries be treated as service-incurred so that the costs of medical treatment would be met by the Organisation. That recommendation was approved on 9 December 2015. It appears that Mr. Ories had also applied to ABCC for compensation for his loss of functions and permanent disability, although it is likewise unclear when this application was made, or what its outcome was.

12. On 6 April and on 18 June 2019, Mr. Ories filed his applications with the UNDT challenging Contested Decision #1 and #2 respectively. The two proceedings were subsequently consolidated.

The UNDT Judgment

13. The UNDT first concluded that Mr. Ories’ appeal relating to Contested Decision #1 was not receivable by it because he had not made a claim to the MEU in negligence (delay in dealing with his requests for transfer) against the Respondent, but rather only about his requested transfer. The UNDT held that its only jurisdiction was to consider whether the refusal to transfer was lawful. The claim was dealt with as not receivable also because it was filed out of time. The UNDT held that the decision rescinding the transfer offer was made in 2016, whereas the claim was not filed until 2019.

14. The UNDT nevertheless went on to determine the substantive merits of Mr. Ories’ case in essence deciding at para. 29 of its Judgment:²

There is no staff rule or regulation mandating a right to reassignment on medical grounds. In any event there was no basis for the transfer from the documentation provided by the Applicant’s doctor. The Applicant’s medical report of 17 September 2018 stated that he “is unable to perform any duties in his line of work with the United Nations” and recommended “*early medical retirement*” and “*permanent disability*”. It was not until 11 April 2019 that the Applicant was cleared to return to work at the end

² Impugned Judgment, para. 29, emphasis added.

of his latest sick leave period which expired on 1 May 2019. Thereafter the MSD only certified him by email dated 4 June 2019 as cleared to return to work. There is no basis for compensation as the Applicant has already availed himself of his sick leave entitlements under staff rule 6.2.

15. Turning to Contested Decision #2, the UNDT ruled that the broadcast announcement of another's appointment was not an administrative decision reviewable under Article 2(1)(a) of the Statute of the United Nations Dispute Tribunal (UNDT Statute). Further, the UNDT held that Mr. Ories suffered no adverse outcome from it as he was then on paid sick leave receiving all of his remuneration and other benefits, and there was no regulatory requirement for the Respondent to require the Organisation to reassign Mr. Ories to Baghdad on medical grounds. The UNDT also found that at the time of the second application, there was no pending decision refusing to assign the Appellant to a post at a duty station other than Erbil.

16. At para. 32 of its Judgment, the UNDT added: “[T]he Respondent was bound to take into consideration that the medical reports put forward by the Applicant from September 2018 to April 2019 certified him as unfit to return to work. The decision to fill the Baghdad position would have been made long before the broadcast of the result. The decision was taken before the Applicant was cleared as fit to return to work.”

17. The UNDT also found Mr. Ories' application to be moot because, when he was first cleared to work from sick leave on 1 May 2019, the Administration accordingly assigned him to a duty station other than Erbil, with effect from 24 May 2019. It was after that date, i.e. on 4 June 2019, that he filed his case in the UNDT relating to Contested Decision #2.

Submissions

Mr. Ories' Appeal

18. Mr. Ories filed his appeal on 17 June 2020, and the Respondent filed his answer on 17 August 2020. The Appellant challenges the UNDT Judgment, dismissing both of his applications over the failure of the Organisation to fulfill its duty of care to staff with medical requirements. In particular, the Appellant makes the following arguments.

19. He alleges that the UNDT erred in its assessment that the refusal to reassign him dated back to 2014 and that he had failed to file a timely challenge. The Appellant contends that the information about what happened in 2014 was only provided for background.

20. The two contested decisions were challenged timeously through the MEU, in which Appellant did in fact argue that the Administration had breached its duty of care in not offering him accommodations for his medical condition.

21. The Appellant claims that the UNDT erred when it ignored the clear jurisprudence regarding the time limit for challenging an administrative decision for non-selection, which runs from the date the affected staff member becomes aware of the decision (i.e. the broadcast e-mail constituted such notice to Appellant that he was not selected for the Baghdad post).

22. The Appellant refers to General Assembly resolution 70/170, the Convention on the Rights of Persons with Disabilities, Secretary-General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority), Secretary-General's Bulletin ST/SGB/2014/3 (Employment and accessibility for staff members with disabilities in the United Nations Secretariat) all pertaining to accommodations that should have been offered to him and were not.

23. He argues that he was never totally disabled, and the medical reports he provided did specify that he could return to work except in Erbil.

24. The Appellant clarifies that he never claimed material losses and withdrew his claim over refusal to assign him, once he was transferred to Basra. Rather, his claim was based on the effects of the Organisation's delay on his mental health.

25. He contends that the UNDT erred when it failed to distinguish between the fact that the Appellant was not fit to return to Erbil, but that he was fit to return to work at other locations.

26. Citing *Lahoud*,³ the Appellant also argues that his case was not made moot by his reassignment to Basra, because he had already sustained damage from the prolonged handling of his request for reassignment by the Organisation.

³ *Lahoud v. Secretary-General of the United Nations*, Judgment No. UNDT/2017/009, para. 23.

27. Additionally, citing *Cohen*,⁴ *Haroun*,⁵ and *Dalgamouni*,⁶ the Appellant argues that he is entitled to compensation of two years' net base pay because of the prolonged duration of the handling of his request for reassignment.

The Respondent's Answer

28. The Respondent submits the UNDT correctly held that any decisions that may have been made in 2014 and 2016 and were not challenged at that time were not receivable within time following Staff Rule 11.2(c) and Article 8(3) of the UNDT Statute.

29. The Appellant cannot succeed by arguing as he does, i.e. Mr. Ories contended that the 2014 and 2016 decisions were not part of the present applications, and yet they should serve as grounds showing the unreasonable delay, or that the Organisation was negligent, and that he should be awarded compensation on that basis.

30. The UNDT also correctly held that it had lacked jurisdiction to adjudicate the negligence claim. The Respondent argues that both claims for compensation for negligence by the Respondent were not receivable because the Appellant never made or submitted a negligence claim to the Respondent. The Secretary-General argues citing, Article 2 of the UNDT Statute, and *Benamar*,⁷ and *Wamalala*,⁸ that because a negligence claim was never submitted, the Organisation never made a decision on a negligence claim, and as such, UNDT lacked jurisdiction to adjudicate such claim, as does the Appeals Tribunal now.

31. The UNDT correctly held that the Respondent was not obligated to reassign the Appellant to a different duty station because of a medical condition. The Respondent argues that Appellant misconstrued recommendations stemming from General Assembly resolution 70/170, ST/SGB/2008/5 and ST/SGB/2014/3, all pertaining to accommodations, as instructions when in fact they are just recommendations.

32. The Respondent cites Staff Regulation 1.2(c) granting the Secretary-General broad discretion to assign staff and that absent any wrongdoing, the UNDT should not interfere. Specifically, citing Staff Rule 6.2, Respondent argues that when a staff member is unable to

⁴ *Cohen v. Registrar of the International Court of Justice*, Judgment No. 2017-UNAT-716.

⁵ *Haroun v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-720.

⁶ *Dalgamouni v. Secretary-General of the United Nations*, Judgment No. UNDT/2016/094.

⁷ *Benamar v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-797, para. 48.

⁸ *Wamalala v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-300, para. 25.

carry out assigned duties, then he/she shall be placed on sick leave. In fact, following the first contested decision and the Appellant was unable to perform his duties at the assigned duty station, he was placed on paid sick leave and received his salary and benefits – he did not suffer any pecuniary loss. As such, the Secretary-General conformed with his obligations under the Staff Regulations and Rules.

33. At the time of the second contested decision also, the Appellant continued receiving his full salary and benefits. The Respondent posits that by virtue of a post opening in Baghdad, that did not change the Administration's obligations under Staff Regulations and Rules. The Respondent also argues that the Appellant did not claim that the selection for the Baghdad position was made in violation of any applicable rules and regulations.

34. The Respondent submits that the medical reports (prior to 11 April 2019) did not support reassignment. Rather, they recommended that Appellant be permitted to take early retirement or be granted permanent disability. The medical reports (prior to 11 April 2019) provided that his prognosis was poor and stated that the Appellant needed permanent disability status and was not capable of returning to work in any capacity. These prognoses did not suggest that the Appellant could work in a duty station other than Erbil. It was not until the 11 April 2019 report that it was mentioned that the Appellant could return to work to a location other than Erbil.

35. The Respondent also argues that the UNDT correctly held that the moral damages claim was unsustainable as the Appellant had failed to show how Respondent acted unlawfully and that the Appellant could not base such claim on the 2014 and 2016 decisions, which were not reviewable.

36. Finally, the Respondent also referred to the following significant dates: on 1 May 2020 the Appellant's doctor cleared him for service, and on 24 May 2020 the Appellant was notified of his reassignment. As such, there was no unreasonable delay, and the Appellant cannot bring a claim originating from 2014 and 2016, when events that occurred then were never challenged at the time.

Considerations

37. We agree with the UNDT that, to a significant extent, the Appellant's two separate contested decision-based causes of action, overlap and merge. In essence, they are both complaints, albeit the first more general and the second more specific, that UNAMI did not accommodate Mr. Ories by reassigning him to another post in Iraq after he had returned to that country following his convalescence. As we have already referred to, for most of the period during which the Organisation's actions or inactions are complained of, the medical information it had about Mr. Ories certified his inability to continue to perform the no-doubt demanding and stressful work of an associate security officer and recommended his retirement as disabled on medical grounds. We infer that it was his decision, if not contrary to then taking informed account of his medical advisers' opinions, to continue to remain in his post, both in his home country of the USA and in Iraq on a combination of sick leave, annual leave and on half pay and hoping for a transfer to another location. The UNDT concluded, correctly, that Mr. Ories did not seek, within the time prescribed for doing so, management evaluation reviews of the refusals of those requests for transfer which were declined. That was an essential prerequisite for applying to the UNDT to challenge those refusals. Although this alone would be sufficient, as the UNDT also concluded, to have disposed of the first proceeding brought by Mr. Ories, the UNDT also proceeded to consider and decide the merits of this case. For completeness, we will also review this decision of the UNDT.

38. Although, for cases such as Mr. Ories' it might be thought desirable to have a Staff Regulation or Staff Rule provision addressing changes of post for medical reasons, it has not been shown that he had a right to consideration of his requests to this effect and to a transfer or reassignment if conditions warranting this were fulfilled. As the UNDT concluded, Staff Regulation 1.2(c) and Staff Rule 6.2 do not so provide. In any event, as we have already noted, it was not until April 2019 that medical confirmation of the desirability of such a reassignment was brought to UNAMI's attention by Mr. Ories, following which he was recommended for such a transfer and one was effected within a matter of weeks. The UNDT did not err in this assessment of the merits of Mr. Ories' case.

39. Turning to the second challenged decision, that which the Appellant says was conveyed to him on 21 April 2019 with the announcement of someone else's appointment to a role in Baghdad, which Mr. Ories had sought on transfer a few days previously, we are similarly not persuaded that the UNDT erred in rejecting this complaint. While we would allow that the

announcement on 21 April of an appointment to a role for which Mr. Ories had expressed a wish some four days previously and upon having been medically cleared to return to work, might have implied that he had not been reassigned to that role, there is no evidence as to why the Appellant ought to have been appointed. That is even assuming that the appointment had not been made by 17 April so that Mr. Ories' request was not too late. The absence of a rule-based entitlement to seek such a reassignment and for its consideration on statutory grounds already referred to in this judgment, again disadvantages Mr. Ories on this aspect of his appeal.

40. Penultimately, there is the fact that following his medically-supported advice to the Organisation on 17 April 2019 that he was able to return to duties at another post as from 30 April, he was promptly reassigned to duties at Basra with effect from 11 July 2019. We agree with the UNDT that this caused to be moot his claims to such a reassignment.

41. Finally, this leaves only Mr. Ories' claims in negligence against the Secretary-General relating to the alleged delays in reassigning him, which he says survive the now mootness of his original claim to reassignment. We agree with the UNDT that this is a sufficiently different claim to that seeking reassignment, that it should have been, but was not, subjected to management evaluation. As already noted, the failure of this jurisdictional prerequisite precluded it from being received by the UNDT. But substantively also, we agree with the UNDT that at all material times that might be covered by such a claim, the medical information furnished to the Organisation was that Mr. Ories was so disabled by his 2013 ordeal and injuries, that he should be retired medically. Faced with that evidence, together with the fact that he remained employed and in receipt of income, albeit on leave and at times, on half pay, for more than five years, Mr. Ories would face insurmountable obstacles to establish both that UNAMI had been negligent in not reassigning him and that he had suffered losses thereby.

Judgment

42. For the foregoing reasons, Mr. Ories' appeal must fail and is dismissed. The UNDT Judgment is affirmed.

Original and Authoritative Version: English

Dated this 19th day of March 2021 in New York, United States.

(Signed)

Judge Colgan, Presiding
Auckland, New Zealand

(Signed)

Judge Murphy
Cape Town, South Africa

(Signed)

Judge Knierim,
Hamburg, Germany

Entered in the Register on this 15th day of April 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar