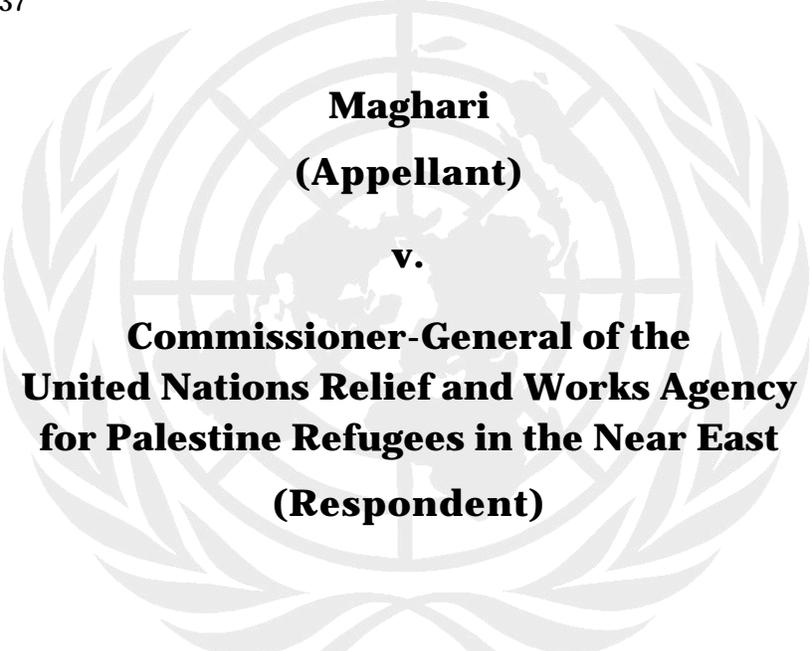




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2010-037



**Maghari
(Appellant)**
v.
**Commissioner-General of the
United Nations Relief and Works Agency
for Palestine Refugees in the Near East
(Respondent)**

JUDGMENT

Before:	Judge Sophia Adinyira, Presiding Judge Rose Boyko Judge Luis María Simón
Judgment No.:	2010-UNAT-039
Date:	1 July 2010
Registrar:	Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: W. Thomas Markushewski

JUDGE SOPHIA ADINYIRA, Presiding.

Synopsis

1. Abdel Rahman Sulieman Maghari (Maghari), a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), submitted on 19 April 2005 a letter requesting “resignation according to the rules of early voluntary retirement” effective 20 May 2005. UNRWA accepted his resignation and commenced the necessary steps to fill the vacancy resulting from Maghari’s retirement. Maghari then sought to withdraw his request for voluntary retirement. This request was rejected. Maghari’s subsequent request for administrative review failed. The UNRWA Commissioner-General adopted the recommendation of the UNRWA JAB not to reverse the decision. This Court affirms the decision of the Commissioner-General.

Facts and Procedure

2. At the time of the events giving rise to the appeal, Maghari was a teacher with UNRWA having been employed since November 1969. In March 2005, a number of concerns were raised about his performance after a series of evaluations of his work. Maghari received two warning letters from the Chief, Field Education Programme, Jordan (CFEP/J) on his shortcomings. Maghari responded and attributed the poor performance of his students to factors other than his teaching. By letter dated 12 April 2005, the CFEP/J advised the Acting Head, Education Development Centre, to conduct another evaluation to assess the level of desired improvement after Maghari had implemented recommendations discussed with him.

3. By letter dated 19 April 2005, Maghari requested, under the Area Staff Rule 109.2, “resignation according to the rules of early voluntary retirement, effective from 20/5/2005”. By letter dated 26 April, the Field Personnel Officer, Jordan (FPO/J) informed Maghari that his request for early voluntary retirement had been accepted and his retirement would take effect close of business on 19 May 2005.

4. By letter dated 9 May 2005, Maghari sought to withdraw his request for early voluntary retirement, because at the time he was “going through unnatural emotional circumstance”, and referred to earlier correspondence regarding his teaching

performance. Maghari's request was refused by the FPO/J upon the advice of the CFEP/J and the Area Education officer in a letter dated 18 May 2005.

5. Maghari accepted the separation payments made by UNRWA. On 16 June 2005, he requested review of the decision not to accept his request for withdrawal of his early voluntary retirement and stated that he "applied for resignation on 19/04/2005 under severe psychological pressure caused by continuous accusation, abusement [sic] and threatening expressions". By letter dated 29 June 2005, the Officer-in-Charge, UNRWA Operations, Jordan, informed Maghari that his request could not be acceded to. He cited the Jordan Field Staff Circular No. J/17/97 of 12 November 1997 as the basis for not accepting his withdrawal request. The said circular provides that "withdrawal of resignations will ... normally not be accepted, unless it is evident, that such withdrawal is in the sole interest of the work. In the latter case, withdrawal of a resignation requires [the Director of UNRWA Operations'] prior approval."

6. Maghari filed an appeal with the JAB on 31 July 2005. The JAB noted that Maghari did not contest an administrative decision alleging the non-observance of his terms of appointment or a disciplinary action under Area Staff Regulation 11.1. The JAB noted that the early voluntary retirement was a unilateral decision of Maghari and, pursuant to Jordan Field Circular No. J/17/97, the resignation could not be withdrawn unless it was in the interest of UNRWA. Accordingly, the JAB concluded that the appeal was not admissible *ratione materiae* and recommended that the Commissioner-General dismiss the appeal. The decision of the Commissioner-General to this effect was communicated to Maghari by letter dated 18 May 2008.

7. Maghari's appeal to the former Administrative Tribunal was transferred to the Appeals Tribunal following the abolition of the former Administrative Tribunal at the end of 2009. The Appeals Tribunal granted the Commissioner-General an extension of time to file an answer by 1 March 2010, and the answer was filed on 26 February 2010.

Submissions

Maghari's Appeal

8. Maghari submits that due consideration was not given to the exceptional circumstances that compelled him to request early retirement. He argues that the decision by the FPO/J of 18 May 2005 should be considered invalid as it was not based on the UNRWA regulations and rules; rather it was based on the opinions and prompting of the officials in the Regional Education Department and the Jordan Area Office. He further submits that the decision of the Officer-in-Charge of UNRWA Operations, Jordan based on Jordan Field Circular No. J/17/97 was too hasty as a committee could have been formed to establish the circumstances under which he submitted his resignation.

9. With regard to the decision of the Commissioner-General, Maghari submits that the JAB did not properly consider the documents before it.

10. Maghari refers to Article 109.2 of the Area Staff Rules and Jordan Field Circular No. J/17/97, and submits that the Circular is ambiguous and prejudicial to staff rights.

11. Maghari requests that this Court annul the decision of the FPO/J of 18 May 2005, the decision of the Officer-in-Charge of UNRWA Operations, Jordan, of 29 June 2005, and the decision of the Commissioner-General of 14 May 2008. He also seeks compensation for the loss of salary for the period from 20 May 2005 to 31 December 2007, the date of his retirement at the age of 60, and the expenses relating to his early retirement, and compensation for psychological suffering and damage to his social standing.

Commissioner-General's Answer

12. The Commissioner-General submits that there was no administrative decision to be reviewed by the JAB because it was Maghari's unilateral decision to leave service by early voluntary retirement.

13. In the event that the Appeals Tribunal finds that the dismissal of Maghari's appeal was not free from error, the Commissioner-General submits that the discretionary authority of UNRWA not to accept the withdrawal of Maghari's resignation under Jordan

Field Circular No. J/17/97 was properly exercised. Maghari has not discharged the burden of establishing any prejudice, improper motivation, procedural irregularity, or error of law in connection with the decision of UNRWA. In this regard, the Commissioner-General refers to the record of concerns regarding Maghari's performance.

14. In the event that this Court does not dismiss the appeal, the Commissioner-General requests the Appeals Tribunal to remand the matter to the Dispute Tribunal of UNRWA for consideration on the facts.

15. The Commissioner-General did not err as a matter of law when she dismissed the appeal based on the recommendation of JAB. The Commissioner-General submits further that Maghari's early voluntary retirement was his unilateral voluntary act and not an appealable administrative decision.

Considerations

16. The issues here are whether the Commissioner-General erred in adopting the JAB's recommendation not to accept Maghari's withdrawal letter; and whether Maghari was entitled to compensation for moral and material damages.

17. We note that Maghari's separation from UNRWA was by his own voluntary early retirement from service in accordance with the UNRWA Area Staff Rule 109.2. We also note that the Jordan Field Staff Circular No. J/17/97 provides that "withdrawal of resignations will ... normally not be accepted, unless it is evident, that such withdrawal is in the sole interest of the work. In the latter case, withdrawal of a resignation requires [the Director of UNRWA Operations'] prior approval."

18. The submission by Maghari that UNRWA ought to have set up an inquiry to determine the circumstances under which he exercised his option for early retirement is untenable and devoid of reality since he did not give any reasons for his early retirement in his letter. Neither did he make any formal complaint of harassment by any of his supervisors before tendering his letter of early voluntary retirement.

19. We observe however that Maghari's decision to go on early voluntary retirement came in the wake of a series of evaluations of his performance as a teacher which was found to be unsatisfactory and for which he had received two warnings. Nonetheless, we consider these evaluations to be a normal performance management and assessment by his supervisors and not a reflection of any bias against him.

20. The early voluntary retirement was a unilateral decision of Maghari and pursuant to Jordan Field Staff Circular No. J/17/97, the resignation could not be withdrawn unless it was in the interest of UNRWA. The decision to accept the withdrawal letter was solely within the discretion of the UNRWA Administration. The evidence on record reveals that Maghari's performance as a teacher was unsatisfactory. Maghari's complaint about the involvement of certain officers, including his supervisors, in the decision to reject his request to withdraw his resignation rather illustrates the transparency of the process as this fact was mentioned in the letter of 18 May 2005 from the FPO/J.

21. Maghari has provided no evidence of prejudice, improper motivation, procedural irregularity, or error of law in the taking of the decision not to accept his request for the withdrawal of his resignation.

22. The Commissioner-General in his submissions referred to the former Administrative Tribunal's Judgment No. 991, *Shamsi* (2001). We find it to be of persuasive authority and therefore adopt it. In paragraph IV of the *Shamsi* case, the former Administrative Tribunal stated:

The Tribunal is satisfied that the Applicant's appointment by the Agency ended because the Applicant had applied for early voluntary retirement and because that application had been accepted, and not because of the Respondent's decision to terminate the Applicant's appointment in the interest of the Agency...Since the Applicant's appointment was terminated by his voluntary action rather than as the result of any wrongful act of the Respondent, there is no basis for the Applicant's claims and all relief sought is refused.

The same reasoning applies to the present case.

23. As there was no error by the Commissioner-General, Maghari's claim for damages fails.

Judgment

24. The decision by the Commissioner-General that there was no error in rejecting Maghari's withdrawal letter is therefore affirmed. Maghari's claim for compensation is dismissed. The appeal is dismissed.

Dated this 1st day of July 2010 in New York, United States.

Original: English

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Boyko

(Signed)

Judge Simón

Entered in the Register on this 16th day of August 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar
United Nations Appeals Tribunal