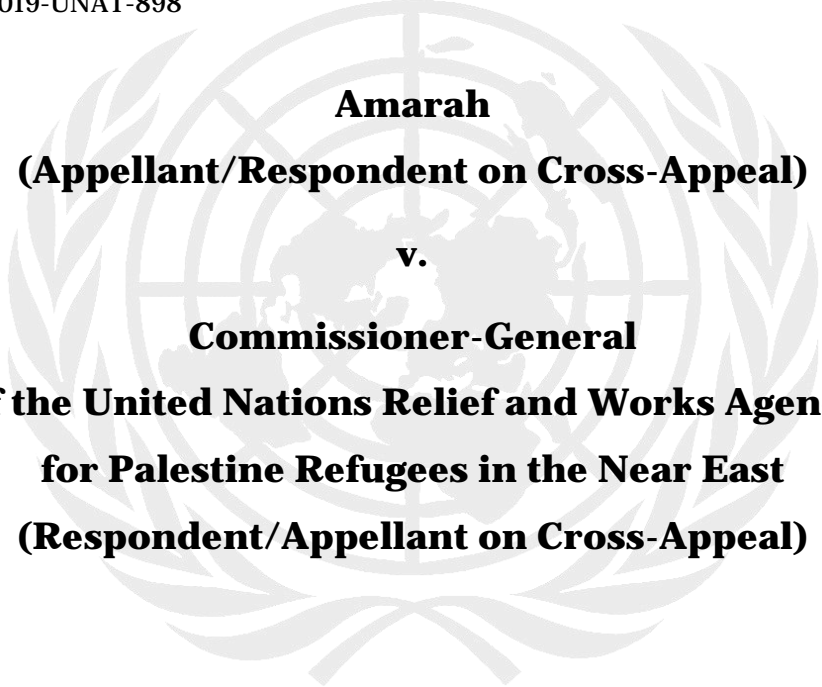




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2019-UNAT-898



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

**JUDGMENT**

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Before:	Judge Deborah Thomas-Felix, Presiding Judge Dimitrios Raikos Judge Sabine Knierim
Case No.:	2018-1188
Date:	29 March 2019
Registrar:	Weicheng Lin

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Counsel for Mr. Amarah:	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 on Remedies No. UNRWA/DT/2018/041 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 27 June 2018, in the case of *Amarah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Jamal Omar Mohammad Amarah filed the appeal on 19 July 2018, and the Commissioner-General filed his answer on 17 September 2018.

2. On 17 September 2018, the Commissioner-General filed a cross-appeal against Judgment No. UNRWA/DT/2018/041 as well as Judgment No. UNRWA/DT/2018/004 issued by the UNRWA Dispute Tribunal on 15 January 2018 in the same case (Judgment on the Merits). On 4 October 2018, Mr. Amarah filed his answer to the cross-appeal

**Facts and Procedure**

3. Mr. Amarah joined the Agency on 9 February 2000. Sometime before 31 August 2015, he submitted an application for Exceptional Voluntary Separation (EVS), in which he stated that: “I acknowledge that I am voluntarily submitting my application for EVS. If my application for EVS is approved, I understand that I will be separated from the Agency’s service in accordance with Area Staff Rule 109.15, Area Staff Personnel Directive A/9 dated 23 June 2015, and General Staff Circular 03/2015 dated 24 June 2015.”<sup>1</sup> Mr. Amarah was then a science teacher at Nur Shams Camp in the West Bank Field Office, UNRWA.

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1. UNRWA Staff Rule 109.15 entitled “Exceptional voluntary separation”, dated 23 June 2015 reads:

1. The Commissioner-General may authorize a staff member’s Exceptional Voluntary Separation (EVS), where the Commissioner-General deems it is in the financial interests of the Agency to do so.

2. EVS is not an entitlement but may be approved in exceptional circumstances. The Commissioner-General will authorize periods during which staff members may apply for EVS. The Commissioner-General will also establish the criteria, priorities and timing to be applied in reviewing and making determinations on applications for EVS and these will be communicated to staff in writing by the Director of Human Resources.

3. The Director of Human Resources has the authority to approve or reject applications for EVS. Decisions on applications for EVS shall be made in coordination with Headquarters and/or Field Office Directors, as applicable. The authority to

4. On 31 August 2015, Mr. Amarah's EVS application was approved and he was separated from the Agency's service.

5. On 20 May 2016, Mr. Amarah applied for the post of Camp Services Officer (CSO), Nur Shams Camp. On 18 October 2016, he was appointed to the post under a three-year fixed-term appointment.

6. Approximately two months later, on 28 December 2016, the Director of UNRWA Operations, West Bank, informed Mr. Amarah that his fixed-term appointment would be cancelled as of 31 December 2016, as it was in breach of the Agency's legal framework on EVS. The Director drew Mr. Amarah's attention to the fact that he had applied for the CSO post on 26 May 2016 and accepted the appointment on 18 October 2016, despite his knowledge that he

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further define the conditions and procedures concerning EVS is also delegated to the Director of Human Resources.

4. A staff member may apply for EVS provided he/she has ninety (90) or more calendar days remaining on his/her contract as of the date of his/her application for EVS.

5. Where a staff member's application for EVS is approved, the Agency shall pay an EVS benefit equivalent to the amount that would be payable to a staff member if he/she were granted Early Voluntary Retirement pursuant to Area Staff Rule 109.2(5) and other issuances related to the computation of Early Voluntary Retirement benefits.

6. The payment of the EVS benefit under this Rule shall automatically extinguish any and all entitlements which might otherwise have existed as separation benefits under the Agency's Area Rules and other issuances except for those benefits provided by Staff Rules 109.10, 109.12 and 109.13.

Area Staff Personnel Directive No. A/9/Rev. 10 dated 23 June 2015 and entitled "Separation from service" devotes paragraphs 45 to 53 to the subject of EVS. Paragraph 53 reads:

A staff member who leaves the Agency's service by EVS will not be eligible for re-employment for a minimum of eighteen (18) months after his/her separation from the Agency. Where a staff member separates from the Agency as a result of EVS and is re-employed by the Agency, re-employment shall only be by re-appointment, as set out in Area Staff Personnel Directive No. A/4/Part III. This means that if the former staff member is re-employed by the Agency it will be without restoration of the staff member's prior periods of qualifying service.

General Staff Circular No. 03/2015 entitled "Exceptional voluntary separation" sets forth the eligibility criteria and the procedure for submission and evaluation of EVS applications, with a blank application form attached.

would not be eligible for re-employment with UNRWA for a minimum period of 18 months after his EVS.

7. Mr. Amarah appealed, by first requesting a decision review and then filing an application with the UNRWA Dispute Tribunal.

8. In its Judgment on the Merits, the UNRWA Dispute Tribunal found that the Agency had unlawfully appointed Mr. Amarah to the post of CSO, in violation of Area Staff Rule 109.15, Area Staff Personnel Directive A/9/Rev. 10 (PD A/9/Rev. 10), and General Staff Circular 03/2015 (GSC 03/2015), and that the Agency was therefore liable for the consequences of that unlawful decision. However, Mr. Amarah also contributed to the unlawful decision, as he was “deemed to know the Agency’s Regulations and Rules”,<sup>2</sup> and should consequently be held partially liable. The UNRWA Dispute Tribunal apportioned the liability as 75 per cent for the Agency and 25 per cent for Mr. Amarah. To assist it subsequently in making monetary awards, the UNRWA DT ordered Mr. Amarah to provide an exact quantification of each of his claimed damages with documentation, together with a justification as to why he should be awarded those damages.

9. On 27 June 2018, the UNRWA Dispute Tribunal issued Judgment on Remedies, in which it awarded Mr. Amarah USD 247.50 as material damages and USD 1,000 as moral damages.

10. The UNRWA DT noted that Mr. Amarah had declined a Ph.D. scholarship offer from a school in Spain on account of his 18 October 2016 appointment with UNRWA, after having incurred the registration expenses in the amount of EUR 280.94, or USD 330. The UNRWA Dispute Tribunal ordered the Agency being 75 per cent liable for the unlawful recruitment decision to pay Mr. Amarah USD 247.50 (75 per cent of USD 330) as material damages. However, it declined to order any additional compensation in this regard because Mr. Amarah had failed to submit any further evidence of the expenses he had incurred in relationship to the scholarship.

11. As for the award of USD 1,000 moral damages, the UNRWA Dispute Tribunal explained that the fact that Mr. Amarah had been informed of the cancellation of his three-year contract only two months into his appointment “presumptively speak[s] for [itself] to a sufficient degree

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<sup>2</sup> *Amarah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2018/004, para. 25.

that it is permissible, as a matter of evidence, to infer logically and legitimately that [he] suffered moral injury”,<sup>3</sup> for which the UNRWA DT affixed the monetary compensation at USD 1,000, though it noted that Mr. Amarah had failed to submit evidence in support of his claim for moral damages.

### **Submissions**

#### **Mr. Amarah’s Appeal**

12. The UNRWA Dispute Tribunal erred in fact and in law in erroneously calculating the compensation due to the Agency’s negligence in the selection process that caused Mr. Amarah to lose his Ph.D. scholarship and salary and sustain material and moral damages. Mr. Amarah complied with the court order by submitting sufficient and credible evidence to prove the exact amount of the damages. The UNRWA Dispute Tribunal, however, did not consider any of his evidence. Mr. Amarah had proven the loss of a full scholarship including a tuition exemption, an allowance of EUR 6,300 per year for at least three years, in addition to the loss of his 33.6 months’ contract as a CSO with UNRWA and his Provident Fund contribution, totalling USD 67,232.

13. It was not a “clear consideration” for the UNRWA Dispute Tribunal to conclude that the decision to appoint Mr. Amarah as CSO was unlawful, but the subsequent decision to cancel his appointment was lawful. Mr. Amarah’s employment was a valid and binding contract as the Agency was aware that he did not pass the 18-month separation period and, in effect, waived that requirement in the interest of the Agency when it recruited Mr. Amarah.

14. Mr. Amarah requests that he be paid USD 67,232 in compensation for his lost Ph.D. scholarship and related benefits, lost career opportunity, and adequate moral damages.

#### **The Commissioner-General’s Answer**

15. The Commissioner-General requests that the Appeals Tribunal find inadmissible Mr. Amarah’s submissions relating to the selection process, the alleged validity of his employment contract, and the waiver of the condition of eligibility for re-employment, as those claims are new elements that were not put forward at the UNRWA Dispute Tribunal level and cannot be introduced for the first time on appeal.

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<sup>3</sup> Impugned Judgment, para. 22.

16. Mr. Amarah has failed to establish any basis to warrant an increase in the material and moral damages awarded or to identify any error warranting the reversal of the contested Judgment. Contrary to Mr. Amarah's allegations, the UNRWA Dispute Tribunal considered the issues of alleged loss of salary and the documents that Mr. Amarah had presented in relation to his scholarship claim. The UNRWA Dispute Tribunal's consideration of these matters "remain[ed] unassailed".

17. Mr. Amarah merely repeats his submissions made before the UNRWA Dispute Tribunal. As there is no legal basis for considering his plea for an enhanced award, the Commissioner-General requests that the Appeals Tribunal reject all of his pleas, deny all reliefs sought and dismiss the present appeal in its entirety.

#### **The Commissioner-General's Cross-Appeal**

18. The UNRWA Dispute Tribunal erred in law and in fact, resulting in a manifestly unreasonable decision when it found the Agency liable and awarded Mr. Amarah USD 247.50 as material damages and USD 1,000 as moral damages. Having held that the cancellation of Mr. Amarah's contract was lawful, there was no basis for the awards, as there was no breach of a contractual right.

19. The UNRWA DT's reasoning was flawed as it was predicated on its holding that, because of the unlawful decision to appoint Mr. Amarah to the post of CSO, he declined a scholarship to pursue studies in Spain. There was no nexus between his employment with the Agency and the scholarship. It was Mr. Amarah's unilateral decision to take up the UNRWA employment instead of pursuing the Ph.D. study in Spain. The elements of the notion of responsibility are not established to warrant an award of compensation. The Agency did not foresee, and could not have reasonably foreseen, that the appointment of Mr. Amarah would cause him to reject a scholarship offer.

20. Likewise, as the UNRWA Dispute Tribunal found the decision to cancel Mr. Amarah's appointment was lawful, there was no basis for consideration of the issue of moral damages. Even if an award of moral damages was merited, there was no evidence adduced in support of the harm. In such circumstances, only the illegality can be declared, but no compensation can be awarded.

21. The Commissioner-General requests that the Appeals Tribunal allow his cross-appeal and vacate the contested Judgments (both on the merits and on remedies) in their entirety.

**Mr. Amarah's Answer to the Cross-Appeal**

22. In his answer to Mr. Amarah's appeal, the Commissioner-General highlighted the corrective nature of the appeals procedure, but he has failed to comply with this requirement in his cross-appeal, as he reiterates the same arguments that had already been addressed by the UNRWA Dispute Tribunal. The cross-appeal has therefore no legal basis.

23. The UNRWA Dispute Tribunal correctly held the Agency liable for the decision to unlawfully appoint Mr. Amarah on 18 October 2016, as there was a direct link between the lost scholarship opportunity and his appointment with UNRWA. Contractual rights existed from the moment Mr. Amarah accepted the appointment. The Agency's decision to recruit him on 18 October 2016 not only made him reject the scholarship but also caused him to lose an opportunity to enhance his long-term career with UNRWA.

24. Mr. Amarah requests that the Appeals Tribunal dismiss the cross-appeal in its entirety.

**Considerations**

25. At the hearing before the UNRWA DT, Mr. Amarah did not raise the CSO selection process as an issue. Nor did he argue that by recruiting him on 18 October 2016, the Agency had entered into a binding and valid contract with him and had, moreover, implicitly waived the condition of an 18-month separation after an EVS. He has, however, included these issues in his appeal. In order for the Appeals Tribunal to consider the merit of these issues on appeal, they ought to have been raised before the UNRWA DT to allow the Commissioner-General to respond thereto and for the UNRWA DT to pronounce thereon. This was not done. We uphold the Commissioner-General's submissions that these issues are not receivable as they are new elements that were not put forward at the hearing before the UNRWA Dispute Tribunal and therefore cannot be introduced for the first time on appeal.<sup>4</sup>

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<sup>4</sup> *Abu Nqairah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-854, para. 21; *AlRifai v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-653, para. 15; *Masri v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment

26. The main issue to be determined in the present case is whether the UNRWA DT erred in apportioning the liability as 75 per cent for the Agency and 25 per cent for Mr. Amarah.

27. Mr. Amarah, as a beneficiary of an EVS, signed the respective EVS application and, in so doing, acknowledged that his EVS was subject, *inter alia*, to the provision of PD A/9/Rev. 10, which prohibits his re-employment for at least 18 months. He knew that the prohibition was a condition with respect to obtaining the EVS and he signed acknowledging same. However, in breach of the prohibition, he applied for the CSO position less than nine months after his EVS and accepted the position some 13 months after his separation.

28. The maxim “he that comes to equity must come with clean hands” is very relevant here. Mr. Amarah cannot be allowed to knowingly breach the rules, engage in an activity which is unlawful and then seek compensation. The integrity of this justice system and the administration of justice must be protected and maintained, therefore the Appeals Tribunal will not allow Mr. Amarah to profit from his own wrong.

29. We deem Mr. Amarah’s conduct self-serving and unlawful and find as a fact that Mr. Amarah knew the law with respect of EVS when he applied for the CSO position, and that he breached the law. Moreover, we find that it was Mr. Amarah’s decision to take up the UNRWA employment (in breach of the law), instead of pursuing the PhD study in Spain. Consequently, the Agency cannot be made liable and Mr. Amarah cannot be awarded damages for the taking of the unlawful re-employment decision. We therefore find that the UNRWA DT erred in apportioning the liability as 75 per cent for the Agency and 25 per cent for Mr. Amarah.

30. It is noteworthy that this case is distinguishable from *Al Hallaj*.<sup>5</sup> In that case, Ms. Al Hallaj worked for the Economic and Social Commission for Western Asia (ESCWA) on a consultancy basis under a not-for-employment residency permit, but did not appear to know that for her to work on a fixed-term appointment at ESCWA she needed a work permit. In the instant case, however, Mr. Amarah signed the EVS application undertaking to comply with *inter alia* PD A/9/Rev. 10, which clearly states an 18-month re-employment prohibition. Yet he still applied for an UNRWA position less than nine months after he had received the EVS.

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No. 2016-UNAT-626, para. 25, citing *Planas v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-049.

<sup>5</sup> *Al Hallaj v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-810.



31. With respect to the issue of moral damages which is raised in this appeal, the Appeals Tribunal in *Kallon* stated in its majority decision that compensation for harm, generally speaking, must be supported by evidence.<sup>6</sup> There is no such evidence to support a claim for moral damages in the instant appeal.

**Judgment**

32. Mr. Amarah's appeal is dismissed. The Commissioner-General's cross-appeal is granted and Judgment Nos. UNRWA/DT/2018/004 (Judgment on the Merits) and UNRWA/DT/2018/041 (Judgment on Remedies) are vacated in their entirety.

Original and Authoritative Version: English

Dated this 29<sup>th</sup> day of March 2019 in New York, United States.

*(Signed)*

Judge Thomas-Felix,  
Presiding

*(Signed)*

Judge Raikos

*(Signed)*

Judge Knierim

Entered in the Register on this 29<sup>th</sup> day of May 2019 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar

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<sup>6</sup> *Kallon v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742.