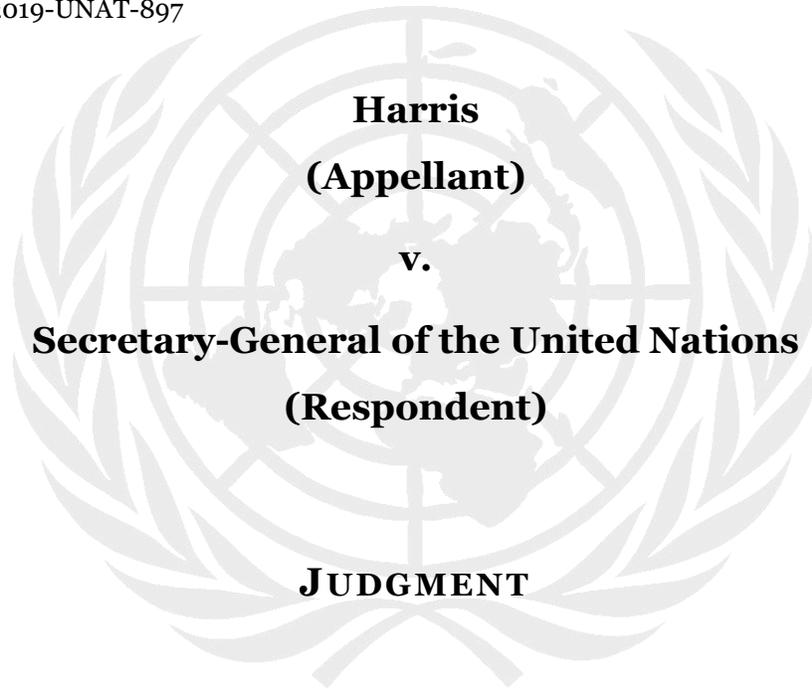




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2019-UNAT-897



**Harris  
(Appellant)**

**v.**

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

**JUDGMENT**

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| Before:    | Judge Richard Lussick, Presiding<br>Judge Dimitrios Raikos<br>Judge Deborah Thomas-Felix |
| Case No.:  | 2018-1145  |
| Date:      | 29 March 2019  |
| Registrar: | Weicheng Lin   |

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|-------------------------|----------------------|
| Counsel for Appellant:  | Self-represented     |
| Counsel for Respondent: | Francisca Lagos Pola |

**JUDGE RICHARD LUSSICK, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment UNDT/2017/095/Corr.1, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 15 December 2017, in the case of *Harris v. Secretary-General of the United Nations*. Mr. Bryan Galakpai Harris filed the appeal on 23 January 2018, and the Secretary-General filed his answer on 26 March 2018.

2. On 11 April 2018 and 21 May 2018, Mr. Harris filed several motions seeking postponement of the consideration of his appeal, first for six months, and then further to the Appeals Tribunal's 2019 Spring Session. By Order Nos. 320 (2018) and 324 (2018), the Appeals Tribunal twice granted his motions for postponement so as to give him time to find legal assistance in further prosecuting his appeals and in adducing additional evidence. Mr. Harris was also directed to file any amended motions relating to admission of additional evidence in the appeals.

3. On 21 May 2018, the Secretary-General filed a motion requesting that the Appeals Tribunal order Mr. Harris to refrain from outside communication with the Secretary-General's Counsel. In Order No. 325 (2018), the Appeals Tribunal instructed Mr. Harris to refrain from all outside communications with Counsel for the Secretary-General other than by way of submissions to the Appeals Tribunal in the proceedings for the present case among others.

4. On 24 January 2019, Mr. Harris filed a motion "requesting in-person hearing for [United Nations Appeals Tribunal] Case Nos. 2018-1142, 2018-1145 & 2018-1153". The Secretary-General was served with a copy of the motion, but he did not provide a response. On 20 February 2019, the Registry confirmed to Mr. Harris that as previously advised, his request for an oral hearing had been denied.

**Facts and Procedure**

5. The following facts have been established by the UNDT:<sup>1</sup>

... On 23 September 2007, [Mr. Harris] joined the United Nations Interim Force in Lebanon (UNIFIL) as an information technology assistant at the FS-4 level on a

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<sup>1</sup> Impugned Judgment, para. 4 (a)-(r).

fixed-term appointment. By the time that he was separated from service on 12 July 2017 he had been promoted to the FS-5 level.

... It is not in dispute that [Mr. Harris] had a good work and attendance record until in or about 2016 when he suffered ill health for which he had been in receipt of medical treatment which resulted in him being absent from work since 17 March 2016. The Chief Information Technology reported to UNIFIL Human Resources Management Section (HRMS/UNIFIL) that [Mr. Harris] had not informed his supervisor of his absence and that his whereabouts could not be established. In response to a notification by the HRMS/UNIFIL that his failure to report to work without explanation was in breach of ST/AI/400 (abandonment of post) [Mr. Harris] sent an e-mail on 24 March 2016 explaining that he was under urgent medical care. He stated that a medical report had already been sent to that effect. However, [Mr. Harris] needed to obtain the appropriate clearance from the Medical Services Division (MSD).

... On 20 April 2016, MSD approved [Mr. Harris's] sick leave from 21 March 2016 to 1 July 2016 and subsequently extended it for a second term from 4 July 2016 to 7 October 2016.

... While [Mr. Harris] was on certified sick leave he received an email from the Chief of Regional Information and Communications Technology Services (C/RICTS) confirming the notification he was given in June 2016 that he was assigned to UNIFIL Sector East. It was said that this was in accordance with the RICTS rotation programme. [Mr. Harris] was not pleased with this posting. Following a meeting on 10 November 2016, [Mr. Harris] informed the Chief/RICTS that he objected to the conditions under which he would be expected to work. Also on 10 November 2016, the Chief/RICTS requested a meeting with [Mr. Harris], the Chief Human Resources Management Section (Chief/HRMS) and the Chief International Staff Administration Unit (HRMS) to discuss [Mr. Harris's] reassignment to Sector East and his absence from work. This meeting took place on 15 November 2016. [Mr. Harris] was asked to explain and clarify the reasons why he was not reporting to work since his return from certified sick leave. [Mr. Harris] gave two reasons. First, that he was not medically fit for duty in Sector East and second that he considered that attempts were being made to destroy his career and he made various allegations to that effect. It would appear that this meeting did not result in any positive resolution.

... By e-mail dated 28 November 2016, the Chief/RICTS asked [Mr. Harris] to explain his failure to report to work in Sector East following the meeting of 15 November 2016.

... It would appear that [Mr. Harris] felt so strongly about the decision to reassign him to work in Sector East that although he was seen at UNIFIL HQ on several occasions and attended training events on certain dates between October 2016 and February 2017 he did not report for work in Sector East where he had been reassigned.

... On 29 November 2016, the Chief/HRMS issued [Mr. Harris] with a warning that if he continued to absent himself from work in Sector East the process of separation for abandonment of post would be commenced. [Mr. Harris] responded on the same day stating that he was unable to work in Sector East and on 8 December 2016 he asked that the decision to reassign him be reconsidered.

... [Mr. Harris] took home leave from 9 December 2016 to 3 January 2017.

... On 16 January 2017, [Mr. Harris] received a final warning that he should report to work or else the Mission would initiate proceedings in respect of abandonment of post. [Mr. Harris] replied on 17 January expressing the view that he regarded this warning as part of the systematic threats that he was being subjected to.

... [Mr. Harris] subsequently submitted a sick leave certificate and on 8 February 2017, the proceedings in respect of abandonment of post ceased upon receipt of an MSD medical leave certificate covering the period 28 January to 17 February 2017, subsequently extended through to 31 March 2017. On this date his entitlement to sick leave on full pay ended.

... By e-mail dated 27 March 2017 to the C/HRMS, [Mr. Harris] sought guidance on the procedure for requesting Special Leave With Full Pay (SLWFP). On 31 March 2017, the C/HRMS advised [Mr. Harris] by email that since he had exhausted his allocation of sick leave with full pay, any additional sick leave certified by MSD would be charged against his allocation of sick leave with half pay and annual leave.

... By memorandum dated 1 April 2017, the C/HRMS addressed [Mr. Harris's] sick leave entitlements and his absence from work. She also explained to him that requests for SLWFP are to be directed to the Secretary-General.

... [Mr. Harris] wrote to the Secretary-General on 20 April 2017 to request 18 months SLWFP. This email was copied to the UNIFIL Director of Mission Support (DMS).

... By memorandum dated 21 April 2017, the C/HRMS directed [Mr. Harris] to provide a specialist report regarding his sick leave or report for duty by 25 April 2017. He was informed that since he was not on either approved annual leave or [Special Leave Without Pay (SLWOP)], the period as of 1 April 2017 would be considered as unauthorized absence.

... On 26 April and 11 May 2017, [Mr. Harris] received warnings that he had been absent from work in Sector East since 1 April 2017 and should report to work or provide a reason otherwise the Mission would initiate proceedings in respect of abandonment of post. [Mr. Harris] responded to the C/HRMS on 26 April and 19 May 2017 seeking information on the status of his pending request for SLWFP. He indicated that he was suffering from anxiety, depression and stress and needed to undergo treatment.

... On 23 May 2017, the C/HRMS informed [Mr. Harris] that UNIFIL was following up with the Field Personnel Division (FPD) on his request for SLWFP since the Mission did not have delegated authority to decide on such requests.

... On 26 May 2017, UNIFIL recommended to the Assistant Secretary-General for Human Resources Management that [Mr. Harris] be separated on the ground of abandonment of post. On 12 July 2017, the recommendation was approved.

... By e-mail dated 25 July 2017, UNIFIL sent [Mr. Harris] a memorandum dated 24 July 2017 informing him that the Secretary-General had approved the decision to separate him from service with effect from 12 July 2017 on the ground of abandonment of post.

6. On 15 December 2017, the UNDT issued its Judgment holding that the Administration's decision to separate Mr. Harris for abandonment of post was lawful. The UNDT held that he failed to meet his burden of proof that his reassignment to Sector East was improperly motivated. The UNDT found that he had been absent from work from 1 April 2017 until his separation on 12 July 2017, for which he did not submit medical certificates. The UNDT noted that if the duties assigned to a staff member were such that it would be difficult, or impossible, to perform them because of a health-related reason than any representation to this effect had to be supported by an appropriate medical report. Such judgments were left to medical professionals and not determined by the opinions of others including staff members, managers, etc. The UNDT found that Mr. Harris did not provide a duly authorized medical certificate or other justification for his failure to report to work. The Administration followed the prescribed procedures. Accordingly, the separation for abandonment of post was lawful.

### **Submissions**

#### **Mr. Harris' Appeal**

7. Mr. Harris requests the Appeals Tribunal to overturn the impugned Judgment. Mr. Harris argues that he did not take certified or uncertified sick leave for ten years while serving in Lebanon and Syria for UNIFIL. Mr. Harris argues that the separation decision is unfair, unreasonable, irrational and procedurally incorrect. Immediately upon completion of intramedullary nail fixation surgery, while still recovering, he was assigned to the toughest part of the mission closest to the Israeli-Lebanese border (Sector East), an assignment which indicated the lack of care for his condition and supports his claim that he was subjected to harassment.

8. Mr. Harris argues that his separation for abandonment of post lacked procedural fairness as his request for special leave had been acknowledged but the Administration did not provide a response until after he had been served with papers for separation. Mr. Harris asserts that the alleged unauthorized absence was caused by reasons beyond his control. In good faith, the Administration should have charged the absences against his accrued annual leave. Further, the Administration withheld his salary and suspended his health insurance while on approved sick leave, serving as further evidence that the Administration did not act fairly, reasonably, and in good faith. The UNDT ignored the fact that he had accumulated more than 43 annual leave days, 28 days of compensatory time off, and 195 days of sick-leave with half pay.

9. Mr. Harris further argues that the UNDT erred in its assessment of the intentional falsification of his attendance record which led to his salary being withheld and the suspension of his health care (issues addressed in UNDT Judgment Nos. UNDT/2017/094 and UNDT/2017/097 and not in issue in the impugned Judgment), and which contributed to his stress and the ultimate diagnoses of post-traumatic stress disorder.

10. Mr. Harris requests that the Appeals Tribunal hold an oral hearing. He further requests twenty-four months of gross salary for both pecuniary and moral damages, plus after-service health insurance (ASHI) for chemotherapy treatment, and repatriation grant to assist in his return travel and the shipment of his effects.

### **The Secretary-General's Answer**

11. The Secretary-General requests the Appeals Tribunal to dismiss the appeal in its entirety. The UNDT correctly found Mr. Harris had been absent without authorization from 1 April 2017 until 12 July 2017, and thus he failed to perform his duties and obligations. Mr. Harris had not provided a medical certificate or other justification for these absences. The UNDT correctly found that the Administration had followed the requisite procedures and, therefore, the separation was lawful. Mr. Harris had been repeatedly advised that if he did not report for duty or provide justification the Administration would commence abandonment of post proceedings. After a month of not receiving justification, UNIFIL recommended his separation. In doing so, UNIFIL complied with the procedures of Administrative Instruction ST/AI/400 (Abandonment of post).

12. In addition, the Secretary-General argues that Mr. Harris has failed to identify any reversible error by the UNDT, which is his burden. While Mr. Harris asserts that the UNDT erred in fact and ignored evidence, he does not identify which facts or evidence. His arguments that the Administration acted unfairly because it did not take into account his request for special leave with full pay, his good attendance record, and his accrued annual leave balance, are reiterations of the same arguments he submitted before the UNDT. He merely reargues and expresses his disagreement with the UNDT's findings. In addition, Mr. Harris sets forth arguments in his appeal that are not relevant to the instant case but relate, rather, to the contested decisions examined by the UNDT in the other judgments separately under appeal. Accordingly, Mr. Harris' claims fail to satisfy the requirements of Article 2(1) of the Appeals Tribunal's Statute and they do not constitute grounds upon which an appellant may appeal a UNDT judgment.

13. Lastly, the Secretary-General argues that Mr. Harris has failed to establish a basis for which compensation may be awarded. Article 9(1) of the Appeals Tribunal's Statute requires proof of harm. Mr. Harris has not provided support for compensation, but merely attaches medical certificates. One certificate, dated 14 April 2017, was not part of the record before the UNDT and should only be admitted before the Appeals Tribunal pursuant to Article 2(5) of the Appeals Tribunal's Statute if there are exceptional circumstances and the evidence was not known to either party. In the instant matter, Mr. Harris has not requested this additional evidence be admitted nor set forth any argument that it meets the exceptional circumstances standard. Furthermore, the two certificates submitted with his appeal (dated 16 January 2017 and 9 February 2017) have no relevance for his absence which began 1 April 2017.

### **Considerations**

14. We deal first with a preliminary matter. Mr. Harris has requested an oral hearing. Pursuant to Article 8(3) of the Appeals Tribunal's Statute, it lies within the prerogative of the judges assigned to a case to decide whether to hold oral proceedings. Rule 18(1) of our Rules of Procedure provides that the judges may decide to do so if such hearing would assist in the expeditious and fair disposal of the case. In the present case, an oral hearing would be of no such assistance as the facts and pleadings on record clearly define the issues for decision on appeal. Mr. Harris's request for an oral hearing is therefore refused.

*The Merits*

15. As recited above, Mr. Harris had been warned to report for duty at his post at Sector East or produce a specialist report. He failed to do either of those things and was separated from service on the ground of abandonment of post. The UNDT upheld the Administration's decision. It found that Mr. Harris was absent from duty and hence failed to perform the work that had been assigned to him and that he did not provide a duly authorized medical certificate or other justification for failure to report to work.

16. The central argument of Mr. Harris' appeal is that the UNDT "erred on the question of facts and greatly ignored evidence" in dismissing his application. He claims that a key principle ignored by the UNDT is the Secretary-General's abuse of his discretionary powers in deciding to separate him from service for abandonment of post, when he had applied for special leave.

17. There was evidence before the UNDT of a previous incident in which Mr. Harris had taken a series of unauthorised absences from duty in respect of which proceedings for abandonment of post were initiated. On that occasion, after a final warning, he brought the abandonment of post proceedings to an end by producing a medical leave certificate. Mr. Harris was, therefore, aware that in order to justify his absence from duty he would need to produce appropriate medical evidence.

18. Despite that earlier experience, he absented himself from duty from 1 April 2017 to 12 July 2017, ignoring requests to either produce a medical certificate or report for duty.

19. The UNDT took into account Mr. Harris' objections to being assigned to duty in Sector East, but, considered that such an assignment was not any justification for his unauthorized absence from duty.

20. We recall that Staff Regulation 1.2(c) provides: "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". Traditionally, the reassignment of staff members' functions comes within the broad discretion of the Organization to use its resources and personnel as it deems appropriate.<sup>2</sup>

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<sup>2</sup> *Hepworth v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-503, para. 45.

21. Accordingly, we uphold the reasoning of the UNDT, which stated:<sup>3</sup>

.. It is not part of the Tribunal's functions to put itself in the position of the managers by making decisions on the deployment of staff or the assignment of their duties, including the place where they are to work. The Tribunal's duty is to judicially review the decisions to determine whether they are in accordance with the law and whether the decision maker/s acted procedurally correctly. In circumstances where a staff member returns from sick leave the administration has to be satisfied that the staff member concerned is certified as fit to return to work. If the duties assigned are of such a nature that it will be difficult, or impossible, to perform because of a reason related to health then any representation to this effect must be supported by an appropriate medical report. Such judgments are left to medical professionals and are not to be determined on the basis of assessments or opinions of others including the staff member, the managers concerned and, it may properly be added, the Tribunal.

22. Mr. Harris has not demonstrated any error in the finding by the UNDT that he had failed to meet his burden of proving that the assignment to work in Sector East was motivated by improper consideration.

23. Contrary to Mr. Harris' claim that the UNDT ignored the Secretary-General's abuse of his discretionary power, we find that the UNDT properly considered the relevant facts and the applicable law in concluding that the Administration had followed the prescribed procedures and acted in accordance with the internal laws of the Organization in separating him for abandonment of post.

24. The UNDT noted, *inter alia*, that Section 5 of ST/AI/400 (Abandonment of post) provides that "[t]he absence of a staff member from his or her work, unless properly authorised as leave under [S]taff [R]ule 105.1(b), as special leave under [S]taff [R]ule 105.2, as sick leave under [S]taff [R]ule 106.2 or as maternity leave under [S]taff [R]ule 106.3, may create a reasonable presumption of intent to separate from the Secretariat unless the staff member is able to give satisfactory proof that such absence was involuntary and was caused by forces beyond his or her control".

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<sup>3</sup> Impugned Judgment, para. 10.

25. Mr. Harris claims that his separation for abandonment of post lacked procedural fairness because the Administration acknowledged his request for special leave but did not provide a response until after he was served with papers for separation. This claim has no merit. He cannot choose to ignore a lawful direction by the Administration to provide medical evidence or return to work simply by requesting special leave.

26. Moreover, Mr. Harris claims that the UNDT ignored evidence, but does not identify what evidence was ignored, or, for that matter, what findings of facts are alleged to have resulted in an unreasonable decision.

27. For the foregoing reasons, this appeal has no merit.

28. There is thus no basis for awarding the compensation claimed by Mr. Harris. The Appeals Tribunal held in *Wishah*<sup>4</sup> that compensation cannot be awarded when no illegality has been established; it cannot be granted when there is no breach of the staff member's rights or administrative wrongdoing in need of repair. There are no legal grounds that can justify such an award when no actual prejudice was found.<sup>5</sup>

29. Lastly, Mr. Harris has attached three medical certificates to his appeal. Two of them, dated 16 January 2017 and 9 February 2017, were produced to the UNDT, which ruled that they were not relevant to his absence from 1 April 2017 to 12 July 2017. The third certificate dated 14 April 2017, was not produced to the UNDT. He has not sought leave to produce it in his appeal. Nor has he established any exceptional circumstances for its admission as required by Article 2(5) of the Appeals Tribunal's Statute. Article 2(5) also excludes the admission of evidence that was known to him and should have been presented at the level of the Dispute Tribunal. We rule that all three certificates are inadmissible.<sup>6</sup>

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<sup>4</sup> *Wishah v. Commissioner-General of the of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-537.

<sup>5</sup> *Oummih v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-518/Corr.1; *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-114; *Nwuke v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-697.

<sup>6</sup> Article 2(5) of the Appeals Tribunal's Statute provides: In exceptional circumstances, and where the Appeals Tribunal determines that the facts are likely to be established with documentary evidence, including written testimony, it may receive such additional evidence if that is in the interest of justice and the efficient and expeditious resolution of the proceedings. Where this is not the case, or where the Appeals Tribunal determines that a decision cannot be taken without oral testimony or other forms of non-written evidence, it shall remand the case to the Dispute Tribunal. The evidence under this paragraph shall not include evidence that was known to either party and should have been presented at the level of the Dispute Tribunal.

30. The appeal fails.

**Judgment**

31. The appeal is dismissed and Judgment No. UNDT/2017/095/Corr.1 is affirmed.

Original and Authoritative Version: English

Dated this 29<sup>th</sup> day of March 2019 New York, United States.

*(Signed)*

Judge Lussick,  
Presiding

*(Signed)*

Judge Raikos

*(Signed)*

Judge Thomas-Felix

Entered in the Register on this 29<sup>th</sup> day of May 2019 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar