



Judgment No. 2017-UNAT-791



Counsel for Ms. Ho:

Self-represented

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Wambui Mwangi



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[directly] caused by the impugned judgment”.<sup>8</sup> Ms. Ho has failed to demonstrate that the UNDT Judgment generated harm that constitutes the *conditio sine qua non* of her appeal.

7. The appeal is not receivable as Ms. Ho failed to identify an error that may have led to a manifestly unreasonable decision warranting the intervention of the Appeals Tribunal. Ms. Ho fails to identify the UNDT’s findings of fact that were not supported by the evidence or were unreasonable. Ms. Ho requests USD 2,000 in moral damages citing without any supporting arguments to Tran Nguyen; however, there is no jurisprudential nexus between this case and Ms. Ho’s situation. Ms. Ho’s argument for an increased moral damage has no basis. Ms. Ho has not submitted any evidence to the MEU, to the UNDT, or to the Appeals Tribunal in support of these assertions and the issue in this case remains to be about the rate of exchange in calculating her repatriation grant. Allegations regarding her privacy and use of a third-party remitter are being raised for the first time on appeal having not been previously submitted for management evaluation. Such decisions are only receivable by the UNDT and subsequently the Appeals Tribunal if they have previously been submitted for management evaluation. Thus, the issue of her breach of privacy is not receivable *ratione materiae*.

8. The Secretary-General further submits that Ms. Ho is re-litigating her request for material damages because she disagrees with the UNDT’s decision. The UNDT already examined whether Ms. Ho suffered harm on account of the delay and whether she was entitled to payment of interest and provided reasoned analysis upon findings of fact and law which are reasonable. Ms. Ho’s argument that given the delay, the Administration should have checked with her to confirm if the bank information she provided in 2015 was still valid and to confirm her preferred currency does not demonstrate an error by the UNDT. Moreover, the onus is on Ms. Ho to update her banking details. This issue was also not previously submitted for management evaluation and is not receivable. Regarding Ms. Ho’s request for a formal apology, the Secretary-General notes the Chief of Human Resources, UNFCCC already expressed his regret for the delay.

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<sup>8</sup> Bagot v. Secretary-General of the United Nations, Judgment No. 2017-UNAT-718, para. 29.

### **Considerations**

Receivability of the appeal

9. The first issue to be decided is whether the appeal is receivable.

10. In Rasul,<sup>9</sup> Sefraoui,<sup>10</sup> and other cases,<sup>11</sup> the Appeals Tribunal held that the party in whose favour a case has been decided is not permitted to appeal against the judgment on legal or academic grounds. Thus, the successful party is prevented from filing an appeal, which is an instrument to pursue a change of a judicial deci



**Merits**

Exchange rate

13. Staff Rule 3.19(a) (Repatriation Grant) provides that:

... 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.

14. Staff Regulation 9.4 stipulates 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.

15. The above-mentioned annex IV (Repatriation Grant) states the following:

... In principle, the repatriation grant shall be payable to staff members who have completed at least five years of qualifying service, 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.

16. There has not been any dispute, either before the UNDT or this Tribunal, in terms of Ms. Ho's eligibility to the payment of a repatriation grant under the above provisions, as well as the USD amount due to her, in application of the table contained in annex IV to the Staff Regulations, namely USD 5,994.

17. Rather, the crux of the present case can be summarized on the issue of the exchange rate used to calculate the repatriation grant due to Ms. Ho in light of the UNORE.

18. In her appeal, Ms. Ho seeks USD 268 as the difference between the actual amount that was paid by UNFCCC of USD 5,725 (MYR 23,358.89) and the repatriation grant due to her of USD 5,994.

19. Ms. Ho argues that the UNORE that should have been applied to determine the amount to be remitted to her MYR bank account is that of 20 June 2016 (which was USD 1 = MYR 4,078), when the payment was released, to wit, when the money was actually transferred to her account, rather than that of 31 May 2016 (which was USD 1 = MYR 3,897), which was used by the Administration.

20. In the course of its Judgment, the UNDT addressed this issue in the following terms:<sup>13</sup>

... To determine any material damage, the [Dispute] Tribunal first has to take into account the UNORE that applied at the time the payment became due (that is upon

to the UNORE that was applied by the Administration, i.e. when the payment was actually made (i.e., 31 May 2016).

22. We discern no fault in this finding of the UNDT, as the determinant UNORE is that applicable at the due date of the repatriation grant entitlement,<sup>14</sup> that is upon receipt of the proof of relocation (1 June 2015), and, indeed, Ms. Ho has not demonstrated in her appeal that the UNDT fell into any error, whether of fact or law. There is no merit to her claim that the UNORE that should have been applied is that of 20 June 2016 (which was USD 1 = MYR 4,078), when the money was actually transferred to her account. If that was the case, the determinant time for the applicable UNORE and hence the calculation of<sup>14</sup>

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... However, the [Dispute] Tribunal notes that the Applicant received a total amount of MYR 23,358.89 in May 2016, instead of MYR 22,585.66 that she would have received if payment had been made in June 2015. Therefore, since the difference in payment, i.e., MYR 773.23, exceeds the amount of interest calculated above, the [Dispute] Tribunal cannot but find that even taking into account the potential interest she could have obtained through investment, the Applicant did not suffer any material damage.

29. We find no reasons to differ from that conclusion, since the findings of fact made by the UNDT can only be disturbed under Article 2(1)(e) of the Statute, when there is an error of fact resulting in a manifestly unreasonable decision, which is not the case here.

30. The UNDT has considered the issues of material damages and the interest claimed by Ms. Ho in detail, providing reasons, facts and law, as required under Article 11(1) of its Statute and in accordance with the Appeals Tribunal's jurisprudence. As we have repeatedly stated,<sup>23</sup> the very purpose of compensation is to place an appellant in the same position he or she would have been in had the Organization complied with its contractual obligations, and any compensation may never give rise to undue enrichment.

Moral damages

31. This Tribunal has consistently held that "compensation must be set by the UNDT following a principled approach and on a case by case basis" and that the Appeals Tribunal will not interfere lightly as "[t]he Dispute Tribunal is in the best position to decide on the level of compensation given its appreciation of the case".<sup>24</sup>

32. In the instant case, the UNDT awarded Ms. Ho compensation for moral damages in the amount of USD 500 for having suffered stress, frustration and anxiety caused by the Organization's failure to process the payment in due time.<sup>25</sup>

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<sup>23</sup> Warren v. Secretary-General of the United Nations, Judgment No. 2009-UNAT-103, para. 1; Azzouni v. Secretary-General of the United Nations, Judgment No. 2011-UNAT-162, para. 23.

<sup>24</sup> Mihai v. Secretary-General of the United Nations

33. Ms. Ho requests moral damages be increased to USD 2,000 from the Dispute Tribunal's award of USD 500 to reflect the gravity of the situation of "unlawfully retaining money".

34. We hold that the UNDT did not commit any error of law in its assessment of the compensation award, which we find was fair and reasonable. Ms. Ho has not demonstrated any error of law or manifestly unreasonable factual findings on the part of the Dispute Tribunal. In such circumstances, the Appeals Tribunal gives deference to the Dispute Tribunal in the exercise of its discretion and will not lightly disturb the quantum of damages.<sup>26</sup>

35. In addition, we reject Ms. Ho's argument that she should have received moral damages equivalent to that awarded to the staff member in Tran Nguyen.<sup>27</sup> This Tribunal is not bound by Tran Nguyen and no similar circumstances were present in the instant case. In any event, the criterion for an award of moral damages is the degree of injury suffered by the individual staff member under the specific circumstances as a result of the unlawful decision. Even if the type of unlawful decision were the same as in another case/or a number of other cases, this does not establish that the degree of moral damage must be the same.<sup>28</sup>

36. We find that the Dispute Tribunal did not commit any error in its assessment of the award of moral damages. Ms. Ho has not established any ground which would justify our interference.

37. Finally, in her appeal, Ms. Ho submits that her banking details were provided to an unconnected third party (INTL FCSTONE LIMITED) without her knowledge and consent, thus breaching her privacy and confidentiality and requests a formal apology from the Administration for having breached her privacy and. However, these issues were not raised before the UNDT, and thus cannot be introduced for the first time on appeal for consideration by the Appeals Tribunal.<sup>29</sup> We find that Ms. Ho's appeal in this regard is not receivable.

<sup>26</sup> Maslei v. Secretary-General of the United Nations, Judgment No. 2016-UNAT-637, para. 31; Leclercq v. Secretary-General of the United Nations, Judgment No. 2014-UNAT-429, para. 22, citing Sprauten v. Secretary-General of the United Nations, Judgment No. 2012-UNAT-219.

<sup>27</sup> Tran Nguyen v. Secretary-General of the United Nations, Judgment No. 2015/UNDT/002.

<sup>28</sup> See, Maslei v. Secretary-General of the United Nations, Judgment No. 2016-UNAT-637, para. 32.

<sup>29</sup>

38. From the foregoing, we hold that Ms. Ho has failed to establish that the UNDT committed errors on questions of facts and law such as to warrant a reversal of the Judgment.

39. Accordingly, the appeal fails.

**Judgment**

40. The appeal is dismissed and Judgment No. UNDT/2017/013 is hereby affirmed.

Original and Authoritative Version: English

Dated this 27<sup>th</sup> day of October 2017 in New York, United States.

(Signed)

Judge Raikos, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Halfeld

Entered in the Register on this 8<sup>th</sup> day of December 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar