



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

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Judgment No. 2013-UNAT-369

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

**JUDGMENT**

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**Before:** Judge Sophia Adinyira, Presiding  
Judge Mary Faherty  
Judge Luis María Simón

**Case No.:** 2012-420

**Date:** 17 October 2013

**Registrar:** Weicheng Lin

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**Counsel for Appellant:** Self-represented

**Counsel for Respondent:** Lance Bartholomeusz

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Awad Flaieh Darwish against Judgment No. UNRWA/DT/2012/029, issued by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT and UNRWA or Agency, respectively) on 28 June 2012 in the case of *Darwish v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Darwish appealed on 6 December 2012 and the Commissioner-General of UNRWA (Commissioner-General) answered on 19 April 2013.

### **Facts and Procedure**

2. Mr. Darwish joined UNRWA on 6 December 1986. On 29 September 2005, he was promoted to the post of “Social Workers and Social Workers CD”, grade 9. This was the post that Mr. Darwish held at the time of the events giving rise to this case.

3. On 6 September 2010, Mr. Darwish was informed of the decision to suspend him on full pay, pending an investigation into allegations of misconduct.

4. By letter dated 25 October 2010, Mr. Darwish was informed of the Investigation Board’s findings that he was involved in acts of corruption and abuse of authority and that he requested and accepted gifts from beneficiaries. He was invited to offer his comments on the Investigation Board’s findings within one week from the date of receipt of the letter. By letter dated 7 November 2010, Mr. Darwish “responded in detail to the conclusions of the Investigation Board” and also alleged violation of his due process rights.

5. On 9 November 2010, Mr. Darwish requested early voluntary retirement (EVR).

6. By letter dated 10 November 2010, Mr. Darwish’s request for EVR was approved and took effect at close of business on 8 November 2010. The Agency made no decision on the disciplinary charges.

7. On 10 May 2011, Mr. Darwish filed an application with the UNRWA DT claiming that UNRWA unlawfully suspended him pending an investigation into allegations that he was involved in acts of corruption and abuse of authority and that he invited and accepted bribes from beneficiaries. He also claimed that he had been coerced into opting for EVR and alleged several violations of his due process rights.

8. On 28 June 2012, the UNRWA DT issued Judgment No. UNRWA/DT/2012/029 in which it dismissed Mr. Darwish's claims. The UNRWA DT found that Mr. Darwish's application was not receivable because he had failed to ask for review of the decision to suspend him with full pay and the decision to commence a disciplinary investigation. It further held that it could not consider Mr. Darwish's allegation "that he was put under considerable pressure by threats and intimidation" and acted under duress when applying for EVR as he had failed to identify any appealable administrative decision.

9. Mr. Darwish appeals the UNRWA DT Judgment.

### **Submissions**

#### **Mr. Darwish's Appeal**

10. Mr. Darwish contends that the UNRWA DT failed to exercise its jurisdiction in finding that he had not requested decision review of his suspension. In particular, he submits that he had explicitly asked that he be given the evidence on the basis of which the UNRWA Director decided to suspend him, that he had asked that a new investigation be conducted and that he be reinstated. He also attached to his request for decision review the letter notifying him of his suspension. The foregoing demonstrates that he in fact did ask for review of the suspension decision.

11. Mr. Darwish contends that the UNRWA DT committed errors in procedure, including the acceptance of UNRWA's untimely reply and its refusal to accept his additional filing in response to UNRWA's reply. He also claims that the UNRWA DT erred in procedure by declining to consider the merits of his allegations that he had been forced into EVR.

12. Mr. Darwish claims that his suspension pending investigation and the conclusion that there was a *prima facie* case of misconduct were based on arbitrary and extraneous reasons. He alleges that the investigation was carried out by an Investigation Board that was not "neutral or fair or [credible]", but was headed by the same person who "fabricate[d] the charge" against him.

13. Mr. Darwish contends that despite several requests to the UNRWA Administration and the UNRWA DT, he has not been provided with the investigation report. He submits that his rights were violated before, during and after the investigation.

14. Mr. Darwish submits that he requested EVR because of “threats, pressures and intimidations” and because he was told that he needed to “submit to early voluntary retirement” failing which he would lose his “saving[s] and rights”. Mr. Darwish submits that UNRWA “[e]xceptionally ... approved [his] request for early voluntary retirement” the same day he made the request and without giving reasons. The EVR lacked a legal basis and was not done in a formal manner.

15. Mr. Darwish requests that this Tribunal reverse the UNRWA DT Judgment and remand the case for adjudication on the merits. Mr. Darwish seeks compensation for the financial loss he suffered (from the date of his early retirement to age 60) which, he estimates, amounts to 180,000 to 250,000 Jordanian Dinars, or, in the alternative, reinstatement to his post and compensation for his financial loss from the date of his EVR to his reinstatement. He further requests compensation for moral damages for suffering mental and bodily harm and damage to his reputation.

16. Mr. Darwish requests that he be provided with a copy of the investigation report, an apology by UNRWA and that those responsible for his situation be punished. He finally requests a suspension of “terms and conditions of time limits”. Mr. Darwish requests that the Appeals Tribunal hold an oral hearing in his case.

#### **The Commissioner-General’s Answer**

17. The Commissioner-General contends that the UNRWA DT did not fail to exercise its jurisdiction by dismissing Mr. Darwish’s application as not receivable. The UNRWA DT correctly found that Mr. Darwish failed to identify the decision to suspend him as a subject for decision review. Even if his request for decision review were to be interpreted as encompassing the suspension decision, the request would have been untimely.

18. Furthermore, the UNRWA DT did not commit an error in procedure such as to affect the decision of the case. With respect to Mr. Darwish’s claim that the UNRWA DT erred in declining to consider the merits of his argument that he had been forced into EVR, the Commissioner-General states that the UNRWA DT correctly found that it lacked competence to decide this element of the application since Mr. Darwish had failed to identify an appealable administrative decision. The Commissioner-General further submits that

Mr. Darwish did not raise the issue of the untimely filing of UNRWA's reply before the UNRWA DT and that he cannot introduce this claim for the first time on appeal.

19. The Commissioner-General requests that the Appeals Tribunal affirm the UNRWA DT Judgment and dismiss the appeal in its entirety. Should the Appeals Tribunal determine that the UNRWA DT failed to exercise the jurisdiction vested in it or committed an error in procedure such as to affect the decision of the case, the Commissioner-General requests that the case be remanded to the UNRWA DT for consideration on the merits.

### **Considerations**

20. Having considered both parties' submissions, the Appeals Tribunal is satisfied that the issues can be determined without the requirement of an oral hearing and therefore rejects Mr. Darwish's request for an oral hearing.

*Did the UNRWA DT fail to exercise its jurisdiction by rejecting Mr. Darwish's application as not receivable?*

21. Mr. Darwish submits that the UNRWA DT failed to exercise the jurisdiction vested in it when it dismissed as not receivable the portion of his application challenging the decision to suspend him pending an investigation on the ground that he had failed to submit a request for review of that administrative decision. Mr. Darwish submits that, in his request for decision review, he explicitly asked that he be given the evidence based on which the UNRWA Director decided to suspend him, that he asked that a new investigation be conducted and that he be reinstated. He attached to his request for decision review the letter notifying him of his suspension. He submits that the foregoing demonstrates that he in fact did ask for review of the suspension decision and that the UNRWA DT failed to exercise its jurisdiction in refusing to consider the merits of his case.

22. Pursuant to UNRWA Area Staff Rule 111.2 and Article 8 of the UNRWA DT Statute, a staff member wishing to formally contest an administrative decision alleging noncompliance with his or her terms of appointment must, as a first step, submit a written request for a decision review.

23. In the present case, the UNRWA DT considered Mr. Darwish's argument that he had asked for review of the suspension decision but came to the conclusion that Mr. Darwish

had requested review of the decision to appoint an Investigation Board instead. The UNRWA DT said:

It should be noted that whilst the Applicant asked for a decision review of the decision to appoint an Investigation Board to enquire into the allegations against him he did not ask for a review of the decision to suspend him. In the circumstances, the claim relating to the decision to suspend with full pay is not receivable. Accordingly, the Tribunal has no jurisdiction to consider this aspect of the claim.<sup>1</sup>

24. The Appeals Tribunal has consistently held that the Dispute Tribunal does not have jurisdiction to consider applications that were not subject to administrative review where such review is a mandatory requirement under the Staff Rules.<sup>2</sup> We therefore affirm the UNRWA DT decision as it is consistent with UNRWA Area Staff Rule 111.2 and Article 8 of the UNRWA DT Statute.

#### *Errors in Procedure*

25. Mr. Darwish submits that by accepting UNRWA's untimely reply and by refusing to accept his additional filing in response to UNRWA's reply, the UNRWA DT committed an error in procedure. The Commissioner-General submits that Mr. Darwish did not raise this issue before the UNRWA DT and that he cannot introduce this claim for the first time on appeal.

26. While the UNRWA DT has discretion in matters of procedure, we note that Mr. Darwish had no opportunity to challenge the untimeliness of the Commissioner-General's reply before the UNRWA DT as by the time he confirmed receipt of the reply, the UNRWA DT had already issued its Judgment. However, since Mr. Darwish has not demonstrated how the untimely reply affected the UNRWA DT's decision that his application was not receivable, we find no merit on this ground.

27. Mr. Darwish also claims that the UNRWA DT erred in procedure by declining to consider the merits of his allegations that he had been subjected to threats and pressure, and that he had been forced into EVR. The Commissioner-General states that the UNRWA DT correctly found that it lacked competence to adjudicate this element of the application since Mr. Darwish failed to identify an appealable decision.

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<sup>1</sup> Impugned Judgment, para. 19.

<sup>2</sup> *Al Surkhi et al. v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-304.

28. The Commissioner-General in his submissions refers to the former Administrative Tribunal 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.

29. A similar reasoning applies in the present case. The jurisprudence is clear that when a staff member claims that he or she has been coerced into resigning, the burden is on the staff member to prove the wrongful acts of the Agency.

30. The UNRWA DT found that prior to tendering his request for EVR, Mr. Darwish did not report to the Agency that he had been threatened or that he was under any pressure to go on voluntary retirement. The UNRWA DT said:

... Had the Respondent been put on notice that the Applicant was alleging that he was being subjected to intimidation and undue pressure which caused him to apply for EVR, the Respondent would have been under a duty to take account of such allegations before making the decision to grant the application. Arguably, this decision would have been capable of review before the Tribunal. In such an eventuality, the Applicant would have been required to provide full details in support of his allegation and the Respondent would have been required to provide a full response. However, this is not the case here and the Tribunal is precluded from enquiring into this issue because the matter was not required to be decided by the Administration.<sup>3</sup>

31. We find no error in this reasoning. A staff member's unilateral decision to request EVR and the Agency's acceptance of such a request does not give rise to a discretionary administrative decision for the purpose of an appeal.<sup>4</sup> Absent an appealable administrative decision, the UNRWA DT lacked jurisdiction to adjudicate this element of the application. The appeal fails and is dismissed.

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<sup>3</sup> Impugned Judgment, para. 23.

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

**Judgment**

32. The appeal is dismissed. The Judgment of the UNRWA DT is affirmed.



Original and Authoritative Version: English

Dated this 17<sup>th</sup> day of October 2013 in New York, United States.

*(Signed)*

Judge Adinyira, Presiding

*(Signed)*

Judge Faherty

*(Signed)*

Judge Simón

Entered in the Register on this 19<sup>th</sup> day of December 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar