



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

Judgment No. 2017-UNAT-789

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

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge Deborah Thomas-Felix Judge Dimitrios Raikos
Case No.:	2017-1073
Date:	27 October 2017
Registrar:	Weicheng Lin

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

JUDGE SABINE KNIERIM, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2017/005, 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 20 February 2017, in the case of *Barakat v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Nabil Jamil Barakat filed the appeal on 19 April 2017, and the Commissioner-General filed his answer on 20 June 2017.

Facts and Procedure

2. Effective 24 November 2001, Mr. Barakat was appointed on a fixed-term appointment as a Teacher at Suf Camp Elementary Boys School. After several transfers, at the material time of the application before the UNRWA DT, Mr. Barakat was on the post of Head Teacher, Grade 12, at Manshieh Preparatory Boys School (Manshieh Prep. B/S). Effective 1 January 2014, Mr. Barakat was promoted to the post of School Principal, Grade 15.

3. On 29 April 2015, Mr. Barakat submitted a transfer request in order to be transferred to Irbid School Compound or to Al Shaheed Azmi Mufti Elementary Boys School (Azmi Mufti Elem. B/S 1) in Al Houson School Compound.

4. By letter dated 22 November 2015, the Chief, Field Education Programme, Jordan (CFEP/J), Mr. Jihad Hamdan, informed Mr. Barakat that his transfer request was denied. The Agency transferred a candidate from Azmi Mufti Preparatory Boys School (Azmi Mufti Prep. B/S 1) to Azmi Mufti Elem. B/S 1, which is on the same compound. Mr. Barakat was then offered the vacated post at Azmi Mufti Prep. B/S 1 as an external transfer but he rejected the offer.

5. On 6 January 2016, Mr. Barakat submitted a decision review request of the decision not to transfer him. By letter dated 2 February 2016, the Director of UNRWA Operations, Jordan Field Office (DUO/J), affirmed the decision not to transfer Mr. Barakat.

6. On 30 April 2016, Mr. Barakat filed his application with the UNRWA Dispute Tribunal. He requested:

- i) an oral hearing with the testimony of the CFEP/J;
- ii) the rescission of the contested decision and his transfer to Azmi Mufti Elem. B/S 1;
- iii) compensation for the financial expenses he incurred; and,
- iv) compensation for moral damages and psychological harm.

7. The UNRWA DT issued its Judgment on 20 February 2017 dismissing the application in its entirety. It declined to hold an oral hearing as requested by Mr. Barakat since “the facts [were] not disputed, [and ...] the evidence in the record [was] clear and abundant”.¹ On the merits, the UNRWA DT found that Mr. Barakat had failed to establish that the decision not to transfer him was unlawful. In accordance with the applicable regulatory framework, namely Administrative Circular No. DT A/243-122 regarding “Transfers of School Principals and Assistant School Principals” issued by the CFEP/J on 31 March 2015 (Circular), the Agency considered Mr. Barakat’s request as an external transfer since he had asked for a transfer outside of his original compound. The UNRWA DT found that in that case, he should have provided the name of the complex he desired to be transferred to and not the specific school number or school name in his request. When Mr. Barakat was offered the vacant post at Azmi Mufti Prep. B/S 1, if he had accepted, such a transfer would have been in conformity with the Agency’s regulatory framework regarding external transfers. The UNRWA DT further recalled the Agency’s broad discretionary power in appointing staff members and found that Mr. Barakat had not presented convincing evidence that the impugned decision was tainted. The UNRWA DT also stated that it did not see any “legal objection to [the] reasonable practice” of considering internal transfer requests before external transfer requests.² As the contested decision was considered lawful and no compensation could be awarded in the absence of any procedural errors or any breach of legal rights, the UNRWA DT declined Mr. Barakat’s request for compensation.

¹ Impugned Judgment, para. 18.

² *Ibid.*, para. 24.

Submissions

Mr. Barakat's Appeal

8. Mr. Barakat submits that the UNRWA DT erred by refusing to hear the testimony of the CFEP/J as requested.

9. He further contends that the UNRWA DT erred by failing to consider or scrutinize the Circular. In particular, there is no indication in the Circular that internal transfers should take precedence over external ones. Rather, it is apparent from paragraph 5 of the Circular that the more senior candidate should be given priority.

10. Moreover, he asserts that the UNRWA DT “erred by accepting the [Commissioner-General’s] arguments and not at all considering [Mr. Barakat’s] arguments”.

11. Based on the foregoing, Mr. Barakat requests that the Appeals Tribunal vacate the UNRWA DT Judgment and award him compensation for material, moral and psychological damages. He further requests compensation for financial expenses incurred as a result of the Agency’s failure to transfer him and he asks to be transferred to Azmi Mufti Elem. B/S 1.

The Commissioner-General's Answer

12. The Commissioner-General submits that the appeal is not well-founded on any of the grounds set out in Article 2(1) of the Statute of the Appeals Tribunal (Statute). In accordance with the Appeals Tribunal’s well-established jurisprudence, it is not sufficient for an appellant to simply state that he disagrees with the outcome of the impugned judgment or to repeat the arguments submitted before the first instance tribunal.

13. To the extent that Mr. Barakat may be contending that the UNRWA DT committed an error of procedure by refusing to hear testimony of the CFEP/J, this contention is without merit as the UNRWA DT correctly exercised its broad discretion in the management of cases under Articles 11 and 14 of the UNRWA DT Rules of Procedure vested in it by the Appeals Tribunal’s jurisprudence.

14. Furthermore, the Commissioner-General claims that there is no basis for Mr. Barakat’s criticism that the UNRWA DT simply accepted the Commissioner-General’s arguments without considering his. Rather, “[a] dispassionate reading of the judgment reveals that the crux of

[Mr. Barakat's] contentions [in particular regarding his interpretation of paragraph 5 of the Circular] were reviewed and dismissed by the UNRWA DT".

15. The Commissioner-General asserts that the Judgment of the UNRWA DT was, as a matter of law or fact, free of error. The UNRWA DT reviewed the applicable legal instrument, namely the Circular, and correctly held that the Agency was in conformity with the regulatory framework and that its practice was reasonable.

16. As to the remedies sought by Mr. Barakat, the Commissioner-General contends that they have no legal basis. Specifically, it is not the role of the Tribunals to substitute their own decision for that of the Administration and therefore, Mr. Barakat's plea to be transferred to Azmi Mufti Elem. B/S 1 is untenable at law.

17. In light of the foregoing, the Commissioner-General requests that the Appeals Tribunal dismiss the appeal in its entirety.

Considerations

Preliminary issue

18. Mr. Barakat requests an oral hearing before the Appeals Tribunal because he wants to "certify that the contested decision is illegal". Under Article 18(1) of our Rules of Procedure, the Judges hearing a case may hold oral hearings if such hearings would assist in the expeditious and fair disposal of the case. In Mr. Barakat's case, the relevant factual and legal issues are straightforward and have been fully ventilated on the papers. For those reasons, the request for an oral hearing is denied.

Merits

19. We find that Mr. Barakat has not complied with his obligations under Article 2(1) of the Statute which reads:

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

- (a) Exceeded its jurisdiction or competence;
- (b) Failed to exercise jurisdiction vested in it;

- (c) Erred on a question of law;
- (d) Committed an error in procedure, such as to affect the decision of the case; or
- (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

20. When the Appeals Tribunal hears an appeal, it does not simply re-try the case. The function of the Appeals Tribunal is to determine if the first instance 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. The appellant has the burden of satisfying the Appeals Tribunal that the judgment rendered by the first instance tribunal 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. It is not sufficient for an appellant to state that he or she disagrees with the outcome of the case or repeat the arguments submitted before the first instance tribunal.³

21. Mr. Barakat, in his appeal, merely asserts that the UNRWA DT “erred” in various ways in its Judgment. He does not specify whether the UNRWA DT committed errors of law, facts, or procedure. For this reason alone, his appeal must fail.

22. Further, there is no merit in Mr. Barakat’s assertions. We do not find any errors of law, fact, or procedure in the UNRWA DT Judgment.

23. The UNRWA DT did not commit an error (in procedure, such as to affect the decision of the case) by refusing to hear the testimony of Mr. Jihad Hamdan, CFEP/J. In his letter dated 22 November 2015, Mr. Hamdan had informed Mr. Barakat that his transfer request was denied. Mr. Barakat does not specify, in his appeal, what Mr. Hamdan could have testified before the UNRWA DT and how this testimony would have affected the decision of the case. Further, we note the large discretion afforded to the UNRWA Dispute Tribunal in relation to case management matters. Article 14 of the UNRWA DT Rules of Procedure provides that the UNRWA DT “may, at any time, either on an application of a party or of its own initiative make any order or give any direction which appears to the judge to be appropriate for a fair and expeditious disposal of the case and to do justice to the parties”.

³ *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-547, para. 30, citing *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29.

Our jurisprudence has consistently held that the Appeals Tribunal will not lightly interfere with the broad discretion of the first instance tribunal in the management of its cases.⁴

24. The UNRWA DT's interpretation and application of the Circular is free of legal or factual errors. In relevant parts, the Circular reads as follows:⁵

2- A- Internal transfer shall mean transfer within the same complex, for example the transfer from a school to another in Al Baqa'a Complex is considered an internal transfer, while external transfer shall mean a transfer from a complex to another, whether in the same region or a different region, for example, a transfer from a school in Al Baqa'a Complex to a school in Al Nuzha Complex shall be considered an external transfer.

...

C- A person wishing to transfer from the current school thereof shall carefully examine the transfer application and precisely provide his preferences, which shall not exceed eight preferences. In case the transfer request is only "external", the total number of preferences shall not exceed eight. In case the sought transfer is external and internal, total preferences shall not be more than eight, four of which as maximum shall be internal transfer. Only one application shall be submitted, whether for internal or external transfer, noting that the principal/assistant principal submitting an application for internal transfer (i.e., within the same complex) may specify the name of his desired school, as for external transfer, the same shall only provide the name of the complex of his preference.

...

5- [T]he employment commencement date of the principal/assistant principal in the Complex shall be used when effecting an internal or external transfer. Where two or more principals/assistant school principals have the same date of employment in the complex, the date of starting employment at the complex shall be used. If they have the same date-, the date of appointment in the Agency shall be the reference date, and in case such date was the same, priority in transfer shall be decided by lot drawing.

25. Under the Circular, the Administration was allowed to deny Mr. Barakat's request to be transferred to Azmi Mufti Elem. B/S 1 in Al Houson School Compound. Mr. Barakat's understanding of paragraph 5 of the Circular is erroneous. It is true that this paragraph does not expressly state that internal transfers should take precedence over external ones. However, the provision does not stand alone but has to be read together with paragraph 2 C

⁴ *Namrouti v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-593, para. 33.

⁵ Emphasis in original omitted.

of the Circular of which the last sentence clearly states “that the principal/assistant principal submitting an application for internal transfer (i.e., within the same complex) may specify the name of his desired school, as for external transfer, the same shall only provide the name of the complex of his preference”. As external candidates (like Mr. Barakat) are only allowed to provide the name of the compound to which they wish to be transferred, a competition between internal and external candidates for a specific school can never occur. Consequently, under the Circular, the Administration only had a duty to consider Mr. Barakat’s wish to be transferred to a certain compound but not his wish to be transferred to a certain school located in that compound.

26. With regard to Mr. Barakat’s request for compensation, we note that since no illegality can be found, there is no justification for the award of any compensation. As this Tribunal held in *Antaki*,⁶ *Oummih*,⁷ and *Nwuke*,⁸ no compensation can be granted in the absence of a breach of the staff member’s rights or administrative wrongdoing in need of repair.

⁶ *Antaki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-095, para. 25.

⁷ *Oummih v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-420, para. 20.

⁸ *Nwuke v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-508, para. 27.

Judgment

27. The appeal is dismissed and Judgment No. UNRWA/DT/2017/005 is affirmed.

Original and Authoritative Version: English

Dated this 27th day of October 2017 in New York, United States.

(Signed)

Judge Knierim, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Raikos

Entered in the Register on this 8th day of December 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar