



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

Judgment No. 2019-UNAT-905

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

JUDGMENT

Before:	Judge Richard Lussick, Presiding Judge Martha Halfeld Judge John Raymond Murphy
Case No.:	2018-1197
Date:	29 March 2019
Registrar:	Weicheng Lin

Counsel for Ms. Ghusoub:	Self-represented
Counsel for Commissioner-General:	Rachel Evers

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2018/044, 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 18 July 2018, in the case of *Ghusoub v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Ms. Rasmiya Khamis Ghusoub filed the appeal on 14 September 2018, and the Commissioner-General filed his answer on 14 November 2018.

Facts and Procedure

2. The following facts are uncontested:¹

... Effective 1 August 1987, the Applicant was employed by the Agency as Medical Officer “B” on a temporary indefinite appointment at the Gaza Town Health Centre. At the time relevant to the instant application, the Applicant was Deputy Head Health Centre “A” in the North Gaza Health Centre, Gaza Field Office.

... Following the Applicant’s request for an extension of service beyond the age of retirement, she was informed by letter dated 4 February 2015 that her request had been approved, and that her service would continue until 28 February 2017.

... On 7 December 2016, the Director of Human Resources (“DHR”) issued Area Staff Circular No. A/05/2016 with subject “Information on Occupational Health Salary Scale and Post Harmonization” (“Circular”). The Circular informed staff members that the Commissioner-General ... had decided to introduce an Occupational Health Salary Scale (“OHSS”) initially for Headquarters (“HQ”) Amman, Jordan, Lebanon and Syria Field Offices with an effective date of 1 January 2017.

... By memorandum dated 29 December 2016, the [Commissioner-General] included the new OHSS for Lebanon, Syria, Jordan, West Bank and Gaza effective 1 January 2017. Amendments to the Area Staff Rules were issued effective 1 January 2017.

... A new Area Staff Rule 113.1 regarding the retirement benefits for staff members under the OHSS was introduced on 9 February 2017, with effective date 1 January 2017.

... By letter dated 1 February 2017, the Head, Field Human Resources Office (“H/FHRO”) informed the Applicant of her retirement effective 28 February 2017.

... By letter dated 6 February 2017, the Director of UNRWA Operations, Gaza (“DUO/G”) informed the Applicant that, as of 1 January 2017, her new health level was HL7, Step 22.

¹ Impugned Judgment, paras. 2-10 and 13-15.

... On 23 March 2017, the Applicant submitted a request for review of the decision to calculate her retirement benefits according to the new OHSS.

... On 11 July 2017, the application was filed with the UNRWA Dispute Tribunal ... The application was transmitted to the Respondent on 12 July 2017.

...

... On 7 August 2017, the Respondent filed a motion for extension of time to file his reply beyond the 30-calendar day time limit set out in Article 6(1) of the Rules of Procedure of the Tribunal. On 8 August 2017, the motion was transmitted to the Applicant.

... By Order No. 108 (UNRWA/DT/2017) dated 17 August 2017, the Respondent's motion for extension of time was granted.

... On 15 September 2017, the Respondent filed his reply. The reply was transmitted to the Applicant on 17 September 2017.

3. On 18 July 2018, the UNRWA DT issued Judgment No. UNRWA/DT/2018/044 dismissing the application. The UNRWA DT noted that Ms. Ghusoub was not contesting the correct application of Area Staff Rule 113.1 (Retirement Benefit) to her case, but she was challenging the new rule itself, claiming that her retirement benefits were less under the new OHSS scheme than under the old scheme. The UNRWA DT found that the Agency correctly applied the rules applicable at the material time of her retirement. The UNRWA DT further held that it was not entitled to examine the Commissioner-General's authority in issuing Regulations and Rules and that the only way for an applicant to successfully challenge an UNRWA Regulation or Rule was to establish that the rule was conflicting with a higher principle established by the United Nations.

4. Ms. Ghusoub appealed on 14 September 2018 and the Commissioner-General answered on 14 November 2018. On 29 November 2018, Ms. Ghusoub filed a motion seeking leave to submit additional pleadings. In support of her motion, Ms. Ghusoub *inter alia* submitted that her retirement date was 4 February 2017 as opposed to 28 February 2017. On 17 December 2018, the Commissioner-General filed his comments, objecting to the motion. On 19 December 2018, the Appeals Tribunal issued Order No. 336 (2018) dismissing the motion.

Submissions

Ms. Ghusoub's Appeal

5. Due to the application to Ms. Ghusoub of a new OHSS which had become effective on 1 January 2017, shortly before her retirement date of 28 February 2017, her retirement benefits had not been correctly calculated.

6. The situation of the applicant in *Mousa*² was the same as Ms. Ghusoub's; yet, in Mr. Mousa's case, the UNRWA DT rescinded the calculation of the retirement benefit according to the OHSS that was effective on 1 January 2017.

7. The method used to calculate Ms. Ghusoub's retirement benefits and her last basic salary as of 28 February 2018 in accordance with Area Staff Rule 113.1 was contrary to the policies of "Palestinian Authority and other Non-[G]overnmental Organizations".

8. The new salary scale should not have been applied to Ms. Ghusoub and it was "not possible" that her retirement benefit according to the new salary scale was about USD 5,000 less than that according to the previous one.

9. Ms. Ghusoub further contends that she lost about USD 3,000 due to the delay in issuing her retirement benefits because of the currency exchange rate of US Dollars.

The Commissioner-General's Answer

10. Ms. Ghusoub has failed to identify, by citation to any provision in Article 2(1) of the Appeals Tribunal Statute, the grounds of her appeal, and as such, her appeal is defective. Ms. Ghusoub has not demonstrated in what respect the UNRWA DT, by dismissing her application on the merits, exceeded or failed to exercise its jurisdiction, erred on a question of law, committed an error in procedure or erred in fact resulting in a manifestly unreasonable decision. In her appeal, Ms. Ghusoub merely disagrees with the outcome of the UNRWA DT Judgment. On that basis alone, the Appeals Tribunal should dismiss the appeal.

² *Mousa v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2018/048.

11. The UNRWA DT Judgment was free of error. The UNRWA DT reviewed the instruments leading up to the amendments to Area Staff Rule 113.1 on retirement benefits and was therefore cognizant of the legal framework. The UNRWA DT reviewed Ms. Ghusoub's contentions and correctly concluded that the computation of her retirement benefits had been performed in accordance with the applicable Area Staff Rule 113.1 and the methodology for computation of retirement benefits at the time of her retirement.

12. The reference to the *Mousa* judgment is misconceived. Ms. Ghusoub's case is distinguishable from the *Mousa* case in that in *Mousa*, the key determinant was the fact that on 6 February 2017, the actual date of Mr. Mousa's retirement, the new Area Staff Rule 113.1 had not yet been issued. In Ms. Ghusoub's case, the UNRWA DT found that Ms. Ghusoub retired on 28 February 2017 and the computation of her retirement benefits was performed according to Area Staff Rule 113.1 applicable at the time of her retirement. As such, the UNRWA DT did not err in treating the two cases differently and arriving at different conclusions.

13. Furthermore, Ms. Ghusoub's contention that the method used in calculating her retirement benefits was contrary to the policies of "Palestinian Authority and other Non-[G]overnmental Organizations" is without merit as the Agency is not bound by the laws of the member states, but is governed by the internal laws of the Organization.

14. Finally, there is no legal basis for Ms. Ghusoub's plea for compensation for the exchange rate loss of USD 3,000 due to the delay in issuing her retirement benefits.

15. The Commissioner-General requests that the Appeals Tribunal dismiss the appeal in its entirety.

Considerations

16. We reject the Commissioner-General's submission that Ms. Ghusoub's appeal is defective because it fails to identify any of the grounds of appeal prescribed by Article 2(1) of the Appeals Tribunal Statute. Article 2(1) of the Statute provides that:

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal³ in which it is asserted that the Dispute Tribunal has:

³ Pursuant to Article 2(4) of the Special Agreement between the United Nations and UNRWA: (a) all references to the United Nations Dispute Tribunal in the Statute of the Appeals Tribunal shall be

- (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.

17. Ms. Ghusoub pleads in her appeal that: “I’m not satisfied by the decision of UNRWA DT Judgment 2018-044 comparing it with the decision of UNRWA DT 2018-mousa (sic) that was as the same as my appeal rescinded the calculation of retirement benefit according to OHSS that was effective from 01/01/2017.”

18. In the interests of justice, it is appropriate to make allowance for the fact that Ms. Ghusoub is not legally represented. Although she has not phrased her appeal in the precise language of the Statute, we are satisfied that she is submitting that the UNRWA DT erred on a question of law by not following its decision in *Mousa*,⁴ which she claims is pertinent to her own case. We therefore find that her appeal is not defective for the reason claimed by the Commissioner-General and is sufficient to invoke our jurisdiction under Article 2(1) of our Statute.

19. Nonetheless, we find that this ground of appeal is without merit. The UNRWA DT was not bound to follow the decision in *Mousa*. In the case at hand, the decisive fact was that Ms. Ghusoub had retired on 28 February 2017, after the new Area Staff Rule 113.1 had come into force. The Commissioner-General was therefore obliged to calculate her retirement benefits in accordance with the new Staff Rule.

20. The UNRWA DT was correct in dismissing her application on the grounds that “[t]he computation of her retirement benefits was performed according to the applicable Area Staff Rule 113.1 and to the methodology for computation of retirement benefits at the time of her retirement. As has been stated above, the [Commissioner-General] correctly applied his rules in computing the Applicant’s benefits.”⁵

deemed to refer to the UNRWA Dispute Tribunal; and (b) the reference to the Secretary-General in Article 9 of the Statute of the Appeals Tribunal shall be deemed to refer to the Commissioner-General of UNRWA.

⁴ *Mousa v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2018/048.

⁵ Impugned Judgment, para. 27.

21. We perceive no error in that finding and, indeed, Ms. Ghusoub has failed to demonstrate that the UNRWA DT committed any error of fact or law in arriving at its decision.

22. Her claim that “Area Staff Rule 113.1 is contrary to policies of ‘Palestinian Authority and other Non-[G]overnmental Organizations’ was put to the UNRWA DT, which correctly ruled that it was irrelevant.

23. Ms. Ghusoub also claims compensation of USD 3,000.00 for the exchange rate loss due to the delay in issuing her retirement benefits. We reject this claim as she does not provide any evidence or submissions in support of it. We note that the same claim was raised in her application to the UNRWA DT, which did not make any order in respect of it.

24. The appeal must fail.

Judgment

25. The appeal is dismissed and Judgment No. UNRWA/DT/2018/044 is affirmed.

Original and Authoritative Version: English

Dated this 29th day of March 2019 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Halfeld

(Signed)

Judge Murphy

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

(Signed)

Weicheng Lin, Registrar