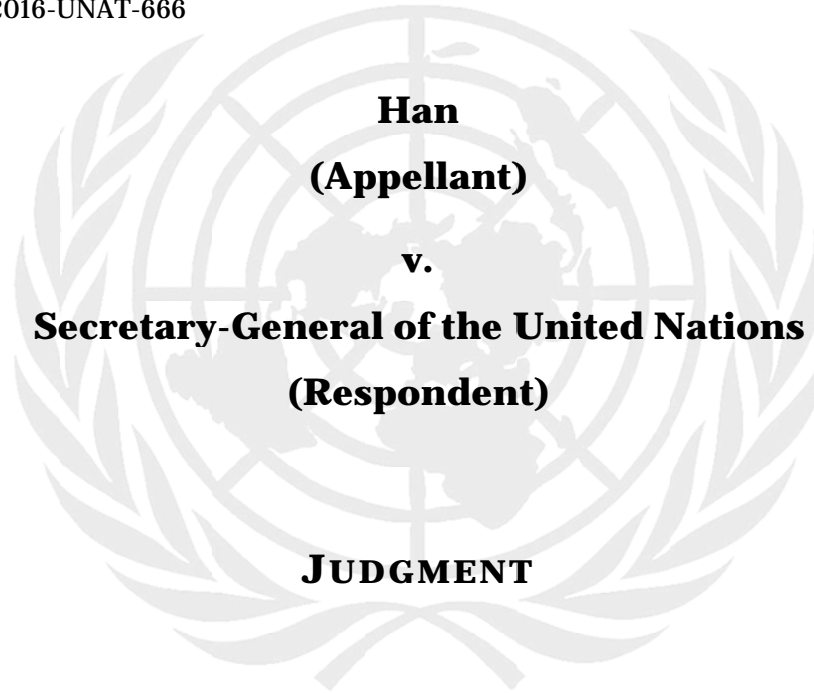




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2016-UNAT-666



**Han
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Deborah Thomas-Felix, Presiding Judge Inés Weinberg de Roca Judge Mary Faherty
Case No.:	2015-877
Date:	30 June 2016
Registrar:	Weicheng Lin

Counsel for Mr. Han:	Self-represented
Counsel for Secretary-General:	Amy Wood

JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal by Mr. Song Han of Judgment No. UNDT/2015/098, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 22 October 2015, in the case of *Han v. Secretary-General of the United Nations*. Mr. Han filed an appeal against the Judgment on 16 December 2015, and the Secretary-General filed his answer to the appeal on 15 February 2016.

Facts and Procedure

2. This case arises from the decision to change Mr. Han's duty station from Baghdad, Iraq, to Kuwait City, Kuwait, effective 19 November 2012, and the rejection of Mr. Han's claims for a daily subsistence allowance and hardship allowances.

3. In a letter titled "Offer of appointment" dated 29 May 2012, the Chief of the Asia and Middle East Section, Field Personnel Operations Service, Field Personnel Division, Department of Field Support (AMES/FPOS/FPD/DFS) offered Mr. Han "a 1 year(s) Fixed[-]Term appointment at level P-3 step 4 as Auditor in United Nations Assistance Mission for Iraq (UNAMI)". The attached statement of emoluments listed Baghdad, Iraq, as the duty station, which entitled Mr. Han to salary and allowances per annum including a non-removal and mobility and hardship allowance of USD 12,760 and a non-family hardship allowance of USD 6,384.

4. Mr. Han joined UNAMI on 3 November 2012. Initially, he underwent pre-deployment training in Brindisi, Italy, from 5 to 9 November 2012, and then in Amman, Jordan, from 11 November 2012.

5. On 12 November 2012, a UNAMI and Integrated Agencies-Iraq Offices movement of personnel form (MOP) was raised, authorizing Mr. Han to travel from Amman to Baghdad on 15 November 2012.

6. On 13 November 2012, Mr. Han signed his letter of appointment (LOA) which listed Kuwait as his official duty station with effect from 3 November 2012.

7. On 14 November 2012, Mr. Han was informed in a telephone conversation with a Movement Control Assistant that he would not be travelling from Amman to Baghdad the next day.

8. In an e-mail dated 14 November 2012 to the Chief, Peacekeeping Audit Services, Internal Audit Division, Office of Internal Oversight Services (OIOS), the Chief of Staff, UNAMI, noted that the developments in Baghdad in the wake of the Syrian crisis had created “tremendous pressure on [UNAMI’s] limited capacity to host staff, even [its] own, within Baghdad”. He continued:

Consequently, the [Special Representative of the Secretary-General for UNAMI (SRSG)] undertook a critical review of staff that do not have to necessarily be Baghdad based on a permanent basis to accomplish their assignments and ... would like to redirect the Auditing Unit to Kuwait in keeping with previous practice as this proved to be an effective and workable set-up.

The SRSG would like to implement this decision as soon as possible and regrets the sudden change of plan and the impact that this move will have on both the staff, their families and the unit, particularly as this was not discussed or shared with you or the concerned staff in advance.

9. In an e-mail dated 15 November 2012, the Chief Administrative Services (CAS), UNAMI, informed the Chief, Human Resources Section, UNAMI, and Mr. Han’s supervisor, among others, of the SRSG’s decision to relocate the Audit Unit to Kuwait. Later in November, the UNAMI Human Resources Section instructed the Finance Section to pay Mr. Han his entitlements to the relocation and assignment grants, as applicable for the Kuwait duty station.

10. On 6 December 2012, Mr. Han travelled from Amman to Kuwait, where he remained. Thereafter, there was considerable confusion within UNAMI about the date on which Mr. Han’s duty station was changed from Baghdad (where he was never located) to Kuwait.

11. In a memorandum dated 14 February 2013, the Officer-in-Charge, Chief of Staff, UNAMI, requested that a Personnel Action form be issued to formalize the transfer of Mr. Han from Baghdad to Kuwait and stated that his duty station should be changed “effective 1 March 2013”. In accordance with these instructions, a Personnel Action form was issued recording Mr. Han’s reassignment from Baghdad to Kuwait, effective 1 March 2013. Also, the

Finance Section was instructed to pay Mr. Han additional entitlements to reflect that his duty station from 3 November 2012 to 28 February 2013 was Baghdad.

12. In March 2013, Mr. Han submitted a claim for payment of daily subsistence allowance for the period from 6 December 2012 to 28 February 2013. This claim was on the basis that his duty station was Baghdad, and he was on travel status in Kuwait from 6 December 2012 to 28 February 2013.

13. In a memorandum dated 16 June 2013, the Chief of Staff, UNAMI, requested the Chief of Mission Support, UNAMI, to formalize the transfer of Mr. Han from Baghdad to Kuwait. This memorandum appears to be duplicative of the 14 November 2012 e-mail. At this stage, there was an attempt to clarify the confusion within UNAMI regarding the change of Mr. Han's duty station. An undated handwritten note made by the CAS, UNAMI, at the bottom of the memorandum reads: "effective date of transfer is 19 Nov. 2012".

14. On 14 July 2013, Mr. Han requested management evaluation of the decision to retroactively change his duty station from Baghdad to Kuwait with effect from 19 November 2012. His request for management evaluation was rejected as not receivable.

15. Mr. Han appealed. In Judgment No. UNDT/2015/098, the Dispute Tribunal dismissed Mr. Han's application. While declaring his UNDT application receivable, the Dispute Tribunal held, on the merits, that Mr. Han had failed to substantiate his claim that the contested decision was unlawful. It found that Mr. Han's relocation to Kuwait "was prompted by administrative and humanitarian reasons based on space constraints in UNAMI ... [and] was not tainted by any improper motives. Nor was it perverse or absurd."¹ As such, the Dispute Tribunal found that the 16 June 2013 decision to change Mr. Han's duty station to Kuwait effective 19 November 2012, which represented a reversal of UNAMI's earlier decision to relocate Mr. Han from Baghdad to Kuwait effective 1 March 2013, did not violate his rights.

16. The UNDT held that Mr. Han was not entitled to hardship allowances under ST/AI/2011/6 (Mobility and hardship scheme). Mr. Han was never physically located in Baghdad, and Kuwait was not a duty station where hardship allowances were payable. The UNDT also found that Mr. Han was also not entitled to claim a daily subsistence allowance.

¹ Impugned Judgment, para. 69.

The UNDT considered that “[t]he confusion, mistake, negligence or oversight of top officials of UNAMI” should not unjustly enrich Mr. Han.²

Submissions

Mr. Han’s Appeal

17. The UNDT committed an error in procedure, such as to affect the decision of the case, by not responding to his motion which sought an order for the Secretary-General to produce documents relating to the SRSG’s review of the staff in Baghdad and the issuance of Mr. Han’s LOA. It was inappropriate for the fair and expeditious disposal of his case for the Dispute Tribunal to decide on the merits of his case without considering those documents. The lack of evidence of any critical review of staff in Baghdad, coupled with the lack of the minutes of the 14 November 2012 meeting, raises serious concerns over the objectivity, clarity, fairness and motivation of the SRSG’s decision.

18. The UNDT erred in fact when it found that by signing the 13 November 2012 LOA which indicated Kuwait as his duty station effective 3 November 2012, “[t]he Applicant agreed to a modification of his duty station”. When he signed the LOA on 13 November 2012, no decision had been made to relocate him.

19. The UNDT erred in law when it failed to conclude that the UNAMI Administration violated the principle of non-retroactivity when in June 2013 it changed his duty station as of November 2012. The 14 June 2013 memorandum incorrectly stated that Mr. Han arrived in Baghdad on 15 November 2012 and departed Baghdad on 19 November 2012. (Mr. Han never went to Baghdad in November 2012.) It was also an error in law to accept the Chief of Staff’s e-mail of 14 November 2012 as evidence of the management decision to change his duty station from Baghdad to Kuwait. The change of the duty station affected the entire Audit Unit, but he was not personally consulted or informed; he was not treated fairly or with dignity.

20. The UNDT failed to notice the irregularities and the bad faith surrounding the issuance of his LOA. The SRSG took the relocation decision allegedly on 14 November 2012, yet his LOA with Kuwait as his duty station was issued on 13 November 2012. This raises questions about the

² *Ibid.*, para. 80.

validity and legality of the 13 November 2012 LOA. That LOA was issued in bad faith and violated his rights as a staff member to be treated fairly and honestly. It thus cannot be used as evidence, as the UNDT did, that he knowingly accepted Kuwait as his duty station on 13 November 2012.

21. The UNDT misinterpreted ST/AI/2011/6 regarding the eligibility criteria for mobility and hardship allowance. The fact that Mr. Han was never in Baghdad was irrelevant. The real issue is when his duty station was changed from Baghdad to Kuwait and whether that decision was properly communicated to him. Mr. Han was working out of Kuwait while his duty station was still Baghdad prior to the issuance of the 14 February 2013 memorandum that officially changed his duty station with effect from 1 March 2013.

22. Mr. Han requests that the Appeals Tribunal vacate the UNDT Judgment and grant other forms of relief.

The Secretary-General's Answer

23. The UNDT correctly concluded that the decision to change Mr. Han's duty station from Baghdad to Kuwait was lawful and it was a valid exercise of the Organization's discretionary authority to reassign its staff. In this regard, the Secretary-General maintains that Mr. Han is barred from raising the argument of lack of "proper consultation" for the first time on appeal. In any event, all staff members are subject to assignment by the Secretary-General to any of the activities or offices of the United Nations without prior consultations with, or the agreement of, the affected staff member.

24. The UNDT correctly concluded that Mr. Han was not entitled to the payment of a hardship allowance because he was never physically located in Baghdad.

25. Mr. Han has failed to establish any error by the Dispute Tribunal to warrant the reversal of its findings and conclusions in the Judgment. The claims raised by Mr. Han on appeal are either near verbatim reiterations of his claims before the UNDT, or entirely new claims not previously raised before the UNDT for consideration. Mr. Han's case does not raise any issues of law or fact relevant to the prohibition against retroactive application of amendments to the terms and conditions of staff service, nor does he raise any legal or factual argument concerning "proper consultation". Therefore the matter is not properly before the Appeals Tribunal.

26. Mr. Han has also failed to demonstrate how the “distinction between relocation and reassignment” is relevant to the matters raised in his UNDT application or the findings and conclusions of the UNDT, and has moreover not provided any evidence to support his general allegations of bad faith and bias, aside from the bare assertions in his pleadings. Furthermore, Mr. Han has failed to set forth what specific aspect of the text of ST/AI/2011/6 the Dispute Tribunal allegedly misinterpreted.

27. Contrary to Mr. Han’s assertion that the UNDT erred on a question of procedure by failing to respond to his motion for the production of additional documents, the Dispute Tribunal reviewed the case record but concluded that the documentary evidence that had been provided adequately addressed the issues raised by the parties.

28. The Secretary-General requests that the Appeals Tribunal affirm the UNDT Judgment as it relates to the merits of the case and dismiss the appeal in its entirety.

Considerations

29. Mr. Han contends that the UNDT committed an error in procedure “such as to affect the decision of the case” by not responding to his motion seeking leave to order the Secretary-General to produce relevant documents. This decision, he asserts, “was inappropriate for the fair and expeditious disposal” of his case.

30. The UNDT, in accordance with Article 19 of its Rules of Procedure, has broad discretion in managing its cases and in determining whether or not it has sufficient evidence and information “for the fair and expeditious disposal of the case and to do justice to the parties”.³

31. Mr. Han has adduced no evidence to support his contention that the exercise of the discretion by the UNDT was arbitrary and/or improper. We uphold the decision of the UNDT on this issue.

³ *James v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-600, para. 19, citing *Pérez-Soto v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-329, para. 20, citing *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062, para. 23.

32. We agree with the findings of the UNDT that Mr. Han's relocation to Kuwait "was prompted by administrative and humanitarian reasons based on space constraints in UNAMI ... [and] was not tainted by any improper motives. Nor was it perverse or absurd."⁴ Indeed, Staff Regulation 1.2(c) provides that: "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".⁵ We find that the decision to relocate Mr. Han to Kuwait was lawful and it was a valid exercise of the Secretary-General's discretionary authority to reassign staff.

33. We find also that the UNDT correctly concluded that Mr. Han was not entitled to the payment of a hardship allowance for Baghdad for any period as he was not physically located in Baghdad. We also agree that Mr. Han is not entitled to the payment of daily subsistence allowance from December 2012 to February 2013 while in Kuwait, since, during that time, his duty station was Kuwait, not Baghdad. We have examined all of Mr. Han's claims and find them to be without any merit.

Judgment

34. The appeal is dismissed in its entirety; Judgment No. UNDT/2015/098 is affirmed.

⁴ Impugned Judgment, para. 80.

⁵ Secretary-General's Bulletin ST/SGB/2012/1.

Original and Authoritative Version: English

Dated this 30th day of June 2016 in New York, United States.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Faherty

Entered in the Register on this 24th day of August 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar