



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

Judgment No. 2019-UNAT-937

**Alhawi
(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 Dimitrios Raikos Judge Richard Lussick
Case No.:	2019-1233
Date:	28 June 2019
Registrar:	Weicheng Lin

Counsel for Mr. Alhawi:	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/2018/067, 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 5 December 2018, in the case of *Al Hawi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*.¹ Mr. Younis Ahmad Alhawi filed an appeal on 2 February 2019 and perfected it on 13 February 2019, and the Commissioner-General filed his answer on 12 April 2019.

Facts and Procedure

2. The following facts are uncontested:²

... Effective 21 December 2002, the Applicant was employed as a Teacher at Beqaa Elementary Boys School 2 in the Jordan Field Office (“JFO”) on a fixed-term appointment, Grade 6B. Following several extensions and promotions, on 22 December 2012, the Applicant’s appointment was converted to a Temporary Indefinite Appointment, Grade 10.

... Effective 8 September 2013, Ms. S.J. was employed by UNRWA in the post of Assistant Professor - English Language on a Limited Duration Contract (“LDC”) expiring on 7 September 2014. Her appointment was subsequently extended three times, each time for one additional year, eventually expiring on 7 September 2017.

... On 10 August 2016, a second post of Assistant Professor - English (Literature and Linguistics) became vacant following the resignation of the incumbent. On 19 October 2016, the Applicant was appointed to this post on an acting basis, pending the post being filled after a recruitment.

... On 28 February 2017, a vacancy announcement for the post of Assistant Professor - English (Literature and Linguistics) was advertised. The Applicant applied for the position.

¹ The Appellant’s name will be spelled throughout this Judgment Mr. Alhawi as set forth in his appeal. However, it is noted that the Appellant’s name is spelled “Al Hawi” in the impugned Judgment and “Al-Hawi” in his application before the UNRWA DT.

² Impugned Judgment, paras. 2-17.

... On 5 March 2017, Ms. S.J. requested the Agency to change the modality of her contract from LDC to Individual Service Provider ("ISP").

... On 7 March 2017, the Director of UNRWA Operations, Jordan ("DUO/J") approved Ms. S.J.'s request to change the modality of her contract from LDC to ISP.

... On 10 April 2017, the Applicant submitted a complaint to the DUO/J, contesting the legality of the decision to change Ms. S.J.'s contract modality into an ISP contract and claiming abuse of authority.

... On 19 April 2017, the Officer-in-Charge UNRWA Operations, Jordan wrote a detailed letter to the Applicant, concluding that the Applicant's claims of abuse of authority were unsubstantiated and his case was closed.

... On 16 May 2017, the Applicant submitted a request for decision review.

... By letter dated 19 June 2017, the DUO/J responded that the Applicant's request for review was not receivable.

... On 5 July 2017, the Applicant was notified of his ranking as the second priority candidate for the LDC of Assistant Professor - English (Literature and Linguistics) which would be valid for 12 months from 29 May 2017.

... On 15 July 2017, the application was filed with the UNRWA Dispute Tribunal [...].

3. In his application before the UNRWA DT, Mr. Alhawi contested the decision to grant Ms. S. J. an ISP contract as Assistant Professor of English Literature and Linguistics. The UNRWA DT dismissed the application as not receivable. The UNRWA DT took note of the facts that Mr. Alhawi was serving in the post on an acting basis and applied as soon as the vacancy was announced; however, after having gone through the recruitment process he was the second priority candidate for the post. The UNRWA DT found that the decision not to advertise the post, but rather to hire Ms. S. J. under an ISP contract, was a discretionary decision, which did not have any direct consequence on Mr. Alhawi's terms of appointment or on his contract as required by Area Staff Rule 111.2. This managerial decision to change the contract of Ms. S. J. could not be contested before the UNRWA DT by another staff member. Ultimately, the UNRWA DT held that Mr. Alhawi's expectation that a post, for which he wished to apply, would become vacant did not give him legal standing to contest the decision. Accordingly, the UNRWA DT held that his application was not receivable.

Submissions

Mr. Alhawi's Appeal

4. Mr. Alhawi argues that the UNRWA DT “deliberately rejecte[ed] pieces of evidence and overlook[ed] others” which caused a flawed Judgment. He asserts that the UNRWA DT rejected the fact that Ms. S. J.’s status was not changed from an LDC to an ISP contract but rather was an illegal renewal of her prior unrenovable LDC, which could not be renewed beyond four years. The renewal was based on deceit in her application. The UNRWA DT deliberately rejected the breach of oath by two witnesses and ignored Mr. Alhawi’s explanation as to how they were untruthful. The UNRWA DT overlooked evidence that the Agency appointed Ms. S. J. to one of the two identical posts for Assistant Professor – English Literature and Linguistics, when the vacancy announcements were still valid, and despite the restriction on extending her prior contract beyond four years. This is evidence of bias, nepotism, and corruption by the Agency. In addition, Ms. S. J.’s salary was unjustifiably high which squandered the Agency’s resources. Mr. Alhawi also argues that the UNRWA DT’s deliberate rejection of evidence confirmed its bias for the benefit of the corrupt people within the Agency.

5. Based on the foregoing, Mr. Alhawi requests rescission of the contested administrative decision, his appointment to the post, compensation for moral damages, compensation for his lost promotion opportunity, and compensation for lost salary.

The Commissioner-General's Answer

6. The Commissioner-General requests the Appeals Tribunal to dismiss the appeal in its entirety and award costs against Mr. Alhawi for manifest abuse of the appeals process. In support of his request, the Commissioner-General argues that Mr. Alhawi has not set forth any of the grounds of appeal under the Appeals Tribunal’s Statute and has failed to meet his burden to establish an appealable error. In addition, the Commissioner-General argues that the UNRWA DT did not err in fact or law in finding his application not receivable. Mr. Alhawi fails in his appeal to claim that the UNRWA DT committed any errors in this regard; rather his arguments address the merits of his application, which are outside of the scope of the jurisdiction of the Appeals Tribunal. Regarding his contention that the UNRWA DT deliberately rejected the breach of oath committed by the Dean during his testimony, the Commissioner-General emphasizes that no hearing on this matter took place and such testimony had no bearing on this

case. There was indeed confusion by the UNRWA DT regarding the scope of the hearing as related to a separate application filed by Mr. Alhawi, but the UNRWA DT clarified that the testimony would have no bearing on this case. As Mr. Alhawi does not address the issue of receivability, he in turn has no legal basis for his requested relief. Likewise, he has not proffered any evidence in support of his pleas for compensatory and moral damages.

7. The Commissioner-General requests the Appeals Tribunal to award costs against Mr. Alhawi for his abuse of the appeals process pursuant to Article 9(2) of the Appeals Tribunal's Statute. All of Mr. Alhawi's arguments set forth in his appeal were already put forward and considered by the UNRWA DT. His appeal is merely an effort to relitigate the same arguments and his appeal reads as a personal vendetta against the honorable Judge of the UNRWA DT and the Agency per his baseless accusations that the UNRWA DT was biased and was defending the practice of the corrupt people within the Agency. There is no ground whatsoever for Mr. Alhawi to bring this appeal and it is thus frivolous and vexatious, especially in view of his pejorative language and criticisms of the UNRWA DT Judge. Mr. Alhawi has manifestly abused the appeals process and the Commissioner-General requests costs in the amount of USD 600.

Considerations

8. Article 2(1) of the Appeals Tribunal's 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:

- 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.

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 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.

9. The main issue for determination in this appeal is whether the UNRWA DT erred on a question of law or fact, resulting in a manifestly unreasonable decision, or committed an error in procedure, such as to affect the decision of the case, when it found that the application was not receivable, because the decision to hire Ms. S. J. under an ISP contract had no direct consequence on Mr. Alhawi's terms of appointment or contract.⁴

10. In his appeal, the relief claimed by Mr. Alhawi is to rescind the "renewal of the unrenovable LDC contract of Ms. S. J." and to assign him to the post of Assistant Professor of English Literature. He also seeks compensation for psychological and material harm. His assertions on the merits, however, cannot be assessed since the case was dismissed on grounds of receivability.

11. As already noted in *Krioutchkov*,⁵ and *Aliko*,⁶ the Appeals Tribunal is not an instance for a party to reargue a case without identifying the defects and demonstrating on which grounds an impugned UNRWA DT judgment is erroneous. As has been repeatedly stated by the Appeals Tribunal, "[i]n the absence of a compelling argument that the UNDT erred on a question of law, or on a question of fact resulting in a manifestly unreasonable decision, we will not lightly interfere with the findings of the Dispute Tribunal".⁷

12. For the UNRWA DT to determine whether or not the administrative decision had a direct impact on Mr. Alhawi's terms of appointment or contract, it considered the discretionary power of the Agency in deciding not to advertise the post he was coveting, but to hire Ms. S. J. under a different modality of contract, the ISP. The UNRWA DT was cognizant of the applicable regulatory framework and this included the restriction on renewing Ms. S. J.'s LDC due to the four-year limitation, as she had been hired in this capacity for four years since 8 September 2013 and her contract could not have been renewed after 7 September 2017.

13. The UNRWA DT was also cognizant of the fact that, having been appointed to a second post of Assistant Professor of English Literature and Linguistics on an acting basis since 19 October 2016, Mr. Alhawi reasonably expected to apply for the post then incumbent by Ms. S. J., had it been advertised. Also, the UNRWA DT knew that, having applied for the second

⁴ Impugned Judgment, paras. 29-31.

⁵ *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-711, paras. 20-22.

⁶ *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540, paras. 28-30.

⁷ *Goodwin v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-346, para. 23.

post advertised in February 2017, Mr. Alhawi was ranked as the second priority candidate for the LDC of Assistant Professor of English Literature and Linguistics.⁸

14. In his appeal, Mr. Alhawi asserts that the UNRWA DT deliberately rejected pieces of evidence or facts, but his allegations are not supported by evidence. Moreover, the records show that there was no hearing in this matter, but a hearing was held on another application filed by Mr. Alhawi, which does not form part of this appeal. All Mr. Alhawi demonstrates is an undeniable disagreement with the UNRWA DT Judgment, but as discussed this is not enough to overturn it.

15. The Appeals Tribunal comprehends Mr. Alhawi's frustration in not having been hired for one of the two posts of Assistant Professor of English Literature and Linguistics, having been ranked number two in the selection exercise. The Agency's decision could have had an indirect impact on Mr. Alhawi's terms of appointment or contract. However, our jurisprudence has established that a direct effect is needed in order to allow for a staff member to contest an adverse administrative decision. Accordingly, there was no justification to oblige the Agency to hire Mr. Alhawi, as there was no evidence of bias or discrimination, so as to hinder the Agency's discretion.

16. The fact that the Agency, in the exercise of its discretionary power, granted the change of modality of Mr. S. J.'s contract from LDC to ISP in March 2017, before the expiry of her last LDC contract, while the advertised post for which Mr. Alhawi had applied was still open, does not have any bearing on the outcome, since the application was dismissed on receivability grounds, nor does the fact that there were sufficient candidates for both posts.

17. In light of the foregoing, the UNRWA DT did not err in any of its factual findings resulting in a manifestly unreasonable decision, and did not err in its legal conclusion that the administrative decision of the Agency to change the modality of the contract of a third party was a discretionary one, having no direct impact on Mr. Alhawi's terms of appointment or contract, and thus, leading to the finding that the application was not receivable. Mr. Alhawi has not established any grounds of appeal in this regard.

⁸ Impugned Judgment, paras. 5 and 12.

18. We consider Mr. Alhawi's language in his appeal quite disrespectful with regard to the UNRWA DT Judgment. However, considering our position to uphold it, there is no need to extend a sanction beyond this admonition.

Judgment

19. The appeal is dismissed and Judgment No. UNRWA/DT/2018/067 is upheld.

Original and Authoritative Version: English

Dated this 28th day of June 2019 in New York, United States.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Raikos

(Signed)

Judge Lussick

Entered in the Register on this 19th day of August 2019 in New York, United States.

(Signed)

Weicheng Lin, Registrar