

Judgment No. 2018-UNAT-810



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**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 Octo

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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

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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.

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

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**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





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

### 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.<sup>2</sup> 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.<sup>3</sup> There was only an offer of employment.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup> 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".

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<sup>2</sup> Impugned Judgment, para. 47.

<sup>3</sup> *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.

<sup>4</sup> 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.

<sup>5</sup> *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.

<sup>6</sup> *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



46. Moreover, the manner in which she was treated when the imbroglio was discovered was unreasonable and disproportionate.<sup>9</sup> 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.

50. On the other hand, although the UNDT cons

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.

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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,



**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