



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

Judgment No. 2020-UNAT-1025

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

JUDGMENT

Before:	Judge Jean-François Neven, Presiding Judge Martha Halfeld Judge John Raymond Murphy
Case No.:	2019-1341
Date:	26 June 2020
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Rachel Evers

JUDGE JEAN-FRANÇOIS NEVEN, PRESIDING.

1. Mr. Alaa Ihsan Murad, a staff member with the Gaza Field Office (“GFO”), the United Nations Relief and Works Agency for Palestine Refugees in the Near East (“UNRWA” or “Agency”) was offered on 13 November 2017, and accepted, the appointment to a higher-level post of Translator/Assistant to the Director of UNRWA Operations in the Jordan (“DUO/J”). But a day before he was due to travel to Amman, Jordan, to assume his new duty, the Agency informed Mr. Murad that his appointment was put on hold due to the Agency’s financial situation. Nevertheless, Mr. Murad travelled to Amman on his own accord on 27 February 2018. Mr. Murad’s request for an update about the status of his Translator appointment and his request for decision review met only with silence on the part of the Agency. On 2 August 2018, Mr. Murad filed an application with the Dispute Tribunal of UNRWA. The Agency did not withdraw the offer of appointment of 13 November 2017 until 6 August 2019. In the impugned Judgment, the UNRWA DT dismissed Mr. Murad’s application in part. It determined that the decision to put on hold Mr. Murad’s appointment and the decision not to appoint him to the post of Translator were not unlawful, but that the Agency had failed to act fairly, justly and transparently and in good faith with Mr. Murad. The UNRWA DT ordered the Agency to pay Mr. Murad USD 3,000 as moral damages for its failure to fulfill its quasi-contractual obligations. For reasons set out below, we affirm the UNRWA Dispute Tribunal’s decision.

Facts and Procedure

2. Effective 1 June 2016, Mr. Murad was appointed as Translation and Interpretation Assistant, with the GFO on a fixed term appointment, Grade 10.

3. On 13 November 2017, following a competitive recruitment process, Mr. Murad was offered the post of Grade 16 Translator/Assistant to the DUO/J (“Translator”). After Mr. Murad accepted the offer on 26 November 2017, the Agency began preparations for his transfer.

4. On 6 February 2018, Mr. Murad was informed that he had been granted a one-day travel permit by Israeli authorities. After informing the Staff Services Officer, Jordan (“SSO/J”), Mr. Murad arranged to travel from Gaza to Amman on 27 February 2018.

5. On 11 February 2018, the SSO/J sent an e-mail to the Human Resources Career Management Officer, Gaza, to confirm Mr. Murad’s transfer, effective 1 March 2018.

6. On 15 February 2018, Mr. Murad e-mailed the SSO/J requesting the budget code for his travel request. On 26 February 2018, the SSO/J provided him the budget code. On the same day, the DUO/J sent the travel request to the Chief of Staff, Executive Office (“CoS”) for approval.
7. On 26 February 2018, the Head, Field Human Resources Office, Jordan (“H/FHRO/J”) informed Mr. Murad in an email that his appointment was put on hold by the Executive Office due to the Agency’s financial situation.
8. On 27 February 2018, Mr. Murad travelled to Amman on his own accord. While there, he met with the DUO/J and H/FHRO/J but received no further information about his appointment. Mr. Murad returned to Gaza two weeks after travelling to Amman and resumed work at his current post.
9. By e-mail to the H/FHRO/J dated 5 March 2018, Mr. Murad inquired about the status of his appointment and requested to be informed about the duration of that “on hold” status. He has never received an official response in this respect.
10. On 22 April 2018, the DUO/J received Mr. Murad’s request for decision review. The DUO/J did not respond to the request.
11. On 25 July 2018, the Director of UNRWA Operations, Gaza (“DUO/G”) informed Mr. Murad that there were funds available for his current fixed-term post at the GFO only until 31 December 2018.
12. On 2 August 2018, Mr. Murad filed his application with the UNRWA Dispute Tribunal. It was transmitted to the Respondent on 5 August 2018.
13. Effective 2 December 2018, the previous incumbent of the post of Translator returned to the post.
14. On 18 January 2019, the Respondent filed his reply. The reply addressed only the issue of receivability and was transmitted to Mr. Murad on 20 January 2019.
15. By Judgment No. UNRWA/DT/2019/029 dated 13 June 2019, the UNRWA Dispute Tribunal decided that Mr. Murad’s application was receivable and ordered the Respondent to submit his reply on the merits.

16. By letter dated 6 August 2019, the H/FHRO/J informed Mr. Murad that the previous incumbent of the post of Translator had returned to his post effective 2 December 2018 and that the offer of appointment dated 13 November 2017 had been withdrawn.

17. In Judgment No. UNRWA/DT/2019/063 dated 4 November 2019, the UNRWA Dispute Tribunal dismissed partially the application. It decided that the decision to put on hold Mr. Murad's appointment and the decision not to appoint him to the post of Translator were not unlawful; however, the UNRWA Dispute Tribunal decided that the Agency had failed to act fairly, justly, transparently and in good faith with Mr. Murad, and that the Agency should pay him compensation for moral damages resulting from its failure to fulfil its quasi-contractual obligations, in the amount of USD 3,000.

18. Mr. Murad filed an appeal on 16 December 2019, and the Commissioner-General filed his answer on 6 March 2020.

Submissions

Mr. Murad's Appeal

19. The Appellant is seeking a proper compensation for the material damages resulting from the breach of his employment contract and for the moral damages.

20. The Appellant argues that the UNRWA's decision of 6 August 2019 to withdraw the offer letter was unlawful. He refers to the *Al Hallaj* case¹ and notes that, although he did not sign a letter of employment, he received an unconditional offer letter signed on behalf of UNRWA by the DUO/J, which he accepted and signed. Therefore, he maintains that UNRWA did not honor its contractual obligations towards him by virtue of the signed offer letter, and that UNRWA DT disregarded this fact.

21. Another aspect that the UNRWA DT disregarded when reviewing the decision not to appoint Mr. Murad to the post in Amman was that the new post was more secure and included better benefits and entitlements than the one in the GFO. The Amman post was charged to the UNRWA General Fund Budget, while the Gaza grade 10 post was associated with the Emergency Appeal budget which witnessed cuts and other financial difficulties. The

¹ *Al Hallaj v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-810.

UNRWA DT did not consider this fact when it decided that the Agency, by not appointing him and then withdrawing the letter of offer that he had signed and accepted on 26 November 2017, did not act unlawfully towards the Appellant.

22. Finally, the Appellant submits that UNRWA DT's final decision was unfair and improper for two reasons. First, it totally ignored the material damage which the Appellant sustained for not having been given the Grade 16 post in Amman. Second, the decision did not thoroughly take into consideration the moral damage which the Appellant endured for more than 17 months. The UNRWA Dispute Tribunal only compensated the Appellant with USD 3,000, which was completely inappropriate, while he was anxiously awaiting news, from November 2017, upon accepting the offer letter, until August 2019, when the offer was withdrawn.

23. In conclusion, the Appellant requests that the United Nations Appeals Tribunal ("Appeals Tribunal") vacate Judgment No. UNRWA/DT/2019/063, compensate him properly for the breach of his employment contract, and award him moral damages that he has suffered due to errors committed by the Agency and the UNRWA Dispute Tribunal.

The Commissioner-General's Answer

24. The Appellant fails to identify, by citation to any provision in Article 2(1) of the Statute of the Appeals Tribunal, the grounds for his appeal, and as such, his appeal is defective. The Appellant has not demonstrated in what respect the UNRWA DT, by dismissing his application in part, exceeded or failed to exercise its jurisdiction, erred on a question of law, committed an error in procedure or erred on a question of fact resulting in a manifestly unreasonable decision.

25. Additionally, the impugned Judgment was, as a matter of law, free of error. It correctly decided that there was no valid contract and that the Agency was not obliged to appoint the Appellant. The Judgment comports with established jurisprudence.

26. With regard to the Agency's quasi-contractual obligations, the UNRWA DT specifically addressed this issue by deciding that the Agency had failed to act fairly, justly, transparently and in good faith and awarding the Appellant USD 3,000 as moral damages, while rejecting his claims for other kinds of damages in accordance with the jurisprudence.

As there was no contract of employment and there was no breach of contractual rights, the UNRWA DT did not err in not awarding material damages.

Considerations

27. The appeal is not defective on the grounds that the Appellant would not have identified the grounds for his appeal and does not quote any provisions of Article 2(1) of our Statute. If an appellant is not legally represented, as is the case here, some latitude may be allowed in the interests of justice.² The Appellant disagrees with the UNRWA DT Judgment and submits that, in his view, the UNRWA DT erred in failing to find a breach of contract or compensate him for material and moral damages. We do not need more indications in order to exercise the judicial review we have to carry out.

Did the UNRWA DT err in deciding that there was no contract of employment and no breach of contractual obligations?

28. The Appellant accepted and signed the unconditional offer for the post of Translator on 26 November 2017. He therefore submits that the Agency was legally bound to appoint him to the said post and was not entitled to put his appointment on hold on 26 February 2018, the day before he was due to travel to take up his duties, despite the decision of the CoS not to approve his travel expenses.

29. In some legal systems, a contract needs not be concluded or evidenced in writing and is not subject to any other formal requirements. The contract may be proved by any means, including by witnesses. In other legal systems, the formation of the contract and its existence are subject to specific forms. Each system has advantages and disadvantages. Academically, it is possible to argue in favour of each of them. The solution may be, and often is, different in civil and administrative matters.

² *Madi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-853, para. 21.

30. From its first sessions, this Tribunal has consistently held that:³

... the contract whereby the Agency recruited a staff member who would be governed by the staff rules is not a common-law contract. According to the staff rules, the contract can only be concluded validly on the date when the Commissioner-General or an official of the Agency duly empowered to act on his behalf signs the staff member's letter of notification. Moreover, the candidates for a public post are presumed to know the rules applicable to the employing public corporation. Ms. El-Khatib therefore has no grounds to claim any work contract was in force on the date when the decision to withdraw the offer of appointment was made.

... an employment contract of a staff member subject to the internal laws of the United Nations is not the same as a contract between private parties (...). The aforementioned provisions confer upon the Secretary-General the power to engage the Organization in this matter. These provisions stipulate that the legal act by which the Organization legally undertakes to employ a person as a staff member is a letter of appointment signed by the Secretary-General or an official acting on his behalf. The issuance of a letter of appointment cannot be regarded as a mere formality (...).

31. The Appellant refers to *Al Hallaj* and argues that in that case, although a letter of employment was not signed, the existence of a contract of employment was inferred from the fact that the staff member had been offered an unconditional offer letter, which she had accepted and signed. We cannot agree. Although the United Nations Dispute Tribunal decided that there was a contract of employment, its Judgment was overturned. The Appeals Tribunal decided:⁴

The Dispute Tribunal found that a valid contract of employment existed between ESCWA and Ms. Al Hallaj, when the latter accepted the former's offer of employment of 13 August 2015. We do not share this view. In accordance with our jurisprudence, there was no contract of employment between ESCWA and Ms. Al Hallaj, because a letter of appointment was never issued in the present case. There was only an offer of employment.

³ *El-Khatib v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-029, para 16; *Gabaldon v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-120, para 22, citing *James*, Judgment No. 2010-UNAT-009, and *El Khatib*, *supra*; see also *Sprauten v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-111, para. 23: "Article 101 of the Charter and Regulation 4.1. of the Staff Regulations confer upon the Secretary-General the power of appointment of staff members. These provisions stipulate that the legal act whereby the Organization legally undertakes to employ a person as a staff member is a letter of appointment signed by the Secretary-General or by an official acting on his behalf."

⁴ *Al Hallaj v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-810, para. 37 (internal citations omitted).

32. In the absence of a valid contract of employment, the Agency's decision to put on hold the Appellant's appointment to the post of Translator was in compliance with all pertinent regulations and rules. The UNRWA DT also considered whether that decision was exercised arbitrarily or capriciously, was motivated by prejudice or other extraneous factors, or was flawed by procedural irregularity, but concluded that it was not the case. The UNRWA DT decided it was clear from the documents in the case file that the impugned decision was related solely to the financial crisis that the Agency was facing and its decision to review the 2018 approved Programme Budget, including a reduction in travel expenditures decided at the end of January 2018. We see no error in that.

33. We conclude that the UNRWA DT did not err in deciding that there was no breach of contract and that the decision to put the appointment on hold was not unlawful.

Did the UNRWA DT err in awarding the Appellant USD 3,000 as moral damages?

34. The absence of a contract of employment does not mean that an offer of employment produces no legal effect when the candidate for employment has met all of the conditions of the offer and has accepted the offer unconditionally.

35. The acceptance of an offer of employment may form a quasi-contract. In *Al Hallaj*, this Tribunal confirmed:⁵

... However, it does not mean that Ms. Al Hallaj was without rights or remedies. Our jurisprudence is clear that after Ms. Al Hallaj had unconditionally accepted and had fully fulfilled the conditions specified in the offer of employment, a quasi-contract was formed between Ms. Al Hallaj and the [...] Administration. That was the case [...] when Ms. Al Hallaj reported for duty at ESCWA.

... That quasi-contract in turn created obligations for the [...] Administration towards Ms. Al Hallaj, which include behaving in keeping with the principle of good faith (to elucidate the other party on the relevant obligations, to provide assistance to her, to protect her legitimate expectations, etc.), and acting fairly, justly and transparently in its dealings with her. These aspects and expressions of the principle of good faith supplement, and at the same time, concretize the terms of the emerging

⁵ *Ibid.*, paras. 38-39, citing *Gabaldon v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-120, para. 28; *Sprauten v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-111, paras. 23-25; *Smith v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-768, para. 26, citing *Matadi et al. v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-592, para. 16 and cite therein.

contract of employment. They constitute in their specific application an inextricable part of the parties' compliance with the "terms of appointment".

36. The UNRWA DT concluded that the Agency had not acted fairly, justly, transparently and in good faith with the Appellant and decided that the Agency should pay the Appellant compensation for moral damages resulting from its failure to fulfill its quasi-contractual obligations,⁶ in the amount of USD 3,000. There is no cross-appeal. The only issue we have to deal with is therefore whether the amount awarded as compensation for moral damage was sufficient to remedy the harm suffered by Mr. Murad. We find that, in the circumstances of the present case, the decision to award an amount of USD 3,000 was reasonable and we do not find any error in that decision.

Did the UNRWA DT err in failing to order any material damages?

37. The decision to put on hold the appointment, and finally not to finalize the recruitment with the signing of the letter of appointment, had various material consequences for the Appellant, who was not appointed to the higher, and better paid, post, for which he had been selected.

38. However, this Tribunal has consistently held that a staff member should (only) be compensated for real and incurred expenses and such claims should be directly related to the damages resulting from a breach of his or her contractual rights.⁷ In the absence of a contract of employment, there can be no pecuniary damage resulting from a breach of contractual rights.

39. Therefore, we agree with the UNRWA DT that, as the Agency's decision not to appoint the Appellant to the post of Translator was not unlawful, his claim to be compensated for loss of salary is without merit.

40. Regarding the Appellant's request to be compensated for the costs of his travel to Jordan in February 2018, there is no evidence that the UNRWA DT erred in its finding that the Appellant had admitted to having been duly informed that his travel to Jordan would be at his own expense.

⁶ Impugned Judgment, paras. 52-54.

⁷ *Ljungdell v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-265, para. 39.

41. The other material damages which the Appellant claims are not supported by evidence.

Judgment

42. The appeal is dismissed and Judgment No. UNRWA/DT/2019/063 is affirmed.

Original and Authoritative Version: English

Dated this 26th day of June 2020.

(Signed)

Judge Neven, Presiding
Brussels, Belgium

(Signed)

Judge Halfeld
Bournemouth, United Kingdom

(Signed)

Judge Murphy
Cape Town, South Africa

Entered in the Register on this 29th day of July 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar