



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

Judgment No. 2017-UNAT-769



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

JUDGMENT

Before:	Judge Martha Halfeld, Presiding Judge Deborah Thomas-Felix Judge Rosalyn Chapman
Case No.:	2017-1049
Date:	14 July 2017
Registrar:	Weicheng Lin

Counsel for Mr. Haj Saleh:	Self-represented
Counsel for Commissioner-General:	Rachel Evers

JUDGE MARTHA HALFELD, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2016/030, 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 23 October 2016, in the case of *Haj Saleh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Ghassan Nimer Haj Saleh filed the appeal on 9 January 2017, and the Commissioner-General filed an answer on 10 March 2017.

Facts and Procedure

2. The facts as found by the UNRWA Dispute Tribunal read as follows:¹

... On 4 February 1987, the Applicant was appointed as a Teacher, at Grade 6, Step 1, at Waqqas Elementary School on a temporary indefinite appointment. Following several promotions, effective 1 October 1992, the Applicant became a Senior Teacher, at Grade 10, Step 1.

... The Applicant obtained a Bachelor's degree in 1992 and a Master's degree in 1999; both degrees were obtained in physical education.

... Effective 1 September 2000, the Applicant was transferred to the post of Recreation Officer, while remaining at Grade 10. At the time relevant to the application the Applicant was still in the post of Recreation Officer.

... According to his post description, the Applicant is to perform "such other duties as may be assigned". In September 2000, the Applicant was asked to teach physical education to students at the Wadi Seer Training Centre ("WSTC") as part of the "Parallel Education Programme" (the "PEP"), in addition to his regular tasks and in excess of his normal working hours. The PEP gives students the opportunity to join UNRWA colleges and universities, subject to a subscription fee, when no placement was obtained as a result of the competitive process for placement in these institutions. From September 2000 until May 2011, the Applicant received additional remuneration of 2.5 Jordanian Dinars ("JD") per lecture.

... On 27 March 2011, the Jordan Field Office ("JFO") issued an interoffice memorandum in which it determined the pay rate for extra working hours for the PEP. The memorandum stipulated a variety of pay rates for the different degrees held by staff members. For example a staff member holding a Master's degree would be

¹ Impugned Judgment, paras. 2-13.

paid JD 9 per hour, and a staff member holding a PhD degree would get JD 11 per hour.

... On 2 May 2011, the Applicant signed an “undertaking” to accept work with the PEP at the hourly rate of JD 9. Consequently, from May 2011 through March 2012, the Applicant was paid JD 9 for each hour he taught physical education.

... On 30 June 2011, the Applicant obtained a doctorate degree (“PhD”) in physical education. On 30 October 2011, he submitted his PhD certificate to the Agency.

... On 2 August 2012, part XI of the Area Staff Personnel Directive No. A/3 was revised. The revision introduced an allowance for staff carrying out assignments in support of the PEP, differentiating between teaching staff, non-teaching senior-management and non-teaching administrative staff.

... As of September 2012, the Applicant’s work with the PEP was remunerated as an overtime allowance on the basis of his regular salary as a Recreation Officer, amounting to approximately JD 5.3 per lecture.

... On 27 August 2014 and 14 October 2014, the Applicant sent letters to the Field Human Resources Officer (“FHRO”) of the JFO requesting a review of the amount of his remuneration. On 24 December 2014, the Applicant sent a letter to the Director of UNRWA Operations in the JFO, requesting to be treated as teaching staff with regard to the lectures he performed.

... On 15 February 2015, the FHRO of the JFO responded to the Applicant stating that he is “a non-teaching staff” and that he is compensated for his lectures on the basis of UNRWA overtime rules.

... On 14 April 2015, the Applicant submitted a request for decision review. The Agency did not respond to the request for decision review.

3. Mr. Haj Saleh appealed to the UNRWA Dispute Tribunal against the decision not to pay him a “teaching staff allowance” for the lectures that he had delivered.

4. In the Judgment now under appeal, the UNRWA Dispute Tribunal dismissed Mr. Haj Saleh’s application. It reviewed Mr. Haj Saleh’s claim within the framework of UNRWA’s Area Staff Personnel Directive A/3 (PD A/3) and his job description as a Recreation Officer. The UNRWA DT concluded that Mr. Haj Saleh was not a teacher, but a non-teaching staff, and that he had been properly compensated in accordance with UNRWA’s overtime rules for the numerous lectures in the PEP that he had given. As for Mr. Haj Saleh’s allegation that a colleague of his in the WSTC had been paid a “teaching staff allowance”, the UNRWA Dispute Tribunal opined that, even assuming the allegation to be true, “the incorrect application

of the Area Staff Regulations, Rules or other administrative issuances cannot create any right for a staff member or obligation on the Agency".²

Submissions

Mr. Haj Saleh's Appeal

5. The UNRWA Dispute Tribunal failed to take the time to establish facts concerning competitive education and took the Agency's response as a given, showing its bias and partiality. It ignored the information about the competitive education and parallel education that Mr. Haj Saleh provided in his application.

6. The UNRWA Dispute Tribunal disregarded the fact that the Agency had used Mr. Haj Saleh's academic degrees (Master and PhD) in the WSTC's general accreditation with Balqaa University, citing him as a teacher with a teaching quota on a permanent basis. By doing so without his knowledge and permission, the Agency committed fraud against Mr. Haj Saleh as a member of the teaching staff of the WSTC. The Appeals Tribunal is requested to order that the Agency provide the official supporting documents in this regard.

7. The UNRWA DT interpreted Mr. Haj Saleh's job description inconsistently and incorrectly. It failed to consider that Mr. Haj Saleh had performed additional work as part of the competitive education programme, in addition to the parallel education programme.

8. Mr. Haj Saleh requests that the Appeals Tribunal rescind the UNRWA DT Judgment.

The Commissioner-General's Answer

9. The UNRWA Dispute Tribunal did not err in fact or in law when it dismissed Mr. Haj Saleh's application. It was cognizant of the applicable legal framework, particularly the revised PD A/3, and the relevant facts regarding Mr. Haj Saleh's appointment, his regular duties and his additional work providing physical education lectures.

² *Ibid.*, para. 31.

10. The UNRWA Dispute Tribunal accurately determined that on the basis of his job description Mr. Haj Saleh was not a teacher. The questions and observations about his job description that Mr. Haj Saleh makes in his appeal do not demonstrate any error of law, fact or procedure in relation to UNRWA DT's interpretation of his job description.

11. Contrary to Mr. Haj Saleh's allegation, the UNRWA Dispute Tribunal addressed both the Agency's assertion that other administrative staff performing teaching assignments as part of the parallel education programme were remunerated on the same basis as Mr. Haj Saleh, and Mr. Haj Saleh's claim that some staff were paid the "teaching staff allowance".

12. As for placing Mr. Haj Saleh on the list of "teaching staff" which was shared with Balqaa University, the Commissioner-General states that this practice "simply reflects the reality that [Mr. Haj Saleh] delivers lectures on physical education at WSTC, albeit in addition to his regular duties as a Recreation Officer". An external communication providing a factual determination regarding staff members performing teaching tasks at WSTC should be distinguished from internal policies regarding the remuneration of additional work performed by staff members.

13. UNRWA's regulatory framework has no specific rules regarding the payment of special allowance for additional work as part of the competitive education programme at the Agency's vocational training centres. However, the Agency applied the same additional allowance rules for physical education lectures that Mr. Haj Saleh gave under both parallel and competitive education programmes, and Mr. Haj Saleh was remunerated on the basis of the same overtime rules for his additional work under both programmes.

14. The UNRWA DT's findings in relation to Mr. Haj Saleh's job description and the references to the remuneration of other staff members were factually and legally accurate. There is no basis for his assertions of partiality and bias.

15. The Commissioner-General requests that the Appeals Tribunal dismiss Mr. Haj Saleh's appeal in its entirety.

Considerations

16. The UNRWA DT held that Mr. Haj Saleh is a Recreation Officer (non-teaching staff), Grade 10, who was selected to carry out additional assignments related to the PEP, outside

duty hours. For that, he received an overtime allowance in accordance with UNRWA's overtime rules, pursuant to paragraph 3.2.3.1 of Annex E to the revised Part XI of PD A/3.

17. Mr. Haj Saleh claims that the functions of Recreation Officer and physical education lecturer are equivalent and that the UNRWA Dispute Tribunal failed to investigate the facts and took the Agency's response at its face value. He also claims that he has been doing additional work since September 2000 in competitive education, and not in parallel education, which only came to light in 2009-2010.

18. Mr. Haj Saleh signed an undertaking on 2 May 2011, agreeing to work on the PEP at the rate determined by the Agency (JD 9 for a holder of a Master's degree). Mr. Haj Saleh's acceptance of the payment established for the PEP in 2011 is not compatible with his subsequent claim for retroactive readjustments, after PD A/3 was revised in 2012.

19. The Appeals Tribunal concludes that the extra and external activities as a lecturer for physical education do not have the consequence to modify the job duties or title of Mr. Haj Saleh's post, nor do they engender compensation other than the "extra payment per hour of overtime worked", as established by paragraph 3.2.3.1 of Annex E to Part XI of PD A/3, effective since 2 August 2012:

ALLOWANCE AND PAY RATES FOR AGENCY AUTHORISED PARALLEL EDUCATION AND DEVELOPMENT PROGRAMMES

1. Purpose

1.1 To establish eligibility for an Additional Assignment Allowance and rates payable to Agency staff members who supervise, lecture or otherwise perform duties under Agency authorised parallel education or development programmes and who are eligible to receive an Additional Assignment Allowance for such duty.

...

3. Establishment of Additional Assignment Allowance Rates

...

3.2. For staff in Jordan Field vocational training centres:

3.2.1. Teaching staff: ...

3.2.2. Non-teaching senior management: ...

3.2.3. Non-teaching administrative staff: Given the difficulty in assessing the impact that the programme(s) will have on administrative staff, additional workload for non-management staff in:

3.2.3.1. *posts up to grade 12 will be compensated by following UNRWA overtime rules* (i.e. an extra payment per hour of overtime worked);³ ...

20. The Appeals Tribunal therefore finds that the UNRWA DT properly treated the question of Mr. Haj Saleh's additional work in light of PD A/3 related to the parallel education programme, since there is no evidence of any specific rules regarding the competitive education programme.

21. Furthermore, Mr. Haj Saleh's regular and extra duties were in line with the functions and responsibilities of Recreation Officer. According to the area staff post description dated 1 July 1974, the post of Recreation Officer belongs to the Vocational Teacher Training Division of the Education Department. The functions and responsibilities of that post include the "custodian of all sports and recreational supplies and equipment" and the performance of "such other duties as may be assigned".

22. The UNRWA Dispute Tribunal has no competence under its Statute to transfer Mr. Haj Saleh from the post of "Recreation Officer" to the post of "Teacher", as requested in the application, since that would involve inappropriate interference in the Agency's organizational proceedings.⁴

23. In view of the foregoing, and despite the strong allegations of bias, fallacies and falsifications, all inconsistent with the present case, Mr. Haj Saleh's misunderstanding of, and/or disagreement with, the outcome of his application is not sufficient to overturn the well-reasoned and lawful Judgment of the UNRWA DT.

24. As we stated in *Krioutchkov*,⁵

The new internal justice system, as established by General Assembly resolution 61/261, is based on a two-tier system, consisting of a first instance, the Dispute Tribunal, and an appellate instance, the Appeals Tribunal, the latter rendering binding decisions and ordering appropriate remedies. This system is highly centered on "the importance for the United Nations to have an efficient and effective system of administration of justice so as to ensure that individuals and the Organization are held accountable for their actions in accordance with relevant resolutions and regulations".

³ Emphasis added.

⁴ Incidentally, the Appeals Tribunal notes that Mr. Haj Saleh was transferred from "Teacher" to "Recreation Officer", following his application and a selection exercise, as of September 2000.

⁵ *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-707, para. 16 (internal citations omitted).

25. According to Article 2 of the Appeals Tribunal's Statute, the competence of this Tribunal is limited to certain issues. For a first instance decision to be vacated or overturned, an appellant must provide proof that the first instance tribunal, in rendering its judgment, exceeded its jurisdiction or competence, failed to exercise jurisdiction vested in it, erred on a question of law, committed an error in procedure such as to affect the decision of the case, or erred on a question of fact resulting in a manifestly unreasonable decision.

26. It follows that it is not enough for an appellant to disagree with the findings of fact or the conclusions of law made by the trial court. Rather, for an appeal to succeed, an appellant must persuade this Tribunal that the contested decision fulfills the objective criteria of its competence. In the present case, however, this did not occur.

Judgment

27. The appeal is rejected and Judgment No. UNRWA/DT/2016/030 is affirmed.

Original and Authoritative Version: English

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

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Chapman

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

(Signed)

Weicheng Lin, Registrar