



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

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Judgment No. 2013-UNAT-371

**Brisson  
(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 Inés Weinberg de Roca, Presiding  
Judge Mary Faherty  
Judge Luis María Simón

**Case No.:** 2012-422

**Date:** 17 October 2013

**Registrar:** Weicheng Lin

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**Counsel for Appellant:** René Bouin/Matthieu Perrauds

**Counsel for Respondent:** Anna Segall

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Lionel Brisson against Judgment No. UNRWA/DT/2012/043, 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 11 September 2012 in the case of *Brisson v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Brisson appealed on 26 November 2012 and the Commissioner-General of UNRWA (Commissioner-General) answered on 4 February 2013.

### **Facts and Procedure**

2. The UNRWA DT made the following findings of fact, which are not disputed by the parties:<sup>1</sup>

... From the time he entered the service of the Agency on 1 December 1993 on a fixed-term appointment until he reached retirement age in July 2005, the Applicant served successively as Director of UNRWA Affairs, Lebanon, Director of UNRWA Operations, Gaza and Director of Operations in Headquarters Gaza.

... The Applicant's last contract extension was from 1 December 2004 to 31 December 2005, when he was separated from the Agency. On 6 July 2005, the Applicant turned 60 years old, which was the age of retirement for international staff members at the Agency.

... On 9 November 2005, the Applicant was injured in a bombing at the Grand Hyatt Hotel in Amman, Jordan, where he was on official duty for the Agency.

... On 30 November 2005, the Applicant wrote a report to the Agency asking for compensation.

... On 7 August 2007, the Applicant submitted a claim concerning the damages under his employer's responsibility, as he considered that the damages had been incurred while he was on duty for the Agency.

... On 6 September 2007, the Agency submitted a claim for compensation on behalf of the Applicant to the Advisory Board on Compensation Claims ("ABCC").

... On 3 April 2009, the ABCC considered the claim of the Applicant.

... By memorandum dated 31 May 2009, the Director of Administration and Human Resources UNRWA Headquarters Gaza informed the Commissioner-General of the ABCC's recommendations, namely:

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<sup>1</sup> Impugned Judgment, paras. 2-19.

(i) the claimant's illness (chronic post-traumatic stress disorder) should be recognized as attributable to the performance of official duties on behalf of the United Nations; and

(ii) based on the independent psychiatric evaluation of 9 February 2009, as the claimant suffers from Class 3 Mental Impairment, he should be awarded compensation in the amount of US\$ 133,662.00, which is equivalent to a fifty (50) per cent permanent loss of function of the whole person, under article 11.3 (c) of Appendix D [sic.] to the Staff Rules.

... By email dated 2 June 2009, the Commissioner-General's approval of the ABCC's recommendation was transmitted to the Applicant.

... On 16 June 2009, the amount of USD 133,662.00 was accepted by the Applicant.

... However, the Applicant considered that the compensation above was for Posttraumatic Stress Disorder ("PTSD") and that it did not relate to the injuries he suffered (bilateral deafness and cervicgia) and the subsequent loss of earning capacity, as mentioned in his 7 August 2007 claim.

... On 17 November 2009, the Applicant addressed a complementary claim concerning the injuries and loss of earnings not dealt with by the ABCC.

... On 10 February 2010, the Applicant was informed by the Agency that the ABCC had recommended to increase his permanent loss of function to 52% and to pay him an additional USD 5,346.48 for the injuries not yet compensated. The Commissioner-General approved the ABCC's recommendation.

... The Applicant refused the offer because he considered that the amount proposed was not in accordance with the schedule attached to Appendix A to the Staff Rules [Rules Governing Compensation to Staff Members in the Event of Death, Injury or Illness Attributable to the Performance of Official Duties on Behalf of the Agency].

... On 16 June 2010, the Applicant was informed by the Agency that an additional proposal for an amount of USD 15,000.00 would be paid to him under the Malicious Acts Insurance Policy. On 22 June 2010, the Applicant accepted the offer.

... However, the ABCC did not agree to compensate the Applicant's loss of future earning capacity on the ground that "there is no obligation on the part of the Organization to compensate claimants for the loss of earning capacity beyond their normal age of retirement".

... On 15 July 2010, the Applicant wrote a letter (in French) to the Commissioner-General requesting administrative review of the decision.

... On 28 July 2010, the Applicant filed an application with the UNRWA Dispute Tribunal.

3. In Judgment No. UNRWA/DT/2012/043, the UNRWA DT noted that “[a]n actionable administrative decision arises in the application of specific International Staff Regulations and Rules” and that “[n]o such Regulation or Rule provides for compensation for loss of earning capacity beyond the normal age of retirement”.<sup>2</sup> The UNRWA DT therefore concluded that UNRWA’s decision not to compensate Mr. Brisson for his loss of earning capacity beyond the normal age of retirement was not an appealable administrative decision within the meaning of International Staff Regulation 11.1(A). The UNRWA DT added that the application was receivable, *ratione temporis*, but rejected it as not receivable, *ratione materiae*.

### **Submissions**

#### **Mr. Brisson’s Appeal**

4. Mr. Brisson submits that the UNRWA DT erred in law by rejecting his claim on the ground that staff members of the Organization cannot stay in active service beyond the normal retirement age of 60 years and that no provision in his contract or the Staff Regulations provide for compensation for loss of earning capacity beyond the normal age of retirement.

5. Mr. Brisson points to Article 11.1 of Appendix A to the UNRWA International Staff Rules which provides that the entitlement to compensation is not dependant on “whether or not the staff member is continued in the employment of the Agency or is separated”. Furthermore, while Article 9.2 of the UNRWA International Staff Regulations provides that the normal retirement age is 60, it also provides that “[t]he Commissioner-General may, in the interest of the Agency, extend this age limit in exceptional cases”, which is exactly what happened in his case. Mr. Brisson reached the normal retirement age on 6 July 2005 and the bombing which caused Mr. Brisson’s injuries took place on 9 November 2005. He therefore fell under the exception provided for in Article 9.2. The right to compensation acquired by the application of this exception is not limited in time and is based solely on the causal link between the medically established incapacity and the loss of earning capacity.

6. Mr. Brisson claims that the contested decision is not only in violation of the terms of his contract and the Staff Regulations, but also of the principle of equality and non-discrimination stipulated in the Universal Declaration of Human Rights.

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<sup>2</sup> Impugned Judgment, para. 31.

7. Mr. Brisson submits that he was in the service of the Agency at the time he suffered the injuries and that it was as a consequence of the injuries that he was forced to retire. He claims that his disability is “total” and that he is not in a position to carry out any professional activity. The type of career Mr. Brisson had would have allowed him to work at least until 2015, either within the United Nations common system or in France.

8. Mr. Brisson emphasizes the exceptional circumstances of his case: his rank; the exception made by the Commissioner-General with respect to his retirement age; and a criminal attack causing injuries to a staff member who was in the service of the Organization beyond the normal retirement age.

9. Mr. Brisson requests that the Appeals Tribunal reverse the UNRWA DT Judgment and award him USD 1,440,000.00 pursuant to Article 11.2(d) of Appendix A to the International Staff Rules. This amount would compensate him for his loss of earning capacity until 2015.

**The Commissioner-General’s Answer**

10. The Commissioner-General contends that the UNRWA DT did not err on a question of law. He contends that Mr. Brisson mainly repeats the arguments he made before the UNRWA DT without demonstrating how the UNRWA DT erred.

11. The Commissioner-General submits that the UNRWA DT correctly found that there is no provision in UNRWA’s regulatory framework or in Mr. Brisson’s contract of employment providing for loss of earning capacity beyond the normal age of retirement.

12. The Commissioner-General submits that, contrary to Mr. Brisson’s assertion that neither UNRWA International Staff Regulation 9.2 nor Article 11.2 of Appendix A to the UNRWA International Staff Rules limit the duration for payment of compensation, the provisions on compensation due to partially disabled staff members clearly limit the period in which compensation must be paid.

13. The Commissioner-General requests that the Appeals Tribunal affirm the UNRWA DT Judgment and dismiss the appeal in its entirety.

**Considerations**

14. The UNRWA DT decided that the Agency's decision not to compensate Mr. Brisson for his loss of earning capacity beyond the normal age of retirement was not an appealable administrative decision within the meaning of UNRWA International Staff Regulation 11.1(A).

15. Article 2 of the UNRWA DT Statute provides:

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Commissioner-General as the Chief Executive Officer of UNRWA:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance[.]

16. Like any other administrative decision, a decision not to compensate can be challenged as the Administration has the duty to act fairly, justly and transparently in dealing with its staff members.<sup>3</sup>

17. In the instant case, Mr. Brisson held a fixed-term appointment and requests compensation for his loss of earning capacity from 2005 to 2015.

18. We note that Mr. Brisson is not seeking additional compensation on the basis of permanent loss of functions already paid but for the loss of chance to receive salaries beyond his retirement age, which he reached in 2005.

19. The parties disagree as to whether Mr. Brisson's disability is "total" or "partial". For the purpose of this appeal, we need not examine this matter.

20. Article 11.1 of Appendix A to the UNRWA International Staff Rules provides that:

In the case of injury or illness resulting in disability which is determined by the Commissioner-General to be total, and whether or not the staff member is continued in the employment of the Agency or is separated:

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<sup>3</sup> *Obdeijn v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-201, para. 33, referring to *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153, para. 45.

...

- (b) Without prejudice to the staff member's entitlement under other provisions ... the salary and allowances which the staff members was receiving ... until either:
  - (i) He or she returns to duty; or
  - (ii) If, by reason of his or her disability, he or she does not return to duty, then until the date of the termination of his or her appointment or the expiry of one calendar year from the first day of absence resulting from the injury or illness, whichever is the later....;
- (c) Immediately following the date on which the salary and allowances cease to be payable under the Staff Regulations and Staff Rules applicable, including paragraph (b) of this Article, and for the duration of the staff member's total disability, he or she shall receive annual compensation payments equivalent to two-thirds of his or her final pensionable remuneration... .

Article 11.2 of Appendix A provides that:

In the case of injury or illness resulting in disability which is determined by the Commissioner-General to be partial:

...

- (b) The provisions of Article 11.1(b) shall apply:
  - (i) During such time as the staff member is incapacitated by the injury or illness from the performance of his or her official duties; and
  - (ii) Whenever the disability of the staff member results in the termination of his or her appointment on the ground that he or she is, for reasons of health, incapacitated for further service;

...

- (d) Where, upon separation of a staff member from the Agency's service, it is determined that he or she is partially disabled as a result of the injury or illness in a manner which adversely affects his or her earning capacity, he or she shall be entitled to receive such proportion of the annual compensation provided for under Article 11.1(c) as corresponds with the degree of the staff member's disability , assessed on the basis of medical evidence and in relation to loss of earning

capacity in his or her normal occupation or an equivalent occupation appropriate to his or her qualifications and experience.

21. Both provisions therefore establish that the allowance is to be paid until the date of the termination of the appointment or the expiry of one calendar year counted from the first day of absence resulting from the injury or illness, irrespective of the age of the staff member.

22. Pursuant to Article 1 of Appendix A, these provisions apply to all international staff members of the Agency holding a fixed-term appointment. Mr. Brisson held a fixed-term appointment.

23. Fixed-term appointments end at the age of retirement, either at the age of 60 or 62, depending on whether a staff member entered the United Nations Joint Staff Pension Fund before or after 1 January 1990 (Staff Regulation 9.2).

24. Mr. Brisson's fixed-term appointment was extended from December 2004 to December 2005 subject to the Staff Regulations and Rules. No exceptional circumstance was invoked for an extension beyond July 2005, when he reached 60.

25. The former United Nations Administrative Tribunal was seized with a similar question of refusal to pay compensation beyond the age of retirement in *Meron*. In response to a request by the former Administrative Tribunal for information regarding the Organization's policy on this issue, the ABCC, by letter dated 19 July 2004, provided the following explanation:

Compensation awarded under article 11.2 (d) for loss of earning capacity is sometimes awarded for a short period of time, if the claimant is expected to recover sufficiently to resume working. In cases where the claimant cannot return to work, the Board awards compensation up to the normal age of retirement, i.e. either up to age 60 or 62, depending on the claimant's entry on duty date. *In the past, such compensation awards were paid up to the claimant's death, or for as long as the disability existed, as in the case of compensation awarded under article 11.1 (c).* In recent years, however, the Board has decided that the Organization does not have an obligation to award compensation for the loss of earnings beyond the normal age of retirement and it has applied this interpretation of article 11.2 (d) uniformly. The claimant is advised as to when the benefit will terminate, and this date is included in the



Secretary-General's decision.<sup>4</sup> (Emphasis added by the former Administrative Tribunal)

26. Based on the information that the former Administrative Tribunal gathered from the ABCC, the policy change took place in 1997.<sup>5</sup> Therefore, staff members who requested such pension as a result of an accident suffered in the service of the Organization post 1997, have been granted it "with the proviso that it would be paid *only until they retired*".<sup>6</sup>

27. Mr. Brisson's accident occurred long after the policy change in 1997. The changed policy has been applied to Mr. Brisson in the same way as it has been applied to other staff members in similar situations. Mr. Brisson had reached retirement age at the time of the incapacitating injury and his appeal must therefore be dismissed.

### **Judgment**

28. The appeal is dismissed.

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<sup>4</sup> Former Administrative Tribunal Judgment No. 1197 (2004), para. X, quoting the ABCC letter of 19 July 2004.

<sup>5</sup> *Ibid.*, para. XIV.

<sup>6</sup> *Ibid.*, emphasis added.

Original and Authoritative Version: English

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

*(Signed)*

Judge Weinberg de Roca,  
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