



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

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Judgment No. 2015-UNAT-602

**Zamel  
(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 Luis María Simón, Presiding  
Judge Sophia Adinyira  
Judge Deborah Thomas-Felix

**Case No.:** 2015-699

**Date:** 30 October 2015

**Registrar:** Weicheng Lin

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**Counsel for Mr. Zamel:** Amer Abu-Khalaf, Staff Legal Assistance

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

**JUDGE LUIS MARÍA SIMÓN, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal of Judgment No. UNRWA/DT/2015/005, issued 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 29 January 2015. Mr. Eyad Zamel appealed on 16 March 2015 and the Commissioner-General of UNRWA answered on 14 May 2015.

**Facts and Procedure**

2. The parties both rely on the summary of facts as set out in the impugned UNRWA DT Judgment as follows:<sup>1</sup>

... Effective 1 October 2012, the Applicant joined the Agency as a P-5 Chief of Project Management Office (CPMO), Enterprise Resources Planning (ERP) with a fixed-term appointment expiring on 30 September 2013.

... On 24 June 2013, during the Applicant's mid-term performance review meeting, the Director ERP ("DERP") orally informed the Applicant of the decisions to extend his appointment for three months and then to abolish his post and recruit for a new consultancy titled "ERP Delivery Manager".

... By letter dated 3 July 2013, the Chief Human Resources Division ("CHRD") offered the Applicant an extension of his fixed-term appointment for a period of three months, expiring 31 December 2013.

... On 15 July 2013, the vacancy for the Consultant, ERP Delivery Manager was published.

... On 28 July 2013, the Applicant submitted a complaint against his supervisor, the DERP, to the Director of Human Resources ("DHR") and the Department of Internal Oversight Services ("DIOS") alleging that the DERP had abused his power.

... On 14 August 2013, the Applicant accepted the proposed three-month extension.

... On 19 August 2013, the Applicant requested review of the decisions to: 1) extend his appointment for a period of three months instead of one year; 2) abolish his post as of 31 December 2013; and 3) create a Consultancy titled "ERP Delivery Manager".

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<sup>1</sup> *Zamel v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2015/005, paras. 2-14.

... By Inter-Office Memorandum (“IOM”) dated 25 August 2013, the DERP provided additional information to the DHR in support of his recommendation to extend the Applicant’s contract for a period of three months.

... By letter dated 1 September 2013, the DHR submitted to the Advisory Committee on Human Resources (“ACHR”) a proposal concerning the restructuring of the ERP project and the extension of the Applicant’s contract for three months.

... By letter dated 9 September 2013, the Officer-in-Charge DHR (“OIC DHR”) replied to the Applicant’s complaint [of] abuse of power providing that the DERP’s recommendation to abolish his post and to renew his appointment for three months was a valid exercise of his discretionary authority and not an abuse of power.

... On 11 September 2013, the ACHR recommended that the Commissioner-General approve the restructuring proposal of ERP and extend the Applicant’s contract for a three-month period, expiring on 31 December 2013. On 18 September 2013, the Commissioner-General endorsed the recommendations.

... By letter dated 19 September 2013, the Deputy Commissioner-General (“DCG”) replied to the Applicant’s request for decision review.

... On 28 November 2013, the Applicant submitted his application to the Tribunal.

3. On 29 January 2015, the UNRWA DT issued Judgment No. UNRWA/DT/2015/005, dismissing Mr. Zamel’s application.

4. The UNRWA DT found that the decisions to abolish Mr. Zamel’s post and to extend his appointment only until 31 December 2013 were properly made. It rejected Mr. Zamel’s contention that the Chair of the ACHR, being the DCG, had a conflict of interest since she was also Mr. Zamel’s second supervisor. The UNRWA DT found that given her position, she had the duty to address issues such as the restructuring of Agency departments and moreover, Mr. Zamel’s performance evaluation was not the cause of the restructuring.

5. The UNRWA DT also dismissed Mr. Zamel’s assertion that the real motive of the restructuring was to separate him from the Agency in retaliation for having requested his supervisor, the DERP, to conduct an investigation to identify whether the delay in the implementation of the ERP application had been caused by Capgemini, the company hired to implement the ERP application at UNRWA. Capgemini claimed that the two-month long project delay had been caused by UNRWA and requested that UNRWA be charged an extra cost for the delay. Mr. Zamel alleged that, as the DEPR was a former employee of Capgemini, he refused Mr. Zamel’s proposal to investigate the cause of the delay.

The UNRWA DT found no evidence to support Mr. Zamel's claim that the DERP had given a competitive advantage to Capgemini.

6. The UNRWA DT found that based on the e-mails exchanged between Mr. Zamel and the DERP from May 2013, it was clear that the DERP reproached Mr. Zamel "for acting beyond the scope of his employment" when the latter asked Capgemini questions without the DERP's permission. The UNRWA DT, however, concluded that there was no evidence that the proposal for restructuring the office was done in an effort to retaliate against Mr. Zamel.

7. In response to Mr. Zamel's contention that the newly created consultancy contained nearly 75 per cent of the job responsibilities that he was performing in his P-5 role and that this revealed that the restructuring had the sole purpose of not renewing his contract, the UNRWA DT recalled that the Agency's decision to recruit a consultant was a discretionary organizational measure and Mr. Zamel had produced no evidence to substantiate his claim that the decision to abolish his post was motivated by abuse of power or retaliation. Moreover, even if his supervisor did not want to renew his appointment, the decision was not taken by him, but by the Commissioner-General after receiving the ACHR's recommendations. Contrary to Mr. Zamel's contention, the decision to abolish his post was made on 18 September 2013, when the Commissioner-General approved the ACHR's recommendation, pursuant to Organization Directive No. 20 (Advisory Committee on Human Resources) (OD 20).

8. Finally, the UNRWA DT found that the decision to recruit a consultant was not an administrative decision directly affecting Mr. Zamel's terms and conditions of employment and was therefore not appealable.

### **Submissions**

#### **Mr. Zamel's Appeal**

9. The UNRWA DT erred in law by failing to establish that the decision to abolish Mr. Zamel's post was tainted by procedural irregularities. The UNRWA DT failed to recognize that the non-renewal decision breached the procedures established in OD 20. According to OD 20, the proposed decision to extend Mr. Zamel's appointment and not to renew it should have first been presented to, and discussed with, the ACHR and later recommended to the Commissioner-General. However, in the present case, the decision to

abolish Mr. Zamel's post was taken on 18 September 2013, more than two months after Mr. Zamel had been informed of the decision not to renew his appointment.

10. Moreover, according to Articles 13 and 14 of OD 20, ACHR recommendations must be made by consensus and in cases in which this is not possible, by majority vote. In the present case, the Administration (sic.) did not agree by consensus or majority vote on the limited extension of Mr. Zamel's appointment and the abolishment of his post before the recommendation was sent to the Commissioner-General for his approval. Instead, the decision was taken and communicated to Mr. Zamel by the DERP. Moreover, there was a clear conflict of interest in that the DCG, who was also Mr. Zamel's second reporting officer, chaired the ACHR discussion and decided that Mr. Zamel's post be abolished. She should have recused herself and designated an alternate chairperson, in accordance with OD 20.

11. The UNRWA DT further erred in fact by disregarding the evidence submitted by Mr. Zamel which proving that the aforementioned decisions were motivated by abuse of power, and erred in law and procedure by not finding so. When Mr. Zamel identified and collected evidence that the project delay was also attributable to Capgemini, the DERP began taking uncooperative actions against him, such as reassigning some of his duties to other staff members, especially those concerning the track of the Capgemini project's progress and performance. The UNRWA DT erred by failing to consider these facts, which clearly constituted an abuse of power. The UNRWA DT further failed to observe that on the evidence the DERP had a clear conflict of interest. According to the UNRWA Procurement Manual, the Procurement Department carries out the administrative activities following the change request which is approved by Change Management, who in the present case was the DERP himself.

12. The UNRWA DT further failed to observe that the investigation was performed by the Human Resources Division (HRD) rather than DIOS, which should have conducted it pursuant to Organization Directive No. 14 (Charter of the Department of the Internal Oversight Services). Moreover, HRD performed the investigation concerning Mr. Zamel's complaint of abuse of power against the DERP while simultaneously coordinating with the DERP the decision to abolish Mr. Zamel's post. Also, the investigation had been carried out only in regard to Mr. Zamel's claim concerning the abolishment of his post and did not include the retaliation activities carried out by the DERP against Mr. Zamel. The UNRWA DT also erred by overlooking the evidence that the investigation had failed to

address Mr. Zamel's claim that 75 per cent of the new consultant's duties were the same as those already carried out by Mr. Zamel.

13. Finally, the UNRWA DT erred in law by holding that the application against the decision to recruit a consultant was not receivable. The UNRWA DT failed to declare that his employment was affected. Mr. Zamel had the expertise to perform the functions of the new consultant position and his post was included in the Organization Structure for the 2014-2015 Biennium Budget. The fact that his post was abolished was tainted by improper motives and constituted an abuse of power.

14. Mr. Zamel requests that the Appeals Tribunal rescind the decisions to abolish his post and not to renew his appointment, award him compensation for loss of salary and entitlements at the P-5, step 6 level from 1 January 2014 until now, as well as moral damages, and reinstate him.

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

15. The Commissioner-General contends that the UNRWA DT did not err in finding that the decision to abolish Mr. Zamel's post was lawful. Contrary to Mr. Zamel's contention, the decision to abolish his post was not taken prior to the Commissioner-General's decision of 18 September 2013. The fact that Mr. Zamel was verbally notified on 24 June 2013 of the Agency's intention to abolish his post was an act of good administration. Moreover, and also contrary to Mr. Zamel's contention, the record reveals that the ACHR Chair approved the ACHR's recommendation to extend Mr. Zamel's appointment until 31 December 2013. The ACHR's Chair's approval is *ipso facto* evidence of the ACHR's consensus.

16. The UNRWA DT did not err in law or procedure in finding that the abolishment of the post and non-renewal were not an abuse of power. The decision was taken in the context of a departmental restructuring, which the UNRWA DT found, was a lawful process and a proper exercise of the Agency's discretionary authority. Further, as Mr. Zamel did not contest the propriety of the HRD conducting the investigation into his complaint of abuse of power prior to his appeal, and he is therefore barred from introducing this matter now.

17. The UNRWA DT did not err in fact and did not disregard Mr. Zamel's evidence proffered to prove that he was the subject of abuse of power. There was sufficient evidence before the UNRWA DT, which the UNRWA DT reasonably accepted, for it to find that the

decision to restructure the department was made in good faith and that such decision necessarily resulted in the abolishment of Mr. Zamel's post and the hiring of a consultant.

18. The UNWRA DT did not err in law by holding that Mr. Zamel's challenge to the decision to recruit a consultant was not receivable, because it was not an appealable decision. While Mr. Zamel alleges that the consultant's duties were substantially similar to those that he carried out, he fails to identify how the UNRWA DT erred in law. Specifically, he fails to show how the decision to recruit a consultant had direct legal consequences for Mr. Zamel's rights and obligations.

19. The Commissioner-General requests that the Appeals Tribunal reject Mr. Zamel's pleas and dismiss his appeal in its entirety.

### **Considerations**

20. This Tribunal holds that the allegations of irregularity raised by Mr. Zamel in his submission are supported by evidence and therefore the appeal will be granted.

21. On 24 June 2013, Mr. Zamel was verbally informed that his appointment would not be renewed for a year, but instead only extended for a period of three months, namely until 31 December 2013, after which his post would be abolished and a new consultancy created. Since at that point, Mr. Zamel had been working with UNRWA for less than a year and his post had been included in the Organization's Structure for the 2014-2015 Biennium Budget in May 2013, only one month before he was informed of its abolition, it is hard to understand how the post became suddenly redundant, even more so, when at the same time a major part, around 75 per cent, of its functions, were to be transferred to the consultancy position.

22. Even though the new organizational structure was not approved until 18 September 2013 when the Commissioner-General endorsed the recommendations by the ACHR, we cannot disregard that as early as June 2013, the abolition of Mr. Zamel's post had already been decided and communicated to him by his supervisor, the DERP, against whom Mr. Zamel subsequently filed a complaint alleging that the DERP had abused his power. On 19 August 2013, Mr. Zamel filed his request for decision review. As a consequence of the challenge contained in the staff member's application, the Administration was obligated

to provide clear and sufficient reasons justifying the lawfulness of its conduct, but failed to do so.<sup>2</sup>

23. Beside the alleged procedural breaches of OD 20 related to the non-renewal of Mr. Zamel's appointment, we find that the alleged conflict of interest by the DERP required a more extensive and detailed consideration and discussion by the UNRWA DT in its Judgment. Mr. Zamel's allegation could well have justified the planned and implemented organizational changes, which resulted in Mr. Zamel's non-renewal despite his unchallenged performance and the fact that his post had been included in the Organization's Structure for the 2014-2015 Biennium Budget.

24. In this context, we must also take into account that the DERP had accused Mr. Zamel of acting outside the scope of his employment, when Mr. Zamel asked the third party vendor Capgemini questions about the ERP application, without the DERP's prior permission. The fact that the investigation into the complaint and the organizational restructuring with respect to Mr. Zamel's post occurred during the same time frame also warranted more transparency in the Administration's actions.

25. For the foregoing reasons, we are satisfied that the UNRWA DT erred in finding that the non-renewal of Mr. Zamel's appointment and the Agency's related actions were not tainted by irregularities or improper motives, in breach of Mr. Zamel's rights.

26. Since Mr. Zamel's post has been abolished, we will not order his reinstatement. Rather, we find that his loss of chance of earnings in relation to his non-renewal can be assessed at the equivalent of three months' net base salary. This award is appropriate since Mr. Zamel only joined the Agency on a one-year fixed-term contract in October 2012 and for a specific project.

27. Turning to Mr. Zamel's request for moral damages, we note that Mr. Zamel has provided no evidence in support of his request. The Appeals Tribunal will not award compensation for moral damages without specific evidence supporting the claim.<sup>3</sup> Accordingly, Mr. Zamel is not entitled to moral damages.

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<sup>2</sup> *Hepworth v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-178, para. 32.

<sup>3</sup> *Hasan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-541, paras. 23 and 24.



28. In light of the above findings, we need not address the remainder of Mr. Zamel's contentions.

**Judgment**

29. The appeal is upheld and the UNRWA Dispute Tribunal Judgment is vacated. The Commissioner-General is ordered to pay Mr. Zamel compensation in the amount of three months' net base salary. The compensation is payable with interest at the US Prime Rate accruing from the date on which Mr. Zamel was separated from UNRWA to the date of payment. If the amount is not paid within the 60-day period counting from the date of issuance of this Judgment, an additional interest at five per cent shall be added to the US Prime Rate until the date of payment.

Original and Authoritative Version: English

Dated this 30<sup>th</sup> day of October 2015 in New York, United States.

*(Signed)*

Judge Simón, Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Thomas-Felix

Entered in the Register on this 30<sup>th</sup> day of December 2015 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar