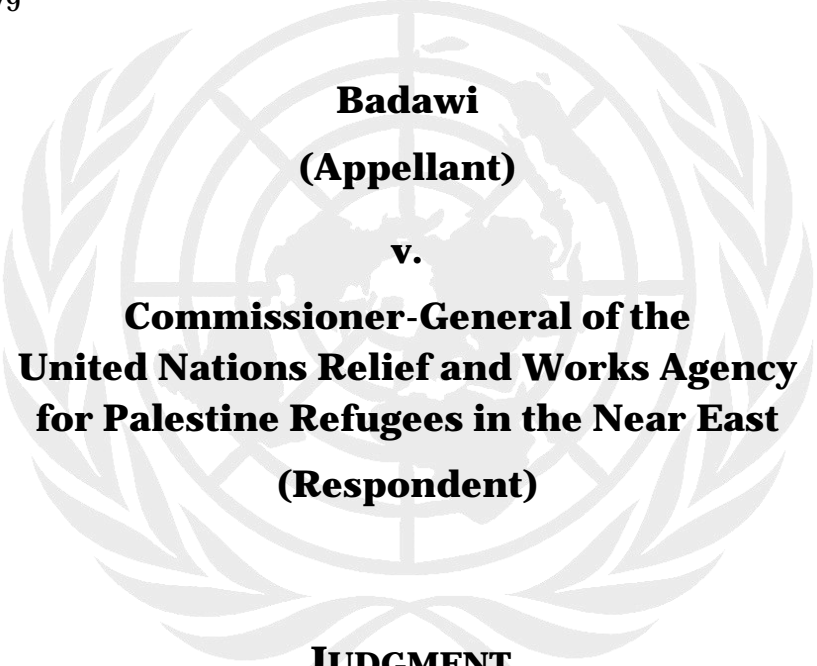




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2011-279



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

JUDGMENT

Before: Judge Rosalyn Chapman, Presiding
Judge Luis María Simón
Judge Inés Weinberg de Roca

Judgment No.: 2012-UNAT-261

Date: 1 November 2012

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: W. Thomas Markuszewski

JUDGE ROSALYN CHAPMAN, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Rawan Ezzeddin Badawi (Appellant) against Judgment No. UNRWA/DT/2011/007 rendered by the Dispute Tribunal (DT) of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) on 13 October 2011 in Amman, Jordan.

Synopsis

2. Ms. Badawi, a social worker with UNRWA, appeals the dismissal of her challenge to the non-extension of her fixed-term appointment and separation from service on 30 September 2009. This Tribunal affirms the UNRWA DT's Judgment and dismisses Ms. Badawi's appeal.

Facts and Procedure

3. On 27 July 2008, Ms. Badawi entered into a letter of appointment with the Agency for a "fixed-term" to serve as a social worker at Grade 10, Step 1, in the North Amman Jordan Area Office. Paragraph 3 of Ms. Badawi's letter of appointment provided the "tenure" of her appointment was "for a fixed-term starting **27.07.2008** and expiring on **31.03.2009**" (emphasis in original). Paragraph 4 of Ms. Badawi's letter of appointment provided that her fixed-term appointment was subject to a twelve-month probationary period (subject to the extension of the expiration date of her appointment) and that, if her work performance during the probationary period was "satisfactory," her appointment would "be confirmed by the Agency in writing".

4. Ms. Badawi's letter of appointment provided she should not expect her appointment to be renewed or converted to another type of appointment:

8. SPECIAL CONDITIONS

This appointment does not carry an expectation of renewal or conversion to any other type of appointment.

5. Regarding separation from service, Ms. Badawi's letter of appointment provided:

7. SEPARATION FROM SERVICE

This appointment may be terminated at any time in accordance with the Area Staff Regulations and Rules. In particular ... [s]hould the Agency terminate your

appointment after it has been confirmed, you will receive not less than 30 days written notice of such termination.

6. On 6 January 2009, UNRWA's Deputy Field Administration Officer advised Ms. Badawi's Area Office Chief that the Agency had serious financial problems and should examine whether Ms. Badawi's post was indispensable.

7. On 23 June 2009, Ms. Badawi received a Periodic Performance Report rating her as maintaining a "good standard of efficiency". On 21 July 2009, UNRWA advised Ms. Badawi in writing that she had satisfactorily completed probation and her fixed-term appointment was confirmed.

8. On 2 August 2009, UNRWA determined the services of nine social workers under the "ECHO PROJECT", including Ms. Badawi, would not be extended because their funding source would be exhausted on 30 September 2009, "based on the agreement between UNRWA and [the European Union]".

9. On 5 August 2009, UNRWA advised Ms. Badawi in writing she was being given thirty days' notice of her separation from service, and her last day of service would be 30 September 2009. Ms. Badawi's last day of service with UNRWA was, indeed, 30 September 2009.

10. On 30 August 2009, Ms. Badawi wrote to the Director of UNRWA's Operations, Jordan, requesting reconsideration of the Agency's decision not to further extend her appointment and to separate her from service.

11. On 30 September 2009, Ms. Badawi filed an appeal with the UNWRA Area Staff Joint Appeals Board (UNRWA JAB) seeking review of UNRWA's decision not to extend her fixed-term appointment. As of 1 July 2009, the UNRWA JAB was abolished and, effective 1 June 2010, all appeals pending before it were transferred to the UNWRA DT. The Commissioner-General does not dispute Ms. Badawi filed her appeal in time and on the proper form; the Commissioner-General also filed his answer in a timely manner. Thereafter, without seeking approval from the Dispute Tribunal, Ms. Badawi filed a rejoinder entitled "Observations" on the answer.

12. On 13 October 2011, the UNWRA DT issued Judgment No. UNWRA/DT/2011/007, dismissing Ms. Badawi's challenge of the decision not to extend her fixed-term appointment and to separate her from service.

13. On 4 December 2011, Ms. Badawi appealed to this Tribunal seeking reversal of the Judgment of the UNRWA DT; “compensation for the actual and moral damage”; and, retroactive reinstatement of her appointment.

14. On 26 January 2012, the Commissioner-General filed his answer.

Submissions

Ms. Badawi’s Appeal

15. The UNRWA DT erred in its factual finding that her fixed-term appointment was extended from 31 March 2009 to 30 September 2009. Since she was subject to a twelve-month probationary period, her appointment ran through the end of her probationary period, 27 July 2009. Thereafter, her appointment converted to a different type of appointment than a fixed-term appointment. The letter of appointment confirms this, since it does not refer to the date of 30 September 2009 or any date subsequent to 27 July 2009.

16. The UNRWA DT erred as a matter of law in concluding that Appellant’s separation was the result of the non-extension of a fixed-term appointment, rather than the termination of her services. Since she worked beyond 27 July 2009 as a “confirmed staff member,” she was no longer on a fixed-term appointment and her separation from the Agency should be treated as a termination, subject to the rules applicable to terminations.

17. The UNRWA DT erred in law and procedure by not accepting Appellant’s rejoinder to the Agency’s answer and, in this and other ways, did not treat her and the Agency equally.

18. The UNRWA DT erred in not allowing her to present evidence regarding the Agency’s treatment of other social workers, some of whom were rehired after being separated from service. This error stemmed, in part, from the UNRWA DT’s refusal to grant Appellant’s request to obtain documents from UNRWA pertaining to its treatment of other social workers, which would have shown UNRWA’s lack of transparency and bad management, among other things.

19. The UNRWA DT’s determination that Appellant lacks credibility stems from a misunderstanding of her statements about her letter of appointment.

Commissioner-General's Answer

20. The UNRWA DT did not make an error of fact in determining Ms. Badawi's fixed-term appointment was extended from 31 March 2009 to 30 September 2009 and, in any event, no manifestly unreasonable decision resulted from this factual finding.

21. The UNRWA DT did not err in determining a question of law. Rather, it properly applied the jurisprudence of the Appeals Tribunal to determine that Ms. Badawi, as the holder of a fixed-term appointment, was not entitled to the extension or renewal of her contract in the absence of countervailing circumstances, and that to overturn the non-renewal decision Ms. Badawi must adduce convincing evidence to show that the contested decision was the result of procedural irregularity, prejudice against her, or some improper motive. This standard does not change even if the staff member has performed satisfactorily.

22. Ms. Badawi's appeal fails to allege any procedural irregularity, prejudice against her, or improper motive in UNRWA's decision not to extend her contract. Rather, Ms. Badawi improperly raises these allegations for the first time in a rejoinder to the answer. Even assuming, *arguendo*, Ms. Badawi properly raised these allegations, she has not met her burden to show any facts supporting them.

23. The UNRWA DT did not commit any procedural error regarding Ms. Badawi's rejoinder, which it did consider despite noting its irregularity.

24. Ms. Badawi had ample opportunity to present her claims and evidence, and she was treated fairly and equally despite the denial of her request for the production of documents. Ms. Badawi's request for the production of documents was overreaching, vague and a "fishing expedition". Moreover, the documents she sought were not material and would not have changed the outcome of the case if admitted into evidence.

25. The UNRWA DT properly made a credibility assessment of Ms. Badawi, which assessment is supported by the record.

26. The remedies Ms. Badawi seeks have no basis in law and fact. Since the Agency's decision not to extend Ms. Badawi's fixed-term appointment was proper, she is not entitled to relief from that decision or to reinstatement. Accordingly, Ms. Badawi has not suffered any harm and is not entitled to any compensatory or moral damages.

Considerations

27. Preliminarily, in response to the question on the appeal form asking whether Appellant seeks an oral hearing, Ms. Badawi checked both the “yes” and “no” boxes. Assuming Ms. Badawi is requesting an oral hearing, this Tribunal denies that request, finding there is no need for further clarification of the issues arising from her appeal, pursuant to Articles 2(5) and 8(3) of the Appeals Tribunal Statute.

28. The issuance of a letter of appointment signed by the appropriate United Nations official or someone acting on his or her behalf is more than a mere formality.¹ Rather, as the letter of appointment governs the conditions of the employment relationship, along with the rules and regulations of the Agency which are incorporated into the contract,² Ms. Badawi’s letter of appointment is the controlling documentary evidence. As UNRWA Regulation 4.1(B)(ii) provides: “The letter of appointment shall state:... (ii) the nature of the appointment”.

29. The language of Ms. Badawi’s letter of appointment is clear, unambiguous and easy to understand. It establishes Ms. Badawi’s appointment was for a fixed term, from 27 July 2008 to 31 March 2009. Furthermore, as set forth in paragraph 8, Ms. Badawi’s fixed-term appointment did not “carry an expectation of renewal or conversion to any other type of appointment”.

30. The parties do not dispute Ms. Badawi continued to work for UNRWA as a social worker until 30 September 2009, when she was separated from service. Based on the circumstances of this case, including paragraph 4 of her letter of appointment, a reasonable inference can be drawn that Ms. Badawi’s fixed-term appointment was extended beyond its initial expiration date of 31 March 2009, until her separation from service on 30 September 2009. Nevertheless, this Tribunal would have preferred documentary evidence of such an extension to have been produced at the hearing before the UNRWA DT. As determined by the UNRWA DT, the Agency’s extension of Ms. Badawi’s fixed-term appointment beyond 31 March 2009 did not convert her appointment into another type of appointment.

¹ *Gabaldon v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-120; *El-Khatib v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-029.

² *Abboud v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-100.

31. Similarly, Ms. Badawi's satisfactory completion of probation, and the Agency's written confirmation of that, did not convert her fixed-term appointment into another type of appointment, as the Dispute Tribunal correctly held, stating:

[T]he confirmation of [Ms. Badawi's] probationary period did not create any legal expectation of contract renewal or extension beyond the expiration date of her fixed-term appointment, as there was no commitment to extend made by the Agency.

32. It must be noted that the severance letter the Agency sent Ms. Badawi on 5 August 2009 advised her the fixed-term appointment, "which will be expired on 30 September 2009[,] will not be renewed beyond that date". It did not advise Ms. Badawi that she was being terminated from her employment. Ms. Badawi's efforts to characterize her separation from service as a termination are not persuasive, despite the use of the words "terminate," "terminated" and "termination" in paragraph 7 of her letter of appointment. Rather, in the context of the letter of appointment, the word "terminate" has the meaning set forth in Webster's Encyclopedic Unabridged Dictionary of the English Language (1989 edition): "to bring to an end; put an end to: *to terminate a contract.*" (Italics in original). In other words, Ms. Badawi's fixed-term appointment was brought to an end when it was not renewed.

33. In addition to the clear and unambiguous terms of Ms. Badawi's letter of appointment, it is well-established jurisprudence that a fixed-term appointment has no expectation of renewal or conversion to another type of appointment.³ Nevertheless, a staff member may challenge the non-renewal of a fixed-term appointment on the grounds the decision was arbitrary, procedurally deficient, or the result of prejudice or some other improper motivation.⁴ The staff member has the burden of proving such factors played a role in the administrative decision.⁵

34. To separate Ms. Badawi from service, paragraph 7 of the letter of appointment compels the Agency to comply with the applicable staff regulations and rules and to give Ms. Badawi thirty-days' written notice. Area Staff Circular No. 4/95, the provision applicable to Ms. Badawi's separation from service, states, in pertinent part: "Extensions of appointments will depend on the Agency's continuing need for the post, the availability of funding and the

³ *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153; *Syed v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-061.

⁴ *Ahmed*, 2011-UNAT-153; *Asaad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-021.

⁵ *Asaad*, 2010-UNAT-021.

staff member's performance." Furthermore, since 1998, UNRWA has required that "[e]xtensions should be requested only for those posts which are indispensable".

35. It is undisputed the Agency afforded Ms. Badawi thirty-day written notice. She does not really dispute that the Agency lost the funding for her position and the loss of funding was the reason for which her contract was not extended. Rather, she complains UNRWA was not transparent about the funding source of her position, did not give her advance notice of the funding source and its possible ending date, had poor management, and did not prudently plan ahead for budgetary problems, among other things. However, none of these complaints refutes the Agency's documentary evidence establishing Ms. Badawi's fixed-term appointment was not extended due to the lack of available funds for her position. Moreover, no evidence was presented showing Ms. Badawi's post was indispensable. Accordingly, as the UNRWA DT found, the Agency fully complied with UNRWA's Staff Regulations and Rules and the provisions of paragraph 7 of Ms. Badawi's letter of appointment in not extending her fixed-term appointment and separating her from service.

36. There is no merit to Ms. Badawi's claim the UNRWA DT did not consider her rejoinder or "Observations". It did consider her rejoinder, despite noting its irregularity. Considering the allegations in Ms. Badawi's rejoinder is not the same thing as finding Ms. Badawi has proven those allegations; she has not. She did not present any evidence showing the Agency's decision was arbitrary, procedurally deficient, or the result of prejudice against her or any other improper motivation. Thus, as the UNRWA DT found, Ms. Badawi has not met her burden to show the Agency's decision was improper.

37. The UNRWA DT found Ms. Badawi's statements that she was not aware she was entering into a fixed-term contract were not credible because the terms of her letter of appointment were clear, unambiguous and easy to understand. To overturn the UNRWA DT's adverse credibility finding, this Tribunal must be satisfied the finding is not supported by the evidence or is unreasonable.⁶ Moreover, some deference should be given to the factual findings of the Dispute Tribunal as the court of first instance.⁷ We find the UNRWA DT's adverse credibility determination is fully supported by the record.

⁶ *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110.

⁷ *Ibid.*

38. None of Ms. Badawi's other claims has merit or would affect the outcome of this case. Thus, this Tribunal will not address those claims or the Agency's responses to them.

Judgment

39. The Judgment is affirmed and the appeal is dismissed.

Original and Authoritative Version: English

Dated this 1st day of November 2012 in New York, United States.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Simón

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 18th day of January 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar