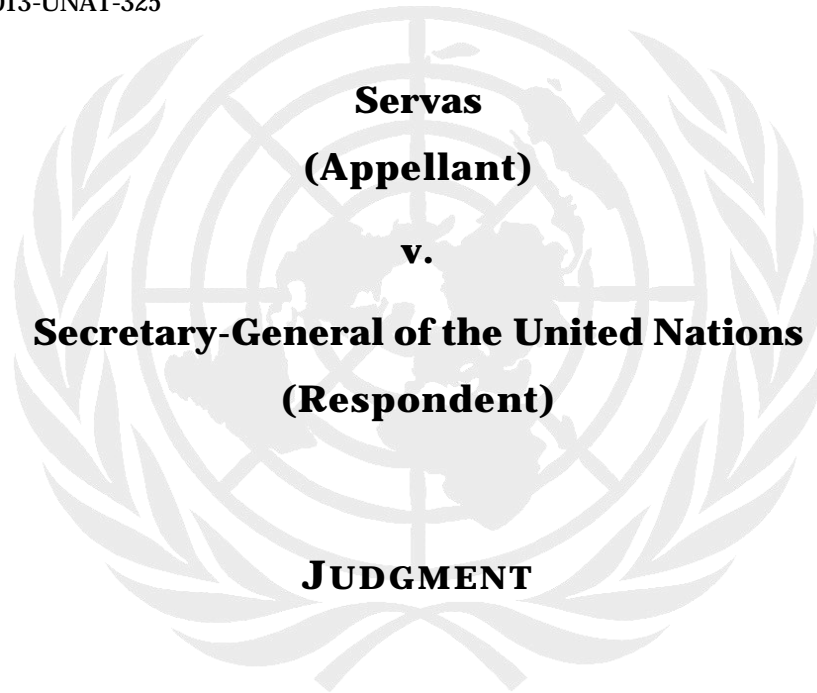




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2013-UNAT-325



Before:	Judge Rosalyn Chapman, Presiding Judge Luis María Simón Judge Richard Lussick
Case No.:	2012-353
Date:	28 June 2013
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Rupa Mitra

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Susan Lee Servas against Judgment No. UNDT/2012/102, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 2 July 2012 in the case of *Servas v. Secretary-General of the United Nations*. Ms. Servas appealed on 26 July 2012, and the Secretary-General answered on 8 October 2012.

Facts and Procedure

2. Ms. Servas is a national of Canada. She obtained temporary resident status in France for family reasons in February 2008.

3. Ms. Servas joined the International Trade Centre (ITC), Geneva, on 20 January 2009 as a locally-recruited G-5 Programme Assistant on a short-term appointment, which was renewed through 19 July 2009. As of 20 July 2009, she was reappointed to the same post on a temporary contract. She served as a Programme Assistant at the G-5 level until 31 May 2010. At all times, Ms. Servas resided in France within commuting distance from Geneva.

4. Ms. Servas was retroactively appointed, effective 1 June 2010, as an Associate Programme Adviser at the P-2 level, pursuant to a Settlement Agreement signed on 29 June 2011 under the auspices of the Office of the United Nations Ombudsman and Mediation Services.

5. Ms. Servas separated from service with the ITC on 18 July 2011.

6. On 5 August 2011, Ms. Servas travelled to Canada for a visit.

7. In September 2011, Ms. Servas took steps to obtain permanent resident status in France. On 5 October 2011, she asked the Human Resources Section of the ITC whether she was entitled to payment of a repatriation grant and travel expenses upon separation from service. On 7 October 2011, she was told she was not entitled to the allowances as she had been recruited locally. On 1 November 2011, Ms. Servas requested management evaluation of the administrative decision refusing her payment of the repatriation grant and reimbursement of her travel expenses. On 12 December 2011, the Management Evaluation Unit (MEU) informed her that the Secretary-General upheld the contested decision.

7. On 19 December 2011, Ms. Servas was granted permanent resident status in France.
8. On 18 January 2012, Ms. Servas filed an application before the UNDT, challenging the refusal to pay her the repatriation grant and travel expenses. The Secretary-General filed his reply on 20 February 2012, and Ms. Servas submitted observations on the reply on 28 February 2012.
9. On 19 June 2012, the UNDT held an oral hearing, and on 2 July 2012 issued Judgment No. UNDT/2012/102, denying Ms. Servas' application seeking a repatriation grant and travel expenses.

Submissions

Ms. Servas' Appeal

10. The UNDT erred in procedure by failing to apply the legal framework set out in Staff Rule 3.18 to determine her eligibility for a repatriation grant.
11. Ms. Servas' internationally recruited status as a professional staff member should have been the starting point of the UNDT's analysis.
12. The UNDT erred in concluding the Secretary-General did not have discretionary authority in the interpretation of staff rules and on the condition of relocation. In this regard, the UNDT erred in considering that the part of France in which the Appellant resided was included in the Geneva duty station, among other things.
13. The UNDT erred in determining she was not eligible for travel on separation to Toronto, Canada, pursuant to Staff Rule 7.1(b). Specifically, the Appellant's service as a General Service staff member should have been credited toward the requirement of two years of continuous service. Eligibility for travel expenses is not the same thing as eligibility for home leave.
14. The UNDT failed to exercise jurisdiction to consider that "extraneous factors had tainted the contested decisions". In particular, Ms. Servas claims that the adverse decisions regarding her entitlement to a repatriation grant and travel expenses were made in retaliation for the Settlement Agreement, which is a protected activity.

Secretary-General's Answer

15. The UNDT correctly found that the Appellant was not eligible for a repatriation grant because she did not establish that she relocated upon separation from service. Rather, she resided in France at the time she began her service with the Organization and continued to reside in France following her separation from service.

16. The UNDT correctly found that the Appellant was not eligible for travel expenses or home leave because she did not complete two years of continuous service at the professional level prior to her separation. The Appellant's initial appointment was at the General Service level and does not count as service for home leave purposes; rather, only her service as a professional staff member counts. The Appellant's service as a professional staff member commenced on 1 June 2010, and ended when she separated from service on 18 July 2011.

17. The Appellant has not identified any errors in the UNDT Judgment regarding her eligibility for either a repatriation grant or travel expenses.

18. Other issues raised by the Appellant before the UNDT were not included in her request for management evaluation and, thus, were not properly before the UNDT for consideration and should not be addressed on appeal. On appeal, the Appellant's claims must be limited to those that were exhausted in the management evaluation, i.e., the denials of a repatriation grant and travel expenses.

Considerations

Repatriation Grant

19. Staff Regulation 9.4 provides that:

The Secretary-General shall establish a scheme for the payment of repatriation grants in accordance with the maximum rates and under the conditions specified in annex IV of these Regulations.

20. In turn, Annex IV provides that:

In principle, the repatriation grant shall be payable to staff members whom the Organization is obligated to repatriate *and who at the time of separation are residing, by virtue of their service with the United Nations, outside their country of nationality*. The repatriation grant shall not, however, be paid to a staff member who

is dismissed. *Eligible staff members shall be entitled to a repatriation grant only upon relocation outside the country of the duty station.* Detailed conditions and definitions relating to eligibility and requisite evidence of relocation shall be determined by the Secretary-General. (Emphasis added)

21. Staff Rule 3.18 implements annex IV. Staff Rule 3.18(a) explains the purpose of the repatriation grant:

The purpose of the repatriation grant provided by staff regulation 9.4 is to facilitate the relocation of expatriate staff members to a country other than the country of the last duty station, *provided that they meet the conditions contained in annex IV to the Staff Regulations and in this rule.* (Emphasis added.)

22. Paragraph (b) of Staff Rule 3.18 defines key terms in annex IV and paragraph (c) of Staff Rule 3.18 sets forth the conditions a staff member must meet to be eligible for a repatriation grant under annex IV. Staff Rule 3.18(c) provides:

(c) Staff members who are considered internationally recruited pursuant to staff rule 4.5 shall be eligible for payment of the repatriation grant in accordance with annex IV to the Staff Regulations provided that they meet the following conditions:

- (i) The Organization had the obligation to repatriate the staff member upon separation after qualifying service of one year or longer;
- (ii) The staff member resided outside his or her recognized country of nationality while serving at the last duty station;
- (iii) The staff member has not been dismissed, or separated from service on grounds of abandonment of post;
- (iv) The staff member has not been locally recruited under staff rule 4.4;
- (v) The staff member does not have permanent resident status in the country of the duty station at the time of separation.

Additionally, paragraph (e) of Staff Rule 3.18 requires that the staff member submit documentary evidence to the satisfaction of the Secretary-General showing that “the former staff member has relocated away from the country of the last duty station”.

23. The UNDT relied solely on annex IV to determine Ms. Servas was not eligible for a repatriation grant, stating:

[T]o be eligible for payment of a repatriation grant, the staff member must not only meet certain conditions, but, first and foremost, must have relocated upon separation

from service. Yet, [Ms. Servas], who had held temporary resident status in France since 2008, before she was recruited by ITC, has not relocated upon her separation from service. ... [Ms. Servas] is, therefore, not eligible for the said grant.

24. Ms. Servas complains that the UNDT erred by not considering the various provisions of Staff Rule 3.18, particularly paragraph (c), in determining her eligibility. That is not so. Staff Rule 3.18(a) provides that, to be eligible for a repatriation grant, a staff member must meet the conditions set forth in *both* annex IV and Staff Rule 3.18. Thus, a staff member's failure to meet the requirements of either annex IV or Staff Rule 3.18 precludes the staff member from being eligible for a repatriation grant. Since Ms. Servas did not meet the requirement of annex IV that she relocate after separation from service, there was no need for the UNDT to consider whether she met the conditions for eligibility under Staff Rule 3.18(c).

25. The evidence clearly shows that Ms. Servas did not relocate outside of the country of the duty station upon separation from service, as required by annex IV. This cannot be disputed. She resided in France while working for the ITC in Geneva and she continued to reside in France after her separation from service. Moreover, as the Secretary-General notes, Ms. Servas was not, at the time of her separation from service, residing outside Canada "by virtue" of her service with the Organization, as required by annex IV. Thus, the UNDT did not err in determining Ms. Servas was not eligible for a repatriation grant.

Travel Expenses

26. The UNDT determined Ms. Servas was not eligible for travel expenses or home leave because she had not completed two years of continuous service prior to her separation from the ITC, stating:

Since [Ms. Servas] was recruited locally, she cannot contend on the basis of the first sentence of paragraph (b) of rule 7.1 that she was eligible, upon her separation from service, for the reimbursement of expenses to travel to Canada, her country of nationality. ... [T]he second sentence of [paragraph (b) of rule 7.1] ... links the payment of travel expenses upon separation from service to staff members' right to take home leave in accordance with rule 5.2 of the Staff Rules.

...

... [I]t is not contested that [Ms. Servas] was appointed to the P-2 level on 1 June 2010[.] [B]y applying [Staff Rule 5.2(c), she] began to accrue service credits for home leave only from that date. It therefore follows that as of 18 July 2011 when

she separated from service, she did not meet the requirement of two years continuous service within the meaning of the aforementioned rule 5.2.

27. The Dispute Tribunal is correct. The eligibility of a staff member for the payment of travel expenses or home leave depends upon whether the staff member has been locally recruited or internationally recruited by the Organization. Staff Rules 4.4 and 4.5 explain the difference between being locally recruited and internationally recruited. Staff Rule 4.4 provides, in pertinent part:

(a) All staff in the General Service and related categories ... shall be recruited in the country or within commuting distance of each office. ... The allowances and benefits available to staff members in the General Service and related categories shall be published by the Secretary-General for each duty station.

...

(c) A staff member subject to local recruitment under this rule shall not be eligible for the allowances or benefits indicated under staff rule 4.5(a).

28. Staff Rule 4.5 provides, in pertinent part:

(a) Staff members other than those regarded under staff rule 4.4 as having been locally recruited shall be considered as having been internationally recruited. Depending on their type of appointment, the allowances and benefits available to internationally recruited staff members, may include: payment of travel expenses upon initial appointment and on separation for themselves and their spouses and dependent children, removal of household effects, home leave, education grant and repatriation grant.

(b) Staff recruited locally at a duty station for posts in the Professional and higher categories at that specific duty station are considered internationally recruited but would generally not be entitled to some or all of the allowances and benefits mentioned in paragraph (a) above as determined by the Secretary-General.

29. Under Staff Rule 7.1(a)(iv), the Secretary-General must pay the travel expenses of a staff member “[o]n separation from service”. However, Staff Rule 7.1(b) places certain limitations on this entitlement, stating:

Under subparagraph (a)(iv) above, the United Nations shall pay the expenses of a staff member to travel to the place of recruitment. However, if the staff member had an appointment for a period of two years or longer or had completed not less than two years of continuous service, the United Nations shall pay his or her expenses to travel to the place recognized as his or her home for the purpose of home leave under

staff rule 5.2 Should a staff member, on separation, wish to go to any other place, the travel expenses borne by the United Nations shall not exceed the maximum amount that would have been payable for the return of the staff member to the place of recruitment or home leave, as applicable.

30. Under Staff Rule 5.2(c), “[s]taff members who become eligible for home leave subsequent to appointment shall begin to accrue such service credits from the effective date of their becoming eligible”.

31. The record shows that Ms. Servas was recruited locally to a General Service position with the ITC, and she continued to work as a General Service staff member until she was retroactively appointed as a P-2 professional staff member, effective 1 June 2010. Since Ms. Servas separated from service on 18 July 2011, she did not have two years continuous service as a professional staff member prior to her separation from service. Thus, she was not eligible for the payment of travel expenses or home leave upon separation.

32. For the foregoing reasons, Judgment No. UNDT/2012/102 should be affirmed and the appeal should be dismissed.

Judgment

33. Ms. Servas’ appeal of Judgment No. UNDT/2012/102 is dismissed.

Original and Authoritative Version: English

Dated this 28th day of June 2013 in New York, United States.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Simón

(Signed)

Judge Lussick

Entered in the Register on this 26th day of August 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar