



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

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Judgment No. 2014-UNAT-458

**Al-Moued  
(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 Richard Lussick, Presiding  
Judge Inés Weinberg de Roca  
Judge Mary Faherty

**Case No.:** 2013-521

**Date:** 17 October 2014

**Registrar:** Weicheng Lin

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**Counsel for Mr. Al-Moued:** Diab Khalil Tabari

**Counsel for Commissioner-General:** Lance Bartholomeusz

**JUDGE RICHARD LUSSICK, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Moued Salim Al-Moued on 28 August 2013 against Judgment No. UNRWA/DT/2013/025, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA Dispute Tribunal or UNRWA DT and UNRWA or Agency, respectively). By Order No. 197 (2014) dated 11 September 2014, the Appeals Tribunal granted the Commissioner-General's motion for a waiver of time and ordered that he file his answer no later than 16 September 2014. He allowed Mr. Al-Moued ten working days from the date of receipt of the answer to file observations, if any. The Commissioner-General submitted his answer on 16 September 2014 and Mr. Al-Moued filed observations on 26 September 2014.

**Facts and Procedure**

2. The following facts established by the UNRWA DT are not contested:<sup>1</sup>

... On 27 September 2000 the Applicant commenced employment with the Agency as a Trades Instructor, Radio and Television Maintenance, Level 3B, at the Sibliin Training Centre ("STC"), Lebanon Field Office ("LFO"). Through successive renewals of the initial two year fixed-term appointment, the Applicant's appointment was extended through to 30 September 2013.

... A report in March 2011 on the employability of graduates from the STC, prepared by the Planning and Strategy Office of the LFO as part of a wider review of the Agency's Vocational Training Centres, recommended that the course in Audio-Visual Maintenance be discontinued given its "unpopularity" and the "marginal relation between training and employment."

... By letter dated 16 September 2011, Ms. Natalie Burton, the Field Human Resources Officer, Lebanon informed the Applicant of the decision to declare the post he occupied as redundant. The Applicant was additionally informed:

Every effort will be made to reassign you to another post in the Field, for which you have the requisite qualification in accordance with Personnel Directive A/9, Rev. 6, para 14.4.

Where the above cannot be achieved, you will be terminated, effective C.O.B. 15.12.2011, on grounds of Redundancy under S/R 109.9 para 3(B).

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<sup>1</sup> Impugned Judgment, paras. 2-23.

... By memorandum to Ms. Burton dated 29 September 2011 and titled "Arbitrary Dismissal from Employment as Redundant Instructor of A.V.E.M." the Applicant argued that the course he had taught was "one of the most important trades and technologies" and suggested that the course had received a bad reputation due to the way it had been administered by the Agency.

... By memorandum addressed to the Director of UNRWA Affairs, Lebanon ("DUA/L") dated 28 November 2011, the Applicant listed four posts at the STC – Recreation Officer, Housemaster, Deputy Principal, and Registrar Assistant – and three other posts within the Agency – Administrative Assistant, Registrar at Beithjala School, and Head Teacher – as examples of posts he could be reassigned to.

... By e-mail to Mr. Aref Abu-Khalil, Human Resources Services Officer, Lebanon dated 30 March 2012 the Applicant requested that he be appointed as a Recreation Officer at the STC.

... By e-mail to Ms. Burton and the Deputy Director of UNWRA Affairs, Lebanon dated 12 April 2012, Mr. Abu-Khalil noted that he met the Applicant that day and informed him that: in order for the Agency to appoint him to a vacant post he needed to have sufficient skills and knowledge required to perform the job; he could sit the respective tests for the posts of Arabic teacher or Clerk; and he was not qualified for the post of Recreation Officer, which requires a University degree in physical education and four years relevant experience.

... By letter to the Applicant dated 23 April 2012, Mr. Salvatore Lombardo, the DUA/L, reiterated that the Applicant was not qualified for the vacant position of Recreation Officer and noted that the Applicant had been offered the opportunity to sit technical evaluations for clerical positions and to be an Arabic teacher, which he had, up to that date, declined. The Applicant was advised to notify Human Resources as soon as possible should he reconsider his decision not to sit either of the technical evaluations. In the absence of such notification his employment would be terminated for reasons of redundancy with effect from close of business 31 May 2012.

... By letter dated 13 August 2012, Ms. Burton advised the Applicant that the Agency was offering him a post of Clerk 'B' and that he was to indicate his preference between two listed schools at which he could take up the post.

... In his reply, dated 30 August 2012, the Applicant reiterated his interest in the post of Recreation Officer without responding to the offer of a post as a Clerk 'B'.

... By e-mail dated 11 September 2012, the Applicant confirmed his receipt of the letter offering him a post as Clerk 'B' at one of two schools but stated that transfer to either of the two schools would "add additional burdens on my shoulder through paying for transport from and to home."

... By e-mail dated 12 September 2012, Ms. Burton asked the Applicant to confirm whether or not he would accept the offer, noting that if he chose not to accept, the Agency would have no other option but to declare him redundant.

... The Applicant did not respond to that e-mail but on 14 September 2012, through a visit to Mr. Abu-Khalil from the Applicant's sister, the Agency became aware that the Applicant had reported for duty at one of the schools at which he had been offered a post.

... By letter dated 27 September 2012, Ms. Burton advised the Applicant of his new terms of employment, which included grade protection at Grade 8, Step 19.

... By memorandum dated 16 October 2012 and addressed to the Officer-in-Charge, UNRWA Affairs, Lebanon, the Applicant requested review of the decision to transfer him to the post of Clerk 'B' and not to appoint him as Recreation Officer. The Applicant noted that his placement at Grade 8, Step 19 had resulted in a lower salary than that which he had previously collected.

... By letter dated 15 November 2012, Ms. Ann Dismorr, the DUA/L, responded to the Applicant's request for decision review, noting that the Applicant had been advised on numerous occasions that he was not qualified for the position of Recreation Officer. Ms. Dismorr found that all relevant Regulations, Rules and issuances had been complied with and that the Agency had exerted "reasonable effort" to find the Applicant a suitable post. Noting that the Applicant was gainfully employed with the Agency she advised him to apply for any of the Agency's vacancies should he be interested in moving from his current post as a Clerk 'B'.

... By application dated 27 December 2012, the Applicant appealed to the [UNRWA Dispute] Tribunal, contesting the decision to declare his functions as Trades Instructor, Radio and Television Maintenance redundant and to deny his request to be transferred to the post of Recreation Officer. The Application was received by the Tribunal on 7 January 2013 and was transmitted to the Respondent on the same day.

3. On 13 June 2013, the UNRWA DT issued Judgment No. UNRWA/DT/2013/025. Based on the evidence on record, the UNRWA DT was satisfied that there was a genuine redundancy situation and that the Agency had complied with Area Personnel Directive A/9, Rev. 7 (PD A/9) in making genuine attempts to find a suitable alternative post for Mr. Al-Moued. The UNRWA DT further found that the decision not to appoint Mr. Al-Moued as Recreation Officer was in accordance with PD A/9 and that his appointment as a Clerk "B" at Grade 8, Step 19, allowed the Agency to most closely approximate his previous salary in accordance with PD A/9. The UNRWA DT found that no "extraneous factors, maladministration and/or breach of due process" tainted the contested decision and dismissed Mr. Al-Moued's application.

### **Submissions**

#### **Mr. Al-Moued's Appeal**

4. Mr. Al-Moued submits that UNRWA's findings regarding the Audio-Visual Maintenance Course had not been shared with him and the lack of consultation rendered the decision to cancel the course improper.

5. Subsequently, UNRWA offered him positions which he was not qualified for, denied him the post of Recreation Officer which was the "closest to [his] qualifications", and reassigned him to a post with "lower salary, lower pension [c]ontributions, and increased transport costs".

6. Mr. Al-Moued also contends that the DUA/L did not review his case and that the response to his request for decision review was "mere rubber stamping".

7. As a result of the Administration's action, he suffered from frustration, stress, and insecurity, which caused him "two years of continuous panic".

8. Mr. Al-Moued requests that he be offered the post of recreation officer with immediate effect; that he be paid his "lost salary, Provident Fund and interest lost as a result of [being placed] at [g]rade 8, step 19"; that he be placed at Grade 11, Step 12 with salary protection, in addition to one step for every year lost; and two years' salary for moral damages.

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

9. The appeal is not founded on any of the grounds set out in Article 2(1) of the Appeals Tribunal Statute. Mr. Al-Moued merely restates the facts as found by the UNRWA DT and the appeals procedure is not an opportunity to reargue a case.

10. The Judgment is, as a matter of law, free of error. The UNRWA DT considered the applicable legal framework, reviewed the facts and correctly dismissed the application.

**Mr. Al-Moued's Observations**

11. Mr. Al-Moued states that the Commissioner-General has not asked at any stage that Mr. Al-Moued articulate what grounds his appeal is based on. In response to the Commissioner-General's answer on this point, Mr. Al-Moued seems to argue that the Secretary-General "fail[ed] to exercise jurisdiction" by not "provid[ing] a suitable post based on equivalency and training"; "[c]ommitted an error in procedure"; and "[e]rred on a question of fact" by "provid[ing] a post not suitable with qualifications".

12. Mr. Al-Moued contends that "[t]he whole reason for raising a case to a higher body is to argue the case".

13. Contrary to the Commissioner-General's contention, Mr. Al-Moued does not contest the Agency's power to restructure and the redundancy of post. Rather, he challenges the way the Agency addressed the redundancy.

**Considerations**

14. We mention as a preliminary matter that Mr. Al-Moued has requested an oral hearing. We find that this is not necessary and would be of no assistance. The submissions of the parties are sufficient to decide the case.

15. It is obvious from Mr. Al-Moued's appeal that he is not happy with the decision of the UNRWA DT, which upholds the Agency's decision to discontinue his post as a Trades Instructor and move him to a Clerk "B" post when he feels that he has the qualifications to fill the post of Recreation Officer.

16. Mr. Al-Moued places before the Appeals Tribunal the same arguments that he put to the UNRWA DT. The UNRWA DT's conclusion that there was a genuine redundancy situation was based on its examination of documentary evidence supplied by the Agency. The UNRWA DT then found from the evidence on record that the Agency had complied with PD A/9 in making genuine attempts to locate a suitable alternative post for Mr. Al-Moued. The UNRWA DT was satisfied with the Agency's explanations as to why it was not possible to appoint him as Recreation Officer, and found that such decision was in accordance with PD A/9. The UNRWA DT also found that Mr. Al-Moued's appointment as a Clerk "B" at Grade 8, Step 19, allowed the Agency to most closely approximate his previous salary in

accordance with PD A/9. It went on to examine Mr. Al-Moued's claim of prejudice against him by the Lebanon Field Office and concluded that there was no evidence to establish any prejudice. Finally, the UNRWA DT found that the record showed that the response to his request for decision review was detailed and comprehensive, not mere "rubber stamping" as suspected by Mr. Al-Moued.

17. Upon reviewing the Judgment, the Appeals Tribunal finds that the UNRWA DT gave careful and fair consideration to Mr. Al-Moued's arguments and weighed them against the facts of the case. We could find no fault with its decision and, indeed, Mr. Al-Moued has not demonstrated in his appeal that the UNRWA DT fell into any error, whether of fact or law.

18. It is apparent that Mr. Al-Moued is not aware of his onus as an appellant. He is not correct in thinking that a person bringing an appeal does not have any onus of establishing that the Tribunal below erred in its decision and that an appeal is an opportunity to present the same arguments for decision by a higher Tribunal. That is a totally misconceived notion of the nature of an appeal.

19. It is not sufficient for an appellant merely to state that he disagrees with the Dispute Tribunal's decision and to repeat the arguments submitted before the first instance court, as the Dispute Tribunal has a broad discretion to determine the weight it attaches to the evidence before it.<sup>2</sup> The appellant must bring the appeal within the jurisdiction of the Appeals Tribunal by basing the appeal on any of the grounds set out in Article 2(1) of the Special Agreement between the United Nations and UNRWA, by alleging 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.

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<sup>2</sup> *Mahfouz v. Commissioner-General of United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-414, para. 15, quoting *Dannan v. Commissioner-General of United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-340 and *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123.

20. Mr. Al-Moued did not identify any of these grounds in his appeal. However, after receiving the Commissioner-General's answer to the appeal, Mr. Al-Moued stated in his observations that had he been asked to identify the grounds of appeal set out in Article 2(1) he would have done so, but since the matter was not raised, he had addressed the merits of the case. He disagreed with the Commissioner-General where the Commissioner-General cited a decision by the Appeals Tribunal that the appeals procedure is not an opportunity to reargue a case. According to him, "the whole reason for raising a case to a higher body is to argue the case".

21. Nevertheless, Mr. Al-Moued states that even though he had not been requested at any stage by the Commissioner-General to identify the grounds of appeal, the application is based on:

- (i) the failure to exercise jurisdiction, "i.e. to provide a suitable post based on equivalency and training";
- (ii) an error in procedure, such as to affect the decision of the case; and
- (iii) errors of fact, resulting in a manifestly unreasonable decision; "i.e. provided a post not suitable with qualifications".

22. It appears that in naming these grounds, Mr. Al-Moued is referring to errors by the Commissioner-General, not the UNRWA DT. Indeed, in his appeal and observations, Mr. Al-Moued has not demonstrated any errors by the UNRWA DT.

23. Contrary to what Mr. Al-Moued believes, 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."<sup>3</sup>

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<sup>3</sup> *Dannan v. Commissioner-General of United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-340, para. 14, quoting *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035.



24. Mr. Al-Moued 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 his appeal and it cannot succeed.

**Judgment**

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

Original and Authoritative Version: English

Dated this 17<sup>th</sup> day of October 2014 in New York, United States.

*(Signed)*

Judge Lussick, Presiding

*(Signed)*

Judge Weinberg de Roca

*(Signed)*

Judge Faherty

Entered in the Register on this 22<sup>nd</sup> day of December 2014 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar