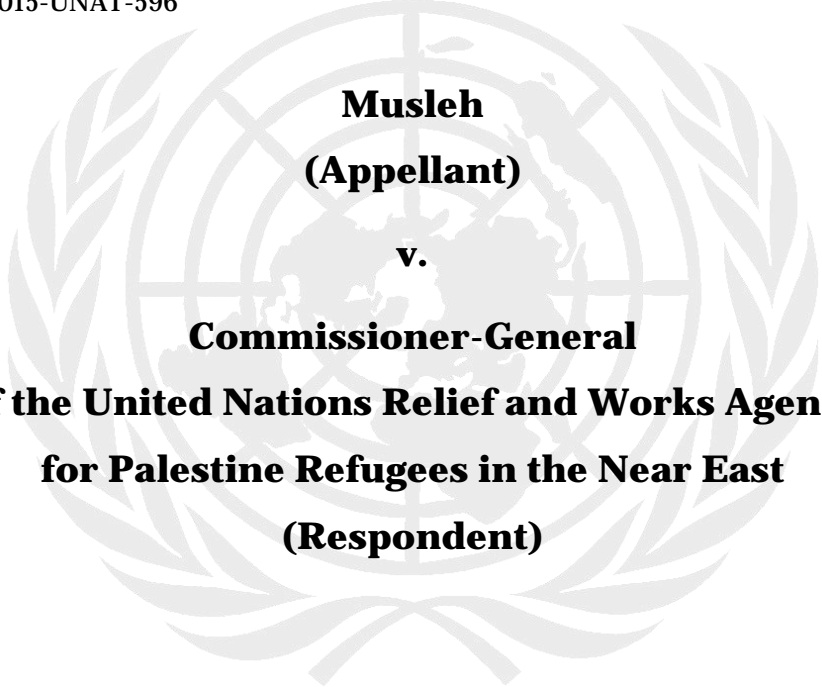




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2015-UNAT-596



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

JUDGMENT

Before:	Judge Deborah Thomas-Felix, Presiding Judge Rosalyn Chapman Judge Sophia Adinyira
Case No.:	2015-696
Date:	30 October 2015
Registrar:	Weicheng Lin

Counsel for Mr. Musleh: Self-represented

Counsel for Commissioner-General: Lance Bartholomeusz

JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2014/053, 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 10 December 2014, in the case of *Musleh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Mohammad Musleh filed his appeal form on 10 February 2015. Although the Appeals Tribunal Registry requested Mr. Musleh on 11 February 2015 to file an appeal brief by 16 February 2015, Mr. Musleh failed to do so. The Commissioner-General filed his answer on 16 April 2015.

Facts and Procedure

2. As of 1 August 2012, Mr. Musleh was employed by the Agency as a Laboratory Technician at the Irbid Town Health Centre on a three-year fixed-term appointment, subject to a 12-month probationary period.

3. On 7 January 2013, Mr. Musleh's supervisor, after visiting the Irbid Town Health Centre the previous day, noted in a report several unsatisfactory aspects of Mr. Musleh's performance.

4. On 23 July 2013, the Senior Medical Officer (SMO) of the Irbid Town Health Centre e-mailed the Area Health Officer (AHO) in relation to Mr. Musleh's performance, noting, inter alia, that the latter still lacked technical competence even after receiving additional training, frequently arrived late for work and had bad relations with his colleagues, and engaged in long personal calls during working hours. The SMO forwarded this e-mail on the same day to the Performance Management Associate "B", stating that the noted shortcomings justified extending Mr. Musleh's probationary period for another six months.

5. On 24 July 2013, the Human Resources Career Management Officer (HRCMO) approved the request to extend Mr. Musleh's probationary period for an additional six months, and wrote to Mr. Musleh to inform him of the same.

6. On 11 September 2013, the Field Laboratory Services Officer (FLSO) served Mr. Musleh with a letter of reprimand due to his bad performance.

7. On 24 September 2013, Mr. Musleh requested a review of the decision of the HRCMO to extend his probationary period for an additional six months, as well as the decision of the FLSO to serve him with a letter of reprimand.
8. On 22 October 2013, the Acting Director of UNRWA Operations, Jordan, informed Mr. Musleh that since there were no new facts justifying a change of the decisions, the decisions he contested were affirmed.
9. On 2 December 2013, Mr. Musleh filed an application with the UNRWA Dispute Tribunal challenging the decision to extend his probationary period for another six months.
10. In a report dated 28 January 2014, a committee convened to review Mr. Musleh's performance, comprising representatives of the Health Department, the Human Resources Department, the Laboratory Service Headquarters and the Services Committee, concluded that Mr. Musleh lacked theoretical knowledge and had inadequate technical skills. The committee therefore recommended to the Head of the Field Human Resources Office that Mr. Musleh's service not be continued, and that he should not be confirmed in his post.
11. On 30 January 2014, the Director of UNRWA Operations, Jordan, informed Mr. Musleh that, due to his unsatisfactory performance, he would not be confirmed in his post and that his appointment with the Agency would expire effective 1 February 2014.
12. On 11 February 2014, Mr. Musleh requested a review of the Agency's decision not to confirm his appointment.
13. On 11 March 2014, Mr. Musleh filed an application with the UNRWA Dispute Tribunal challenging the decision not to confirm his appointment.
14. On 10 December 2014, the UNRWA Dispute Tribunal rendered its Judgment, which consolidated Mr. Musleh's two applications. The UNRWA DT found that both the initial decision to extend Mr. Musleh's probationary period and the subsequent decision not to confirm his appointment complied with Mr. Musleh's letter of appointment and the Agency's regulatory framework, and were further supported by his poor performance. Accordingly, the UNRWA DT dismissed the applications.

Submissions

Mr. Musleh's Appeal

15. The UNRWA Dispute Tribunal failed to exercise its jurisdiction, erred on questions of fact, as well as in procedure and was biased in favour of the Respondent. The UNRWA DT Judgment is biased and based solely on UNRWA's documented version of events, and fails to search for "the true facts". While UNRWA relied on Mr. Musleh's supervisor's report of 6 January 2013, his supervisor was neither neutral nor just.

16. Mr. Musleh requests an oral hearing which will help him prove his case. Mr. Musleh does not request that the Appeals Tribunal order any remedies.

The Commissioner-General's Answer

17. In the absence of a brief explaining the basis for his grounds of appeal, as required by the UNRWA DT's Rules of Procedure, Mr. Musleh's appeal is not well founded. The Appellant merely asserts that the UNRWA DT Judgment is affected by errors, but fails to demonstrate how the UNRWA DT erred. The UNRWA DT did not err as a matter of fact or law when it dismissed the Appellant's applications. The Respondent therefore requests that the Appeal Tribunal dismiss the appeal.

Considerations

Preliminary issue – request for an oral hearing

18. Mr. Musleh has requested an oral hearing so as to help him prove his case. Oral hearings are governed by Article 8(3) of the Appeals Tribunal Statute (Statute) and Article 18(1) of the Appeals Tribunal Rules of Procedure (Rules), which envisage granting an oral hearing when it would "assist in the expeditious and fair disposal of the case". The Appeals Tribunal rejects Mr. Musleh's request since the appeal does not present any issues that require further clarification.

Appeal on the merits

19. Article 8(2) of the Rules provides that a party to an appeal shall provide a brief which explains the legal basis of any of the five grounds of appeal set out in Article 2(1) of the Statute, which an appellant relies upon. In this case, despite the Appeals Tribunal Registry's request to Mr. Musleh to file an appeal brief, he failed to do so.

20. We recall that the Appeals Tribunal's function is to determine whether the UNRWA Dispute Tribunal has made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as prescribed in Article 2(1) of the Statute. An appellant has the burden of satisfying the Appeals Tribunal that the judgment he or she seeks to challenge is defective. It follows that the appellant must identify the alleged defects in the judgment and state the grounds relied upon in asserting that the judgment is defective.¹

21. While Mr. Musleh broadly claims in his appeal form that the UNRWA DT erred in numerous respects, he fails to provide any details as to how. The only discernible complaint in his appeal form vis-à-vis the UNRWA DT Judgment is that it is "basic[al]ly false".

22. Nonetheless, having reviewed the UNRWA DT Judgment, we can discern no error in its conclusion that neither the initial six-month extension of Mr. Musleh's probationary period, nor the ensuing non-confirmation of his appointment, was unlawful.

23. The UNRWA Dispute Tribunal considered the applicable law relevant to probationary periods and their extension, namely Area Staff Personnel Directive A/4/Part VII/Rev. 7, as well as the terms of Mr. Musleh's letter of appointment. It correctly noted that Mr. Musleh was informed in his letter of appointment that his three-year term of employment "shall be subject to probationary service of twelve months effective 01/08/2012". It was thus clear that his performance would be reviewed within that period.

24. In the lead up to the expiration of the initial 12-month probationary period, Mr. Musleh was informed that his performance was not up to standard. He was thus given the opportunity to improve his performance through the further extension of his probationary period for an additional six months. However, as his performance still had not improved throughout

¹ *El Saleh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-594, para. 30, citing *Achkar v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-579, para. 15 and cites therein.

the additional six-month probationary period, he was not confirmed in the position. The UNRWA DT correctly noted that Mr. Musleh's letter of appointment had also made clear that his appointment would only be confirmed in writing, "[s]ubject to [his] satisfactory work performance during this probationary period".²

25. Area Staff Rule 109.1, which was in effect and governed termination at the time, provided that a staff member's probationary appointment may be terminated without advance notice at any time prior to its written confirmation.³ The same was reflected in Mr. Musleh's letter of appointment.

26. On the basis of the foregoing, the UNRWA Dispute Tribunal concluded that both the initial decision to extend Mr. Musleh's probationary period and subsequent decision not to confirm his appointment were in compliance with his letter of appointment and the Agency's regulatory framework. We see no error in this regard.

27. This appeal has no merit and cannot succeed.

Judgment

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

² Impugned Judgment, para. 35.

³ UNRWA Area Staff Rules, Cod./A/59/Rev.25/Amend.135, 1 January 2013.

Original and Authoritative Version: English

Dated this 30th day of October 2015 in New York, United States.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Chapman

(Signed)

Judge Adinyira

Entered in the Register on this 18th day of December 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar