



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

Judgment No. 2014-UNAT-414

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

JUDGMENT

Before: Judge Richard Lussick, Presiding
Judge Mary Faherty
Judge Inés Weinberg de Roca

Case No.: 2013-465

Date: 2 April 2014

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Lance Bartholomeusz

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Safi Mahmoud Mahfouz against Judgment No. UNRWA/DT/2013/008, rendered by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or the Agency) Dispute Tribunal (UNRWA DT) on 15 April 2013, in the case of *Mahfouz v. Commissioner-General of UNRWA*. Mr. Mahfouz appealed on 29 April 2013, and the Commissioner-General answered on 1 July 2013.

Facts and Procedure

2. The UNRWA DT made the following findings of fact, which are not contested by the parties:¹

... On 1 November 1992, the Applicant commenced employment with the Agency on a Temporary Indefinite Appointment as a Teacher 'D' at Beqaa Camp Elementary Boys School No. 2, North Amman, Jordan. Following several promotions, the Applicant was occupying the post of Associate Professor- Modern American Literature at the Faculty of Educational Sciences and Arts (FESA) at the time material to the events relating to the Application.

... By memorandum dated 17 October 2011, the Applicant informed the Field Human Resources Officer, Jordan (FHRO/J) that he had been awarded 'the 2012-2013 Fulbright Visiting Scholar (Post-Doctoral) Research Grant' and that he had received a letter of invitation from the Provost Office at the City University of New York and the Martin E. Segal Theatre Center to conduct post-doctoral research on American drama and theater during the academic year 2012-2013. The Applicant requested leave with full pay during the proposed research period 'so as to cover my family expenses in Jordan during my stay in the United States'.

... By memorandum to the Director of UNRWA Operations, Jordan (DUO/J) dated 30 November 2011, the Applicant reiterated his request for leave with full pay during the research period, citing provisions of Personnel Directive [(PD)] A/5[, entitled 'Special Leave',] and A/17[, 'Attendance at Training Courses, Scholarship Courses, Symposia and Conferences',] in support of his request. The Applicant also noted:

I would like to bring it to your notice that some UNRWA staff who obtained graduate scholarships were given leave with full pay for one year, and my case is not exceptional though it is a scholarship for a

¹ The following text is taken from Judgment No. UNRWA/DT/2013/008, paras. 2-9.

postdoctoral degree ... my Fulbright post doctorate scholarship is not a kind of training, but is rather a study leave scholarship leading to obtaining a postdoctoral degree.

...

... [M]y study leave is essential for meeting the requirements of the Accreditation Commission of the Ministry of Higher Education and Scientific Research which stipulate that there has to be in the English Department a professor who has graduated from an English speaking country. In addition, this study leave will also reflect positively on my students' learning in the English Department at FESA.

The Applicant noted that he had been advised by the Dean, FESA to resubmit his request as a request for leave without pay. However, the Applicant stated: 'Financially, I cannot manage to take a leave of absence from my job at FESA without pay since the Fulbright postdoctoral scholarship grant will only cover university tuition fees, and accommodation and there are no financial liabilities on the part of the City University of New York.'

... By memorandum to the DUO/J dated 8 March 2012, the Applicant noted that he had not yet received a response to his request for leave and repeated the content of his previous memoranda. The Applicant concluded by requesting 'sabbatical leave with full pay during the research period or if not possible ... special leave with partial pay'.

... By letter dated 10 April 2012, the Acting Director of UNRWA Operations, Jordan (ADUO/J) rejected the Applicant's request for [special leave with pay (SLWP) or special leave with partial pay (SLWPP)] noting that:

The principle of approving the Special Leave whether with full pay or partial pay as per the PD A/5 is the same, and it was responded to your letter dated 17 October 2011 by the Acting Field Human Resources Officer through the Dean, FESA on 8 November 2011, copy of which is attached [for] easy reference.

Your request has been thoroughly reviewed by all concerned and concluded that your request can not be accommodated as there are no available fund[s] to cover this request pursuant to PD A/17 paragraph 3.3 ...

The Applicant states in his application that he was verbally informed of this decision by the Dean, FESA on 25 April 2012 and that, upon his request to Jordan Field Office staff, he received a copy of the ADUO/J's letter on 6 June 2012.

... By memorandum to the Deputy Commissioner General (DCG) dated 22 May 2012 and resent on 11 June 2012 and 2 August 2012, the Applicant requested review of the decision rejecting his request for SLWP or SLWPP. The Applicant

reiterated the information and arguments that he had set out in previous memoranda and added:

The other Fulbrighters from public universities, who have been awarded the scholarship, were given leave with full pay on account that they have the academic rank of Associate Professor ... It is stated in Article 14 of the Legislations at the University of Jordan, which are applicable to all Jordanian universities, that 'any Associate Professor is eligible for a one year sabbatical leave with full pay for study, conducting research or working as a visiting scholar at any university in any country in the world'. ... I find it so strange why UNRWA ... does not recognize my eligibility to such a right given to my colleagues at other Jordanian public universities.

... By memorandum to the FHRO/J dated 7 August 2012, the Applicant requested [s]pecial [l]eave [w]ithout [p]ay (SLWOP) during the research period from 10 September 2012 until 10 May 2013. The Applicant formally requested SLWOP on the same date using the appropriate form. The Applicant's request was approved on 8 August 2012.

... On 15 August 2012, the [UNRWA DT] received an application from the Applicant contesting the decision to deny his request for SLWP or SLWPP. ...

3. The UNRWA DT dismissed the application, concluding that the impugned decision was "well within [UNRWA's] discretion which was properly and lawfully exercised".

4. The UNRWA DT found that the Appellant had erred in attempting to rely on the benefits accorded to the faculty of the University of Jordan under Article 14 of its Legislation as he was, rather, subject to the internal legislation of the Agency. A review of that legislation made clear that, notwithstanding the potential benefit of the Appellant's scholarship, UNRWA was not obliged to grant his request for paid, or partially paid, leave. Indeed, the UNRWA DT found: "Were the Agency to disregard the requirements of Article 3.3 of PD A/17 [(which requires available funds prior to approval of Agency expenditure on staff training),] it would have been not only unlawful but arguably an act of gross irresponsibility." The UNRWA DT noted that there had been no allegation that the reason proffered by the Agency was not valid.

Submissions

Mr. Mahfouz' Appeal

5. The Appellant submits that he is “eligible to receive a sabbatical leave with full pay”, under “Article 14 of the Legislations of the University of Jordan, which are applicable to all Jordanian universities and even to all universities in the world”. He contends UNRWA erred in not recognizing this right.
6. The Appellant also submits he is entitled to paid study leave pursuant to the terms of PD A/5 and PD A/17.
7. He argues that his post-doctoral study was essential for the ongoing national accreditation of FESA.
8. Finally, the Appellant claims he has been treated in a discriminatory fashion, as other staff members of the Agency were granted leave with full pay to pursue their studies.
9. He requests sabbatical leave with full pay, retroactive reimbursement of his salary and entitlements, and compensation for all damages resulting from the impugned decision.

The Commissioner-General's Answer

10. The Commissioner-General submits that the appeal should be dismissed in its entirety, as it is not founded on the grounds for appeal as provided for in the Statute of the Appeals Tribunal.
11. He further submits that the Appellant “has merely reiterated the facts set out in his application before [the] UNRWA DT and ... has not set out any errors of fact or law that would require a reversal of the UNRWA DT's decision to dismiss his application”.
12. With respect to the merits of the case, the Commissioner-General contends that the UNRWA DT erred neither as a matter of law nor as a matter of fact in its Judgment.

Considerations

13. In presenting this appeal, the Appellant merely expresses his disagreement with the UNRWA DT's decision and repeats the facts and arguments, almost to a word, that he placed before the UNRWA DT. Nowhere in the appeal does he demonstrate any error by the UNRWA DT, whether of law or fact.

14. The appeal is not based on any of the grounds set out in Article 2(1) of the Special Agreement between the United Nations and UNRWA, by virtue of which the Appeals Tribunal has jurisdiction to hear appeals emanating from UNRWA. The Appellant has not alleged that the UNRWA DT has:

- (a) exceeded its jurisdiction or competence;
- (b) failed to exercise the jurisdiction vested in it;
- (c) erred on a question of law;
- (d) committed an error of procedure, such as to affect the decision of the case; or
- (e) erred on a question of fact, resulting in a manifestly unreasonable decision.

15. It is not sufficient for the Appellant to state that he disagrees with the UNRWA DT's findings of fact and to repeat the arguments submitted before the first instance court, as the UNRWA DT has broad discretion to determine the weight it attaches to the evidence with which it is presented.² The consistent jurisprudence of the Appeals Tribunal emphasizes that the appeals procedure is of a corrective nature and is not an opportunity for a dissatisfied party to reargue his or her case: "A party cannot merely repeat on appeal arguments that did not succeed in the lower court. Rather, he or she must demonstrate that the court below has committed an error of fact or law warranting intervention by the Appeals Tribunal."³

² *Dannan v. Commissioner-General of United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-340; *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123.

³ *Dannan*, para. 14, citing *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035.

16. The UNRWA DT held that the Appellant was mistaken in his submission that he was entitled to the same benefits available to academic staff of the University of Jordan under Article 14 of the Legislation of that University. Moreover, the UNRWA DT found that the Agency was correct in refusing his request for the reason that funding was not available. The UNRWA DT concluded that the decision reached by the Agency was well within its discretion, which was properly and lawfully exercised.

17. The Appellant has failed to demonstrate that the UNRWA DT committed any error of fact or law in arriving at its decision. Accordingly, we find that there is no merit in this appeal and it cannot succeed.

Judgment

18. The appeal is dismissed and the Judgment of the UNRWA DT is affirmed.

Original and Authoritative Version: English

Dated this 2nd day of April 2014 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Faherty

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 13th day of May 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar