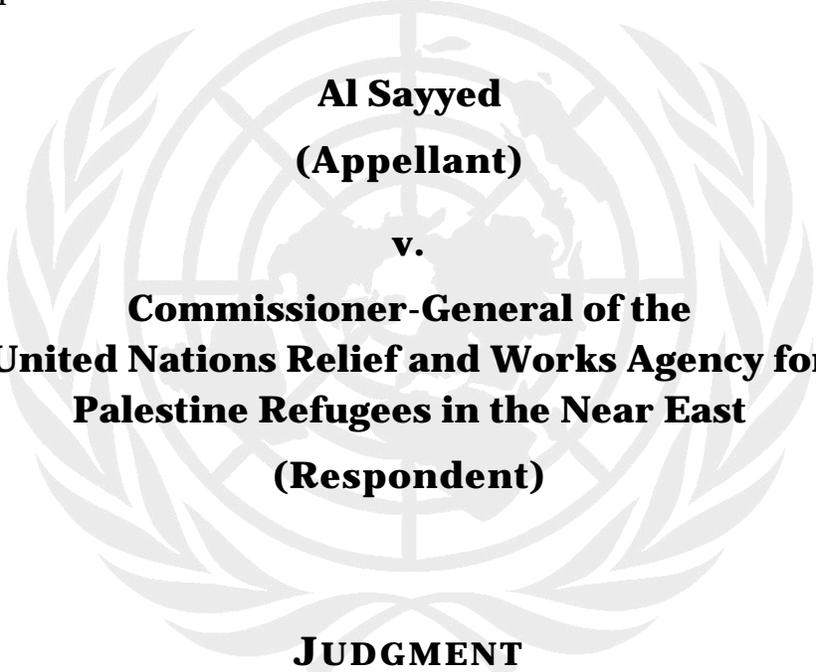




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2010-181



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

JUDGMENT

Before: Judge Mary Faherty, Presiding
Judge Sophia Adinyira
Judge Inés Weinberg de Roca

Judgment No.: 2012-UNAT-193

Date: 16 March 2012

Registrar: Weicheng Lin

Counsel for Appellant: Diab Tabari

Counsel for Respondent: W. Thomas Markushewski

JUDGE MARY FAHERTY, Presiding.

Synopsis

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal by Mr. Mohammad Diab Al Sayyed against a decision taken by the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) dated 11 December 2009 to dismiss his appeal as lacking any basis.

2. A decision was made, as set out in a letter of 20 November 2007, to terminate Mr. Al Sayyed's service, pursuant to the UNRWA Area Staff Regulation 9.1 "effective close of business 15 December 2007". Further, Mr. Al Sayyed was advised that the letter constituted notice of termination of his employment.

3. By way of a handwritten letter of 4 December 2007, Mr. Al Sayyed requested early retirement under UNRWA Area Staff Rule 109.2.

4. On 14 December 2007, Mr. Al Sayyed sought review of the decision to terminate his service. This was followed up by a further communication from him on 7 January 2008, wherein he sought early retirement but which indicated that he was nonetheless preserving his right to appeal his termination.

5. Having regard to the documents and submissions under consideration in this appeal, the Appeals Tribunal is satisfied that the decision to terminate Mr. Al Sayyed's service, effective from close of business 15 December 2007, and as communicated to him on 30 November 2007, was superseded by the action he took on 4 December 2007, an action reinforced by him on 7 January 2008. Under those circumstances, this Tribunal is satisfied that the UNRWA Commissioner-General did not err in rejecting the recommendation of the UNWRA JAB and in dismissing Mr. Al Sayyed's appeal against his termination on the basis that there was no termination decision capable of review. The appeal is thus dismissed.

Facts and Procedure

6. Mr. Al Sayyed joined UNRWA in December 1978 as a teacher at Karameh Elementary and Preparatory School in B/Barajnah. By September 2003, he was Assistant Head Teacher at Manara Elementary Boys School at Naher El Bared Camp (NBC) in North Lebanon.

7. In a memorandum dated 1 October 2003, the Area Officer, North Lebanon, reported that the father of a pupil at Manara School had brought a complaint against Mr. Al Sayyed, accusing him of physically punishing his then six-year old son on the morning of 29 September 2003 and injuring him in the left eye, face and arms while on the premises of Manara School. Mr. Al Sayyed denied the allegation. According to the Area Officer, the case was under investigation.

8. It appears that a Note For the Record (NFR) was prepared at the end of the investigation, but it curiously disappeared. The matter was not taken up again until three years later in October 2006, when the pupil's father filed a claim with the UNRWA Administration. According to the claim, on 29 September 2003, Mr. Al Sayyed struck the pupil on his face and body with a rubber hose, and the pupil almost lost the entirety of his sight in one eye and was facing vision deterioration in the other.

9. A Board of Inquiry (BOI) was subsequently convened to investigate the claim against Mr. Al Sayyed. It interviewed a total of eighteen individuals including the pupil and Mr. Al Sayyed, some on more than one occasion. In its report dated 16 January 2007, the BOI found that Mr. Al Sayyed struck the pupil on the face and head with a rubber hose on 29 September 2003, that the striking directly led to the pupil's eye injury, and that Mr. Al Sayyed's testimony was not credible. As a result of its investigation, the BOI recommended the imposition of appropriate disciplinary measures against Mr. Al Sayyed.

10. In a letter dated 20 November 2007, the Officer-in-Charge, UNRWA Affairs, Lebanon, advised Mr. Al Sayyed that, in light of the serious misconduct of corporal punishment committed against the pupil, it had been decided to terminate his service in the interest of the Agency under Area Staff Regulation 9.1 "effective close of business 15 December 2007".¹ The Officer-in-Charge asked Mr. Al Sayyed to consider her letter as notice of termination as per paragraph 7(a) of his initial letter of appointment dated 22 February 1979.²

¹ UNRWA Staff Regulation 9.1 provides: "The Commissioner-General may at any time terminate the appointment of any staff member if, in his opinion, such action would be in the interest of the Agency."

² Paragraph 7(a) of Mr. Al Sayyed's letter of appointment states: "Should the Agency terminate your appointment after it has been confirmed, you will receive not less than 30 days written notice of such termination."

11. According to an undated NFR, on 30 November 2007, Mr. Al Sayyed met with a Senior Personnel Associate in Lebanon, and was “officially informed that he may at his written request leave the Agency’s service by Early Voluntary Retirement in accordance with para[graph] (10) of [the UNRWA Area Staff Rule] 109.2, then the notice of termination of his appointment shall accordingly be withdrawn”.³ According to Mr. Al Sayyed, the UNRWA Senior Personnel Associate told him on more than three occasions to sign the Early Voluntary Retirement (EVR).

12. In a hand written letter dated 4 December 2007, Mr. Al Sayyed informed the Field Personnel Officer:

I the undersigned Mohammad Al Sayyed Emp[loyee]. No. 3480 Assistant Head Teacher
Manara School NBC
In refer[ence] to the notice of OiC, UNRWA Affairs, Lebanon dated 20 November 2007
and I've received on 30 November 2007
I ... [here]by request early retirement effective C.O.B. 15 December 2007
In accordance with Para. 11 [of] staff rule 109.2
Thanks in advance

13. However, in a memorandum dated 14 December 2007 addressed to the Director of UNRWA Affairs, Lebanon, Mr. Al Sayyed requested the review of the decision to terminate his service with UNRWA on the ground of misconduct. He recounted the events of 29 September 2003. Mr. Al Sayyed stressed that he had done “no wrong”, and that he was surprised that the BOI investigation had taken place “almost 3 years after the event”.

14. Mr. Al Sayyed ceased work with UNRWA effective 15 December 2007.

15. In another hand written letter dated 7 January 2008 to the Field Personnel Officer, Mr. Al Sayyed stated:

I'm the undersigned Mohammad Diab Al Sayyed Emp[loyee]. No. 3480 Assistant Head
Teacher Manara School N.B.C.

³ Area Staff Rule 109.2 (10), which was replaced by Area Staff Rule 109.2 (8) and 109.2 (9) in 2007, reads: “A staff member who is eligible for early voluntary retirement [in Mr. Al Sayyed’s case, by having reached the age of 50 and accumulated at least 10 years’ service], and who, during the period of such eligibility, receives a notice of termination of his/her temporary indefinite appointment..., may at his/her written request leave the Agency’s service by early voluntary retirement under these rules on the date established for the termination of his/her appointment, and the notice of termination of his/her appointment shall accordingly be withdrawn...”

In refer[ence] to the notice of OiC, UNRWA [A]ffairs, Lebanon dated 20 Nov.. 2007. I hereby request early retirement effective C.OB 15 Dec. 2007. As I'm fifty five years old and I've spent twenty eight years in the employment. In accordance with Para. 10 [of] staff rule 109.2 in lieu of notice of termination mentioned above, I preserve my right for appeal.

16. In a letter dated 31 January 2008, the Field Personnel Officer informed Mr. Al Sayyed that his EVR request of 7 January 2008 had been approved effective 15 December 2007.

17. On 12 February 2008, Mr. Al Sayyed submitted an appeal to the UNRWA Joint Appeals Board (UNRWA JAB) seeking inter alia that the decision to terminate his service with UNRWA be rescinded and that the period of his separation be treated as special leave with full pay.

18. In a report dated 10 May 2009, the UNRWA JAB considered the issue of receivability raised by the Respondent, but concluded that Mr. Al Sayyed's appeal was receivable. The UNRWA JAB recommended that the Respondent submit a reply on merits so as to enable the UNRWA JAB to review the substance of the case. The UNRWA Commissioner-General rejected this recommendation and dismissed Mr. Al Sayyed's appeal, because, in her view, his employment relationship with UNRWA ended "as the result of [his] decision to opt for early voluntary retirement and not as a result of termination".

19. On 4 December 2010, the Registry received an incomplete appeal (perfected on 9 December 2010) from Mr. Al Sayyed against the UNRWA Commissioner-General's decision to reject the UNRWA JAB's recommendation. UNRWA filed an answer on 4 February 2011.

Submissions

Mr. Al Sayyed's Appeal

20. Mr. Al Sayyed states that he had been forced to request an EVR on 7 January 2008 on the basis of UNRWA Administration's assurance that he could simultaneously request an EVR and continue with his appeal.

21. Mr. Al Sayyed maintains that under the UNRWA Staff Regulations and Rules, a staff member has the right to appeal after having requested an EVR. Mr. Al Sayyed avers that he submitted an EVR request “to preserve [his] right & not to resign”.

22. Mr. Al Sayyed stresses that the decision to terminate his service with UNRWA was “unfair” [and] “unjust”, and that it has caused huge damage to his reputation and his career with UNRWA.

23. Mr. Al Sayyed seeks a return to his post until retirement, with the period of his separation to be treated as leave with full pay. He also seeks USD 500,000 in compensation for being subject to blackmail.

UNRWA’s Answer

24. Mr. Al Sayyed requested, and was granted, an EVR, effective 15 December 2007. That was prior to the UNRWA Administration taking any action in connection with the termination of Mr. Al Sayyed’s service. The original decision to terminate was thus superseded and never implemented. Therefore, no appealable administrative decision remained for review. The decision by the UNRWA Commissioner-General was in keeping with the clear jurisprudence of the former Administrative Tribunal, and was correctly taken in the exercise of her discretionary administrative authority.

25. The Commissioner-General did not err in law when she dismissed Mr. Al Sayyed’s appeal, despite the recommendation of the UNRWA JAB to the contrary.

26. When Mr. Al Sayyed requested an EVR on 4 December 2007, he did not mention any purported right of appeal. His request for an EVR in place of termination superseded any prior basis for appeal.

27. Mr. Al Sayyed has made allegations of coercion and pressure leading to his EVR request as well as moral injury as a result of blackmail. However, he has produced no evidence to support his claims or to prove his injury.

Considerations

28. There is no dispute that following the BOI report, a decision was made, as set out in the letter of 20 November 2007, to terminate Mr. Al Sayyed's service, pursuant to the Area Staff Regulation 9.1 "effective close of business 15 December 2007".

29. Further, Mr. Al Sayyed was advised that the letter constituted notice of termination of his employment.

30. On 30 November 2007 a meeting took place between Mr. Al Sayyed and UNWRA personnel. It would appear that the termination letter was provided to him on that date. An undated note of this meeting documented that Mr. Al Sayyed was informed that he could, at his written request, leave the service of UNWRA by availing himself of an EVR, which would also result in the withdrawal of the notice of termination of his service.

31. By way of a handwritten letter of 4 December 2007, Mr. Al Sayyed requested the EVR under the provisions of UNRWA Staff Rule 109.2.

32. On 14 December 2007, Mr. Al Sayyed sought administrative review of the decision to terminate his service. This was followed up by a further communication from him on 7 January 2008, wherein he sought early retirement but which indicated that he was nonetheless preserving his right to appeal his termination.

33. There was no official response to Mr. Al Sayyed's request for review of 14 December 2007.

34. However, Mr. Al Sayyed's request for EVR, as set out in his letter of 7 January 2008, was responded to on 31 January 2008 wherein he was informed that the request was approved, effective 15 December 2007.

35. Mr. Al Sayyed contends that the basis of his application for early retirement was to preserve his right of appeal following the notice of termination of his employment and as such the application for early retirement was not a true resignation.

36. Mr. Al Sayyed also contends that his application for early retirement came about as a result of coercion. In his submission to this Tribunal, Mr. Al Sayyed does not elaborate on this claim. He does however maintain that he was advised that he could preserve his right of

appeal against termination, in tandem with his availing himself of early voluntary retirement. Mr. Al Sayyed's belief that he could do so is reflected in his letter of 7 January 2008. Other than what he sets out in his submission, and the contents of his letter of 7 January 2008, the balance of the contemporaneous documentation available to this Tribunal is silent on the issue of such an assurance having been given to him. No mention of such assurance is made in his letter of 4 December 2007 requesting EVR.

37. Having regard to the submissions in this case, the issue for this Tribunal is whether there remained extant a decision to terminate Mr. Al Sayyed's employment capable of administrative review.

38. As of 30 November 2007 Mr. Al Sayyed, who was by then in receipt of the termination letter and of the advice that he could avail himself of the Area Staff Rule 109.2, had the option of challenging the decision to terminate his service or taking early retirement.

39. By his letter of 4 December 2007, Mr. Al Sayyed elected for the latter. This request was officially responded to on 31 January 2008.

40. The question for this Tribunal is whether the UNRWA Commissioner-General erred in rejecting the recommendation of the UNWRA JAB to the effect that the Respondent should submit a reply to enable the JAB to consider the merits of Mr. Al Sayyed's appeal against the termination and whether she erred in her dismissal of Mr. Al Sayyed's appeal on the basis that his employment ended "as the result of [his] decision to opt for early voluntary retirement and not as a result of termination".

41. In *Maghari*⁴ this Tribunal adopted as persuasive authority the ruling of the former Administrative Tribunal in *Shamsi*,⁵ as follows:

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

⁴ *Maghari v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-039, para. 22.

⁵ Former Administrative Tribunal Judgment No. 991 *Shamsi* (2001).

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.

42. This Tribunal also adopts the above principle as persuasive authority but considered whether the circumstances of the present case could persuade the Tribunal that the principle should not apply.

43. Did Mr. Al Sayyed's request for review of 14 December 2007 annul the request for EVR in circumstances where his letter was sent prior to the Field Personnel Officer's letter of 31 January 2008 approving the request for early retirement? Having reviewed the documentation and submissions in this case, this Tribunal is not persuaded that it did, particularly in circumstances where the letter of 4 December 2007 was an unambiguous request for early retirement and where no procedures were put in place by the UNRWA Administration to process the termination, and in circumstances where Mr. Al Sayyed does not adduce evidence to substantiate his claim of coercion. Furthermore, this Tribunal took cognizance of the fact that Mr. Al Sayyed repeated his request for early retirement on 7 January 2008.

44. Having regard to the documentation and submissions in this appeal, this Tribunal is satisfied that the decision to terminate Mr. Al Sayyed's service effective from close of business 15 December 2007, and as communicated to him on 30 November 2007, was superseded by the action he took on 4 December 2007, an action reinforced by him on 7 January 2008. In those circumstances, this Tribunal is satisfied that the UNRWA Commissioner-General did not err in rejecting the recommendation of the UNWRA JAB and in dismissing Mr. Al Sayyed's appeal against his termination on the basis that there was no termination decision capable of review.

Judgment

45. The appeal is thus dismissed.

Original and Authoritative Version: English

Done this 16th day of March 2012 in New York, United States.

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 7th day of May 2012 in New York, United States.

(Signed)

Weicheng Lin, Registrar