



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

Judgment No. 2015-UNAT-541

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

JUDGMENT

Before:	Judge Sophia Adinyira, Presiding Judge Richard Lussick Judge Mary Faherty
Case No.:	2014-622
Date:	2 July 2015
Registrar:	Weicheng Lin

Counsel for Mr. Hasan: Self-represented

Counsel for Commissioner-General: Lance Bartholomeusz

JUDGE SOPHIA ADINYIRA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2014/014, 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 27 May 2014 in the case of *Hasan v. Commissioner-General of UNRWA*. Mr. Mohammad Saleem Hasan appealed on 23 June 2014 and the Commissioner-General of UNRWA answered on 9 September 2014.

Facts and Procedure

2. On 12 August 2008, the Appellant entered the service of UNRWA as Assistant Head Teacher, grade 9, at Madaba Preparatory Boys School, in Jordan.

3. On 1 August 2009, the Appellant was promoted to the post of Head Teacher, grade 9, at Irbid Camp Preparatory Boys School.

4. On 7 February 2011, the Appellant was transferred to the post of Head Teacher, grade 9, at Khazmah Preparatory Boys School in the Irbid area.

5. On or about 25 September 2011, a Fact-Finding Committee was established to investigate a complaint that the Appellant had instigated a student to make a false complaint against a teacher at the school accusing him of using corporal punishment.

6. After a preliminary investigation on 3 October 2011, the Fact-Finding Committee submitted an undated report to the Chief of the Area Office in Irbid (CAO/Irbid) and the Area Education Officer in Irbid (AEO/Irbid). The report was stamped as “received” on 8 January 2012. The report concluded that the Appellant had “provoked” students into making complaints that another teacher used corporal punishment, a method of discipline which was strictly forbidden in all UNRWA schools at the time, and had smoked inside the school laboratory. Annexed to that report was a statement dated 25 September 2011 by the student in question, in which the student admitted that he made such a complaint at the direction of the Appellant by whom he felt intimidated.

7. On 9 April 2012, a newly constituted Investigation Panel conducted an investigation. That investigation concluded that it was not proven that it was the Appellant who provoked the student to complain against the teacher, but rather it was the school counsellor.

8. On 13 June 2012, the Senior Legal Officer of the Jordan Field Office wrote to the Appellant to inform him that the results of the preliminary investigation of 3 October 2011 reflected that “there [was] overwhelming evidence that [he had] engaged in an unprofessional and inappropriate manner”, and that the act of instigating a student to make a false complaint about another teacher could be construed as misconduct. The Appellant was invited to comment.

9. On 23 June 2012, the Appellant provided his reply in which he, inter alia, denied the allegations, and accused the AEO/Irbid of retaliation against him.

10. On 31 July 2012, the Appellant was served with a letter of censure and was suspended from duty for one week without pay.

11. On 1 September 2012, the Appellant submitted a request to the Director of UNRWA Operations, Jordan (DUO/J) for review of the decision to issue him a letter of censure and suspend him for one week without pay.

12. On 27 September 2012, the DUO/J informed the Appellant that the decision to issue him a letter of censure and suspend him for one week without pay would stand.

13. On 30 December 2012, the Appellant filed an application requesting an extension of time in which to file his application with the UNRWA DT, which was annexed and dated 15 December 2012. The request was granted and his application was accepted.

14. On 27 May 2014, the UNRWA DT issued its Judgment in the matter and found in favour of the Appellant. After reviewing the evidence upon which the reports of the Fact-Finding Committee and the subsequent Investigation Panel based their findings, the UNRWA DT concluded that they presented contradictory evidence and conclusions. The UNRWA DT thus found that the Agency had no basis to inform the Appellant that “overwhelming evidence” showed he had instigated a student to make a false complaint, while it disregarded the evidence of the Investigation Panel which concluded to the contrary, without indicating why. Accordingly, the UNRWA DT found that the facts on which the sanction was allegedly based were not established and thus, that the Agency’s decision was illegal and irrational. The UNRWA DT

ordered that the Agency withdraw the letter of censure from the Appellant's personnel file, and reimburse him one week's salary. The UNRWA DT declined to award any compensation noting the Appellant had not provided any evidence to support his claim of psychological suffering.

Submissions

Mr. Hasan's Appeal

15. In his appeal form, the Appellant states that the UNRWA DT Judgment of 27 May 2014 satisfied some of his rights, but failed to consider several points, or to address compensation. The Appellant otherwise makes factual submissions concerning his past low performance reports, his allegedly arbitrary transfer to Khazmah School which was a significant distance from his home, and the Agency's refusal to transfer him back to the Irbid area. By appealing, the Appellant hopes this Tribunal "will complete [its] mission to help [...] employees to get their rights and stop the corruption and base use of power".

The Agency's Answer

16. The Agency submits that the Appellant has not identified any errors on the part of the UNRWA Dispute Tribunal that would require a reversal of its Judgment, nor upon which of the five grounds of appeal he seeks to rely. The Appellant's submissions focus mainly on facts unrelated to the subject matter of the present appeal, including his transfer to Khazmah School and subsequent termination of his appointment. Insofar as the Appellant seems to challenge the failure of the UNRWA DT to award him compensation, that decision was sound and within the discretionary remit of the UNRWA Dispute Tribunal under Article 10(5) of its Statute. Moreover, the refusal to grant the Appellant compensation accords with the jurisprudence of this Tribunal which holds that compensation may only be awarded where it is established that the staff member suffered damages. The Agency requests that this Tribunal dismiss the Appellant's appeal in its entirety.

Considerations

17. A party must bring his or her 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, which mirrors Article 2(1) of the Appeals Tribunal Statute, by alleging that the UNRWA Dispute Tribunal 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 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.

18. Mr. Hasan did not identify any of these grounds in his appeal. Further, his submissions were mainly focused on facts relating to his past transfer to a different school and personal conflicts with some staff members, which were not raised before the UNRWA DT. We will not allow new claims to be raised on appeal when the circumstances giving rise to such claims were known to a party at the time and should have been presented to the UNRWA Dispute Tribunal.¹

19. In the instant case, to the extent that Mr. Hasan's submissions concerning conflict with his fellow staff members may have had some nexus to the issue of the investigation report, they should have first been presented to the UNRWA Dispute Tribunal. To the extent that the remainder of his claims have otherwise been raised for the first time on appeal and are unrelated to the scope of the appeal presently before us, they are rejected by the Appeals Tribunal.

20. The only other matter that can be discerned from this appeal relates to the UNRWA Dispute Tribunal's decline to award compensation. In this respect, Mr. Hasan submits the UNRWA DT satisfied some of his rights, but failed to consider several points, in particular relating to compensation.

21. The Agency submits that the decision of the UNRWA Dispute Tribunal not to award compensation ought not be disturbed as it accords with the jurisprudence of the Appeals Tribunal that compensation may only be awarded where it is established that the staff member suffered damages.

22. With respect to the award of damages, the UNRWA DT held:²

... [Mr. Hasan] has not provided any evidence in support of his claim of psychological suffering. As there is no compensation where no harm has been suffered, the Tribunal determines that [Mr. Hasan] is not entitled to compensation in this regard.

¹ *Azzouz v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-432. Cf. also *Shakir v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-056.

² Impugned Judgment, para. 52.

23. We uphold this finding. The need for compensation must be demonstrated by evidence.³ Moral damages may not be awarded without specific evidence supporting the claim.

24. Mr. Hasan claimed psychological suffering but did not produce any evidence in proof of that. Accordingly, he is not entitled to any damages.

25. Having reviewed the UNRWA DT Judgment, we find that Mr. Hasan's case was fully and fairly considered by the UNRWA Dispute Tribunal. Further, we can find no error of law or fact in its decision.

26. Accordingly, we find no merit in this appeal.

Judgment

27. The appeal is dismissed and the Judgment of the UNRWA Dispute Tribunal is affirmed.

³ *James v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-009.

Original and Authoritative Version: English

Dated this 2nd day of July 2015 in Geneva, Switzerland.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Faherty

Entered in the Register on this 20th day of August 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar