



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

Judgment No. 2017-UNAT-749

**Ayoub
(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 John Murphy
Case No.:	2016-985
Date:	14 July 2017
Registrar:	Weicheng Lin

Counsel for Ms. Ayoub:	Amer Abu-Khalaf, LOSA
Counsel for Commissioner-General:	Rachel Evers

JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2016/025, 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 26 September 2016, in the case of *Ayoub v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Ms. Maha Abdul Rahim Ayoub filed the appeal on 14 November 2016, and the Commissioner-General filed an answer on 22 December 2016, which was considered as filed on 9 January 2017.¹

Facts and Procedure

2. The following facts are uncontested:²

... Effective 1 September 2008, the Applicant entered the service of the Agency as a Clerk A on a fixed-term appointment until 31 August 2011, at Grade 7, in the Yarmouk Branch of the Microfinance Department (“MD”) of the Syria Field Office (“SFO”). Effective 1 April 2009, the Applicant was transferred to the Al-Saida Zeinab Branch of the MD/SFO. On 29 August 2011, the Applicant’s fixed-term appointment was extended to 31 August 2014. In July 2012, the Applicant was transferred to the Al-Ameen Branch of the MD/SFO. On 11 March 2014, the Applicant’s fixed-term appointment was extended until 30 September 2014.

... In September 2014, the MD/SFO developed a redundancy plan abolishing 17 posts effective 31 December 2014, noting, *inter alia*:

At the current level, there is overstaffing in loan officers’ post, which cannot be financed from the current level of outreach due to capital limitations. Reductions will also include administrative staff, while maintaining a skeletal administrative staffing to maintain core administration required to support its operations.

It is planned to maintain six loan officers (LO) at each branch (except Damascus area, where an additional two LOs will be maintained to work on the collections of the bad portfolio), one branch manager, area loan supervisor, cashier, clerk, data operator, and cleaner. In addition, a skeletal administrative staff at the national offices for management, [Human Resources (HR)] and finances will be maintained. Currently, MD employs 82 staff members (47 fixed term and 35 [Special Service

¹ Order No. 273 (2016).

² Impugned Judgment, paras. 2-9.

Agreement (SSA)] allocated in Damascus area, Tartous, Latakia, and Suwaida. The proposed list of needed versus redundant staff, as at 1 January 2015, ... indicates that the total number of staff required to maintain the current level of operations is 56 staff (30 fixed and 26 SSA), while the redundant staff will be 27 (17 fixed and 10 SSA).

... On 15 September 2014, the Agency organized a meeting with the MD/SFO staff members to explain the financial situation of the department, the redundancy process and the evaluation criteria for the different posts. For the previous six months, the Applicant had been performing data entry duties rather than duties of a Clerk. The Agency indicated in this meeting that in order to fairly determine which staff members were the least efficient incumbents, evaluations would be based on a previous evaluation exercise that staff members had undergone (this criterion was given 70 percent of the score) and the actual performance of the staff members in their positions at the current time (this criterion was given 30 percent of the score).

... By letter dated 30 September 2014, the Head, Field Human Resources Office (H/FHRO) informed the Applicant that her post would be abolished effective 31 December 2014 and that she was declared provisionally redundant effective 1 October 2014. The letter provided in relevant part:

I have to inform you that based on the evaluation of MD staff members conducted during this month; your post is one of the abolished posts. Consequently you are hereby, [sic] declared provisionally redundant effective 1 October 2014. Your provisional redundancy is regulated by the Area Personnel Directive A/9 [on Separation from Service], Sec[ti]on 15.

In accordance with the above directive we provide you a list of currently available vacant posts. We kindly request that you 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 10 October 2014.

... On 9 October 2014, the Agency held a meeting with all provisionally redundant MD/SFO staff in order to provide them with information about applications for vacancies, and employment on a daily paid or casual basis. In the following days, the Agency held individual meetings with staff members to discuss and determine their compatibility with vacant posts.

... By letter dated 30 November 2014, the H/FHRO informed the Applicant that she would be separated from the Agency for the reason of redundancy. The letter provides in relevant part:

I refer to the letter of 30 September 2014 in which you were declared provisionally redundant. The Agency has made efforts to find you an alternative suitable placement but until the date of this letter has been unsuccessful.

In accordance with Area Personnel Directive A/9, paragraph 15.4, you are hereby served with the termination notice required by your letter of appointment, i.e. 30 days. This means that you will be separated from the Agency for reason of redundancy effective close of business on 31 December 2014.

During the following one month period, the Agency will continue making all possible efforts to find a suitable placement for you. You are also encouraged to apply to suitable vacancies during the period and to inform Head Field Human Resource Office accordingly. Should an alternative suitable placement be found and you accept it, this termination notice will be rescinded.

... On 27 November 2014, the Applicant filed a request for review of the decision dated 30 September 2014, to abolish her post and declare her provisionally redundant.

... By letter dated 20 December 2014, the Deputy Commissioner-General replied to the Applicant's request for decision review. The contested decision was upheld.

3. On 22 February 2015, Ms. Ayoub filed an application with the UNRWA Dispute Tribunal against the decision to abolish her post and declare her provisionally redundant.

4. In the Judgment now under appeal, the UNRWA Dispute Tribunal dismissed Ms. Ayoub's application. It reviewed the case within the framework of the Agency's policy dealing with the abolishment of posts for reasons of redundancy and in the context of a decrease in lending and devaluation of the Syrian Pound as a result of the Syrian crisis. The UNRWA Dispute Tribunal concluded that there was a "genuine redundancy situation".³ In the case of Ms. Ayoub, the UNRWA DT noted that the Agency had discussed the financial problems of the MD/SFO, the plan to downsize and the process of evaluation with the MD/SFO staff. It was of the view that evaluating staff members on previous and current performances was reasonable under the special circumstances of the case. The UNRWA Dispute Tribunal rejected Ms. Ayoub's contention that her evaluation was unfair, finding that Ms. Ayoub had failed to submit evidence to support her claim. It also concluded that there was "no evidence submitted that the decision to abolish [Ms. Ayoub's] post was arbitrary or capricious, motivated by prejudice or extraneous factors, or was flawed by procedural irregularity or error of law".⁴

³ *Ibid.*, para. 27.

⁴ *Ibid.*, para. 26.

Submissions

Ms. Ayoub's Appeal

5. The UNRWA Dispute Tribunal erred in law by failing to base its Judgment on the governing law and the spirit of the governing law.

6. The UNRWA Dispute Tribunal erred in law and procedure by failing to recognize that Ms. Ayoub's performance evaluation was flawed and tainted by procedural irregularities and abuse of power on the part of the Agency. There was a large difference in the evaluation of Ms. Ayoub's suitability prior to her being made redundant and after her being made redundant. The difference is unreasonable and is "evidence to show ... some sort of bias and abuse of power". Ms. Ayoub was not properly evaluated in accordance with the UNRWA Regulations and Rules.

7. The UNRWA DT erred in law and procedure by failing to apply the General Staff Circular 06/2010 to her case, and by holding that the decision to terminate Ms. Ayoub's employment was properly effected. The Agency used Ms. Ayoub's status of maternity hours against her in rating her commitment and responsibility at a lower level for the purpose of abolishing her post so that it could take "an easy option to release a number of staff due to the lack of funding without having to follow the correct procedure" for abolishing posts held by staff receiving higher performance ratings.

8. Ms. Ayoub requests that the Appeals Tribunal overturn the impugned Judgment, reinstate her to her post or to a post of a similar grade and level or any other suitable post at UNRWA. She also requests that the Appeals Tribunal award her compensation for the loss of her entitlements from 31 December 2014 to the present and the loss of her salary from 22 March 2016 when her daily paid position ended, and compensate her for moral damages. In the alternative, Ms. Ayoub requests that the Appeals Tribunal order her placement against a post with a lower grade and salary protection until the Syrian crisis ends, or provide her with appropriate training so as to qualify her for an alternative post.

The Commissioner-General's Answer

9. Ms. Ayoub fails to demonstrate that the UNRWA DT exceeded its jurisdiction or competence, failed to exercise jurisdiction vested in it, erred on a question of law or fact or committed an error in procedure. She merely disagrees with the impugned Judgment and seeks

to reargue her case. In doing so, she does little more than repeating arguments already raised before the UNRWA Dispute Tribunal.

10. The Commissioner-General draws the attention of the Appeals Tribunal to its decision in *Haimour and Al Mohammad*,⁵ in which the Appeals Tribunal dismissed similar appeals against the abolishment of posts in Syria. He requests that the Appeals Tribunal reject Ms. Ayoub's pleas and dismiss her appeal in its entirety.

Considerations

11. There is no evidence before us to support the contention that the UNRWA Dispute Tribunal erred in law.

12. The Revised Personnel Directive A/9 on Separation from Service (6 February 2012) outlines the instances where redundancy may arise and states, in Sections 15.1 and 15.2, as follows:

... Redundancy arises when a post is ... eliminated; or ... 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 ... reclassified from part-time to full-time or full-time to part-time when the incumbent is not prepared to work the required hours.

... In such circumstances, a staff member is declared provisionally redundant and will be so notified in writing. The affected staff member will be the incumbent in the case of a unique post, i.e., one which requires unique qualifications and which is not replicated elsewhere in the relevant section of the staffing table. Where there are two or more posts of similar category, title and post description in that section of the staffing table, the least efficient incumbent will be redundant or, if the incumbents are of equal efficiency, the incumbent with the shortest period of service.

13. The Agency, due to budgetary constraints, identified redundant posts and had a meeting with the MD/SFO staff members to explain the financial situation of the department, the redundancy process and the evaluation criteria for the different posts. Ms. Ayoub's post was one of the posts which were eliminated in accordance with the Revised Personnel Directive A/9.

⁵ *Haimour and Al Mohammad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-688.

14. We uphold the findings of the UNWRA Dispute Tribunal that there was “no evidence submitted that the decision to abolish [Ms. Ayoub’s] post was arbitrary or capricious, motivated by prejudice or extraneous factors, or was flawed by procedural irregularity or error of law”.⁶ In fact, the uncontroverted evidence is that on 9 October 2014, the Agency held a meeting with all provisionally redundant MD/SFO staff in order to provide them with information about applications for vacancies, and employment on a daily paid or casual basis. In the following days, the Agency held individual meetings with staff members to discuss and determine their compatibility with vacant posts. There is no evidence of an arbitrary or capricious process, but instead there is evidence of a process which was motivated by budgetary constraints as well as concerns about the effective management of a redundancy process.

15. We can find no procedural irregularity or any error in law on the part of the UNRWA Dispute Tribunal when it rejected the argument that Ms. Ayoub “lost” her fixed-term appointment and concluded that there was a policy “dealing with the abolishment of posts for reasons of redundancy”.⁷

16. In the circumstance, we uphold the decision of the UNRWA Dispute Tribunal.

⁶ *Ibid.*, para. 26.

⁷ *Ibid.*, para. 21.

Judgment

17. The appeal is dismissed and Judgment No. UNRWA/DT/2016/025 is hereby upheld.

Original and Authoritative Version: English

Dated this 14th day of July 2017 in Vienna, Austria.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Chapman

(Signed)

Judge Murphy

Entered in the Register on this 5th day of September 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar