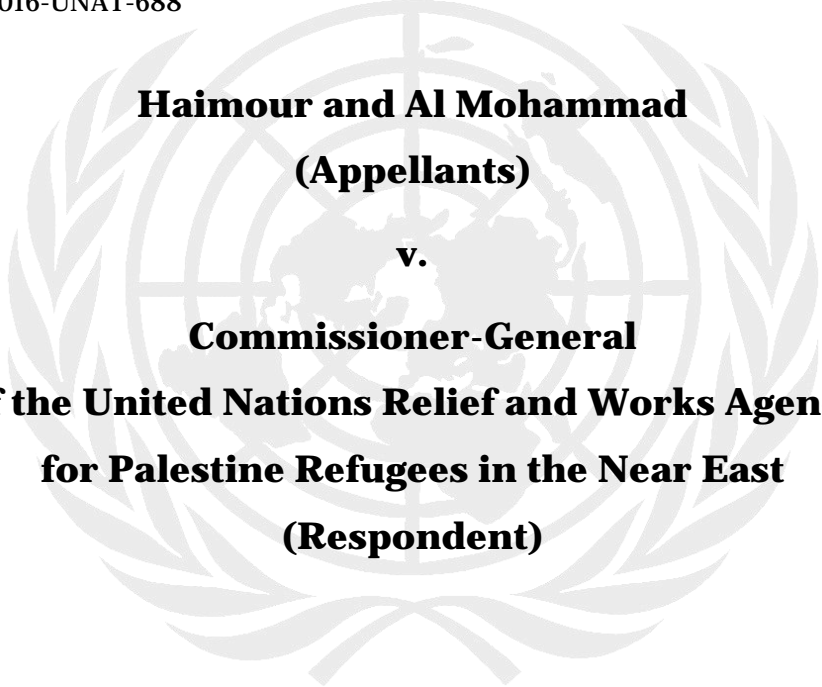




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2016-UNAT-688



**Haimour and Al Mohammad  
(Appellants)**  
**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 Dimitrios Raikos, Presiding Judge Richard Lussick Judge John Murphy
Case No.:	2016-918
Date:	28 October 2016
Registrar:	Weicheng Lin

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Counsel for Ms. Haimour & Mr. Al Mohammad:	Amer Abu-Khalaf, LOSA
Counsel for Commissioner-General:	Lance Bartholomeusz

**JUDGE DIMITRIOS RAIKOS, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2016/003, 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 24 January 2016, in the cases of *Haimour and Al Mohammad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Ms. Bushra Rabie Haimour<sup>1</sup> and Mr. Mamoun Fayez Al Mohammad filed their joint appeal on 11 April 2016, and the Commissioner-General filed an answer on 10 June 2016.

**Facts and Procedure**

2. The following facts are uncontested:<sup>2</sup>

... Effective 1 June 2011, Mamoun Fayez Al Mohammad and Bushra Rabei Haimour entered the service of the Agency as Credit Extension Assistants, also known as Loan Officers, on fixed-term appointments, at Grade 9, in the Douma branch of the Microfinance Department (“MD”) of the Syria Field Office (“SFO”).

... Effective 1 May 2012, Applicant Al Mohammad was transferred to the MD Al-Saida Zeinab branch due to the closure of the MD Douma branch. He was later transferred to the MD Al-Ammen branch upon the closure of the MD Al-Saida Zeinab branch. As of 1 April 2013, Applicant Al Mohammad was working with the Relief and Social Services Programme of the SFO. On 14 October 2013, he was suspended with pay pending the outcome of an investigation for possible misconduct.<sup>[3]</sup>

... Effective 1 October 2012, Applicant Haimour was transferred as Loan Officer to the MD Al-Ammen branch.

... In November 2013, the MD of the SFO (“MD, SFO”) developed a projection of its operations and staff needs together with the MD in Headquarters. This projection indicated *inter alia* that 14 Loan Officer posts in the Damascus area needed to be abolished as of 1 April 2014. Accordingly, 37 staff members in this post category were evaluated during the first two weeks of December 2013 in order to identify the least efficient incumbents, who would be declared redundant. Applicant Al Mohammad

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<sup>1</sup> Ms. Haimour’s middle name is spelled “Rabei” in the UNRWA DT Judgment. However, we adopt the spelling “Rabie” as Ms. Haimour provides in the appeal form.

<sup>2</sup> Impugned Judgment, paras. 3-12.

<sup>[3]</sup> In a memorandum dated 6 August 2014, the Director of UNRWA Affairs, Syria, informed Mr. Al Mohammad that “the investigation into [a report of possible misconduct against Mr. Al Mohammad] is now complete, and the evidence obtained does not substantiate the reported misconduct”.

obtained the second lowest score and Applicant Haimour obtained the fifth lowest score.

... By separate letters dated 22 December 2013, the Head, Field Human Resources Office (“H/FHRO”) informed the Applicants that 18 posts, including their respective posts, would be abolished effective 31 March 2014 due to financial difficulties of the MD, SFO. The letter provides in relevant part:

I have to inform you that based on the evaluations of all MD staff members conducted at the beginning of this month, your post is one of the aforementioned posts. Consequently you are hereby declared provisionally redundant effective 23 December 2013[.] Should you not be successful in being appointed to an alternative post by 31 March 2014 your contract will be terminated and you will be separated from the Agency.

In accordance with the Agency’s policy on redundancy under Area Personnel Directive A/9, MD in coordination with the Human Resources Department (HRD) have identified suitable alternative posts for the redundant staff members. These posts are to be filled effective 1 February 2014 up to 31 March 2014 according to MD needs at the new branches located in Tartous, Latakla and Sweida, as provided in the attached list of vacancies.

You are kindly requested to review the attached list of vacancies, express your interest in three of them in a priority order, and provide Staff Relations Officer (SRO) ... with your choices in writing on the attached form by close of business 5 January 2014. In case you are not interested in any of the offered vacancies please confirm by close of business 5 January 2014.

The appointments to the vacancies of the same functions and grade level will be made as lateral transfers based on expressed interest and the evaluation ranking in accordance with regulation 1.2.

... The Applicants did not contact the SRO to express interest in any of the 23 identified alternative posts. However, Applicant Haimour participated in the recruitment process of two posts, i.e. Assistant Shelter Manager in February 2014 and Administration Officer-Relief Emergency in March 2014, but [s]he was not selected for either.

... On 5 February 2014, all redundant MD staff members were invited to a meeting with the Director of UNRWA Affairs/Syria (“DUA/S”) and the H/FHRO to discuss the difficulties caused by the potential job loss. The meeting concluded, among other things, that redundant staff should reconsider the offered alternative employment in new MD, SFO branches and that MD staff would have preferential treatment in all future recruitment processes.

... On 9 February 2014, the H/FHRO held another meeting with two MD, SFO staff members who represented the redundant staff. The H/FHRO provided the staff members with a list of vacancies as of the end of January 2014. It was agreed that the two MD representatives would prepare an overview of the qualifications of the redundant staff and would visit all department heads to discuss employment opportunities.

... Out of the 18 staff members whose posts were declared provisionally redundant, eight staff members – including the Applicants – had not been appointed to an alternative post by 12 April 2014.

... By separate letters dated 29 April 2014, the H/FHRO informed the Applicants that they were separated from service effective 31 March 2014 as they had not been appointed to alternative posts.

3. In Judgment No. UNRWA/DT/2016/003 now under appeal, the UNRWA DT stated that it had decided to join Mr. Al Mohammad's and Ms. Haimour's cases in the interests of judicial economy and consistency, as the two applications were "very similar" contesting the same decisions and "asserting essentially the same claims and seeking similar relief".<sup>4</sup> The UNRWA DT noted that on 22 December 2013, Mr. Al Mohammad and Ms. Haimour were informed of their provisional redundancy and were invited to express their interest in the 23 alternative posts. However, Mr. Al Mohammad did not apply to any of them, and Ms. Haimour applied only for vacant posts in Damascus and participated in the recruitment exercises for two of them but was not successful. The UNRWA Dispute Tribunal found that the Agency had made reasonable efforts to find Mr. Al Mohammad and Ms. Haimour suitable placements, that their appointments with the Agency were properly terminated on 31 March 2014, and that the relief sought by Mr. Al Mohammad and Ms. Haimour had no basis in fact or in law.

### **Submissions**

#### **Ms. Haimour and Mr. Al Mohammad's Appeal**

4. The UNRWA Dispute Tribunal erred in law and procedure by failing to find that the Appellants were not given reasonable notice periods in respect of the termination of their contracts and their separation from the Agency. Contrary to the finding of the UNRWA DT, the 22 December 2013 letters to the Appellants were not notice letters; they were generic

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<sup>4</sup> Impugned Judgment, para. 2.

letters notifying them that they were provisionally redundant and would be offered alternative placements and that their contracts would be terminated if they were not successful in finding alternative positions by 31 April 2014. No termination notice was provided one month prior to 31 April 2014, in violation of PD No. A/9.<sup>5</sup>

5. The UNRWA Dispute Tribunal erred in law and procedure by finding that the Agency had made diligent efforts to find suitable alternative positions for the Appellants. The Agency did not make any effort other than notifying them of the termination and inviting them to apply for alternative positions. The Agency's effort was "minimal", in violation of PD No. A/9. The reasonable efforts should have included providing the Appellants, especially Ms. Haimour, a single mother with restricted access to her son, with an option to take up posts in the same Damascus area, which do not put them in an unsafe working environment. The positions offered by the Agency on 22 December 2013 were not reasonably suitable in view of the personal circumstances of the Appellants and the dangerous working environment where those positions were located as a result of the Syria War. No explanation was provided as to why the Appellants were not offered positions within Damascus when there were positions available there. Moreover, no training was provided to the staff members on provisional redundancy to prepare them for alternative positions.

6. The Agency did not take any security precaution when it offered to transfer the Appellants to an area caught in armed conflict. The failure to make this finding on the part of the UNRWA DT constitutes an error in law and procedure. The UNRWA Dispute Tribunal also erred in law by deciding that the Agency was not compelled to take into consideration any personal circumstances.

7. The UNRWA Dispute Tribunal erred by failing to consider whether the decision to abolish Mr. Al Mohammad's post was a "bias[ed] decision" due to his suspension for possible misconduct, without proper procedure and as a result of abuse of power. The decisions to abolish the Appellants' posts were tainted by procedural irregularities and abuse of power.

8. The UNRWA Dispute Tribunal erred in fact in finding that the Appellants did not suffer moral damages and that their claims had no basis in fact or in law.

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<sup>5</sup> The Appellants refer to Personnel Directive (PD) No. A/9 on Separation from Service dated 23 June 2015. However, the relevant PD in the present case is PD No. A/9/Rev. 9 issued by the UNRWA Director of Human Resources on 6 February 2012.

9. The Appellants request that the Appeals Tribunal rescind the termination decisions, reinstate them to their positions or any other suitable positions within UNRWA, and award them compensation for the loss of salaries and entitlements as from 31 March 2014 to date. Ms. Haimour additionally requests that the Appeals Tribunal award her one year's salary as moral damages. Alternatively, the Appellants seek salary payment as if they had remained in service, or their placement at a lower grade but with salary protection until the Syrian crisis ends, or provide them with training so as to qualify them for alternative positions.

**The Commissioner-General's Answer**

10. The UNRWA Dispute Tribunal did not err when it dismissed Ms. Haimour's and Mr. Al Mohammad's applications. The Appellants claim that the UNRWA DT erred on several questions of law, fact and procedure, but fail to adduce any convincing argument in support of these claims and do not raise any grounds for appeal.

11. The UNRWA Dispute Tribunal did not err when it held that the Appellants were aware of the potential upcoming termination of their contracts. With regard to the notice period, the Agency has paid compensation for its failure to give appropriate termination notice to the staff members including the Appellants. As noted by the UNRWA Dispute Tribunal, that procedural irregularity has been corrected.

12. The UNRWA Dispute Tribunal did not err when it concluded that the Agency had exerted reasonable efforts to find alternative suitable placements for the Appellants. The Appellants were not placed because Mr. Al Mohammad did not express interest in any of the 23 alternative posts identified by the Agency or applied for any posts that became available afterwards, and Ms. Haimour was not successful in the two recruitment exercises in which she participated. The Appellants' interpretation of PD No. A/9/Rev. 9 as imposing a "duty of care" on the Agency to offer the affected staff members "a suitable role which they should not have to apply to [ ... ] or which they could be trained to qualify for" cannot be supported. The Agency complied with its obligation by identifying alternative posts, organizing several meetings with the staff members on provisional redundancy and allowing Ms. Haimour to volunteer with the human resources department so she could become familiar with its work.

13. The Appellants repeat their arguments made before the UNRWA Dispute Tribunal in an attempt to reargue their cases. The Commissioner-General therefore requests that the Appeals Tribunal dismiss the present appeal in its entirety.

**Considerations**

14. The Appellants allege that the UNRWA DT committed errors of fact, law and procedure in arriving at its decision.

15. First, the Appellants argue that the UNRWA DT erred on questions of law and procedure by failing to establish that they were not given reasonable notice periods to terminate their service and separate them from the Agency.

16. Area Staff Regulation 9.1 provides that:

The Commissioner-General may at any time terminate the appointment of any staff member if, in his opinion, such action would be in the interest of the Agency.

17. Area Staff Regulation 9.3 states that:

(A) A staff member whose temporary appointment is to be terminated shall be given not less than 14 days' written notice of such termination or such notice as may otherwise be stipulated in his/her letter of appointment.

(B) In lieu of the notice period, the Commissioner-General may authorise compensation calculated on the basis of salary and allowances which the staff member would have received had the date of termination been at the end of the notice period.

18. Area Staff Rule 109.1 provides that:

Termination is a separation initiated by the Agency under staff regulation 9.1, by giving to a staff member a written notice of termination as required under staff regulation 9.3.

19. Area Staff PD No. A/9/Rev.9, at paragraph 15.1, provides that:

15.1. Redundancy arises when a post is

15.1.1. eliminated; or

15.1.2. reclassified and the incumbent either no longer meets the qualifications specified in the Occupation Classification Manual to encumber the post, or would suffer a reduction of entitlements by remaining in the post; or

15.1.3. reclassified from part-time to full-time or full-time to part-time when the incumbent is not prepared to work the required hours.

20. The UNRWA DT correctly concluded that, though only on 29 April 2014 the Appellants were informed of the decisions to separate them from service effective 31 March 2014 as they had not been appointed to alternative posts, this procedural irregularity did not impact their due process rights, since the Agency agreed to pay compensation to the concerned staff members, including the Appellants, in lieu of the notice period. Thus, we reject the aforementioned ground of appeal.

21. The Tribunal now turns to the question as to whether diligent efforts were made by the Agency to find suitable alternative posts for the Appellants, in conformity with PD No. A/9/Rev.9, paragraphs 15.1 ff. This Tribunal finds that such efforts were made for the reasons outlined below. The mere fact that they were not successful is not evidence to the contrary, nor will this Tribunal retroactively impose its own view concerning the suitability of the appellants for a vacancy upon the Administration in the exercise of its duty and authority to do so, provided this Tribunal finds no improper motive or bias in that exercise.

22. PD No. A/9/Rev. 9, at paragraph 15, states that:

15.2. In such circumstances, a staff member is declared provisionally redundant and will be so notified in writing. ...

...

15.4. The purpose of the period of provisional redundancy is to use the time (usually three months)[ ... ] between the decision to abolish an occupied post and its actual abolition to find a suitable placement for the displaced official or, failing that, to give the appropriate termination notice required by the staff member's letter of appointment.

15.5. It is imperative that redundancy cases be well documented. During the period of provisional redundancy, reasonable effort must be made to find the redundant staff member a suitable placement. It is useful in this regard to maintain a list of all posts that became vacant during the period of provisional redundancy and to show why the staff member was not assigned to any of them. The possibility of providing training to qualify redundant staff members for alternative employment should be considered seriously.

15.6. If no suitable post can be found for the staff member before expiry of the notice of termination given in accordance with Staff Rule 109.1, the staff member is separated for reason of redundancy and qualifies for payment of termination indemnity in accordance with Staff Rule 109.9 as appropriate.



23. It is clear from the language of the above-referenced paragraphs of PD No. A/9/Rev. 9 that a termination as a result of the abolition of a post is lawful provided that the provisions of the UNRWA Area Staff Rules and PD No. A/9/Rev. 9 are complied with in a proper manner. It is also clear from these provisions that there is an obligation on the Administration to make reasonable efforts to find the redundant staff members whose posts have been abolished suitable placements. The strong language of paragraph 15.5 of PD No. A/9/Rev. 9 that it is imperative that the redundancy cases are well documented and that the Administration must show why a staff member was not assigned to any of the listed vacant posts leaves no doubt thereabout. As such, a decision to abolish a post triggers the mechanism and procedures intended to protect the rights of a staff member, under the Area Staff Rules and PD No. A/9/Rev. 9, to proper, reasonable and good faith efforts to find an alternative post for him or her who would otherwise be without a job. Failure to accord to the displaced staff members the rights conferred under the said provisions will constitute a material irregularity.

24. Therefore, the Administration is bound to demonstrate that all reasonable efforts have been made to consider the staff member concerned for available and suitable posts. Where there is doubt that a staff member has been afforded reasonable consideration, it is incumbent on the Administration to prove that such consideration was given.

25. Nevertheless, while efforts to find a suitable post for the displaced staff member cannot be unduly prolonged, the person concerned is required to cooperate fully in these efforts.

26. In view of the foregoing, we reject the Appellants' assertions that the UNRWA Dispute Tribunal erred on questions of law and procedure in holding that the Administration had made diligent efforts to find suitable alternative positions for them, and had considered "qualifying" them for alternative posts.

27. Indeed, contrary to the Appellants' claim that the Administration had not made reasonable efforts to find suitable posts for them and had failed to exhaust all forms of resolutions before making the displaced staff members redundant, the records show that this was not the case. In the letters dated 22 December 2013, the Appellants were invited to review the attached list of vacancies and express their interest in three of them in a priority order. The letters further specified that "the appointments to the vacancies of the same functions and grade level will be made as lateral transfers based on expressed interest and

the evaluation ranking in accordance with regulation 1.2. However, the appointments to the vacancies at [] higher level functions and grades will be made through a competitive recruitment process among all interested MD SAR staff members.” Nevertheless, the Appellants failed to cooperate or show interest in any of the posts listed, thereby leaving no space for the Administration to even consider them for lateral placement in the said vacancies.

28. In the course of its Judgment, the UNRWA DT addressed this issue in the following terms:<sup>6</sup>

The Tribunal notes that apart from the list of 23 suitable alternative posts attached to the letter dated 22 December 2013, two meetings took place, on 5 February 2014 and on 9 February 2014, between the redundant MD staff members or their representatives and the Administration to discuss the difficulties caused by potential job loss and the need to support the redundant staff. During these meetings, the Administration requested the redundant staff to reconsider the offered alternative employment in new branches and, at the second meeting, the H/FHRO provided the staff members’ representatives with a list of vacancies as of end January 2014. Yet, the Tribunal notes that the Applicants failed to express interest in any of the 23 alternative posts identified by the Administration. Furthermore, Applicant Al Mohammad did not apply for any of the other vacancies during the period of redundancy and Applicant Haimour was not successful in her two applications. Therefore, the Tribunal finds that the Agency made reasonable efforts to find the Applicants suitable placements. The Tribunal finds that while the available posts in the same occupational group were located outside of the Damascus area, the Administration was not compelled to offer the Applicants an alternative post in Damascus, particularly in view of the MD operational situation in the SFO.

29. We find no reasons to differ from that conclusion, since the findings of fact made by the UNRWA DT can only be disturbed under Article 2(1)(e) of the Appeals Tribunal Statute, when there is an error of fact resulting in a manifestly unreasonable decision, which is not the case here.

30. Further, the UNRWA DT relevantly opined:<sup>7</sup>

... [T]he Agency paid due regard to the special circumstances in Syria. The evidence shows that the MD, SFO was forced to take certain measures to mitigate the consequences of its financial loss caused by the Syrian crisis. Those measures included the non-renewal of a number of daily paid contracts in September 2012, the closure of almost all of the MD, SFO branches in the Damascus area in 2012 and the opening of

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<sup>6</sup> Impugned Judgment, para. 39.

<sup>7</sup> *Ibid.*, para. 40.

new branches in Tartous, As-Suwayda and Latakia in June 2013, locations that were considered safer than the Damascus area for the continuation of the MD, SFO's operations.

31. The UNRWA DT's conclusion that the Administration took into consideration the serious and dangerous situation in Syria at the relevant time was based on its examination of the documentary evidence supplied by the Agency. It then found from the evidence on record that the Agency had complied with PD No. A/9/Rev. 9 in making genuine attempts to locate suitable alternative posts for the Appellants.

32. In view of the above, we do not find merit in the Appellants' claim that the UNRWA DT erred on questions of law and procedure by finding that the security situation and safety of staff was considered by the Administration based on the United Nations regulations concerning the safety of its staff members.

33. Further, Ms. Haimour submits that "[t]he UNRWA DT erred on questions of law by deciding that it was correct for the Agency not to take into consider[ation] in particular [her] personal circumstances which prevent her from seeing her son regularly".

34. Ms. Haimour has misunderstood the findings of the UNRWA DT on this matter. Other than stating that it was correct for the Administration not to take into consideration her personal circumstances which prevented her from seeing her son regularly, the UNRWA DT considered the issue further and opined that: "while the personal circumstances of a staff member may be relevant in deciding whether an alternative placement is suitable, this is not the only factor to be considered. Rather, other factors such as the availability of posts and the qualifications of the staff member take priority. Indeed, Applicant Haimour did not express interest in any of the vacant posts outside of [the] Damascus area, and while she applied for vacant posts in Damascus, she was not selected for any of them."<sup>8</sup>

35. Upon reviewing this finding, the Appeals Tribunal holds that the UNRWA DT gave careful and fair consideration to Ms. Haimour's arguments regarding her personal circumstances and weighed them against the facts of the case. The first instance Judge came to the conclusion that the personal circumstances of a staff member were not the sole factor to be considered in deciding whether an alternative placement was suitable for him or her.

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<sup>8</sup> *Ibid.*, para. 41.

We discern no fault in this finding and, indeed, Ms. Haimour has not demonstrated in her appeal that the UNRWA DT fell into any error, whether of fact or law.

36. The Appeals Tribunal emphasizes that the appeals procedure is of a corrective nature and, thus, 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 before the lower court. The function of the Appeals Tribunal is to determine if 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 Appeals Tribunal Statute. The 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.<sup>9</sup> It seems that the Appellants merely reiterate allegations already thoroughly examined by the UNRWA DT.

37. The Appellants have failed to demonstrate any error in the UNRWA DT's finding that the Administration's decision to assess and terminate their service resulted from a valid exercise of the discretionary power of the Administration and was not tainted by improper motives. They merely voice their disagreement with the UNRWA DT's findings and resubmit their submissions to this Tribunal. They have not met the burden of proof of demonstrating an error in the Judgment such as to warrant its reversal.<sup>10</sup>

38. Finally, in his appeal, Mr. Al Mohammad raises the claim that there is a connection between the termination of his service and his suspension from duty for possible misconduct. This issue was not raised before the UNRWA Dispute Tribunal, and thus cannot be introduced for the first time on appeal for consideration by the Appeals Tribunal.<sup>11</sup> We find that Mr. Al Mohammad's appeal in this regard is not receivable.

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<sup>9</sup> *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; *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; *Ruyooka v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-487, para. 24.

<sup>10</sup> *Ruyooka v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-487, para. 24; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-236, para. 37; see also *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110, para. 27; *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035, para. 30.

<sup>11</sup> *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-547, para. 25; *Simmons v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-221, para. 61.

**Judgment**

39. The appeal is dismissed and Judgment No. UNRWA/DT/2016/003 is hereby affirmed.

Original and Authoritative Version: English

Dated this 28<sup>th</sup> day of October 2016 in New York, United States.

*(Signed)*

Judge Raikos, Presiding

*(Signed)*

Judge Lussick

*(Signed)*

Judge Murphy

Entered in the Register on this 20<sup>th</sup> day of December 2016 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar