



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

Judgment No. 2020-UNAT-1018

Abu Ouda *et al.*
(Appellants)
v.
Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East
(Respondent)

JUDGMENT

Before:	Judge John Raymond Murphy, Presiding Judge Sabine Knierim Judge Dimitrios Raikos
Case No.:	2019-1343
Date:	26 June 2020
Registrar:	Weicheng Lin

Counsel for Appellants:	Amer Abu Khalaf, LOSA
Counsel for Respondent:	Rachel Evers

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by 51 Appellants (“Abu Ouda et al.”) against Judgment No. UNRWA/DT/2019/046 rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (“UNRWA DT”) on 9 September 2019 in the case of *Abu Ouda et al. v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Abu Ouda et al. filed their appeal on 8 January 2020 and the Commissioner-General of UNRWA filed his answer on 6 March 2020. We reject the appeal and uphold the decision of the UNRWA DT.

Facts and Procedure

2. Abu Ouda *et al.*, at the time of filing their applications with the UNRWA DT, were employed by the Agency under Limited Duration Contracts (“LDCs”) in the Gaza Field Office (“GFO”).

2. In a statement to staff members on 17 January 2018, the Commissioner-General (“CG”) announced that the Government of the United States was limiting its contribution to the Agency to USD 60 million in 2018, compared to its contribution of more than USD 350 million in 2017.

3. In a letter to all staff members in the GFO dated 6 March 2018, the Director of UNRWA Operations, Gaza (“DUO/G”) highlighted the financial difficulties the Agency was facing due to the sudden decrease in contributions to the Agency and explained that the reduction in funding had plunged the Agency into a “dramatic and sudden existential crisis”.

4. On 4 July 2018, the Deputy Commissioner-General of the Agency (“D/CG”) recommended to the CG that the CG authorise an increase of 548 part-time posts for the GFO, the redeployment of 280 staff members, and the separation of 113 staff members. The CG approved the D/CG’s recommendation on 5 July 2018.

5. In an update to staff members on 7 July 2018 about the impact of the financial crisis, the CG described the aforementioned measures that the Agency was taking to better address the challenges of the funding cut as follows:

We are engaging donors very actively but we need to be crystal clear about the necessity for some internal measures in order to limit the threats to our core services to Palestine refugees. The US funding cut is directly impacting our emergency interventions and we ran out of EA funding for the occupied Palestinian territory at the end of June. [...] You can be certain that we will continue to fundraise for these activities but currently, we need to take some difficult measures that prioritize refugees with the most critical needs. This is our humanitarian responsibility. Emergency interventions in the West Bank are, proportionately, the most heavily impacted because they have been supported almost entirely by the US for years, and those resources are no longer available in 2018

[...]In Gaza, poverty and unemployment rates are at very high levels, and almost a million refugees – more than 50 percent of the population – depend on food aid from UNRWA. Food assistance is an absolute humanitarian necessity and a priority. We are therefore taking all measures possible to protect this vital assistance, including advancing program budget funds. To successfully do so, we have to adjust some other interventions. One of them is our community mental health program. We are determined to alleviate the impact on refugees who rely on our mental health services. We are looking at ways to preserve at least a part of that intervention. Our job creation – cash for work – intervention in Gaza will also need to be scaled down further, as funds are no longer available to continue it at the current level. Transitional shelter cash assistance is also being reviewed. The scheduled payment at the end of July 2018 will proceed. Further payments would require additional, dedicated resources.

6. On 25 July 2018, the Appellants individually received a letter signed by the DUO/G, informing them that their appointments would not be extended and that they would be offered either new part-time fixed-term appointments (“FTAs”) or new part-time LDCs.

7. For the staff members who were offered new FTAs or LDCs on a part-time basis, the impugned decisions of 25 July 2018 read, in relevant parts, as follows:

[Your] Limited Duration Contract is hereby extended until 31 August 2018. I regret to inform you, however, that, your Limited Duration Contract on a full-time basis will not be renewed or extended beyond 31 August 2018 due to lack of funding.

However, you are hereby offered a new post on a fixed-term appointment at a part-time basis of 50%. Future entitlements effective 1 September 2018 will be pro-rated in accordance with the terms of the new contract.

If you accept this offer, you will be transferred to the new post [...] effective 1 September 2018.

8. For the staff members who were offered new LDCs on a part-time basis, the 25 July 2018 letters were slightly different and read, in relevant parts, as follows:

[Your] Limited Duration Contract is hereby extended until 31 August 2018. I regret to inform you, however, that your Limited Duration Contract on a full-time basis will not be renewed or extended beyond 31 August 2018 due to lack of funding.

However, you are hereby offered a new post on a Limited Duration Contract at a part-time basis of 50%. [...] Future entitlements effective 1 September 2018 will be pro-rated in accordance with the terms of the new contract.

If you accept this offer, you will be transferred to the new post [...] effective 1 September 2018.

9. In a subsequent update dated 16 August 2018 about the internal measures to address the financial crisis, the CG informed all staff members as follows:

Specifically, we still need \$217 M, which includes \$123 M for our Program Budget activities and \$94 M for our Emergency Appeals. This is a lot of money.

This critical gap forced us to take painful measures of reduction in our Emergency Services in the West Bank and Gaza. These were Agency-wide decisions, taken because we have run out of funding for Emergency Programs in these two fields.

I fully recognize the dramatic impact these measures have had on staff members who lost their jobs and others for whom part time arrangements were necessary. In particular in Gaza, where unemployment rates are extremely high and alternatives very difficult to find, I truly regret that we had no choice under the circumstances, and no other solutions could be found. I understand that affected colleagues felt a need to express deep frustration and anger.

It was however necessary to take certain steps in order to protect vital UNRWA services benefitting Palestine refugees. For example the Agency managed to preserve the food distributions for 1 Million people in Gaza. This remains a key priority and that we have been able to maintain the intervention after an immense loss of income is a very big achievement.

Today, I wish to announce my decision to open UNRWA schools for 526[,]000 students in the West Bank, including East Jerusalem, Gaza, Jordan, Lebanon and Syria. This is another major priority. It reflects UNRWA's deep commitment to protecting the dignity of Palestine refugees, the core of its service delivery and its mandate.

10. Abu Ouda *et al.* submitted requests for decision review in either August or September 2018.

11. Following an agreement reached on 1 September 2018 between the DUO/G and the Local Staff Union in Gaza, the LDCs of Abu Ouda *et al.* were extended on a full-time basis until the end of September 2018.

12. By Letters of Appointment dated 21 October 2018, Abu Ouda *et al.* were offered either part-time FTAs or part-time LDCs, effective 1 October 2018, expiring on 31 December 2018. Abu Ouda *et al.* accepted the offers.

13. Between 28 November and 4 December 2018, Abu Ouda *et al.* filed their applications with the UNRWA DT. Between December 2018 and May 2019, the UNRWA DT made various interlocutory orders; most importantly it consolidated the individual applications of Abu Ouda *et al.*

14. In a statement on 1 May 2019, the CG announced a decision to reinstate 500 part-time staff members in the GFO to full-time employment from 1 May to 31 December 2019. The relevant part of his statement read as follows:

Today, I am pleased to announce a series of measures that will positively impact Palestine refugees and staff. These actions are the result of close coordination between field teams, headquarters departments and the Executive Office and I wish to thank the colleagues involved in their preparation.

In May [2019] ... we will reinstate some 500 community mental-health workers and other part-time staff in Gaza, to full-time employment from 1 May to 31 December. This is a special measure to respond to the critical consequences that years of blockade and conflict are having, mainly on boys and girls in Gaza, with 68% of children suffering from either depression, sleep irregularities, anxiety and other forms of trauma.

15. Although not entirely clear from the record, Abu Ouda *et al.* appear to have benefited from the decision of 1 May 2019 to reinstate 500 staff members back to full-time employment. Their challenge was thus limited to the contested decision of 25 July 2018 not to renew their LDCs on a full-time basis beyond 31 August 2018 (later extended to 30 September 2018) due to lack of funding and to offer them new appointments on a part-time basis of 50%. The UNRWA DT held that the decision was lawful, reasonable and did not violate the acquired rights of Abu Ouda *et al.* It accordingly dismissed the applications.

Submissions

The appeal of Abu Ouda *et al.*

16. Abu Ouda *et al.* submit that the UNRWA DT erred in fact and in law when assessing the evidence before it and coming to the conclusion that they had failed to establish that the contested decision was arbitrary, capricious or procedurally unfair.

17. Abu Ouda *et al.* claim that the UNRWA DT erred in failing to address the contractual relationship and circumstances between each individual staff member and the Agency by consolidating the cases and not dealing with each application individually.

18. Abu Ouda *et al.* maintain that the UNRWA DT disregarded Area Staff Regulation 12.1 which allows amendment of the regulations without prejudice to the acquired rights of staff members. The CG, they contend, entirely ignored their acquired rights when making the contested decision.

19. Abu Ouda *et al.* claim furthermore that PD A/4/Part II/Section II/Rev. 8, para. 46, confers upon them a legitimate expectation of renewal of their LDCs.¹

20. Abu Ouda *et al.* ask the Appeals Tribunal to reverse the Judgment of the UNRWA DT, to order their reinstatement to their former posts and to award them compensation for financial loss.

The Commissioner-General's Answer

21. The CG contends that the Judgment of the UNRWA DT was free of error and correct in its conclusion that Abu Ouda *et al.* failed to establish that the non-extension of their LDCs was unlawful and unreasonable. The LDCs and the letters of appointment of Abu Ouda *et al.* do not carry any expectation of renewal or conversion.

22. The CG acted reasonably, fairly and justly in the context of the financial crisis.

¹ UNRWA Area Personnel Directive PD A/4/Part II/Section II/Rev. 8 titled "Limited Duration Contracts" effective 1 April 2019. Its paragraph 46 reads: "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 ... 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."

23. The reliance on the Area Staff Regulation to assert acquired rights is patently misplaced. No amendment to the Staff Regulations was relevant or in contention.

24. The CG finally submits that the UNRWA did not err in consolidating the applications on the grounds of convenience and on the basis that the applications required the determination of common questions of law and fact.

25. The CG asks the Appeals Tribunal to dismiss the appeal.

Considerations

26. We deal first with the challenge to the consolidation of the applications. The UNRWA DT, having reviewed the applications and having noted the common questions of law and fact, considered it appropriate to consolidate the applications and issue only one judgment. Its decision in that regard was within its discretion and justifiable. Where separate applications have been filed and it appears to the UNRWA DT convenient to do so, it may on application of any party consolidate the applications whereupon the applications shall proceed as one application. The overriding consideration is convenience, expedience and judicial economy. The UNRWA DT may order consolidation if it is satisfied that such a course of action is favoured by the balance of convenience and that there is no possibility of substantial prejudice to any party. The convenience of consolidating the applications in this case is self-evident. All the staff members with LDCs were in exactly the same position and the contested decision affected them all equally. The facts and the applicable law were the same for each application. Moreover, Abu Ouda *et al.* have not made out any cogent case that anyone of them was substantially prejudiced in any respect. The UNRWA DT accordingly exercised its discretion lawfully and appropriately and Abu Ouda *et al.* are entitled to no relief on this score.

27. It may be noted at the outset that Abu Ouda *et al.* accepted the renewal of their appointments on 1 October 2018 on different terms. They thus acquiesced in the contested decision but challenged it simultaneously. It is an established principle of international administrative law that an applicant's right to review of a contested administrative decision can be perempted should s/he, by unequivocal conduct inconsistent with an intention to seek review, acquiesce in the decision. The evidence is not clear on whether in acquiescing in the

decision Abu Ouda *et al.* reserved their rights of review. Furthermore, the CG has not pleaded peremption. Accordingly, we will assume there was no peremption in this case.

28. With respect to the renewal and extension of their LDCs, the Letters of Appointment of Abu Ouda *et al.* expressly provide that the LDC carries no expectation of renewal or extension and renewal or extension is subject to availability of project funding, continuing need for the position and satisfactory performance of the staff member. In addition, Area Personnel Directive PD/A/4/Part II/Rev.7/Section II/Amend.1 governing LDCs provides in relevant parts that there should be a clear understanding on the part of the LDC holders regarding the time-limited and non-career nature of such appointments and that an LDC cannot be converted to another category of appointment. Conversions of LDC appointments normally require the staff members to be selected following a competitive recruitment process applicable for regular area staff posts. It is also a well-established principle in our jurisprudence that fixed-term appointments or appointments of limited duration carry no expectation of renewal or conversion to another type of appointment. It is thus indisputable that the LDCs of Abu Ouda *et al.* did not carry an expectation of renewal or conversion to any other type of appointment. Nevertheless, an administrative decision not to renew an LDC can be challenged on the grounds of legality, reasonableness and procedural fairness.²

29. The evidence shows irrefutably that the non-renewal decision and the offer of part-time posts were related to the financial crisis that the Agency was facing as spelt out in the CG's messages to staff members in July and August 2018. It was common knowledge that the Agency had experienced a significant decrease in funding from certain donors, most notably the Government of the United States. The resultant situation compelled the Agency to restructure some of its departments or units, including abolishing posts, creating new posts, letting LDCs lapse, and redeploying staff. The CG was constrained to make certain unenviable operational choices. He decided to take measures to prioritize and secure the Agency's community mental health programme and cash for work programme in Gaza in order to protect vital food assistance to a million refugees. To do that, he was obliged to restructure and to make job cuts. The decision was taken in good faith and on a reasonable basis. There was a *bona fide* reason to restructure and it was operationally rational not to renew the LDCs at that time.

² See *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-311, para. 32.

30. If an exercise of discretion by the CG is legal, rational, procedurally correct and proportional, there will be no basis for interference. The Appellants have not identified any relevant matters that were ignored or any irrelevant matters that were considered in the decision not to renew their LDCs. Abu Ouda *et al.* received proper notice of the decision, which was later delayed by one month, and were offered, and accepted, reasonable alternatives intended to avoid their dismissal, which in the end turned out to be temporary measures. Absent any evidence of any improper motive or irrational consideration, and given the *bona fide* and operational necessity to restructure, there is no basis to conclude that the CG acted unreasonably in relation to Abu Ouda *et al.*

31. The argument that PD A/4/Part II/Section II/Rev. 8 confers a legitimate expectation of renewal of their LDCs is not correct. The provision merely states that LDCs are usually only issued for periods of work between six months and four years and are renewable for up to one year at a time but no extensions may be granted beyond a total duration of eight years on LDC. Such does not confer any expectation of renewal, particularly in light of the express terms of the letters of appointment. The purpose of this provision is rather to impose restrictions on the power of the Agency to renew LDCs beyond a period of eight years, such being in conflict with the purpose to use LDCs for temporary increases in workload. The intention is not to convey any expectation on an LDC staff member to be renewed or converted to another appointment.

32. With regard to the contention of Abu Ouda *et al.* that their acquired rights have been violated, it must be kept in mind that the LDCs were signed subject to the provisions of the Staff Regulations and the issuances which in this instance make it clear that LDCs carry no expectation of renewal. Moreover, as the CG correctly argues, no Staff Regulations were amended in this instance and thus Area Staff Regulation 12.1 had no application. In so far as an offer of future employment on a different basis might be construed substantively as an amendment of contractual rights (which formally it is not), in the circumstances of this case, such “amendment” was reasonable and did not involve the confiscation or spoliation of any right or benefit that subsisted beyond the expiry of the LDCs. The decision of the CG to offer Abu Ouda *et al.* part-time positions was based on a precise assessment of the situation in issue. The proposed change was necessary and reasonably related to the objective of prioritizing and securing the core activities of the Agency. The decision, moreover, in keeping with the principle of proportionality, sought to minimize harm to Abu Ouda *et al.* Therefore, the contention about the acquired rights is without merit.

33. In the premises, the appeal must be dismissed.

Judgment

34. The appeal is dismissed and Judgment No. UNRWA/DT/2019/046 is affirmed.

Original and Authoritative Version: English

Dated this 26th day of June 2020.

(Signed)

Judge Murphy, Presiding
Cape Town, South Africa

(Signed)

Judge Knierim
Hamburg, Germany

(Signed)

Judge Raikos
Athens, Greece

Entered in the Register on this 16th day of July 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar