



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

Judgment No. 2020-UNAT-1028

Ayman El Najjar
(Appellant)

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.:	2019-1334
Date:	26 June 2020
Registrar:	Weicheng Lin

Counsel for Mr. El Najjar:	Amer Abu-Khalaf
Counsel for Commissioner-General:	Rachel Evers

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Ayman El Najjar against Judgment No. UNRWA/DT/2019/051 rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT and Agency or UNRWA, respectively) on 9 September 2019 in the case *El Shanti and El Najjar v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*.

Facts and Procedure

2. Mr. El Najjar is a former staff member of the Agency who held a fixed-term appointment (FTA) in the Gaza Field Office (GFO).

3. In a statement to staff members on 17 January 2018, the Commissioner-General 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.

4. 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, specifically noting that the anticipated reduction in funding in 2018 for both the Programme Budget and Emergency Appeals by UNRWA's largest donor, the United States of America, had plunged the Agency into "a dramatic and sudden existential crisis".

5. In light of the financial crisis, and in an effort to address the problem, the Deputy Commissioner-General (D/CG) on 4 July 2018 wrote to the Commissioner-General and recommended that the Commissioner-General authorise the separation of 113 staff members, but with an increase of 548 part-time posts for the GFO and the redeployment of 280 staff members. The Commissioner-General accepted and approved the D/CG's recommendation on 5 July 2018.

6. The non-renewal decisions were related to the financial crisis that the Agency was facing with the reduction in funding of almost USD 300 million of more than USD 350 million that was expected in 2018 for both its Programme Budget and Emergency

Appeals. The budget of the Emergency Appeals (EA) for the GFO and West Bank Field Office (WBFO) was significantly affected in 2018. In 2017, the Government of the United States provided USD 95 million of the USD 138 million in total pledges to the EA for the GFO and WBFO. However, in 2018, total pledges to the EA for the GFO and WBFO decreased to USD 103 million with no pledges from the Government of the United States.

7. The financial difficulties related to the EA funding were transparently communicated by the Commissioner-General to all staff members in an e-mail dated 7 July 2017. The Commissioner-General noted the necessity for some internal measures 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.

8. In a letter dated 25 July 2018, the DUO/G informed Mr. El Najjar of the Agency's decision not to extend his FTA on a full-time basis beyond 31 August 2018 and offered him a new post on a part-time basis of 50 per cent.

9. In a subsequent update dated 16 August 2018, about the internal measures to address the financial crisis, the Commissioner-General 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. Following an agreement reached on 1 September 2018, between the DUO/G and the Local Staff Union in Gaza, Mr. El Najjar's FTA was extended on a full-time basis until the end of September 2018.

11. On 23 September 2018, Mr. El Najjar submitted a request for review of the Agency's decision not to renew his FTA.

12. On 6 October 2019, Mr. El Najjar rejected the offer of a new FTA on a part-time basis, and accordingly, he was separated from service with effect from the date of the expiry of his FTA on 30 September 2018.

13. On 4 December 2018, Mr. El Najjar submitted an application to the UNRWA DT against the Agency's decision not to renew his FTA.

14. By Order No. 079 (UNRWA/DT/2019) dated 10 April 2019, the UNRWA DT consolidated Mr. El Najjar's application with three other applications, including the application of Mr. El Shanti.

15. On 9 September 2019, the UNRWA DT issued Judgment No. UNRWA/DT/2019/051 dismissing the applications of Mr. El Najjar and Mr. El Shanti. With regard to Mr. El Najjar, the UNRWA DT held that his letter of appointment provided clearly that his appointment did not carry an expectation of renewal or conversion to any other type of appointment. In the face of the financial crisis, it was within the Commissioner-General's discretionary authority to restructure the Agency, to abolish posts, create new posts and re-deploy staff and that the Commissioner-General had exercised his discretion reasonably in the circumstances. It also rejected Mr. El Najjar's contention that he had an acquired right to his salary and thus the Agency was not permitted to reduce it by changing the terms and conditions of his appointment by offering him a part-time appointment.

16. Mr. El Najjar filed an appeal against the decision of the UNRWA DT on 28 November 2019. The Commissioner-General filed his answer on 4 February 2020.

Submissions

Mr. El Najjar's Appeal

17. Mr. El Najjar asserts that the UNRWA DT erred in fact and in law when assessing the evidence before it and coming to the conclusion that he had failed to establish that the non-renewal decision was arbitrary, capricious or procedurally unfair.

18. Mr. El Najjar claims further that the UNRWA DT erred in failing to give meaning to the contractual relationship and entirely disregarded his acquired rights.

19. He complains also that the UNRWA DT erred by not translating documents filed by him with the UNRWA DT during the case.

20. Mr. El Najjar asks the Appeals Tribunal to reverse the Judgment of the UNRWA DT, to order his reinstatement to his former post, and to award him compensation for financial loss.

The Commissioner-General's Answer

21. The Commissioner-General submits that the grounds of appeal are not supported by a proper legal basis as required in terms of Article 8(2) of the Appeals Tribunal's Rules of Procedure. Further, Mr. El Najjar has not identified any defects in the judgment warranting any intervention by the Appeals Tribunal.

22. The Commissioner-General contends that the non-renewal decision was lawful and reasonable and the alleged disregard of Mr. El Najjar's acquired rights is without merit. The Commissioner-General accordingly requests the Appeals Tribunal to dismiss the appeal.

Considerations

23. Area Staff Rule 109.5 provides that a FTA shall expire without prior notice on the expiration date specified in the letter of appointment. Area Staff Circular No. 4/95, dated 5 April 1995, on Area Staff posts and appointments, provides in paragraph 6 that the extension of appointments will depend on the Agency's continuing need for the post, the availability of funding and the staff member's performance. Mr. El Najjar's letter of appointment provided clearly that his appointment did not carry an expectation of renewal or conversion to any other type of appointment.

24. It is well-established that a FTA has no expectation of renewal or conversion to another type of appointment. Nevertheless, an administrative decision not to renew a FTA can be challenged on the grounds of legality, reasonableness, and procedural fairness.¹

25. The evidence shows indisputably that the non-renewal decision and the offer of a part-time post were related to the financial crisis that the Agency was facing as set out fully in the Commissioner-General'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 United States Government. The resultant situation compelled the Agency to restructure some of its departments or units, including abolishing posts, creating new posts, non-renewal of FTA's and redeploying staff. The Commissioner-General was constrained to make certain unenviable operational choices. He decided to take measures to prioritize and secure the Agency's community mental health

¹ *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-311, para. 32.

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 re-structure 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 certain FTAs.

26. If an exercise of discretion by the Commissioner-General is legal, rational, procedurally correct, and proportionate, there will be no basis for interference. Mr. El Najjar has not identified any relevant matters that were ignored or any irrelevant matters that were considered in selecting him for non-renewal. He received proper notice of his selection and was offered a reasonable alternative intended to avoid his dismissal, which he rejected. 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 Commissioner-General acted unreasonably in relation to Mr. El Najjar.

27. With regard to Mr. El Najjar's contention that his acquired rights have been violated, it must be kept in mind that employment contracts with the Agency are signed subject to the provisions of the staff regulations and issuances which in this instance make it clear that FTAs carry no expectation of renewal. 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 FTA. The decision of the Commissioner-General to offer Mr. El Najjar a part-time position 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 Mr. El Najjar. Therefore, his claim about his acquired rights is without merit.

28. Mr. El Najjar's complaint that the UNRWA DT erred by not translating documents filed by him with the UNRWA DT is vague, unsubstantiated, and probably inconsequential.

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

Judgment

30. The appeal is dismissed and Judgment No. UNRWA/DT/2019/051 of the UNRWA DT 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 29th day of July 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar