



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

Judgment No. 2018-UNAT-881

**Mansour
(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 Dimitrios Raikos
Judge Deborah Thomas-Felix

Case No.: 2018-1174

Date: 26 October 2018

Registrar: Weicheng Lin

Counsel for Mr. Mansour: 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/2018/021, 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 29 March 2018, in the case of *Mansour v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Ala Jamal Mansour filed the appeal on 28 April 2018, and the Commissioner-General filed his answer on 6 July 2018.

Facts and Procedure

2. Effective 1 August 2015, Mr. Mansour joined the Agency on a fixed-term appointment as Assistant Operations Support Officer (A/OSO) at the Operations Support Office, West Bank Field Office, Grade 12, Step 1, with a one-year probationary period.

3. Mr. Mansour's supervisor, the Operations Officer (OPSO), met with Mr. Mansour on 4 March 2016. The OPSO discussed his performance with him and identified areas where his performance required improvement. The meeting was recorded by the OPSO in an e-mail to Mr. Mansour dated 8 March 2016. It was agreed to review Mr. Mansour's performance after 20 April 2016.

4. On 6 May 2016, the OPSO sent an e-mail to Mr. Mansour noting that Mr. Mansour had improved in certain areas but still lacked critical competencies. In a note for the record dated 1 June 2016, the Head, Field Human Resources Office (H/FHRO) recorded a meeting held with Mr. Mansour and the Acting OPSO. The H/FHRO noted that Mr. Mansour's initial probationary period was ending on 31 July 2016 and that the outlined performance issues needed to improve before his contract could be confirmed. The H/FHRO proposed a mentoring programme for Mr. Mansour, with two Operations Support Officers (OSOs). On 24 June 2016, a mentoring meeting was held with Mr. Mansour and the two OSOs.

5. By letter dated 25 July 2016, the H/FHRO informed Mr. Mansour of the decision to extend his probationary period for three months. Another meeting was held on 31 August 2016 with Mr. Mansour and the two mentoring OSOs. The mentors noted some improvement in Mr. Mansour's performance. In a report dated 4 November 2016, the OPSO noted some improvement in Mr. Mansour's performance. He recommended an extension of Mr. Mansour's

probationary period for an additional three months. By letter dated 8 November 2016, the H/FHRO informed Mr. Mansour of the decision to extend his probationary period for a final three months, ending on 31 January 2017.

6. In a note for the record dated 6 December 2016, the H/FHRO recorded a meeting held with the OPSO and the Access Officer (AO). In this meeting, the OPSO provided feedback on Mr. Mansour's performance, and areas of improvement were noted. In a note for the record dated 12 January 2017, the H/FHRO recorded another meeting with the OPSO and the AO. The OPSO noted Mr. Mansour's shortcomings and indicated that some OSOs had pointed out that they were not confident to work with him as a team member.

7. By letter dated 30 January 2017, the Director of UNRWA Operations West Bank informed Mr. Mansour that, due to his unsatisfactory performance, his appointment with UNRWA would not be confirmed.

8. On 8 February 2017, Mr. Mansour submitted a request for review of the decision not to confirm his appointment. On 2 May 2017, Mr. Mansour filed an application with the UNRWA DT.

9. On 29 March 2018, the UNRWA DT issued Judgment No. UNRWA/DT/2018/021. The UNRWA DT found that there were several irregularities, such as the fact that Mr. Mansour's assessment was completed rather late, nearly at the end of his initial probationary period, that due to persisting problems with the Electronic Performance Evaluation System (e-Per), no work plan had formally been submitted at the beginning of Mr. Mansour's probationary period, and that Mr. Mansour was only informed on 8 November 2016 that his probationary period would be extended for another three months, after his probationary period had already expired on 1 November 2016. The UNRWA DT, however, noted that in accordance with the Appeals Tribunal's jurisprudence, not every irregularity in itself will necessarily lead to vacating an administrative decision and proceeded to examine whether, on the facts, Mr. Mansour's performance supported the decision not to confirm his appointment.

10. The UNRWA DT rejected Mr. Mansour's claim that the Agency did not give him any advice or guidance, finding that both the H/FHRO and Mr. Mansour's supervisor gave Mr. Mansour clarifications on his shortcomings and two mentors were assigned to help and guide him. The UNRWA DT further found no merit in Mr. Mansour's claim that the reports of the meetings held with the OSOs established that he had made significant progress and that,

to the contrary, the reports and a note to the file revealed Mr. Mansour's shortcomings. The UNRWA DT also rejected Mr. Mansour's contention that he had been assigned tasks which were not part of his job description. Finally, the UNRWA DT concluded that Mr. Mansour's allegations of harassment and discrimination were not supported by the evidence and dismissed his application.

Submissions

Mr. Mansour's Appeal

11. The Agency failed to follow the United Nations law and procedure to assess Mr. Mansour fairly and without abuse of power. Mr. Mansour's supervisor failed to assess him in accordance with the rules and procedures, failed to provide him with the required training and guidance needed to carry out his duties for a proper assessment, and assigned him duties unrelated to his job description. His supervisor assigned him to work on several duties within the whole of the West Bank putting pressure on him and treating him unequally from other staff to whom she assigned specific duties in particular areas. Mr. Mansour was provided with assessments from OSOs he did not work for, and the excellent reviews from OSOs he actually worked for were excluded. The Agency abused its power by improperly assessing his performance based on discrimination and unequal treatment.

12. From the beginning, Mr. Mansour was personally targeted and discriminated against by his supervisor, which manifested itself in assigning him continuously changing roles with objectives that could not be accessed through the applicable rules and regulations which require that staff's performance be assessed in light of the prescribed duties through the e-Per. Mr. Mansour's e-Per was based on duties assigned to him during the course of his performance period, duties which were unrelated to his contractual duties, in areas for which he had never been trained or in which he had previously not worked, without any goals or work plans. Mr. Mansour's supervisor failed to create a work plan at the beginning of the cycle, did not create a mid-point review and provided his first review only in January 2017, shortly before his separation. The decision not to confirm Mr. Mansour's appointment was flawed by procedural irregularities, tainted by improper motive and abuse of power and violated the principle of good faith.

13. Mr. Mansour requests rescission of the decision not to confirm his appointment; payment of his salary from the date of his separation including dependency allowance; compensation for the psychological stress and harm he suffered due to the effect the decision had on his status; and compensation in the amount of USD 3,000 for expenses he had incurred working on this case.

The Commissioner-General's Answer

14. The appeal is defective in that it fails to set out, by citation to any provision in Article 2(1) of the Appeals Tribunal Statute (Statute), the grounds of the appeal. The appeal reargues the case before the Appeals Tribunal and fails to demonstrate that the UNRWA DT erred in law, procedure or fact or exceeded or failed to exercise its jurisdiction.

15. The UNRWA DT Judgment was, as a matter of law, free of error. The UNRWA DT was cognizant of the legal framework regarding assessment of staff on probation and the relevant jurisprudence. The UNRWA DT considered the main issue of whether Mr. Mansour's performance supported the decision not to confirm his appointment, and correctly concluded that it did. Furthermore, the UNRWA DT correctly dismissed Mr. Mansour's allegations of harassment and discrimination.

16. In light of the foregoing, there is no legal basis for consideration of the plea sought. Moreover, Mr. Mansour's request for moral damages and various compensatory awards was not before the UNRWA DT and is therefore a new matter which may not be raised on appeal. The Commissioner-General requests that the Appeals Tribunal dismiss the appeal in its entirety.

Considerations

Content of Mr. Mansour's appeal

17. Mr. Mansour's appeal is defective in that it fails to identify any of the five grounds of appeal set out in Article 2(1) of the Statute as forming the legal basis of his appeal. Article 2(1) of the Statute provides that:

1. 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.

18. These provisions are supplemented by Article 8(2) of the Appeals Tribunal Rules of Procedure, which provides, in part, that: “The appeal form shall be accompanied by: (a) A brief that explains the legal basis of any of the five grounds for appeal set out in article 2.1 of the statute of the Appeals Tribunal that is relied upon”.

19. It follows from the above provisions that a party appealing a judgment of the UNRWA DT is unlikely to succeed in having the judgment reversed, modified or the case remanded to the UNRWA DT unless the appeal challenges the impugned judgment on one or more of the grounds referred to in Article 2(1) (a) to (e) of the Statute.

20. In the present case, all submissions by Mr. Mansour concern his treatment by the Administration and the merits of the decision not to confirm his appointment with UNRWA. His appeal brief starts with a “Summary of the facts of the case or facts relied upon” and continues with “Grounds for contesting the administrative decision” laying out under A. that “[t]he Agency failed to follow the UN law and procedure”, under B. that “[t]he Agency violated the law and procedure”, and under C. that “[t]he Agency abused their use of power”. Nowhere in his appeal brief does Mr. Mansour explain how the UNRWA DT, in dismissing his application on the merits, exceeded or failed to exercise its jurisdiction or competence, erred on a question of law or procedure, or erred on a question of fact, resulting in a manifestly unreasonable decision.

The UNRWA DT Judgment

21. Even assuming, in Mr. Mansour’s favour, that the allegations in his appeal brief are meant to state that the UNRWA DT committed errors of law, the appeal must fail.

22. As to Mr. Mansour’s repeated allegation that he was assigned to duties not related to his job description, such as translation, we find no error in the UNRWA DT’s determination that translation was part of Mr. Mansour’s duties in his service with UNRWA. Among his “responsibilities and duties”, his job description enumerates the following:

- Assists the OSO in gathering information and data on the humanitarian services provided by other organisations and local authorities, for the purpose of strategic and humanitarian programming.
- Assists the OSO in communicating and explaining UNRWA's mandate to refugee community, advising on issues related to the Agency's facilities.

23. As at least some of the OSOs do not speak Arabic fluently, it is evident that assisting them in “gathering information and data” and “communicating and explaining” require the A/OSO to translate from Arabic to English and vice versa. Consequently, the job description specifies under “Languages” that the A/OSO shall have an “[e]xcellent command of spoken and written English and Arabic”. Mr. Mansour’s statement in his appeal brief that he “wasn’t qualified to give accurate translation” supports the Agency’s decision not to confirm his appointment as A/OSO on the ground that there were, *inter alia*, shortcomings in his abilities to translate.

24. Contrary to Mr. Mansour’s allegations, we do not find that there was a violation of his due process rights. The UNRWA DT correctly applied our consistent jurisprudence that not every irregularity in itself will necessarily lead to vacating an administrative decision.¹ The UNRWA DT, after having found that there were some procedural irregularities related to the assessment of Mr. Mansour’s performance, proceeded to examine whether, on the facts, Mr. Mansour’s performance supported the decision not to confirm his appointment. The UNRWA DT was satisfied that both the H/FHRO and Mr. Mansour’s supervisor gave Mr. Mansour clarifications on his shortcomings and two OSOs had been assigned as mentors to help and guide him and that the reports and a note to the file revealed Mr. Mansour’s continued shortcomings.

25. We cannot find any error in the UNRWA DT’s findings. The evidence before us shows that several meetings were held with Mr. Mansour (i.e. 4 March 2016, 27 May 2016, 24 June 2016, 31 August 2016, 6 December 2016, and 12 January 2017) where his shortcomings were clearly addressed in order to give him an opportunity to improve his performance. His probationary period was extended twice for the same reason. There is no evidence casting doubt on the ability of the H/FHRO, Mr. Mansour’s supervisor or the mentoring OSOs to evaluate Mr. Mansour’s performance. Mr. Mansour’s submission that there were other OSOs who were extremely content with his work as an A/OSO is legally irrelevant as those OSOs had no authority to evaluate Mr. Mansour’s performance.

¹ *Ncube v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-721, paras. 20 to 22.

26. In light of the foregoing, we find that the UNRWA DT did not err in concluding that the Administration's decision not to confirm Mr. Mansour's appointment was solely based on his performance and that his allegations of harassment and discrimination were not supported by the evidence.

Request for compensation for material and moral damages

27. As there was no illegality, there can be no compensation for harm under Article 9(1) (b) of the Appeals Tribunal Statute.

Costs

28. The Commissioner-General has not abused the proceedings and accordingly, Mr. Mansour's request for costs is dismissed.

Judgment

29. The appeal is dismissed and Judgment No. UNRWA/DT/2018/021 is affirmed.

Original and Authoritative Version: English

Dated this 26th day of October 2018 in New York, United States.

(Signed)

Judge Knierim, Presiding

(Signed)

Judge Raikos

(Signed)

Judge Thomas-Felix

Entered in the Register on this 20th day of December 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar