



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

Judgment No. 2020-UNAT-1055

Ashraf Ismail abed allah Zaqqout

v.

**Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East**

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge Martha Halfeld Judge Dimitrios Raikos
Case No.:	2020-1387
Date:	30 October 2020
Registrar:	Weicheng Lin

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

JUDGE GRAEME COLGAN, PRESIDING.

1. Ashraf Zaqqout appeals against the Judgment of the Dispute Tribunal of the United Nations Relief and Works Agency (UNRWA DT or UNRWA Dispute Tribunal, and UNRWA or Agency, respectively)) dated 12 February 2020 (UNRWA/DT/2020/006) finding in favour of the Respondent (the Commissioner-General). The UNRWA DT determined four applications made to it by Mr. Zaqqout who was employed by UNRWA at its Gaza Field Office (GFO) as a social worker on a limited duration contract (LDC). These four applications all concerned essentially the Respondent's decisions to extend, or finally not renew or extend, the Appellant's LDC but included challenges to reviews by UNRWA of some of these decisions.

2. The first contested decision of the Agency, made and communicated to him on 27 June 2018, was to extend Mr. Zaqqout's LDC by one month to 31 July 2018. The second, also contested by the Appellant, was a decision made and communicated on 25 July 2018 to further extend Mr. Zaqqout's employment by a further month to 31 August, but which was then said to be the last of such temporary extensions. A further, but apparently uncontested, decision was made on or shortly after 1 September 2018 and purported to extend yet again Mr. Zaqqout's LDC until the end of September. During the latter part of that month, the Appellant requested reviews of the first two contested decisions. In November, Mr. Zaqqout was advised that his review of the first extension to his contract had been successful. He was reinstated to his original LDC arrangement which was then to expire on 31 December 2018. This constituted the third decision contested by Mr. Zaqqout. On 24 January 2019, the Appellant requested a review of this third contested decision. His employment was allowed to lapse with effect from 31 December 2018 upon the expiry of his LDC.

3. The impugned Judgment of the UNRWA DT contains considerable detail of the interlocutory processes leading to delivery of its final consolidated judgment on 12 February 2020, which is now subject to appeal. On numerous occasions, Mr. Zaqqout was allowed extensions of time to file documents for reasons that were justified and which the UNRWA DT acknowledged. We do not reiterate these because nothing on this appeal turns on them.

4. After this appeal had been set down for hearing and a judicial panel assigned to it, Mr. Zaqqout applied for orders that the Respondent disclose a large number of documents which, we infer, he intended to use in support of his case, and for an order adjourning the

consideration of the appeal. For reasons set out in Order No. 372/2020 issued on 20 October 2020, these motions were refused.

5. For the following reasons, we dismiss Mr. Zaqqout's appeal.

Facts and Procedure

6. Mr. Zaqqout was a staff member having started work with UNRWA in April 2015. His last LDC was scheduled to cease on 30 June 2018.

7. On 17 January 2018, the Commissioner-General of UNRWA announced to all UNRWA staff that the Government of the United States of America was limiting its contribution to the Agency to 60 million USD in 2018, compared to its contribution of more than 350 million USD in 2017. The sudden and very significant decrease in this contribution led to a series of emergency measures that the Agency subsequently took to address the challenges of the prospective funding cut. Among them were proposals for an increase of 548 part-time posts for the GFO, the redeployment of 280 staff members, and the separation of 113 staff members.

8. This financial crisis affected Mr. Zaqqout's employment. His LDC was extended on a monthly basis, first from 1 July to 31 July 2018, then from 1 August to 31 August 2018, and finally from 1 September to 30 September 2018, the last extension being a result of an agreement between the GFO and the Local Staff Union in Gaza.

9. On 23 September 2018, Mr. Zaqqout requested review of his July and August monthly extensions. On 22 November 2018, the Director of UNRWA Operations, Gaza (DUO/G) accepted Mr. Zaqqout's request and reinstated him to his LDC post, retroactively from 1 October 2018 for three months through 31 December 2018. On 29 November 2018, he accepted the offer of this three-month extension of his LDC.

10. Between 23 November 2018 and 23 February 2019, Mr. Zaqqout filed three applications with the UNRWA Dispute Tribunal against: i) the July 2018 monthly extension (first contested decision); ii) the August 2018 monthly extension (second contested decision); and iii) the October-December extension (third contested decision). On 25 May 2019, he filed a fourth application with the UNRWA Dispute Tribunal, this one again in respect of the third contested decision.

11. In the UNRWA DT's Judgment in respect of case file number 2018/204 which the Tribunal concluded challenged the Agency's decision of 27 June 2018 to extend his contract by one month to 31 July, his claim was dismissed as not receivable. This was on the basis that the decision had been one that was favourable to the applicant. In addition, the UNRWA DT found that by the time Mr. Zaqqout's application was made to it, the challenged extension had been superseded by decisions to further extend his employment.

12. The same result (non-receivability) was delivered in the UNRWA DT's Judgment in respect of the challenge to the second extension of his contract, that is the Agency's decision of 25 July 2018 to extend the Appellant's service to 31 August 2018.

13. Finally, the UNRWA DT addressed the Appellant's two proceedings contesting the Agency's decision of 22 November 2018 to extend his contract from 1 October to 31 December 2018. One proceeding (identified by its UNRWA DT case file number 2019/014) was Mr. Zaqqout's response to the outcome of his request for decision review. The UNRWA Dispute Tribunal considered authority of this Tribunal holding that such a decision was not receivable, but distinguished it as not being applicable to the different decision review process used by UNRWA.¹

14. The UNRWA Dispute Tribunal considered the receivability of Mr. Zaqqout's claims in two separate respects. On the first, it held both decisions (to extend the Appellant's contract term and by way of review of that decision) were receivable. However, it also held that in these two matters, the Appellant's claims were not receivable on the same grounds as it had rejected his other applications, namely that these were administrative decisions that benefitted Mr. Zaqqout. It pointed out also that limited duration contracts such as Mr. Zaqqout's did not carry any expectation of renewal or conversion to a more enduring appointment. The UNRWA DT therefore dismissed all applications made to it by Mr. Zaqqout.

Submissions

The Appellant's Grounds of Appeal

15. These are multiple (in part because of the four separate cases brought to the UNRWA DT by Mr. Zaqqout) and convoluted. We have attempted to distil them as follows.

¹ *Kalashnik v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-661.

16. Mr. Zaqqout submits that the UNRWA Dispute Tribunal erred by finding that his applications in respect of the July 2018 monthly extension and the August 2018 monthly extension were not receivable. He referred to those contested decisions in his requests for decision review. In his view, the UNRWA Dispute Tribunal erred in failing to consider whether the Agency had followed the proper procedure in its review of his requests, whether the reviewer had the proper authority to conduct the decision review, and whether those decisions were the product of abuse of authority, ulterior motives, prejudice, retaliation and bad faith. The fact that they were replaced by subsequent renewals called into question the validity of those decisions.

17. The Appellant states that, contrary to the conclusion of the UNRWA Dispute Tribunal, the letter dated 22 November 2018 constituted a new administrative decision, as his LDC was renewed to the end of December 2018. Mr. Zaqqout questions the legality of the 22 November 2018 letter because it included the signature of the Director of DUO/G, but he was absent from office on that day.

18. Mr. Zaqqout also submits that the UNRWA Dispute Tribunal erred in law in concluding that his appeal against the decision to extend his LDC to the end of December 2018 was not receivable, because it was a positive decision in his favor. That decision to extend his LDC for three months violated paragraph 48 of Area Personnel Directive PD A/4/Part II/Rev. 7/Section II/Amend.1, which provides that “limited duration contract holders shall work for periods ranging from six months to four years. The initial period of employment may last up to one year, and appointments of staff members on limited duration contracts may be renewed for a period of up to one year at a time. The overall period of employment shall not exceed four years.”

19. The Appellant further submits that the UNRWA Dispute Tribunal erred in law in concluding that his appeal against the decision not to extend his LDC beyond 31 December 2018 was not receivable because LDCs did not carry any expectation of renewal or conversion to any other type of appointment. The GFO and the Local Staff Union in Gaza had concluded two agreements, one on 29 March 2018 and the other on 14 November 2018, which conveyed a clear assumption of extensions of contracts. In addition, the Agency renewed the contracts of his colleagues under the same type of contract working for the GFO. The fact that he was singled out for non-extension speaks to the irregularity of the decision.

20. Mr. Zaqqout maintains that the decision not to extend his LDC beyond 31 December 2018 was the product of misconduct, harassment, and misinformation that the Agency had waged against him. The UNRWA Dispute Tribunal erred by failing to address the psychological and physical harm and the reputational damage that the termination of his LDC had inflicted upon him.

21. He refers at length to issues related to the grade, band and step of his LDC and claims that the classification of his post at grade 10, band D and step 1 was “unjust” from the beginning of his LDC appointment. However, as these matters are clearly outside of the scope of the present review, Mr. Zaqqout’s arguments in this regard are not summarised here.

22. Finally, the remedies claimed by the Appellant include rescission of the impugned decision; an order requiring a public declaration by UNRWA of Mr. Zaqqout’s innocence and acceptance that he was subjected to retaliation and prohibited conduct; an order that UNRWA undertakes an investigation of these events; and compensation equivalent to two years’ net base salary.

The Respondent’s Answer

23. First, the Respondent submits that the Appellant has not identified, let alone established, any of the grounds contained in Article 2(1) of the Statute of the United Nations Appeals Tribunal to upset an UNRWA Dispute Tribunal judgment. The Respondent submits that Mr. Zaqqout’s case amounts only to a reiteration of the case he advanced before the UNRWA DT without establishing that it was in error or otherwise defective.

24. Turning to the particular submissions of the Appellant in relation to UNRWA DT case file 2018/204, the Commissioner-General says that this claim was not receivable because Mr. Zaqqout failed to identify the contested decision. This, the Respondent says, is a sufficient ground to dismiss such a claim summarily.²

² Here, the Commissioner-General cites *Haydar v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-821, para. 16.

25. Addressing the core question whether a “positive” administrative decision is challengeable, the Respondent says the UNRWA Dispute Tribunal correctly applied the law that such decisions, having no adverse effect on the Appellant’s employment, were unreceivable.

26. Even if Mr. Zaqqout is correct that the decision he challenged was that conveyed to him in the letter of 25 July 2018, the Respondent says that this decision too was superseded by subsequent decisions allowing extensions to his contract so that the legal principle against receiving appeals against positive decisions applies.

27. Addressing the elements of the appeal against the UNRWA DT Judgment on case files 2019/014 and 2019/043, the Respondent submits that these too were unreceivable because they purported to challenge positive decisions.

28. Addressing Mr. Zaqqout’s appeal against that part of the UNRWA Dispute Tribunal’s Judgment disallowing the claim to a contractual extension beyond 31 December 2018, the Respondent says that LDC’s such as the Appellant’s carry no expectation of renewal or conversion to any other type of appointment.

29. The Respondent says that the Appellant’s grounds of appeal concerning the identity of the signatory to the 22 November 2018 letter were not an issue before the UNRWA DT and cannot, therefore, be introduced for the first time on this appeal.

Considerations

30. An appellant cannot simply re-present his or her case as it was put forward to the UNRWA Disputes Tribunal and invite us on appeal to re-decide it. If, however, an appellant says that his or her case was wrongly decided (error of law or of fact), it is not only permissible to present the same case on appeal to support a submission that it was wrongly decided at first instance. Indeed, it may be necessary to so present an appellant’s case because, in addition to identifying the error or errors, an appellant will need to persuade the appellate tribunal of the facts necessary to achieve a successful outcome by applying the law properly (where there is an error of law) or by finding the correct facts (where the error is factual). This exercise will, however, necessarily be on the pleadings and the facts as put to the UNRWA Dispute Tribunal. On this basis, we should not be too critical of the Appellant, as an unrepresented party, for presenting his case as he has. Although Mr. Zaqqout may not have addressed Article 2(1) of

the Statute of this Tribunal as well as a legally represented party may have, we infer that he submits that the UNRWA Dispute Tribunal erred in fact and/or in law.

31. Even if we were to accept for the purpose of this appeal that the file 2018/204 decision was not that settled on by the UNRWA DT but rather, as he says, was that conveyed to Mr. Zaqqout on 25 July 2018 which he successfully had reviewed by UNRWA on 22 November 2018, which had the effect of extending his LDC to 31 December 2018, his appeal on this ground of chronological error cannot succeed. That is because UNRWA's review decision delivered on 22 November reversed the 25 July decision in Mr. Zaqqout's favour. Put another way, there was no longer an administrative decision (of 25 July) that was adverse to him. That narrows the number of justiciable administrative decisions and engages the question that is really at the heart of this case, i.e., whether UNRWA acted lawfully in not renewing Mr. Zaqqout's LDC after 31 December 2018. We decide that question subsequently.

32. All the Appellant's heads of appeal except for his challenge to the Agency's decision not to renew or extend Mr. Zaqqout's LDC beyond 31 December 2018 must fail. That is for the simple reason that those several decisions to extend from 1 July advantaged him by adding, in total, six months to his last LDC. Furthermore, on 29 November 2018, Mr. Zaqqout agreed expressly to what was the final extension of his LDC to 31 December.

33. As to the Respondent's refusal to extend or renew his employment after that date, we find no error in the UNRWA DT's reasoning and result that the Agency was justified in doing so. It is undeniable and not contested by Mr. Zaqqout that the Agency faced a massive financial shortfall. His LDC provided expressly that he could have no expectation of renewal or extension or conversion to any other type of appointment. As to the other grounds of challenge brought by Mr. Zaqqout, including his challenge to the authority of a signatory to correspondence, we accept that these are new in the sense that they were not put before the UNRWA DT and so cannot be allowed for the first time on appeal unless there are exceptional circumstances for their admission. Mr. Zaqqout has not established that there are such grounds.

34. In these circumstances, no questions of remedies for Mr. Zaqqout arise.

Judgment

35. For the foregoing reasons, we dismiss Mr. Zaqqout's appeal. Judgment No. UNRWA/DT/2020/006 is affirmed.

Original and Authoritative Version: English

Dated this 30th day of October 2020.

(Signed)

Judge Colgan, Presiding
Auckland, New Zealand

(Signed)

Judge Halfeld
Juiz de Fora, Brazil

(Signed)

Judge Raikos
Athens, Greece

Entered in the Register on this 8th day of December 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar