



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

Judgment No. 2018-UNAT-810

Al Hallaj
(Respondent/Appellant on Cross-Appeal)
v.
Secretary-General of the United Nations
(Appellant/Respondent on Cross-Appeal)

JUDGMENT

Before: Judge Martha Halfeld, Presiding
Judge John Murphy
Judge Dimitrios Raikos

Case No.: 2017-1097

Date: 22 March 2018

Registrar: Weicheng Lin

Counsel for Ms. Al Hallaj: Daniel Trup/Aleksandra Jurkiewicz, OSLA

Counsel for Secretary-General: Wambui Mwangi

JUDGE MARTHA HALFELD, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2017/036, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 29 May 2017, in the case of *Al Hallaj v. Secretary-General of the United Nations*. The Secretary-General filed the appeal on 28 July 2017, Ms. Hana Al Hallaj filed her answer to the appeal as well as a cross-appeal on 18 August 2017, and the Secretary-General filed an answer to the cross-appeal on 17 October 2017.

Facts and Procedure

2. Ms. Al Hallaj is a Syrian national residing in Beirut, Lebanon. Before October 2014, she worked for the Economic and Social Commission for Western Asia (ESCWA) in Beirut on a short-term consultancy basis for varying periods of time: (Project Manager (18 December 2012–18 January 2013); Consultant (13 March 2013–15 April 2013; 17 June 2013–18 August 2013; 15 September 2013–31 December 2013); and Individual Contractor (31 December 2013–10 January 2014; 10 February 2014–20 June 2014). Ms. Al Hallaj held a residency permit issued by the Lebanese Government valid through 22 October 2015, though the permit did not give her the right to work in Lebanon. According to Ms. Al Hallaj, she had never been directed to obtain a work permit in order to work for ESCWA as a consultant or individual contractor.

3. On 1 October 2014, a Job Opening (JO) for a fixed-term position of Research Assistant at the G-6 level within the Modeling and Forecasting Section, ESCWA, was circulated under JO No. 14-SOC-ESCWA-37710-R-BEIRUT (R). Ms. Al Hallaj applied. The special notice in the JO read:

Appointment against this post is on a local basis; candidates shall be recruited in the country of the duty station, irrespective of nationality and length of time the candidate may have been in the country. If no suitable candidate is identified, overseas candidates will be considered subject to a passing grade on the relevant entry-level examinations at the duty station.

The candidate is responsible for any expenses incurred in order to take the examination and, in the event of an employment offer, any costs relating to travel and relocation to the duty station.

4. By e-mail dated 31 July 2015, ESCWA notified Ms. Al Hallaj of her selection for the advertised position and asked Ms. Al Hallaj to confirm her continued interest in, and availability for, the position. Ms. Al Hallaj was advised that the Human Resources Management Office (HRMS), Administrative Services Division (ASD), ESCWA would contact her shortly with regard to “further recruitment or staffing procedures”. The following day, Ms. Al Hallaj responded to confirm her continued interest in and availability for the G-6 position.

5. By e-mail dated 10 August 2015, a Human Resources Assistant, Recruitment Unit, HRMS/ASD/ESCWA, sent Ms. Al Hallaj an offer letter of the same date. The offer letter signed by Mr. J. Kratzheller, Chief, HRMS/ASD/ESCWA, offered Ms. Al Hallaj “a fixed-term appointment for [one] year at step II of the G6 level as Research Assistant in the Economic Development and Integration Division of the Economic and Social Commission for Western Asia, Beirut”. The letter continued:

Your appointment is subject to satisfactory completion of pre-recruitment formalities through the United Nations Secretariat procedures, including medical clearance and verification of qualifications. Upon confirmation of your highest degree and medical clearance, you will receive a provisional confirmation of the offer. On this basis and with your concurrence, the United Nations will proceed with the on-boarding procedure.

...

This appointment will take effect from (...) the day you report for duty. A formal Letter of Appointment will be prepared for your signature shortly thereafter.

...

This offer is conditional upon the information provided by you when applying for the position remaining true and complete as at the date of your acceptance of the appointment. By accepting the terms of this offer of appointment, you accordingly confirm and certify that all information relevant to your fitness to meet the highest standards of efficiency, competence and integrity and to your ability to perform your functions, which you provided when applying for the position, remain true and complete as at the date of your acceptance of this offer.

If information relevant to your meeting the above standards and your ability to perform your functions which you provided when applying for this position has materially changed since that time, you are required to immediately inform in writing the undersigned United Nations Official, providing relevant updated and complete information. Failure to do so may be regarded by the Organization as giving rise to grounds for withdrawal of this offer, or for termination or cancellation of any contract entered into.

...

Likewise, in the event that the pre-recruitment formalities are not satisfactorily completed, or where a condition is not met or no longer met, this may be grounds for withdrawal of this offer, or for termination or cancellation of any contract entered into.

Please do not resign from your current employment, or engage in any financial commitments related to employment at the United Nations, including schooling or housing, prior to receiving confirmation of the offer and a valid visa, if applicable.[¹]

In order to facilitate your access to the premises on the first day you report for work, you must bring with you this offer of appointment, your passport and another photo ID.

6. Ms. Al Hallaj accepted the terms of the offer by signing it with the date of 11 August 2015. Following the completion of a medical clearance and an employer reference check, on 23 September 2015, she reported for duty with ESCWA in Beirut, as instructed. She was issued an ESCWA ground pass valid for one year expiring on 22 September 2016 and assigned an United Nations e-mail address, a computer, and an office.

7. However, on 25 September 2015, during her induction tour, at the Travel and Visa Section, Ms. Al Hallaj presented her national passport and inquired about who would apply for her work visa. Only then did the ESCWA Administration realize that Ms. Al Hallaj did not have a permit or visa for working in Lebanon.

8. During a meeting on 28 September 2015, Mr. Makhmudov, the Chief Human Resources Officer of ESCWA (CHRO/ESCWA), informed Ms. Al Hallaj that she could no longer work for ESCWA since she did not have a work permit. She was requested to turn over her security pass and leave the premises immediately, which she did. On the following day, Ms. Al Hallaj was prevented from entering the ESCWA premises.

9. By e-mail dated 5 October 2015 to the CHRO/ESCWA, Ms. Al Hallaj submitted a new residency permit sponsored by her aunt.

10. By e-mail dated 16 October 2015, the CHRO/ESCWA informed Ms. Al Hallaj that the Lebanese authorities had confirmed that her new permit only allowed her to work for her aunt as her sponsor, but did not give her the right to work in Lebanon legally. The CHRO/ESCWA then gave Ms. Al Hallaj two more weeks to submit documentation to show a permission from the

[¹] Underline in original.

Lebanese authorities that she could work in Lebanon without sponsor restrictions. Ms. Al Hallaj was not able to obtain such documents.

11. After she filed a request for management evaluation contesting the decision to “suspend or terminate her employment with ESCWA” and an application with the Dispute Tribunal, on 21 December 2015, ESCWA filled the G-6 position for which Ms. Al Hallaj had been initially selected with another candidate from the same recruitment exercise. The candidate assumed his duties on 18 January 2016.

12. On 22 February 2016, ESCWA offered Ms. Al Hallaj another Research Assistant position in the same division, at the same level, with the same job description as the one for which she had been initially selected. Ms. Al Hallaj did not respond to the offer, as she had started working for a private company, the Al-Hora Group, on 1 October 2015.

13. In its Judgment now under appeal, the Dispute Tribunal rejected the Agency’s receivability and mootness challenges and found that Ms. Al Hallaj’s application was receivable and that it had jurisdiction to hear her case. On the merits, the UNDT found that the decision to terminate Ms. Al Hallaj’s contract of employment was unlawful as it was the result of an error committed by the ESCWA Administration. The error consisted of (i) the ESCWA Administration’s failure to inform Ms. Al Hallaj of the requirement that she obtain a work permit from the Lebanese Government as a condition precedent in any of its communications with Ms. Al Hallaj before she reported for duty on 23 September 2015, and (ii) its failure to assist her in obtaining the necessary work permit or take corrective action, before 22 February 2016, when it offered Ms. Al Hallaj a similar position of Research Assistant with ESCWA.

14. In terms of damages, the UNDT awarded Ms. Al Hallaj one month’s net base salary in compensation for moral damages for the manner in which she had been treated by the ESCWA Administration after learning that she did not have a work permit. In addition, the Dispute Tribunal awarded Ms. Al Hallaj two months’ net base salary for harm resulting from the fundamental breach of her contract of employment.

15. However, the Dispute Tribunal rejected Ms. Al Hallaj’s claim for compensation for her “traumatic experience” as it found her evidence to be unreliable. In addition, the UNDT rejected Ms. Al Hallaj’s claim for compensatory damages, as it found that she was in receipt of a higher salary from the Al-Hora Group (USD 14,250) than she would have earned from ESCWA

(USD 13,611.43). It also rejected Ms. Al Hallaj's claim for a lost employment opportunity with the Embassy of Rwanda in Cairo and found that Ms. Al Hallaj had declined the alleged offer due to personal reasons and not because she had accepted to work for ESCWA.

Submissions

The Secretary-General's Appeal

16. The Secretary-General submits that the UNDT erred in finding that the Administration breached Ms. Al Hallaj's employment contract and in awarding her two months' net base salary for breach of contract. There was no breach of Ms. Al Hallaj's contract. Ms. Al Hallaj was selected as a local recruit expected to already have a residency status permitting her to work in Lebanon. At no point in time before she was recruited did Ms. Al Hallaj inform ESCWA that she would need assistance in obtaining a work permit, though she knew that her residency permit did not give her the right to work in Lebanon. In her Personal History Profile (PHP), Ms. Al Hallaj confirmed that she did not require assistance pertaining to her ability to perform the type of work related to the G-6 position. The ESCWA Administration was thus within its rights to take corrective action (withdrawal of identification badge, refusal to give her access to ESCWA premises, etc.), once it became aware of the not-for-employment nature of her residency permit, in compliance with the laws of the host country and the 1946 Vienna Convention on the Privileges and Immunities of the United Nations. As its finding of breach of contract was erroneous, the Dispute Tribunal's monetary award of two months' net base salary on the sole basis of this finding should be dismissed as an error.

17. The Secretary-General also submits that the Dispute Tribunal erred in awarding Ms. Al Hallaj one month's net base salary as moral damages, though it dismissed the evidence of a medical report allegedly evidencing a traumatic experience and the e-mails said to evidence a lost employment opportunity as unreliable and inadequate. The UNDT's award of damages based solely on its finding of breach of contract without any finding of harm suffered by Ms. Al Hallaj is unsubstantiated and amounts to an award of punitive or exemplary damages.

18. The Secretary-General requests that the Appeals Tribunal vacate the impugned Judgment as well as the Dispute Tribunal's award of damages.

Ms. Al Hallaj's Answer

19. Ms. Al Hallaj submits that she supports the Dispute Tribunal's decision to award her harm-based compensation in principle, though she is cross-appealing seeking a larger amount of damages.

20. Ms. Al Hallaj maintains that the UNDT did not err in finding a breach of contract. At no stage did the ESCWA Administration require that she have a work permit in order to be appointed to the G-6 post. Ms. Al Hallaj fulfilled the conditions of her offer of employment. The fact that Ms. Al Hallaj already commenced work shows a contractual relationship between her and ESCWA. Never did Ms. Hallaj mislead ESCWA to render this contract voidable. It should be noted that the Secretary-General never challenged the validity of the contract between her and ESCWA during the UNDT proceedings.

21. Since an error was committed by the ESCWA Administration, it was incumbent on the Administration to obtain a work permit for Ms. Al Hallaj, which it had the ability to do.

22. The Secretary-General appears to be arguing, on appeal, that there was a lack of a contractual relationship between Ms. Al Hallaj and ESCWA due to impropriety in her PHP and some legal impediments. It should be stressed that, at trial, the Secretary-General never advocated such a position, nor did he challenge Ms. Al Hallaj's character or intention. The Appeals Tribunal therefore should not entertain these claims raised on appeal for the first time.

23. The Dispute Tribunal did not err in awarding Ms. Al Hallaj compensation for the harm to her resulting from the breach of contract on the part of the ESCWA Administration. Ms. Al Hallaj submitted evidence before the Dispute Tribunal to prove her lost opportunities, which included turning down the position that she had been offered in Egypt, the loss of a possible career with the United Nations, and the loss of opportunities to improve her status within the Organization.

24. The Secretary-General has failed to present any evidence to show that the Dispute Tribunal's exercise of its discretion in awarding compensable damages was manifestly unreasonable.

25. Ms. Al Hallaj requests that the Appeals Tribunal dismiss the appeal in its entirety.

Ms. Al Hallaj's Cross-Appeal

26. Ms. Al Hallaj contends that the Dispute Tribunal failed to award her an adequate amount in compensation for the breach of contract. In view of the breach of a valuable contractual right and its substantial and foreseeable impact on her life and work, Ms. Al Hallaj requests that the Appeals Tribunal award her five months' net base salary.

27. In addition, Ms. Al Hallaj requests that the Appeals Tribunal award her three months' net base salary as moral damages in compensation for the frustration, distress and anxiety she experienced resulting from the ill treatment in the hands of the ESCWA Administration, which was supported by the psychiatric report that she submitted to the Dispute Tribunal.

28. Finally, Ms. Al Hallaj requests that the Appeals Tribunal award her unspecified compensation for the ESCWA Administration's failure to act with due diligence and fairness upon learning that she did not have a work permit, the lost opportunity to work in Egypt and the loss of a career opportunity within the United Nations. Moreover, she requests that the Appeals Tribunal award her compensation for the actual damages for economic loss amounting to the difference in emoluments payable for the entire contract period of one year.

The Secretary-General's Answer to Cross-Appeal

29. The Secretary-General submits that Ms. Al Hallaj failed to demonstrate that the amount awarded by the Dispute Tribunal was inadequate, and that none of her explanatory arguments hold any merit.

30. On appeal, Ms. Al Hallaj introduces a new argument in relation to the loss of emoluments and raises a new claim with respect to pension entitlements. She did not provide any evidence before the Dispute Tribunal on her losses with regard to pension, sick, and annual leave. Since they were not part of her application before the Dispute Tribunal, the Secretary-General had no opportunity to respond to them at that stage.

31. As a general matter, Ms. Al Hallaj cannot claim compensation for "lost" salary and emoluments in respect of employment which she was legally prohibited from accepting. The lack of a valid work permit for a locally recruited position was a genuine legal impediment that prevented the Organization from finalizing an employment contract with Ms. Al Hallaj. It was Ms. Al Hallaj, not the ESCWA Administration, that was responsible for obtaining the necessary

work permit, and that was a critical element to enable the contract to be finalized. It should be noted that Ms. Al Hallaj did not sign a letter of appointment.

32. The Secretary-General alternatively argues that even if the Appeals Tribunal were to determine that there was a breach of contract, the Dispute Tribunal erred in law in awarding compensation in the absence of evidence of harm as required by Article 10(5)(b) of the UNDT Statute.

33. It is understandable for the ESCWA Administration to assume, during the selection process, that Ms. Al Hallaj had the necessary immigration permits to work in Lebanon, having previously been a consultant with ESCWA. After it realized that Ms. Al Hallaj did not have a valid work permit, the ESCWA Administration chose to keep the position open for almost three months for her return, demonstrating a flexibility to give her an opportunity to obtain the necessary permit to work for ESCWA.

34. Ms. Al Hallaj seeks to present the Appeals Tribunal with a different version of the evidence than that she gave before the Dispute Tribunal regarding the alleged offer of employment with the Embassy of Rwanda in Cairo. She cannot, at this stage in the proceedings, offer an alternative explanation for why she refused to accept the offer of appointment from the Rwandan Embassy. This new alternative explanation does not provide a basis for her argument that the UNDT had erred in its assessment of the record before it. Admission of such an explanation is inconsistent with the jurisprudence of the Appeals Tribunal.

35. Ms. Al Hallaj's claim about the lost opportunity to have a career in the United Nations is without merit. Even if she had served her ESCWA appointment in September 2015, she has presented no evidence to show that her appointment would have been renewed. If a career at ESCWA was indeed her intention, why did she not accept ESCWA's offer of a similar position in February 2016?

36. The Secretary-General requests that the Appeals Tribunal dismiss Ms. Al Hallaj's cross-appeal in its entirety.

Considerations

37. The Dispute Tribunal found that a valid contract of employment existed between ESCWA and Ms. Al Hallaj, when the latter accepted the former's offer of employment of 13 August 2015.² We do not share this view. In accordance with our jurisprudence, there was no contract of employment between ESCWA and Ms. Al Hallaj, because a letter of appointment was never issued in the present case.³ There was only an offer of employment.⁴

38. However, it does not mean that Ms. Al Hallaj was without rights or remedies. Our jurisprudence is clear that after Ms. Al Hallaj had unconditionally accepted and had fully fulfilled the conditions specified in the offer of employment, a quasi-contract was formed between Ms. Al Hallaj and the ESCWA Administration.⁵ That was the case on 23 September 2015 when Ms. Al Hallaj reported for duty at ESCWA.

39. That quasi-contract in turn created obligations for the ESCWA Administration towards Ms. Al Hallaj, which include behaving in keeping with the principle of good faith (to elucidate the other party on the relevant obligations, to provide assistance to her, to protect her legitimate expectations, etc.), and acting fairly, justly and transparently in its dealings with her.⁶ These aspects and expressions of the principle of good faith supplement, and at the same time, concretize the terms of the emerging contract of employment. They constitute in their specific application an inextricable part of the parties' compliance with the "terms of appointment".

² Impugned Judgment, para. 47.

³ *Gabaldon v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-120, para. 28; *Sprauten v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-111, paras. 23-25.

⁴ We note, however, that there appears to be a contradiction of argumentation in the appeal and answer to the cross-appeal. While, in the latter, the Secretary-General contested Ms. Al Hallaj's status as a staff member, "as she had yet to be issued a letter of appointment" (paragraph 11), in the former he acknowledged the existence of such a letter (paragraph 21) and the fact that "The Organization could not maintain the Appellee in employment", claiming that corrective action had to be taken (paragraph 22). The existence of the appointment or of a letter of appointment or of the contract was not contested therein, only in the answer to the cross-appeal. As it is a matter of law, this contradiction does not bar the Appeals Tribunal from assessing the issue.

⁵ *Gabaldon v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-120, para. 28; *Sprauten v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-111, paras. 23-25.

⁶ *Smith v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-768, para. 26, citing *Matadi et al. v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-592, para. 16 and cite therein.

40. We agree with the UNDT that the ESCWA Administration committed two major errors in the present case, in breach of its quasi-contractual obligations towards Ms. Al Hallaj.

41. First, the ESCWA Administration failed in its due diligence to clearly and fully specify the obligations including obtaining a valid work visa that Ms. Al Hallaj was expected to fulfill. It never asked her whether she possessed a valid work visa in order to work for ESCWA. A simple assessment to this effect would have saved all involved the aggravation and expenses of the present legal proceedings. Only when Ms. Al Hallaj herself took the initiative to inquire about who would apply for her work visa did the ESCWA Administration realize that she did not have it. The glitch was evident. Even if we consider that the ESCWA Administration assumed, on the basis of Ms. Al Hallaj's previous consultancy history, that she had the necessary work permit, that fact cannot be seen as an excuse for not completing the needed formalities before permitting her to embark on the process of actual appointment.

42. We hold that the ESCWA Administration bore the primary responsibility to ensure that a successful job applicant such as Ms. Al Hallaj hold a valid work visa before starting to work for ESCWA. Instead, it considered the requirements to be satisfactorily fulfilled, so much so that Ms. Al Hallaj not only received a written offer of appointment, which she eventually accepted on 13 August 2015, but also approximately 40 days later, she reported for duty on 23 September 2015, was given an identification badge and was assigned a United Nations e-mail address, a computer and an office. In this regard, there was an affirmative—and preventive— duty on the ESCWA Administration's part, which it failed to carry out.

43. Besides, the question in the PHP "Do you need any assistance pertaining to your ability to perform the type of work related to the position for which you wish to be considered", to which Ms. Al Hallaj answered "No", could not be reasonably understood as relating to a work visa. From the perspective of a reasonable person, this question was aimed at soliciting an answer about the applicant's personal talent, skills, proficiency and, possibly any physical disability, but not the fulfilment of administrative formalities.

44. Moreover, there is ambiguity in the correspondence. Although the offer letter dated 10 August 2015 did not explicitly promise a visa, it mentioned that a valid visa could be needed.⁷ Given the pre-contractual obligations that are imposed on the Administration in

⁷ The letter stated: "Please do not resign from your current employment, (...) prior to receiving confirmation of the offer and a valid visa, if applicable". Underline in original.

relation to information which has to be given, we find that this mention created an obligation to provide assistance in obtaining a proper work permit. Even though a locally-recruited staff member ordinarily would enjoy residency status permitting him or her to work in the duty station concerned, we find that the reason for the recruitment being done locally was to avoid costs related to travel and relocation to the duty station. Ms. Al Hallaj fulfilled the specified condition, as she resided in Lebanon. In this regard, we also recall the universal principle of interpretation against the party that supplies the term. In other words, when doubts remain as to the meaning of a term in a document, an interpretation against the party who supplied it is to be preferred.

45. Secondly, the ESCWA Administration failed in its obligation to provide assistance to Ms. Al Hallaj in securing a work permit from the Lebanese authorities after it became aware that she did not have such a document. The Dispute Tribunal found that the ESCWA Administration “did not take any action”, except giving Ms. Al Hallaj two weeks to submit a valid work permit.⁸ We agree with the Secretary-General that corrective action had to be taken in order to comply with the applicable law. However, its quasi-contractual obligation required the ESCWA Administration in the specific circumstances of the case to help her out in this regard especially when the problem was largely caused by the administrative oversight or error on the part of the ESCWA Administration, and when the ESCWA Administration was capable of providing a meaningful assistance. The Administration failed in the obligation it had assumed, in violation of the aforementioned principle of good faith even though there was no certainty that Ms. Al Hallaj would have obtained the work permit. In this regard, the Appeals Tribunal notes that the ESCWA Administration did offer to request, on behalf of Ms. Al Hallaj, the necessary visa from the Ministry of Foreign Affairs of Lebanon some five months later, in February 2016, in connection with its offer of a similar position to Ms. Al Hallaj. To do nothing and to leave Ms. Al Hallaj to her own devices was unconscionable.

⁸ Impugned Judgment, para. 49.

46. Moreover, the manner in which she was treated when the imbroglio was discovered was unreasonable and disproportionate.⁹ While the communications during the pre-recruitment formalities for the position had lasted for approximately two months (from the 31 July 2015 e-mail up to 23 September 2015 when she reported for duty), there was no proportionality in dismissing her forthwith, even if the Administration had partially reconsidered its decision, when it later agreed to give her time to obtain a proper visa.

47. The failure by the ESCWA Administration to fulfil its quasi-contractual obligations towards Ms. Al Hallaj engaged its responsibility and warranted an award of compensation.

Compensation

48. As to the award of compensation for moral damages and for breach of the employment contract, it is not clear, from the UNDT Judgment, which amount compensates which harm. While the decision in paragraph 67 of the impugned Judgment stipulates that one month's net base salary is awarded for moral damages and two months' net base salary is for breach of the employment contract, paragraph 66 states that the compensation for moral damages amounts to two months' net base salary in view of the fundamental nature of the breach of the contract of employment; and one month's net base salary is awarded, in paragraph 65 of the impugned Judgment, to compensate Ms. Al Hallaj for the manner in which she had been treated by the ESCWA Management in the wake of learning that she did not have a valid permit to work for ESCWA.

49. We reiterate our jurisprudence, which provides that no compensation for moral damages shall be awarded when there is no evidence whatsoever to sustain such harm or prejudice.¹⁰ The UNDT erred on a matter of law when it awarded two months' net base salary as compensation for breach of her employment contract, without having related it to any evidence of harm.

⁹ She was informed during a meeting, held on 28 September 2015, five days after the fact came to light, that she could no longer work for ESCWA. She was then removed from her functions, told to return her identification badge and leave the premises immediately. She was also prevented from entering the compound subsequently.

¹⁰ *Kallon v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742. See also *Tsoneva v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-714; *Ademagic et al. v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-684; and *Oummih v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-518/Corr.1.

50. On the other hand, although the UNDT considered the medical report unreliable, due to the sole fact that Ms. Al Hallaj took another job a few days after she had been asked to leave the ESCWA premises, we are of the view that an intense and unfair mental stress on the part of a staff member or any employee in the work environment does not always trigger medical leave or more drastic consequences. Individual effects or harm may indeed differ from person to person, due to different personal resilience. The existence of a major or minor harm will certainly influence the choice of the final remedy by the judge; however, once harm is produced and evidenced, liability arises. There is, therefore, no contradiction between experiencing a harmful event at one work place and starting work at another. In certain circumstances, like the present one, as prescribed by the medical report, the recommended course of action for the person concerned is to change his or her work environment.

51. According to the medical report signed by the Associate Director of the Psychiatry Residency Program of the Department of Psychiatry at the American University of Beirut Medical Center, that is what happened in the present case. The medical report stated that the return to the work environment in which Ms. Al Hallaj had experienced what she had called “an intense sense of shame and helplessness” should be avoided, after her narrative of an unexpected conversation that had left her “shocked and confused”, followed by a “humiliating experience of being publicly evicted in front of colleagues and acquaintances”. Rather than advising her to return to work, the psychiatrist recommended a “swift closure allowing her to heal and move on”, because “residual symptoms” remained, even though some improvement had been made by the time the medical consultation took place on 6 April 2016, more than six months after the event.

52. Apart from the individual impact on Ms. Al Hallaj, the undisputed objective facts of the situation and its context corroborate the medical report. The UNDT has the power and the duty to legitimately infer harm to the *dignitas* of Ms. Al Hallaj resulting from the unlawful action of the ESCWA Management. In this way, the UNDT correctly recognized the harm suffered by Ms. Al Hallaj, from the manner in which she had been treated after the error of the administration had come to light. In so doing, the UNDT built a direct link between facts and harm, by means of evidentiary presumption, corroborated by the context in which the situation occurred and the expected impact the acts would have on an average person.

53. Therefore, while the UNDT was correct in holding that the decision to terminate Ms. Al Hallaj's appointment was unlawful, it erred in law when it awarded compensation for breach of her employment contract without having related it to any evidence of harm; and erred in fact leading to a manifestly unreasonable decision when it concluded that the medical report was not convincing evidence.

54. In view of the foregoing, Ms. Al Hallaj suffered harm and this is sufficiently supported by credible evidence.

55. As noted above, it is not clear from the UNDT Judgment what was the basis for each head of the compensation awarded. According to Ms. Al Hallaj, the UNDT awarded her two-months' net base salary in compensation for, *inter alia*, i) the direct economic loss of wages and benefits (such as salary, health insurance, pension, annual leave, sick leave); ii) loss of the job offer in Egypt; and iii) loss of career advancement within the Organization.

56. Likewise, Ms. Al Hallaj understood that the compensation for moral damages was related to the manner in which she had been treated. In her cross-appeal, Ms. Al Hallaj seeks "adequate compensation for the breach of contract", setting forth a number of arguments. We agree with them in part.

57. Like the UNDT, we find that there was no need to award Ms. Al Hallaj any additional compensatory damages. Although there is no evidence that Ms. Al Hallaj was paid from 23 to 28 September 2015 and the fixed-term appointment was for one year at step II of the G-6 level, approximately five months later, Ms. Al Hallaj was offered another position in the same division, at the same level, with the same job description, but did not respond to it, as she had started working for a private company, on a higher salary, as of 1 October 2015.

58. In this regard, Ms. Al Hallaj demonstrated due diligence in quickly reorganizing her professional life, after the upsetting experience with the ESCWA Administration. Although employed in "limited consultancy work" by a private company, she received a higher salary. There was no considerable economic loss.

59. Besides, we agree with the UNDT that the evidence, with regard to the lost opportunity related to the job offer in Egypt, does not favour Ms. Al Hallaj. The new argument put forward by her that the mention of "personal reasons" was merely a polite

excuse to decline the offer (although receivable since it concerns the evidence presented before the UNDT) is not corroborated by any other proof.

60. On the other hand, we consider, in light of what has been established elsewhere in this Judgment, that there was harm supported by evidence, and such harm resulted from the Administration's failure to act with due diligence, proportionality and fairness. This includes the manner in which Ms. Al Hallaj was treated, the harm for loss of career advancement, particularly given the fact that Ms. Al Hallaj had previous experience within ESCWA and that the appointment at issue was for an extended period of time of one year.

61. We also take into consideration the mitigating factor of the subsequent offer by ESCWA of a similar position a few months later (on 22 February 2016), which she declined for "personal reasons". This represents, in our view, a reconsideration of the entire situation by the ESCWA Administration.

62. In our view, an award of compensation of USD 8,500.00 is appropriate in the circumstances.

Judgment

63. The appeal and cross-appeal are upheld in part. Judgment No. UNDT/2017/036 is hereby modified to substitute the two heads of compensation awarded with USD 8,500.00 in compensation for harm resulting from the failure by the ESCWA Administration to fulfil its quasi-contractual obligations.

64. The payment shall be executed within 60 days from the date of issuance of this Judgment to the parties. If payment is not timely made, interest shall be applied, calculated as follows: five per cent shall be added to the US Prime Rate from the date of expiration of the 60-day period to the date of payment.

Original and Authoritative Version: English

Dated this 22nd day of March 2018 in Amman, Jordan.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Raikos

Entered in the Register on this 23rd day of May 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar