



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

Judgment No. 2015-UNAT-502

**Khashan
(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 Inés Weinberg de Roca
Judge Deborah Thomas-Felix

Case No: 2014-571

Date: 26 February 2015

Registrar: Weicheng Lin

Counsel for Mr. Khashan: Self-represented

Counsel for Commissioner-General: Anna Segall

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal has before it an appeal filed by Mr. Abdol Razeq Yousef Khashan against Judgment No. UNRWA/DT/2014/001, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or UNRWA Dispute Tribunal and UNRWA or Agency, respectively) on 16 January 2014 in the case of *Khashan v. Commissioner-General of UNRWA*. Mr. Khashan appealed on 28 January 2014 and the Commissioner-General of UNRWA answered on 26 March 2014.

Facts and Procedure

2. The facts as established by the Dispute Tribunal of UNRWA read as follows:¹

... Abdel Razeq Khashan (the “Applicant”) filed an application contesting the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (the “Respondent”) not to include, in his end-of-service retirement benefit, an allowance that he had received in addition to his base salary.

Facts

... By letter dated 30 September 1999, Mr. Gunnar Lofberg, the Director of UNRWA Operations, Jordan (“DUO/J”) informed the Applicant, a Technical Instructor in Mechanical Engineering, grade 12, at Wadi Seer Training Center [(W.S.T.C.)], Amman, Jordan, that his post was being deleted and that he was being declared “provisionally redundant” with effect from 1 January 2000. However, as an alternative to redundancy the Agency was offering the Applicant a transfer, with grade protection, to a post of Assistant Head Teacher or Vocational Activities Teacher.

... By memorandum dated 5 October 1999, the Applicant accepted a transfer to the post of Assistant Head Teacher and by letter to the Applicant dated 12 October 1999, the Agency informed him that he had been assigned to the post of Assistant Head Teacher at Ashrifiyeh Preparatory Boys School No. 2 with effect from 9 October 1999. This transfer included grade protection at grade 12.

... The Respondent stated in his Reply:

As a result of a Progression exercise conducted in 2011, the Agency eliminated the 10% administrative allowance for all Head Teacher, Grade 12 posts. As a result, the Appellant, who had since September 2000 transferred to a post as Head Teacher, Grade 12, suffered a loss in his monthly salary of approximately 60 [Jordanian

¹ The following facts are taken from Judgment No. UNRWA/DT/2014/001, paras. 1-13, 16-17.

Dinar] because he had by then reached Step 24, the ceiling on the steps available at that Grade.

... By letter to the Applicant dated 25 October 2011, the Human Resources Services Officer, Jordan, gave the Applicant notice that he would be separated from the Agency in 2013 on retirement in accordance with Staff Rule 109.2 and advised him that he would be eligible to receive a retirement benefit under paragraph 5 of Staff Rule 109.2[.]

... By memorandum to the Human Resources Officer, Jordan dated 27 October 2011, the Applicant stated:

As a result of promotion of the head teacher from grade 10 to grade 12, I have lost 62 JD from my salary because I'm already grade 12 step 22 in addition to the head teacher allowance due to the decision of the director of UNRWA in 1999 because the UNRWA transferred me from the post of technical instructor at W.S.T.C to the post of a head teacher. Up to my knowledge the decision of human resources director to change the post H. teacher to principle [sic] should not affect the salary of the Head Teacher.

A handwritten note at the bottom of the letter reads "As discussed with [the Human Resources Career Management Officer (HRCMO)], the staff may be recommended for [Transitional Personal Allowance (TPA)] as compensation."

... In his Reply the Respondent described the Agency's response to this issue as follows:

In order to compensate the Applicant for the noted loss of the Head Teacher's allowance resulting from the Progression exercise, the Agency, decided to pay him a Transitional Personal Allowance of 58JD per month. Accordingly, on 23 January 2012, the Agency paid the Applicant a total of 290.050 JD, representing the retroactive payment of five months' of TPA payment at 58 JD each.

... By memorandum to the Field Human Resources Officer, Jordan ("FHRO/J") dated 5 September 2012, the Applicant requested that the Transitional Personal Allowance of 58 [JD] be included in his retirement benefit. The Applicant followed up this request by memorandum to the FHRO/J dated 27 September 2012 and by e-mail to Ms. Marta Colburn, the DUO/J, dated 6 November 2012.

... By letter to the Applicant dated 7 November 2012, Ms. Ethel Roellich, the FHRO/J stated that his request could not be acceded to because in accordance with paragraph 5 and paragraph 7 of Staff Rule 109.2 and Staff Rule 112.3 the calculation of the retirement benefit is based on the base salary only.

... On 14 November 2012, the Applicant submitted a request for review of the decision not to include the allowance in his retirement benefit. The Applicant stated:

The reason behind not getting the benefit [...] was the transfer to a lower-grade post because of the arbitrary and unfair transfer made by some officials who were later terminated and their mismanagement and lack of integrity was proven and known.

Please note that there is a decision from the Office Director of the salary and allowance protection because he/she is aware of the injustice resulted against me. It is available in my file in the Personnel.

... On 16 December 2012, having not received a response to his request for decision review, the Applicant filed an application to the [UNRWA Dispute] Tribunal contesting the decision. The application was transmitted to the Respondent on 18 December 2012.

... By letter dated 24 December 2012, Ms. Marta Colburn, the DUO/J, responded to the Applicant's request for decision review confirming that the decision would be upheld and citing Area Staff Rules 109.2 and 112.3(D).

... On 17 January 2013[,] the Respondent filed his Reply to the Application.

...

... On 24 September 2013, the Respondent filed a Supplement to the Reply in English.

... By e-mail dated 26 September 2013 the Applicant submitted his response to the Reply. Rather than addressing the decision contested in his application, the Applicant's submissions focused on his transfer to the post of Assistant Head Teacher in 1999, which he regarded as an attempt to get rid of him, to block his progress, to limit his power, and to cause him "severe losses". The response was transmitted to the Respondent on 1 October 2013.

3. In Judgment No. UNRWA/DT/2014/001, the UNRWA DT dismissed Mr. Khashan's application as meritless. It upheld the Agency's decision not to include the TPA of 58 JD in his retirement benefit:

... The Area Staff Rules are clear that a staff member's retirement benefit is to be calculated on the basis of their "ending" annual salary. The ending annual salary is the "monthly salary" at the date of retirement, multiplied by 12. Rule 109.2(7) explicitly states that the meaning of "monthly salary" is to be taken from Rule 112.3(D) which defines it as *net contractual salary and increments only*. This excludes the Transitional Personal Allowance that the Agency paid to the Applicant to compensate him for loss of salary after his transfer with grade protection to a post with a lower grade. The Tribunal cannot ignore the plain interpretation of the Staff Rules. [...]

... [...] The Tribunal finds that the calculations [for Mr. Khashan's end of service retirement benefit] were reached after a correct application of the relevant rules.²

4. The UNRWA DT also discussed the allegations raised by Mr. Khashan in respect of his transfer to the post of Assistant Head Teacher in October 1999, but dismissed them as not receivable as a separate head of claim.

Submissions

Mr. Khashan's Appeal

5. The decision to transfer him to a different field was unfair and affected him "physiologically and socially as well as technically". He was however obliged to accept the transfer as there was no alternative available to him and to reject that decision would have entailed more losses to him.

6. Mr. Khashan argues that "deleting the allowance [...] during the last period of [his] work increased [his loss] which reached fifty eight JD from [his] basic salary".

7. Mr. Khashan alleges that he was not selected for unspecified higher level posts in the same field of specialization because of "unjust treatment".

8. Mr. Khashan voices his "disagreement" with the UNRWA DT Judgment and requests that this Tribunal review his case file which will "show facts of unjust treatment".

The Commissioner-General's Answer

9. The UNRWA Dispute Tribunal did not err in confirming the Agency's decision not to include the TPA in the calculation of Mr. Khashan's retirement benefit.

10. The UNRWA Dispute Tribunal did not err in dismissing Mr. Khashan's application related to his 1999 transfer as not receivable.

11. Mr. Khashan's allegation about not being selected for unspecified higher level posts because of "unjust treatment" is not receivable as this is a new issue that has been introduced for the first time on appeal.

² Impugned Judgment, paras. 24-25 (emphasis in original).

12. The Commissioner-General asks that the Appeals Tribunal reject Mr. Khashan's appeal.

Considerations

13. Mr. Khashan states in his appeal that he does not agree with the UNRWA DT's decision. He claims that the decision to transfer him was unfair and affected him adversely, but that he could not reject it because he was obliged to continue working for UNRWA as there was no available alternative. He also claims that he was the subject of "unjust treatment" in that his applications for higher posts were ignored. However, Mr. Khashan does not assert in his appeal that the UNRWA DT erred in its decision.

14. It is not sufficient for an appellant merely to state that he disagrees with the UNRWA Dispute Tribunal's decision and to repeat the arguments submitted before the first instance court, as the UNRWA Dispute Tribunal has a broad discretion to determine the weight it attaches to the evidence with which it is presented.³ 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."⁴

15. 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 jurisdiction vested in it;
- (c) erred on a question of law;

³ *Mahfouz v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-414; *Dannan v. Commissioner-General of the 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.

⁴ *Dannan, ibid.*, citing *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035.

- (d) committed an error in procedure, such as to affect the decision of the case; or
- (e) erred on a question of fact, resulting in a manifestly unreasonable decision.

16. Mr. Khashan did not identify any of these grounds in his appeal and has failed to demonstrate that the UNRWA DT committed any error of fact or law in arriving at its decision. While it is understandable that Mr. Khashan would not be happy with the UNRWA DT's decision, the finding by the UNRWA DT that his retirement benefit was correctly calculated in accordance with the relevant staff rules cannot be faulted. In protesting against the non-inclusion of his TPA in his retirement benefit, Mr. Khashan has failed to appreciate the distinction between an allowance and base salary. There is no provision in the UNRWA retirement system which would permit such an allowance to be included in the calculation of his retirement benefit. Upon retirement, Mr. Khashan was no longer entitled to the TPA paid to him during his employment.

17. The UNRWA DT considered that the calculation of Mr. Khashan's retirement benefit was governed by Area Staff Rules 109.2(5) and (7) and 112.3(D). Paragraphs 5 and 7 of Area Staff Rule 109.2 state:

RETIREMENT BENEFIT

5. A staff member who has completed not less than three years of qualifying service shall, upon retirement on grounds of age under this rule on or after 1 September 1987, become eligible to receive a standard retirement benefit computed as 10% of ending annual salary for each year of qualifying service. Benefits under this rule shall be calculated by prorating to the last full month of qualifying service. No benefit is payable in respect of a total of less than three years of qualifying service.

.....

7. For the purposes of this rule ending annual salary shall mean the monthly salary as defined in staff rule 112.3(D), as at the date of retirement, multiplied by 12.

Area Staff Rule 112.3(D) provides:

“Base Salary” shall mean net contractual salary and increments only.

18. Pursuant to those provisions, the retirement benefit is computed as a percentage of the staff member's ending annual salary; “ending annual salary” means the monthly salary as defined in Area Staff Rule 112.3(D) as at the date of retirement, multiplied by 12; the monthly salary defined in Area Staff Rule 112.3(D) is “base salary”, meaning net contractual

salary and increments only. In short, the calculation of the retirement benefit is based on the base salary only.

19. The UNRWA DT correctly found that under the applicable Staff Rules, Mr. Khashan's retirement benefit did not include the TPA paid to him to compensate him for loss of salary after his transfer with grade protection to a post with a lower grade.

20. The UNRWA DT also found that, as there was no evidence that Mr. Khashan had submitted a timely request for decision review with respect to his allegation as to the impropriety of his transfer to the post of Assistant Head Teacher in 1999, such a claim was not receivable and that "[t]he only justiciable issue before [it] concerns the alleged shortfall in his end of service retirement benefit".⁵ We can find no error in this finding. It is well settled case law that a request for decision review, or management evaluation, is a mandatory first step in the appeal process.⁶

21. Finally, in his appeal, Mr. Khashan raises for the first time his claim that he was unjustly treated in that his applications for higher posts were ignored. This issue was not raised in the tribunal of first instance, that is, the UNRWA Dispute Tribunal, and thus cannot be introduced for the first time on appeal for consideration by the Appeals Tribunal. We find that Mr. Khashan's appeal in this regard is not receivable.

22. Mr. Khashan has failed to establish that the UNRWA DT fell into any error of law or fact in arriving at its decision and thus his appeal has no merit and cannot succeed.

Judgment

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

⁵ Impugned Judgment, para. 25.

⁶ See e.g., *Servas v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-349.

Original and Authoritative Version: English

Dated this 26th day of February 2015 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Thomas-Felix

Entered in the Register on this 17th day of April 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar