



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

Judgment No. 2024-UNAT-1470

**Nina Humackic
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Kanwaldeep Sandhu, Presiding Judge Nassib G. Ziadé Judge Leslie F. Forbang
Case No.:	2023-1824
Date of Decision:	28 June 2024
Date of Publication:	13 August 2024
Registrar:	Juliet E. Johnson

Counsel for Appellant: George G. Irving

Counsel for Respondent: Noam Wiener

JUDGE KANWALDEEP SANDHU, PRESIDING.

1. Ms. Nina Humackic, a staff member at the United Nations Interim Force in Lebanon (UNIFIL), contested a decision to laterally transfer her from the position of Contracts Management Officer (CMO), FS-6, to the position of Procurement Officer (PO), FS-6 (the contested decision).
2. By Judgment No. UNDT/2023/041, the United Nations Dispute Tribunal (UNDT) dismissed the application on the merits (the impugned Judgment).¹
3. Ms. Humackic appeals to the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure²

5. On 1 November 2009, Ms. Humackic joined UNIFIL as a Budget and Finance Assistant at the FS-5 level.³ On 1 August 2018, she was promoted to the CMO post at the FS-6 level.
6. On 12 March 2021, after Ms. Humackic's complaints of harassment and abuse of authority against her first reporting officer (FRO), the Head of Mission/Force Commander (HoM/FC) took administrative action with a reprimand to the FRO and a caution to the FRO against retaliation.⁴
7. On 9 December 2021, the Officer-in-Charge of the Regional Conduct and Discipline Section (OiC/RCDS) recommended suspension of the supervisory relationship between the two staff members and that allegations raised by both staff members be addressed by way of administrative action.⁵
8. In December 2021 and January 2022, after Ms. Humackic's further complaints of harassment, retaliation and hostile working environment against her FRO, the United Nations Ombudsman and Mediation Services (UNOMS) carried out mediation sessions with the parties

¹ *Humackic v. Secretary-General of the United Nations*, Judgment dated 30 May 2023.

² Summarized from the impugned Judgment as relevant to the appeal.

³ Impugned Judgment, para. 6.

⁴ *Ibid.*, paras. 8-19.

⁵ *Ibid.*, para. 19.

without reaching an agreement.⁶ In the application to the Dispute Tribunal, Ms. Humacki stated that UNOMS' recommendation was to change reporting lines to separate the supervisory relationship between the parties.⁷

9. On 13 May 2022, the Director of Mission Support (D/MS) met separately with the parties to advise them on the possibility of reassignment.⁸

10. By memorandum dated 2 June 2022, Ms. Humackic was informed of the contested decision.⁹ The HoM/FC wrote:¹⁰

1. Please be informed that under my delegated authority, I have decided to laterally reassign you from the Acquisitions Management Section, [Office of] Supply Chain Management[,] to the Procurement Section within the same Pillar effective 1 July 2022.

2. Please be further informed that you will be reassigned from the Contracts Management Unit [CMU] with your current post# 30042307, which will be loaned to the Procurement Section, where you will assume the functions of FS-6 Procurement Officer.

11. The FRO was reassigned to the position of Chief Contingent Owned Equipment at the P-4 level effective 1 July 2022.¹¹

12. On 10 June 2022, Ms. Humackic requested management evaluation of the contested decision and on 22 July 2022, the Management Evaluation Unit informed her that the contested decision was upheld.¹²

13. On 5 September 2022, Ms. Humackic challenged administrative inaction regarding certain complaints of harassment and abuse of authority she had made against her FRO (Case No. UNDT/NBI/2022/076).¹³ The UNDT dismissed that application as not receivable on 24 March 2023 (Judgment No UNDT/2023/019).¹⁴ That Judgment was not appealed.

⁶ *Ibid.*, para. 20. Annex 4 to the appeal is an e-mail setting out the mediator's recommendation to Ms. Humackic. It seems to be subject to settlement privilege as communication in the mediation process. This e-mail should not be part of the panel file. We will disregard it.

⁷ Mr. Humackic's application before the UNDT, Section VII, para. 4; impugned Judgment, para. 21.

⁸ Impugned Judgment, para. 23.

⁹ *Ibid.*, para. 24.

¹⁰ 2 June 2022 memorandum (Annex 5 to the appeal).

¹¹ Impugned Judgment, para. 26.

¹² *Ibid.*, paras. 25 and 29.

¹³ *Ibid.*, para. 3.

¹⁴ *Ibid.*, para. 4

14. On 20 October 2022, Ms. Humackic filed her application in the present case with the UNDT.¹⁵

The impugned Judgment

15. In the impugned Judgment, the UNDT found that the case involved two formal complaints by Ms. Humackic alleging workplace harassment by her FRO.¹⁶ The UNDT noted that one complaint dated 23 May 2019 resulted in the reprimand of the FRO and the second complaint of 24 November 2021 resulted in the reassignment of both Ms. Humackic and her FRO.¹⁷ Therefore, the UNDT held that the propriety of the contested decision had to be evaluated in the context of Secretary-General's Bulletin ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority) and related administrative issuances.¹⁸ The procedural steps mandated by ST/SGB/2019/8 were not accurately followed and that justifiably may have caused her to feel dismissed, or even penalized, by a dry announcement of her own reassignment.

16. The UNDT noted that ST/SGB/2019/8 contemplated reassignment only as an interim measure.¹⁹ Section 5.7(b) of Administrative Instruction ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process) suggests that reassignment is a measure to be applied after an investigation. The same results from Sections 7.5(b) and 9.1(b). There had been no allegation of unsatisfactory conduct against Ms. Humackic and no investigation had been conducted.

17. However, differentiating reassignment as a response to unsatisfactory conduct from reassignment for operational needs, the UNDT held that re-assignment may be applied by way of a managerial action notwithstanding the limiting wording of Section 5.7 of ST/AI/2017/1.²⁰ The broad discretion of the Organization to use its resources and personnel as it deems appropriate provided in Staff Regulation 1.2(c) cannot be fettered by a subordinate act which is ST/AI/2017/1.

¹⁵ *Ibid.*, para. 1.

¹⁶ *Ibid.*, para. 42.

¹⁷ *Ibid.*, paras. 26 and 43.

¹⁸ *Ibid.*, paras. 44-50.

¹⁹ *Ibid.*, paras. 51-52.

²⁰ *Ibid.*, paras. 52-53.

18. The UNDT found that maintaining a harmonious work environment and the prevention of prohibited conduct was a valid operational reason for reassignment.²¹ The four-year acrimony must have contributed to a negative working environment for other staff members within the Acquisitions and Management Section. Also, in the absence of misconduct and because both staff members were equally intransigent and responsible for the perpetuation of the conflict, the reassignment of both staff members was both fair and in the best interest of UNIFIL. It prevented the potential of creating a sense of one staff member prevailing over another, a demoralizing effect, and a continuing of the acrimonious situation between adversaries.

19. The UNDT accepted that the managerial action in relation to Ms. Humackic had not been disproportionate.²² The PO post was at the same level and commensurate with her qualifications, as evidenced by the fact that the Organization associates the job codes for PO and for CMO for purposes of roster selection and she was rostered for the PO post. Moreover, she listed experience in procurement-related work and training in her Personal History Profile (PHP). The fact that the PO post would require additional training does not render her unqualified and the reassignment disproportionate. Furthermore, possibilities to more closely define her tasks within the current office placement in a way that could meet her experience and reasonable expectations were not foreclosed. There is no evidence of economic prejudice against her, as she remains a holder of a continuing appointment and serves on a budgeted post.

20. The UNDT observed that Ms. Humackic had been aware of the recommendation to move her and her FRO apart and had the opportunity to voice her concerns.²³ Finally, there is no evidence of an improper motive. To the contrary, UNIFIL had dedicated extensive time and human resources over four years in an attempt to address her grievance and manage her conflict with her supervisor.

21. The UNDT concluded that, despite the procedural shortcomings, the contested decision conformed with the law and, absent illegality, the question of compensation did not arise.²⁴

²¹ *Ibid.*, para. 54. The UNDT noted that it was confirmed by everyone involved in the process—the D/MS, the OiC/RCDS, the United Nations Ombudsman and Mediation Services (UNOMS) as well as the conflicted staff members—that maintaining the existing supervisory relationship had been untenable and that changing of the reporting lines had been impossible within the structure of CMU. As confirmation that it was no longer reasonable to expect that either staff member would be able to work cooperatively, the UNDT also referred to the failure of repeated mediation efforts.

²² Impugned Judgment, paras. 55-56.

²³ *Ibid.*, paras. 57-58.

²⁴ *Ibid.*, para. 59.

Submissions

Ms. Humackic's Appeal

22. Ms. Humackic requests the Appeals Tribunal to vacate the impugned Judgment, rescind the contested decision, effectively returning her to her duties as CMO, and award compensation for harm to her *dignitas*, including professional reputation and legitimate career expectations, and her well-being in the amount of two years' net base salary.

23. Ms. Humackic argues that the UNDT erred in law in finding that the contested decision fell within the Administration's broad discretion to assign staff members to posts and was a proper exercise of that discretion. No evidence was provided of a "negative working environment" for other staff members within the CMU. Also, there is no determination that both staff members were equally responsible for the perpetuation of the conflict. Unlike her FRO, she was not found to have engaged in unsatisfactory conduct.²⁵ The UNDT's justification for the fairness of the reassignment was based on a false assumption. The UNDT's justification of preventing a sense of triumph and defeat or one staff member prevailing over another is ambiguous and, in any event, clearly apposite to the purpose of anti-harassment policy and with no basis in law. The UNDT's reference to extensive time and human resources necessary for managing her conflict with her supervisor suggests rationalizing retaliation.

24. Ms. Humackic submits that there was no operational need for her reassignment. The question remains why her reassignment was necessary after her complaint about harassment had been closed and the reassignment of her FRO removed her from the reporting line. Under the circumstances, her future job security is put into question. The outcome effectively penalizes her for having spoken out against harassment.

25. Ms. Humackic contends that the UNDT also erred on a question of fact in finding that the position to which she was assigned was commensurate with her skills and experience. Procurement is a highly specialized field that requires training and certification at the professional level that she does not possess.²⁶ It has never been addressed that clearance from the Procurement Division, approval from the Office of Supply Chain Management and delegation of procurement

²⁵ Ms. Humackic refers to the Letter of Reprimand (Annex 6 to the appeal).

²⁶ Ms. Humackic refers to a 29 December 2021 memorandum from the Office of Supply Chain Management (Annex 7 to the appeal). She also notes that the reference, in her CV, to procurement experience was merely to a general familiarity with the topic but that she has no experience in procurement at the United Nations.

authority, which she does not have, are required to perform the normal duties in a generic job description of a Procurement Officer at the FS-6 level. This places her in an untenable situation. Furthermore, it appears curious that no prior consultation took place in her case.

26. Ms. Humackic submits that the UNDT erred in adopting the Secretary-General's unproven assertion that she was rostered for the PO post. No evidence was produced that the job codes used for PO and CMO are "associated" and that the rosters are interchangeable. The only job titles associated with CMO are Supply Chain and Requisition Officer and Acquisition Planning Officer. Moreover, they involve different job families.

27. Referring to medical reports in Annex 9 to the appeal, Ms. Humackic asserts that she has provided medical evidence corroborating the serious effects of the contested decision on her well-being.

The Secretary-General's Answer

28. The Secretary-General requests the Appeals Tribunal to dismiss the appeal.

29. The Secretary-General argues that the UNDT correctly held that Ms. Humackic was reassigned lawfully. Her transfer was not arbitrary. The argument relying on the reprimand of her FRO erroneously treats reassignment as a disciplinary action. Her reassignment should not be understood as a reproach of her conduct. Furthermore, the authority of the HoM/FC to reassign her was not limited to ST/SGB/2019/8. Her reassignment was unrelated to the policy for addressing harassment but, as the UNDT correctly held, decided pursuant to Staff Regulation 1.2(c). Her argument relying on ST/SGB/2019/8 is misconstrued.

30. The Secretary-General contends that the UNDT correctly determined that Ms. Humackic was assigned to a position of equal level that was commensurate with her skills.

31. The Secretary-General submits that Ms. Humackic's related arguments are unsupported by the evidence and/or inapposite. Her reassignment kept her within the same job network—the Logistics, Transportation & Supply Chain Network—and merely moved her to a different stage in the supply chain management, from the contract management stage to the contract procurement stage.²⁷ The Organization's career development framework intends for staff members to switch between jobs within the job network. Contrary to her claims, the evidence demonstrates that

²⁷ The Secretary-General refers to a list of United Nations job networks (Annex 2 to the answer).

CMOs and POs belong to the same job network. Consequently, she was listed as being rostered for both the CMO post and the PO post, demonstrating that the Organization considered her qualified for both.²⁸

32. Finally, the Secretary-General argues that all individuals hired to serve as POs in the Organization undergo training to familiarize them with the Organization's procurement policies and Ms. Humackic is receiving procurement training.

Considerations

33. The central issue in the appeal is whether the administrative decision to laterally reassign Ms. Humackic to the position of a FS-6 Procurement Officer was lawful.

34. The Secretary-General, and therefore, the Administration, has discretion to reassign staff members within certain parameters.

35. Staff Regulation 1.2(c) governing basic rights and obligations of staff provides:²⁹

Staff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations. In exercising this authority, the Secretary-General shall seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them.

36. However, the Administration must exercise this discretion judiciously. In *Silva*, we outlined the established jurisprudence, that a reassignment decision must be properly motivated and not tainted by improper motive or taken in violation of mandatory procedures, “[i]t can be impugned if it is found to be arbitrary or capricious, motivated by prejudice or extraneous factors, or was flawed by procedural irregularity or error of law”.³⁰

Whether the Secretary-General followed proper procedure in reassigning Ms. Humackic

37. In the impugned Judgment, the Dispute Tribunal held that there were procedural shortcomings in handling Ms. Humackic's 24 November 2021 complaint but that the

²⁸ The Secretary-General refers to Inspira confirmation of roster memberships (Annex 3 to the answer).

²⁹ Secretary-General's Bulletin ST/SGB/2018/1/Rev.2 (Staff Regulations and Rules of the United Nations).

³⁰ *Cristina Silva v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1223, para. 70 (internal citation omitted).

reassignment was lawful. Ms. Humackic says that ST/SGB/2019/8 contemplates reassignment only as an interim measure and does not authorize or envisage the removal of a complainant from his or her position without consent.

38. We do not disagree that the Administration likely failed to follow the proper procedure set out in ST/SGB/2019/8 in responding to and investigating prohibited conduct alleged in Ms. Humackic's complaint dated 24 November 2021. The contentious environment due to the relationship between Ms. Humackic and her FRO is the context in which the reassignment decision was made. However, the appropriateness of whether proper procedure in ST/SGB/2019/8 was followed is not before the Appeals Tribunal in this appeal.

39. The issue of the Administration's inaction with respect to the complaint was adjudicated in a separate Dispute Tribunal case and Judgment No. UNDT/NBI/2022/076 where the Dispute Tribunal found the application not receivable. Therefore, we are perplexed as to the relevancy of the Dispute Tribunal's finding in the impugned Judgment that the procedural steps mandated by ST/SGB/2019/8 as relating to misconduct and prohibited conduct were not accurately followed.

40. Further, in a Case Management Session, the Dispute Tribunal bifurcated the applications and informed Ms. Humackic that the present application would proceed on her claim for compensation for the reassignment decision.

41. Therefore, the handling of her complaint was the subject of another Dispute Tribunal case and Judgment, and the procedural shortcoming of the complaint process was adjudicated in that matter.

42. In the reassignment decision that is the subject of this appeal, Ms. Humackic argues that the Administration required her consent for the reassignment. We find this argument misplaced. There is no such requirement in the applicable legal and administrative framework or in the jurisprudence of the Appeals Tribunal.

43. Staff Regulation 1.2(c) specifically requires that the Secretary-General, in exercising the authority to reassign, must "seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them". There is no procedural requirement that the staff member consent to the reassignment.

44. In terms of the nature of “consultation” with a staff member, in *Silva*, we clarified that it is sufficient consultation regarding a reassignment decision for the Administration to provide information about the intended administrative decision to the staff member and to give them an opportunity to comment.³¹ In the present case, Ms. Humackic was aware of UNMOS’ recommendation to separate her from the FRO and had the opportunity to voice her concerns. She was also informed of the decision to reassign her on 2 June 2022, nearly a month before she took up the new post. This gave Ms. Humackic ample opportunity to comment on the transfer, and in fact, she requested management evaluation during that time on 10 June 2022. There is no requirement that the “Administration discusses [*sic*] the reasons for the intended administrative decision in detail with the staff member or even must be ‘open’ to negotiate and reconsider issuing the administrative decision”.³²

45. As we have further noted in *Silva*:³³

(...) The accepted method for determining whether the reassignment of a staff member to another position was proper is to assess whether the new post was at the staff member’s grade; whether the responsibilities involved corresponded to his or her level; whether the functions to be performed were commensurate with the staff member’s competence and skills; and, whether he or she had substantial experience in the field.

46. We accept the Secretary-General’s evidence that Ms. Humackic was reassigned laterally to a post at the same FS-6 level. Her previous position as FS-6 Contracts Management Officer qualified her for appointment in the new position as FS-6 Procurement Officer as well as FS-6 Acquisition Planning Officer as the three positions require related skills. In addition, Procurement and Contracts Management belong to the same job network. In her PHP, Ms. Humackic confirmed that she had “extensive experience in contract management, requisitions, procurement, budget and finance”.³⁴

47. Despite Ms. Humackic’s argument that she required training and certification in procurement, we accept the Secretary-General’s evidence that these mandatory training courses for the FS-6 Procurement Officer are a prerequisite for all qualified staff. In a

³¹ *Silva* Judgment, *op. cit.*, para. 77.

³² *Ibid.*

³³ *Ibid.*, para. 70 (internal citation omitted).

³⁴ Annex R/6 to the Secretary-General’s reply before the UNDT.

29 December 2021 communication, the Assistant Secretary-General confirmed the mandatory training and certification requirements for all procurement personnel.³⁵

48. Therefore, we accept that the responsibilities and job functions were commensurate with Ms. Humackic's competence, skills, and experience. The job functions of the two positions do not need to be identical.

49. Ms. Humackic says that the reassignment has placed her in a "less favourable position" because the post in the Procurement Section is technically being "loaned" for a limited duration, putting her future job security in question. We accept the Secretary-General's evidence that because her post was transferred with her, there was no change to the funding source for the post or any increased risk to future job security. Further, Ms. Humackic suffered no economic prejudice with the lateral reassignment.

50. Therefore, we find that the procedural requirements of the reassignment decision were met.

Whether there was an operational need for the reassignment and whether the reassignment decision was properly motivated

51. Ms. Humackic says that the Dispute Tribunal erred in its finding that the reassignment due to operational needs was justified. She argues that her reassignment to another office was not necessary after the harassment complaint was closed and her FRO was reassigned, removing her FRO as her supervisor.

52. We agree with the Dispute Tribunal that the Administration dedicated extensive time and human resources managing the conflict between Ms. Humackic and her FRO over four years, including mediation efforts. This four-year acrimony would have contributed to a negative working environment for other staff members within the CMU.

53. The Dispute Tribunal correctly held in the impugned Judgment that maintaining a harmonious work environment and the prevention of prohibited conduct was a valid operational reason for the reassignment as the D/MS, OiC/RCDS and UNOMS all confirmed that continuing the existing supervisory relationship between Ms. Humackic and her FRO was untenable and that changing the reporting lines was not possible, given the structure of the

³⁵ Annex 7 to the Secretary-General's reply before the UNDT.

CMU. Therefore, the reassignment decision for both Ms. Humackic and the FRO was fair and in the CMU's best interest operationally.

54. Finally, we find no error in the Dispute Tribunal finding that there was no evidence of an improper motive in the reassignment decision.

Conclusion

55. In conclusion, we find that the Dispute Tribunal did not err in finding the reassignment decision to be lawful. As the reassignment decision has been found lawful, Ms. Humackic is not entitled to receive any compensation.

Judgment

56. Ms. Humackic's appeal is dismissed, and Judgment No. UNDT/2023/041 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 28th day of June 2024 in New York, United States.

(Signed)

Judge Sandhu, Presiding

(Signed)

Judge Ziadé

(Signed)

Judge Forbang

Judgment published and entered into the Register on this 13th day of August 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar