



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

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Judgment No. 2019-UNAT-960

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

**JUDGMENT**

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Before:	Judge Dimitrios Raikos, Presiding Judge Martha Halfeld Judge Graeme Colgan
Case No.:	2019-1259
Date:	25 October 2019
Registrar:	Weicheng Lin

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Counsel for Ms. Abdeljalil:	Alaa Ayoub
Counsel for Commissioner-General:	Rachel Evers

**JUDGE DIMITRIOS RAIKOS, PRESIDING.**

1. The present case arose from the non-renewal of Ms. Lina Mohammad Safouh Abdeljalil's Limited Duration Contract (LDC) in the Syria Field Office. In Judgment No. UNRWA/DT/2019/016, 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) dismissed Ms. Abdeljalil's application on the grounds that her non-renewal was lawful in that it resulted from a lack of funding and she had no expectancy of renewal. We affirm the UNRWA DT's Judgment.

**Facts and Procedure**

2. The following facts are uncontested:<sup>1</sup>

... Effective 5 December 2010, the Applicant was employed by the Agency on a Limited Duration Contract ("LDC") as Business Development Facilitator in the Syria Field Office. At the time relevant to the instant application, the Applicant held this position.

... The Applicant's LDC was extended several times and, after the last extension, it expired on 31 October 2017.

... The Applicant's post was related to the project entitled "Engaging Youth Phase II – Special Measure for Syria 2011" ("EYP") and was funded by the European Commission ("EC"). All personnel working in the EYP project, including the Applicant, were informed, on 1 June 2017, of the project's scheduled expiration on 31 October 2017.

... Grateful for the availability of other funds from other projects funded by the EC, the Agency was able to extend the EYP project until 30 April 2018, but only by reducing the staffing level from 44 to 30 posts. The Applicant's post was not one of the 30 posts to be extended.

... On 4 January 2018, the Applicant requested review of the decision not to extend her LDC.

... On 25 February 2018, the application was filed with the UNRWA Dispute Tribunal (...). It was transmitted to the Respondent on 26 February 2018.

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<sup>1</sup> Impugned Judgment, paras. 2-7.

3. On 20 March 2019, the UNRWA DT issued Judgment No. UNRWA/DT/2019/016 dismissing the application. The UNRWA DT noted that under Ms. Aldejalil's contract, "[her] LDC carrie[d] no expectation of renewal or extension" and the "[r]enewal or extension of [her] LDC [was], *inter alia*, subject to availability of project funding, continuing need for position and satisfactory performance of the staff member".<sup>2</sup> Based on the wording of her contract, she was not entitled to have her contract renewed or extended. The UNRWA DT further found that in light of the limited funding available for the project, the Agency was only able to extend it by reducing the staffing level from 44 to 30 posts and Ms. Abdeljalil had failed to provide any evidence refuting the Agency's explanations regarding the criteria applied in the reduction of the staffing level. Finally, the UNRWA DT found that Ms. Abdeljalil's claim that she had been requested to report for work on 1 November 2017 had no bearing on the non-renewal decision and did not entitle her to any form of compensation or contract extension.

4. On 14 May 2019, Ms. Abdeljalil filed an appeal before the United Nations Appeals Tribunal (Appeals Tribunal) and the Commissioner-General filed his answer on 11 July 2019.

### **Submissions**

#### **Ms. Abdeljalil's Appeal**

5. The UNRWA DT committed errors of law. Ms. Abdeljalil's contract was terminated while she was on maternity leave in violation of the UNRWA Area Staff Rules and labour laws in force in States around the world. Ms. Abdeljalil's maternity leave began on 8 August 2017 and was due to end on 8 November 2017. However, her contract was terminated on 31 October 2017. Under UNRWA Area Staff Rule 106.3, an employee is entitled to maternity leave after completion of a full year of employment before the leave and with the expectation that she will continue to work for not less than six months after returning to duty. Ms. Abdeljalil's contract, however, was not renewed for at least six months and was terminated in apparent contravention of that rule.

6. Ms. Abdeljalil was singled out as the contracts of all her project colleagues were renewed. Her non-renewal was tainted by improper motives, bias, and procedural irregularities. The UNRWA DT failed to consider Ms. Abdeljalil's contentions in this regard although she repeatedly submitted that she was ready to submit supporting evidence. The UNRWA DT also ignored her request that some of her project colleagues be heard as witnesses. Under the Appeals Tribunal

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<sup>2</sup> *Ibid.*, para. 24.

jurisprudence, a staff member has the burden to demonstrate that the Administration has not acted fairly, justly or transparently with the staff member and that its decision was motivated by bias, prejudice or improper motive. The UNRWA DT however ignored Ms. Abdeljalil's request to hear witnesses to support her claims.

7. The UNRWA DT failed to consider that specific procedures need to be followed when staff members' contracts are terminated. Ms. Abdeljalil submitted documents and supporting evidence to the UNRWA DT confirming that she was uniquely qualified in her field and that she was the most senior and capable staff member in her office with higher qualifications than any of her colleagues. Her managers were aware that the project was facing budget cuts and took on additional staff only to then terminate her contract, on the pretext that budget cuts had forced the reduction of staff. They acted in their own personal interest and without following established procedures.

8. The UNRWA DT committed a procedural error by rejecting Ms. Abdeljalil's request to submit relevant evidence, such as a recording of a telephone conversation between Ms. Abdeljalil and her senior administrative supervisor during which he directly threatened her that her insistence on proceeding with the case would have adverse consequences for her future employment prospects.

9. Moreover, the UNRWA DT did not treat the parties equally. Rather, it based its Judgment wholly on the arguments and allegations presented by the Agency without assessing their veracity and without considering the evidence submitted by Ms. Abdeljalil to refute the allegations. For example, Ms. Abdeljalil submitted that she had been officially informed by the project coordinator at the head office in Damascus acting on behalf of the Agency that her contract had been renewed and that she should cut short her maternity leave and report for duty on 1 November 2017. She complied with the instructions and continued to work for a month until she was informed that her contract had in fact not been renewed. The UNRWA DT however adopted the Agency's allegations without attempting to verify their veracity, even though Ms. Abdeljalil had asked that it hear the project coordinator in Damascus and other project staff members as witnesses. The UNRWA DT failed to consider the facts presented by Ms. Abdeljalil as well as her observations on the Agency's allegations.

10. Ms. Abdeljalil requests the Appeals Tribunal to vacate the UNRWA DT Judgment; remand the case to the UNRWA DT or rule itself on the merits; rescind the contested decision; order her reinstatement at the same grade and with the same salary with full back pay; and in the alternative, compensation for material and moral damages; and take appropriate administrative measures and impose penalties on any person shown to have caused her damage.

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

11. The UNRWA DT did not err as a matter of fact, law or procedure when it dismissed Ms. Abdeljalil's application on the merits. Ms. Abdeljalil's contract was not terminated while she was on maternity leave. Pursuant to Area Staff Rule 106.3, additional requirements exist for staff members holding LDCs, as set out in Personnel Directive A/4, Part II. Personnel Directive A/4, Part II provides that "[a] staff member who will have served continuously for one year at the anticipated date of delivery shall be entitled to maternity leave of 12 consecutive weeks or until the end of her current LDC, whichever is earlier". Moreover, Ms. Abdeljalil was aware that her maternity leave was to end upon the contract expiry date because the Human Resources Department had copied her on an e-mail confirming the duration of her maternity leave from 8 August 2017 "till 31 October 2017 (End date of her cont[r]act)".

12. Ms. Abdeljalil misreads Area Staff Rule 106.3. Her contract was not a fixed-term appointment, but an LDC and therefore Area Staff Rule 106.3 did not apply. Even if it did apply, it would not oblige the Agency to keep someone on board for six months following her return from maternity leave. Rather, the six-month contract continuation following the return from maternity leave is a precondition for the grant of maternity leave.

13. Ms. Abdeljalil failed to meet the burden of proof to demonstrate that the non-renewal of her contract was tainted by improprieties. The UNRWA DT found that Ms. Abdeljalil had not provided any evidence refuting the Agency's explanations on how the decision was made on whom to retain and whom not to retain as a result of the reduction in funding for the project. Moreover, the jurisprudence relating to redundancy cited by Ms. Abdeljalil does not apply in her case because her contract was not terminated, but rather allowed to expire on its expiry date. Even if it did apply, the criteria used by the Agency as described in the UNRWA DT Judgment are consistent with the redundancy rules.

14. The UNRWA DT did not err in procedure requiring a reversal of the impugned Judgment. The UNRWA DT did not disregard any of the grounds on which the case was based and in fact addressed all of them in its Judgment. In any event, pursuant to the Appeals Tribunal's jurisprudence, the Tribunals need not address each and every claim made by a litigant, especially when a claim has no merit. Furthermore, the UNRWA DT was not required to call Ms. Abdeljalil's witnesses to testify before it. The Appeals Tribunal has established that as a general principle case management issues, including the question of whether to call witnesses, remain within the discretion of the UNRWA DT and the Appeals Tribunal will only intervene in clear cases of denial of due process affecting a party's right to produce evidence.

15. Ms. Abdeljalil's allegation that an UNRWA staff member informed her, by telephone, that her contract had been renewed after 31 October 2017 is belied by the facts, including the following: i) from the outset, it was clear to all concerned including Ms. Abdeljalil, that the EYP was of limited duration and so was Ms. Abdeljalil's post which was inextricably linked to the project; ii) all personnel, including Ms. Abdeljalil were notified on 1 June 2017 of the project's scheduled expiration on 31 October 2017; iii) the EYP leadership prepared a business case, which was subsequently approved on 15 November 2017, to get approval of the extension of the project from 1 November 2017 to 30 April 2018, and the staffing for that period. The number of posts was reduced from 75 to 44 in October 2017 to 30 in November 2017 to seven in 2018; iv) Ms. Abdeljalil was aware that her maternity leave would end on the contract expiry date; v) on 22 October 2017, the EYP leadership held an appreciation event, at which all the EYP personnel, including Ms. Abdeljalil, were given a token of appreciation for their service; and vi) when Ms. Abdeljalil reported to work on 1 November 2017, she was made aware that her contract could not be further extended.

16. The Commissioner-General requests the Appeals Tribunal to dismiss the appeal in its entirety and, pursuant to Article 9(2) of the Appeals Tribunal Statute, award costs in the amount of USD 300 for a manifest abuse of the appeals proceedings.

### **Considerations**

17. The UNRWA DT rejected Ms. Abdeljalil's application contesting the decision not to renew her contract, and she appeals that decision on the grounds that the UNRWA DT committed substantive errors that led it to reach a manifestly unreasonable decision. For the

reasons that follow, this Tribunal determines that the UNRWA DT's conclusions are correct.

*Applicable law*

**18. Personnel Directive A/4, Part II**

**LDC TERMS AND CONDITIONS**

**Limited employment period**

46. The LDC is for periods of work between six months and four years. The initial period of employment may be for up to one year, and LDC appointments are renewable for up to one-year at a time. On request by the Hiring Director and subject to the approval of the DHR (as described in the paragraph below), the LDC may be renewed for up to one year at a time beyond the first four-year period and up to a maximum total duration of employment of eight years.

47. At least six months prior to the end of four years on LDC, the Hiring Director must submit a justification to the Director of Human Resources addressing the continuing need for the function to be extended beyond four years using the LDC modality, the impact on service delivery and the necessity that the function be performed by the same individual on LDC along with the completion of performance evaluation as set forth in paragraph 53 below. Upon review and approval by the DHR, the LDC may be renewed for up to one-year at a time. No extensions shall be granted beyond the total duration of eight years on LDC.

48. An LDC is extended by issuing an Extension Letter to the original LOA. A sample of this format is available on the HRD section of the intranet. When the salary is adjusted, whether due to a revision of the local salary scale or in conjunction with the extension, the salary adjustment should be reflected in the Extension Letter.

49. There should be a clear understanding on the part of LDC holders regarding the time-limited and non-career nature of such appointments.

50. Staff hired on LDC should perform functions that are normally quite specialised and directly linked to the work of the Hiring Departments for time-bound activities such as posts funded by the Emergency Appeal and Project Funds and to perform functions under non-core posts in the Microfinance Department. Furthermore, staff may be hired under LDC when HR Operational Guidelines indicate restrictions on hiring of staff under Fixed-Term appointments.

51. An LDC cannot be converted to an 'A' or 'X' category appointment. In order to secure such an appointment, the staff member would have to be selected following the normal competitive recruitment process applicable for regular area staff posts.

Moreover service under LDC shall not be considered as qualifying service for any benefits under any other appointment including an A or X category appointment.

19. It is well settled jurisprudence that an international organization necessarily has the power to restructure some or all of its departments or units, including the abolition of posts, the creation of new posts, and the redeployment of staff.<sup>3</sup> The Appeals Tribunal will not interfere with a genuine organizational restructuring even though it may have resulted in the loss of employment of staff. However, even in a restructuring exercise, like any other administrative decision, the Administration has the duty to act fairly, justly, and transparently in dealing with staff members.<sup>4</sup>

20. We recall our jurisprudence that fixed-term appointments or appointments of limited duration carry no expectation of renewal or conversion to another type of appointment.<sup>5</sup>

21. Even the renewal of the appointment of a staff member on successive appointments does not, in and of itself, give grounds for an expectancy of renewal, unless the Administration has made an express promise that gives the staff member an expectancy that his or her appointment will be extended, or there is a firm commitment to renewal revealed

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<sup>3</sup> *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902, para. 34, citing *Loeber v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-844, para. 18, citing in turn *De Aguirre v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-705; *Khalaf v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-678; *Matadi et al. v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-592; *Bali v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-450; *Simmons v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-425; *Pacheco v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-281; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-236; *Liverakos v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-206; *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123; and *Dumornay v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-097.

<sup>4</sup> *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902, para. 34, citing *Loeber v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-844, para. 18.

<sup>5</sup> *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902, para. 44, citing in turn *He v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-825, para. 40; *Muwambi v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-780, para. 25, in turn citing *Ncube v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-721, para. 15; *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-311, para. 32; *Badawi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2012-UNAT-261, para. 33; *Schook v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-216, para. 3; *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153, paras. 39-42; *Syed v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-061, para. 13.



by the circumstances of the case.<sup>6</sup> The jurisprudence requires this promise at least be in writing.<sup>7</sup>

22. Nevertheless, an administrative decision not to renew a fixed-term appointment can be challenged on the grounds that the Administration has not acted fairly, justly or transparently with the staff member or was motivated by bias, prejudice or improper motive.<sup>8</sup> The staff member has the burden of proving such factors played a role in the administrative decision.<sup>9</sup>

23. The Appeals Tribunal has consistently held that:<sup>10</sup>

When judging the validity of the Secretary-General's exercise of discretion in administrative matters, as in the case of a non-renewal decision, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The UNDT can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Dispute Tribunal to substitute its own decision for that of the Secretary-General.

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<sup>6</sup> *Kalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-580, para. 67, citing *Munir v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-522, para. 24, citing in turn *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153 and *Abdalla v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-138.

<sup>7</sup> *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902, para. 45, citing *He v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-825, para. 41, in turn citing *Muwambi v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-780, para. 25, in turn citing *Igbinedion v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-411, para. 26.

<sup>8</sup> *He v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-825, para. 43, citing *Muwambi v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-780, para. 27, in turn citing *Obdeijn v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-201, para. 33 and *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153, paras. 45-46.

<sup>9</sup> *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902, para. 47, citing *He v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-825, para. 43, in turn citing *Muwambi v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-780, para. 27, in turn citing *Kacan v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-426, para. 20; *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-311, para. 33.

<sup>10</sup> *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902, para. 48, citing *He v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-825, para. 44 (internal footnote omitted), in turn citing *Muwambi v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-780, para. 28, in turn citing *Said v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-500, para. 40 and cites therein.

24. The Appeals Tribunal has held that “[a]n administrative decision not to renew [a fixed-term appointment] must not be deemed unlawful on the sole ground that the decision itself does not articulate any reason for the non-renewal. But that does not mean that the Administration is not required to disclose the reasons not to renew the appointment.”<sup>11</sup> “Rather, the Administration has an obligation to state the reasons for an administrative decision not to renew an appointment to assure the Tribunals’ ability to judicially review the validity of the Administration’s decision.”<sup>12</sup>

25. We have reviewed the UNRWA DT’s Judgment and find that Ms. Abdeljalil’s case was fully and fairly considered; we can find no error of law or fact in its decision. The UNRWA DT properly reviewed the contested decision in accordance with the applicable law.

26. In the first place, as correctly found by the UNRWA DT,<sup>13</sup> it is a matter of record that the decision contested by Ms. Abdeljalil before the UNRWA DT was a decision not to renew her LDC ending on 31 October 2017, coinciding with the EYP’s then expiration date. This is evidenced in the content of the last extension of her contract (commencement on 1 July 2017) indicating that the expiry date of that extension would be 31 October 2017.

27. As it is clear from the material law and our jurisprudence, the separation as a result of termination initiated by the Commissioner-General in cases of abolition of posts or reduction of staff differs substantially from the separation as a result of expiration of a fixed-term or a limited duration appointment, which takes place automatically, without prior notice, on the expiration date specified in the letter of appointment.<sup>14</sup> Therefore, as correctly contended by the Commissioner-General, there was no administrative decision to terminate Ms. Abdeljalil’s contract prior to its expiration but a decision denying its renewal beyond the expiration date.

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<sup>11</sup> *Obdeijn v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-201, para. 32.

<sup>12</sup> *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902, para. 50; citing *He v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-825, para. 46 (internal footnote omitted).

<sup>13</sup> Impugned Judgment, para. 24.

<sup>14</sup> *Koumoin v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-119, para. 20. Comp. also *Kule Kongba v. Secretary General of the United Nations*, Judgment No. 2018-UNAT-849, para. 24 and *Liu v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-659, para. 17.

28. Following that, the UNRWA DT considered the material facts of the case at issue. In this regard, it found that the main reason for not renewing Ms. Abdeljalil's LDC was the lack of funding.<sup>15</sup>

29. Indeed, as per the UNRWA DT Judgment and the documents on file, the renewal or extension of Ms. Abdeljalil's contract was, *inter alia*, subject to availability of project funding and the continuing need for her position. On 1 June 2017, Ms. Abdeljalil, along with all personnel working in the EYP, was notified of the project's scheduled expiration on 31 October 2017. Because there were available funds from other projects funded by the EC, the Agency was able to use such funds to extend the EYP after 31 October 2017.

30. However, because the funding could not support all the posts then connected with the project, a number of posts had to be eliminated after 31 October 2017. The EYP leadership prepared a business case to get approval of the extension of the project after 31 October 2017 and the staffing for the period 1 November 2017 through 30 April 2018, the anticipated new project end date. The number of posts had to be reduced from 44 to 30 because that was all the funding could support. Finally, on 15 November 2017, the Officer-in-Charge, UNRWA Affairs/Syria approved the business case to extend the project to 30 April 2018 with reduced staffing. Ms. Abdeljalil's post was not included in the 30.

31. In these circumstances, the non-extension of Ms. Abdeljalil's LDC was a result of the elimination of her post due to a lack of funds, which constituted a valid reason proffered by the Administration for not renewing her appointment. Therefore, we reject Ms. Abdeljalil's assertions to the contrary as without merit.

32. Further, with respect to the way the Commissioner-General exercised the discretion vested in him in determining the reduction of the staffing level, the UNRWA DT opined:<sup>16</sup>

The Respondent affirmed that the Agency was guided by the following criteria in the reduction of the staffing level from 44 to 30 posts: Firstly, there should be at least one coordinator and one trainer remaining for each location, and, secondly, staff members who had the capacity to do more than one task and had notable experience and performance would be prioritised. The Respondent added that, among the four incumbents of those posts in Homs, the Applicant's performance was the least strong and

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<sup>15</sup> Impugned Judgment, para. 25.

<sup>16</sup> *Ibid.*, para. 27.

her experience was limited to business development training. In this regard, the Applicant did not provide any evidence refuting these explanations of the Respondent.

33. We find no reason to differ from this conclusion. Though with a different reasoning, the Appeals Tribunal holds that, by applying the aforementioned objective criteria of (at least one coordinator and one trainer for each location, staff members with the capacity to do more than one task with notable experience and performance) the Agency, in exercising its discretionary authority to determine the reduction of the staffing level from 44 to 30 posts, adhered to the principles of equality, objectivity and transparency in dealing with this issue and comports with our jurisprudence on the exercise of discretion in administrative matters. Moreover, Ms. Abdeljalil failed to establish that the decision not to renew her contract discriminated against her or was tainted by improper motives, unfairness or lack of transparency, and we do not find any indication to this effect.

34. Ms. Abdeljalil submits that the UNRWA DT erred as a matter of fact or law in not finding that her contract was unlawfully terminated before she had completed her maternity leave, in contravention of the UNRWA Area Staff Rules. In this respect, Ms. Abdeljalil points to paragraph 2 of Area Staff Rule 106.3, which stipulates that “[s]taff members on fixed-term appointment may be granted maternity leave along the same lines provided that their appointment is expected to continue for at least six months after return to duty from maternity leave”.

35. We do not find merit in this submission as Ms. Abdeljalil’s case does not fall within the ambit of this provision but within that of Area Staff Rule 106.3.1, which specifically provides, under clause (E) thereof, that “[a]dditional requirements exist for staff members holding LDC contracts, as set out in Personnel Directive A/4, Part II”. Personnel Directive A/4, Part II, para. 67 provides as follows:

*Maternity leave*

67. A staff member who will have served continuously for one year at the anticipated date of delivery shall be entitled to maternity leave of 12 consecutive weeks or until the end of her current LDC, whichever is the earlier. A staff member who is not entitled to maternity leave is entitled to take five consecutive weeks of special leave without pay. A certificate from a registered medical practitioner indicating the estimated date of confinement and fitness to work must be submitted in both cases. NB: this entitlement is different from that allowed to regular (Cat A or X) staff.

36. The plain language of the latter provisions makes it clear, *inter alia*, that the maternity leave of a staff member serving on a LDC shall not exceed the end of her current LDC. Moreover, a plain reading of the latter provisions in parallel with that invoked by Ms. Abdeljalil (Area Staff Rule 106.3(2)) supports the interpretation advanced by the Commissioner-General that they simply regulate the specific conditions for granting a maternity leave to a staff member, either on a fixed-term appointment or a LDC, by the Administration, i.e. the requirements *de lege lata* for the establishment of an entitlement to maternity leave, and not the consequences of such a grant.

37. Therefore, under the applicable legal framework and the established facts of the case, Ms. Abdeljalil's maternity leave, which began on 8 August 2017 and was allegedly due to end on 8 November 2017, came to an end on 31 October 2017, when her contract expired automatically. Hence, contrary to Ms. Abdeljalil's contention, the grant of her maternity leave could not and did not imply the extension of her LDC beyond that time limit.

38. Further, Ms. Abdeljalil contends that the UNRWA DT erred as a matter of procedure by not giving the two parties equal treatment, as it based its Judgment wholly on the arguments and allegations presented by the Administration, as though they were absolute truths, without complying with its due diligence obligation to examine the veracity of those allegations or consider the evidence submitted by her to refute those allegations.

39. In specific, Ms. Abdeljalil puts forward that the UNRWA DT did not allow her to call witnesses to testify before it that she had been officially informed by telephone by the project coordinator at the head office in Damascus, who had been charged with doing so on behalf of the Agency, that her contract had been renewed and that she should cut short her maternity leave and report for duty on 1 November 2017.

40. We do not find merit in these contentions either. In the beginning, there is not a modicum of evidence before the UNRWA DT in the instant case to support the allegation made by Ms. Abdeljalil that her contract had been renewed, or to suggest that she had a legitimate expectation that her contract would be renewed beyond 31 October 2017. As already noted, in order for a staff member's claim of legitimate expectation of a renewal of

appointment to be sustained, it must not be based on mere verbal assertion, but on a written promise.<sup>17</sup>

41. Notwithstanding her reliance on the fact that her contract with the Agency had been consistently renewed over the preceding seven years, there is no evidence of an express promise or at least a firm commitment to renew her contract beyond the expiration date of 31 October 2017. Although a staff member may challenge the non-renewal of an appointment on the ground that the Administration made an express promise that gave rise to a legitimate expectation of renewal, there is no legal authority for the proposition that an implied promised renewal stems from the past renewals of an appointment. On the contrary, this promise should be explicit and in writing. Last but not the least, the existing law (Personnel Directive A/4, Part II, para. 48) prescribes that an LDC is extended by issuing an Extension Letter to the original Letter of Appointment, which is not the case here.

42. Further, Ms. Abdeljalil's submission that the UNRWA Dispute Tribunal made an error of procedure by not calling the witnesses identified by her in her application to give evidence before the Tribunal also has no merit.

43. At the outset, we note that the UNRWA DT has broad discretion under its Rules of Procedure<sup>18</sup> to determine the admissibility of any evidence and the weight to be attached to such evidence.<sup>19</sup> Our jurisprudence has consistently held that the Appeals Tribunal will not lightly interfere with the broad discretion conferred on the first instance tribunal in the management of its cases<sup>20</sup> to enable cases to be judged fairly and expeditiously and for

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<sup>17</sup> *Kalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-580, para. 67, citing *Munir v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-522, para. 24, citing in turn *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153 and *Abdalla v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-138.

<sup>18</sup> See Article 14 of the UNRWA DT Rules of Procedure.

<sup>19</sup> *Lemonnier v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-762, para. 37, citing *Ljungdell v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-265, para. 26.

<sup>20</sup> *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, citing *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-560, para. 30, in turn citing *Leboeuf et al. v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-354, para. 8, *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-294, para. 20, and *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062, para. 23.

dispensation of justice.<sup>21</sup> We will intervene only in clear cases of denial of due process of law affecting a party's right to produce evidence.<sup>22</sup>

44. In the instant case, we do not accept Ms. Abdeljalil's argument that this threshold has been met.

45. First, under Article 2(1)(d) of its Statute, the Appeals Tribunal is competent to hear and pass judgment on an appeal filed against a judgment rendered by the Dispute Tribunal in which it is asserted that the latter has committed an error in procedure, such as to affect the decision of the case. It follows that a party, in order to be successful on appeal, not only has to assert and show that the Dispute Tribunal committed an error in procedure but also that this error affected the decision on the case.<sup>23</sup> Hence, even if there was a procedural error Ms. Abdeljalil would need to show that this error would have had an impact on the decision of the case, which, in the present case, she has not done.

46. Second, in the absence of evidence on record of an express promise in writing or at least a firm commitment to renew her contract beyond its expiration date on 31 October 2017, it was not unreasonable on the part of the UNRWA DT not to call witnesses to that end. In fact, Ms. Abdeljalil did not even allege before the UNRWA DT that there existed such evidence, i.e. an extension letter as per the prescriptions of Personnel Directive A/4, Part II, paragraph 48. Instead, she claimed that she had been informed by telephone by the project coordinator at the head office in Damascus that her contract had been renewed. However, as already held above, even if the factual basis of her allegation were to be true and attested to by witnesses, it would not meet the standard of our jurisprudence in order to establish her legitimate expectation of renewal of her LDC beyond its expiry date on 31 October 2017.

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<sup>21</sup> *Bastet v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-423, para. 14, citing *Khambatta v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-252, para. 15.

<sup>22</sup> *Uwais v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-675, para. 27, citing *Wu v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-597, paras. 34 and 35.

<sup>23</sup> *Nimer v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-879, para. 33, citing *Nadeau v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-733/Corr.1, para. 31.

47. Be that as it may, on 1 June 2017, Ms. Abdeljalil, along with all personnel working in the EYP, was notified of the project's scheduled expiration on 31 October 2017 coinciding with her contract expiry date, while on 15 November 2017, the Officer-in-Charge, UNRWA Affairs/Syria approved the business case to extend the project to 30 April 2018 with reduced staffing, which did not include Ms. Abdeljalil. Therefore, we cannot find any error in the proceedings before the UNRWA DT. Ms. Abdeljalil's due process rights were not violated.

48. In addition, the findings of fact made by the UNRWA DT can only be disturbed under Article 2(1)(e) of the Appeals Tribunal Statute when there is an error of fact resulting in a manifestly unreasonable decision, which is not the case here. This Tribunal is mindful that the Judge hearing the case has an appreciation of all the issues for determination and the evidence before it.<sup>24</sup> We are satisfied that the UNRWA DT's conclusions are consistent with the evidence. Ms. Abdeljalil has not put forward any persuasive grounds to warrant interference by this Tribunal. Therefore, we reject the arguments advanced by Ms. Abdeljalil to the contrary.

49. However, although the Appeals Tribunal does not deal with the issue of Ms. Abdeljalil's remuneration for the work she had possibly provided to the Agency for a month beyond the expiration of her contract on 31 October 2017 until she was informed that her contract had in fact not been renewed since this is not part of her case before this Tribunal, we nevertheless assume that she has been properly remunerated for that work on a *quantum meruit* basis.

50. Our conclusion that the UNRWA DT did not make any errors of law or fact in dismissing Ms. Abdeljalil's challenge of the decision not to renew her contract precludes the Appeals Tribunal from awarding compensation. Since no illegality was found, there is no justification for the award of any compensation. As this Tribunal has stated before, "compensation cannot be awarded when no illegality has been established; it cannot be granted when there is no breach of the staff member's rights or administrative wrongdoing in need of repair".<sup>25</sup>

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<sup>24</sup> *He v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-825, para. 59, citing *Kacan v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-582, para. 25, in turn citing *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-546, para. 35.

<sup>25</sup> *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, para. 34, citing *Kucherov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-669, para. 33, in turn citing *Wishah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-537, para. 40 and citations therein;



51. Finally, the Commissioner-General requests the Appeals Tribunal to award costs in the amount of USD 300 for a manifest abuse of the appeals proceedings. This Tribunal may award costs in terms of Article 9(2) of the Appeals Tribunal Statute if it determines that a party has manifestly abused the appeals process. It accordingly does not have the authority to award costs as a matter of course on the basis that costs should follow success. It may only do so in the event of manifest abuse. The filing of the present appeal cannot be described as an abuse of the process and the Agency does not provide evidence in support of this. There is hence no basis for making a costs award in favour of the Commissioner-General.

52. Accordingly, the appeal fails.

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see also *Nwuke v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-508, para. 27; *Oummih v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-420, para. 20; *Antaki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-095, para. 23.

**Judgment**

53. The appeal is dismissed and Judgment No. UNRWA/DT/2019/016 is hereby affirmed.

Original and Authoritative Version: English

Dated this 25<sup>th</sup> day of October 2019 in New York, United States.

*(Signed)*

Judge Raikos, Presiding

*(Signed)*

Judge Halfeld

*(Signed)*

Judge Colgan

Entered in the Register on this 20<sup>th</sup> day of December 2019 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar