



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

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Judgment No. 2024-UNAT-1489

**Ahmad Hasan Hamad  
(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 Leslie F. Forbang, Presiding Judge Katharine Mary Savage Judge Graeme Colgan
Case No.:	2023-1875
Date of Decision:	25 October 2024
Date of Publication:	3 December 2024
Registrar:	Juliet E. Johnson

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Counsel for Appellant: Diab El Tabari

Counsel for Respondent: Stephen Margetts

**JUDGE LESLIE F. FORBANG, PRESIDING.**

1. Mr. Ahmad Hasan Hamad, a staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or the Agency), contested the decision not to pay him separation benefits for the period during which he had worked on daily-paid service contracts (first contested decision), and to deny his request to include his daily-paid service in the determination of his Service Computation Date (SCD) for purposes of calculating his separation benefits (second contested decision).
2. By Judgment No. UNRWA/DT/2023/036 (impugned Judgment),<sup>1</sup> the UNRWA Dispute Tribunal (UNRWA DT) dismissed the application on the merits.
3. Mr. Hamad lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

**Facts and Procedure<sup>2</sup>**

5. On 1 April 2006, Mr. Hamad was employed by the Agency on a daily-paid service contract as Plant Mechanic at the Lebanon Field Office (LFO).<sup>3</sup> He continued working for the Agency on daily-paid service contracts until 31 August 2022.
6. Effective 1 September 2022, Mr. Hamad was placed on a mandatory one-month break in service.<sup>4</sup>
7. Effective 17 October 2022, Mr. Hamad was employed by the Agency on a fixed-term appointment as Plant Mechanic, LFO, Grade 3, Step 1.<sup>5</sup> Mr. Hamad's Letter of Appointment (LOA)

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<sup>1</sup> *Hamad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment dated 21 September 2023.

<sup>2</sup> Summarized from the impugned Judgment as relevant to the appeal.

<sup>3</sup> Impugned Judgment, para. 5.

<sup>4</sup> *Ibid.*, para. 6. The UNRWA DT referred to this period as "mandatory separation".

<sup>5</sup> Impugned Judgment, paras. 7-8.

included a section titled “Separation From Service” but did not state a SCD or a method for determining a SCD or calculating separation benefits.<sup>6</sup> Under “Special Conditions”, the LOA stated:<sup>7</sup>

It is expressly understood and agreed that your employment by the Agency shall be governed exclusively by this present letter of appointment and that any and all previous letters of appointment or contracts of service between you and the Agency are hereby irrevocably cancelled and revoked.

8. The Agency set Mr. Hamad’s SCD at 1 September 2022.<sup>8</sup>
9. On or about 30 September 2022, Mr. Hamad was informed of the contested decisions.<sup>9</sup>
10. On 31 October 2022, he submitted a Request for Decision Review (RDR) challenging the contested decisions.<sup>10</sup>
11. By letter dated 16 January 2023, the Director of UNRWA Affairs, Lebanon, upheld the contested decisions.<sup>11</sup>
12. On 14 February 2023, Mr. Hamad filed the application with the UNRWA DT.

*The impugned Judgment*

13. By Judgment No. UNRWA/DT/2023/036 dated 21 September 2023, the UNRWA DT dismissed the application.
14. Noting that daily-paid workers were not staff members of the Agency and did not accrue any benefits under their contracts, including separation benefits upon termination, the UNRWA DT held that Mr. Hamad had failed to meet his burden of showing that he was entitled to separation benefits for his daily-paid service.<sup>12</sup> He has not pointed to anything that would entitle him to such benefits. Rather, he appears to have conceded that his daily-paid service contracts did not mention any such entitlement.

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<sup>6</sup> *Ibid.*, para 8. LOA dated 14 October 2022.

<sup>7</sup> LOA, Section 8.

<sup>8</sup> Impugned Judgment, para. 27.

<sup>9</sup> Mr. Hamad’s application before the UNRWA DT, Section III; the Commissioner-General’s reply.

<sup>10</sup> Impugned Judgment, para. 10.

<sup>11</sup> *Ibid.*, para. 11.

<sup>12</sup> *Ibid.*, paras. 23-24. The UNRWA DT noted that neither Mr. Hamad nor the Commissioner-General had produced a copy of his daily-paid contracts.

15. With regard to the second contested decision, the UNRWA DT found the application receivable.<sup>13</sup> The period over which Mr. Hamad's separation benefits will be calculated constitutes a term or condition of his fixed-term employment. The impact of the SCD date on his separation benefits is not "potential" but rather definite, final and unequivocal. Moreover, in addition to its future impact, the SCD also has a present impact. Staff members are entitled to know how their separation benefits will be calculated when deciding whether to accept and/or continue employment with the Agency. It is not sufficient to say that a staff member must wait until the end of their career with the Agency to learn if they will be successful in their challenge to a SCD that will dictate the separation benefits they receive.

16. The UNRWA DT found that Mr. Hamad had pointed to no term of his fixed-term contract nor any provision of the Agency's regulatory framework that would have entitled him to have the Agency count his daily-paid service when determining his SCD or calculating his separation benefits.<sup>14</sup> His claim of the Agency's bad faith ignores that the break in service is mandatory under Section 21.d of Complementary Personnel Directive No. CPD/2 (Administration of Daily Paid Workers), and he has not demonstrated that he would have been entitled to an earlier SCD even absent that break in service.

#### *Procedure before the Appeals Tribunal*

17. On 20 November 2023, Mr. Hamad filed an appeal of the impugned Judgment with the Appeals Tribunal, to which the Commissioner-General filed an answer on 30 January 2024.

### **Submissions**

#### **Mr. Hamad's Appeal**

18. Mr. Hamad requests the Appeals Tribunal to review the impugned Judgment and to provide justice: as relief, he seeks payment of separation benefits for the period from 1 April 2006 to 31 August 2022, i.e. 16 years and five months, or inclusion of those years of service in the SCD, or issuance of a letter clearly indicating that he will be paid the separation benefit for his daily-paid service from 1 April 2006 until 31 August 2022, i.e. 16 years and five months, at the end of service.

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<sup>13</sup> Impugned Judgment, paras. 29-30.

<sup>14</sup> *Ibid.*, paras. 31-32.

19. Mr. Hamad contends that the Agency implemented the one-month break in service contrary to the legal advice provided to the Human Resources department and the Deputy Director that even with the break in service, the daily-paid worker should still be entitled to remuneration for the “uncut period worked”.<sup>15</sup> The UNRWA DT did not grant his request for an oral hearing. His daily-paid service had taken place without a break in service for too long and that created a potential problem of an increased financial obligation on the Agency. Causing him financial loss was bad faith on the part of the Agency.

20. Mr. Hamad argues that the impugned Judgment is unfair. The application of the burden of proof by the UNRWA DT is unacceptable.

21. Mr. Hamad asserts that even if a new rule is adopted not to pay entitlements to any daily-paid workers no matter how long they have consecutively worked, such rule would not apply to daily-paid workers hired before. The change in the rule, effected in bad faith, should not apply to him. It would be worth asking the Agency whether prior to the rule change it paid entitlements to daily-paid workers who worked more than a year.<sup>16</sup> Precedents exist but he does not have access to such documentary evidence.

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

22. The Commissioner-General requests the Appeals Tribunal to dismiss the appeal and affirm the impugned Judgment.

23. The Commissioner-General argues that the UNRWA DT correctly dismissed the application. As concerns the first contested decision, the contract for daily-paid workers clearly stated, in relevant part that “it is expressly understood and agreed that [the worker] shall not be entitled to any benefit payment, subsidy, compensation, or other entitlement other than those expressly provided for in this contract”. In view of the record and the applicable law, the UNRWA DT correctly found that Mr. Hamad had failed to show that the second contested decision was in non-compliance with the terms of his appointment.

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<sup>15</sup> Mr. Hamad submits that he will provide a list of witnesses to give testimony on that fact before the Appeals Tribunal.

<sup>16</sup> Mr. Hamad submits that the Agency refused to verify or refute this fact with assistance from the department of Finance but it could also be established by witness testimony.

24. The Commissioner-General submits that the appeal fails to satisfy the requirements of Article 2(1) of the Appeals Tribunal Statute (Statute). He has failed to identify any grounds of appeal.

25. The Commissioner-General contends that the appeal fails to establish any reversible error of fact, law or procedure by the UNRWA DT warranting intervention by the Appeals Tribunal. First, the UNRWA DT did not err by not holding an oral hearing. It is not apparent from the record that Mr. Hamad requested the UNRWA DT to hold an oral hearing. In any event, it would have been within the UNRWA DT's discretion to deny the request. He has also failed to explain, let alone establish, how the UNRWA DT's decision not to hold an oral hearing was an error that affected the outcome of the case.

26. Second, the Commissioner-General submits that Mr. Hamad has failed to explain how the UNRWA DT's findings were in error or how his claims undermine the lawfulness of the contested decisions. Contrary to his views, the Agency is not subject to local labour laws. The UNRWA DT was correct to hold him to his burden of proof to show that the contested decisions, which enjoy a presumption of regularity, were in non-compliance with the terms and conditions of his appointment or contract of employment. His claims regarding bad faith are as unsubstantiated on appeal as they were before the UNRWA DT.

27. Lastly, the Commissioner-General maintains that there is no basis to grant any of the requested reliefs as the contested decisions were properly taken.

### **Considerations**

28. This appeal challenges Judgment No. UNRWA/DT/2023/036 of UNRWA DT dated 21 September 2023 upholding the Agency's decision not to pay Mr. Hamad separation benefits for the period during which he worked on daily-paid service contracts (first contested decision), and to deny his request to include his daily-paid service in the determination of his Service Computation Date (SCD) for purposes of calculating his separation benefits (second contested decision).

#### *Preliminary issue: oral hearing*

29. Mr. Hamad has requested an oral hearing on grounds that the "case needs to be investigated as legal officers at fi[el]d level can justify regarding bad faith by field management"

and that he will provide “the list of witnesses in due course”. We note that decisions whether to hold an oral hearing are governed by Article 8(3) of the Statute and Article 18(1) of the Appeals Tribunal Rules of Procedure (Rules). We think that the factual and legal issues arising from this appeal have already been clearly defined by the parties and there is no need for further clarification. In addition, we do not find that an oral hearing would “assist in the expeditious and fair disposal of the case” as required by Article 18(1) of the Rules.

30. Accordingly, Mr. Hamad’s request for an oral hearing is denied.

*Merits of the appeal*

31. In this appeal, Mr. Hamad challenges the UNRWA DT’s conclusion that the contested decisions were lawful. Based on our review of the record, the applicable legal instruments and jurisprudence, we hold that the UNRWA DT did not err in law or in fact in reaching the above conclusion and its Judgment should be affirmed for the reasons set out below.

*Whether the UNRWA DT erred in finding that the decision not to pay Mr. Hamad separation benefits for the period during which he had worked on daily-paid service contracts was lawful*

32. Mr. Hamad takes issue with the UNRWA DT’s finding that he had failed to meet the burden to establish that he was entitled to separation benefits for his daily-paid service. Mr. Hamad argues that it is “totally unacceptable to hide behind the burden of proof” to deny his entitlement to compensation “after all the labo[u]r laws say so” and that it is a “breach of universal labo[u]r laws”.

33. Before reviewing this ground of Mr. Hamad’s appeal, this Tribunal reiterates its position stated in *Slade* as follows:<sup>17</sup>

(...) The terms and conditions of the employment contract of a staff member are set forth in the letter of appointment and its express incorporation by reference of the Organization’s Regulations and Rules and all pertinent administrative issuances. In this regard, “the employment contract of a staff member subject to internal laws of the United Nations is not the same as a contract between private parties”.

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<sup>17</sup> *Slade v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-463, para. 26 (internal citation and brackets omitted).

34. In *Wang*, we emphasized further that the Organization is governed by its internal rules and regulations and not the national laws of its Member States, unless the Organization adopts such national laws as part of its internal law.<sup>18</sup>

35. Likewise, the Agency's obligations towards Mr. Hamad in relation to his daily-paid service contracts are governed by the Agency's relevant administrative issuances. Based on the foregoing, his argument with reference to "all the labo[u]r laws" and "universal labo[u]r laws" has no merit.

36. Turning to the main issue, it is apposite to reprise the relevant legal and administrative framework governing daily-paid workers or services.

37. UNRWA General Staff Circular No. 05/2010 on Hiring Daily Paid Workers (GSC 05/2010), effective 1 August 2010, provides in Section 1:

Daily paid workers are complementary personnel with non-staff status;

The nature of assignments is strictly temporary, intermittent and time-limited (...).

38. UNRWA General Staff Circular No. 02/2015 on Limitations on Hiring of Daily Paid Workers (GSC 02/2015), effective 1 July 2015, states in relevant part:

2.a Daily Paid Workers' assignments are "strictly temporary, intermittent, and time-limited" in nature (GSC 05/2010 (Hiring of Daily Paid Workers), para. 1).

39. In the same vein, UNRWA Complementary Personnel Directive No. CPD/2 on Administration of Daily Paid Workers (CPD/2), effective 17 January 2022, provides in Section 3(e) that a daily-paid worker is "a person who is engaged by UNRWA under a Daily Paid Contract and considered as temporary, complementary personnel with non-staff status in the Agency".

40. As concerns the duration of service and mandatory separation, CPD/2 provides in Section 21(d):

When a Daily Paid Worker has been selected for a staffing table post, whether it be on a Limited Duration Contract (LDC) or on a Fixed-Term Appointment basis (FTA), including a Part-time appointment (category P), the Daily Paid worker must be separated from service for a minimum of 30 days before commencing the appointment with the Agency as a staff member.

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<sup>18</sup> *Wang v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-454, para. 32.



41. Regarding the benefits and entitlements of a daily-paid worker, Section 27 of CPD/2 states:

Daily Paid Workers are complimentary personnel with non-staff status. As such, they are not entitled to any benefit or entitlement beyond the following:

- a. Authorised leave: (...)
- b. Sick leave: (...)
- c. Insurance and compensation: The Agency will not provide any form of insurance coverage to Daily Paid Workers. However, in the event of injury, illness or death directly attributable to the performance of services under his/her contract, in accordance with the established procedure, the Daily Paid Worker may be entitled to compensation payable to a staff member on a Limited Duration Contract in addition to payment up to the expiration of their contract.

42. With respect to recognition of prior daily-paid service, UNRWA Area Staff Personnel Directive PD A/4/Part VI/Rev. 6, effective 23 June 2015, provides in relevant part:

(iii) Recognition of Prior Daily-Paid Service: the entry on duty date is the date of area staff manning table appointment, but the service computation date is the commencement date of the continuous daily-paid service being recognized. It must be without significant break in service, defined as seven consecutive calendar days or more, immediately prior to the area staff appointment. Further, we should ensure that no separation benefit was paid, proper evidence of the amount of that payment exists and has been recovered from the staff member before recognition can be granted. Any break whatever period between the immediately preceding period of daily-paid service and the next preceding period of daily-paid service shall bar from recognition of any period of daily-paid service prior to the immediately preceding period of daily-paid service. Both the service computation date and the entry on duty must be entered and maintained on the personnel records of the staff member.

43. By applying the above administrative issuances to the present case, it is clear that Mr. Hamad served the Agency as complementary personnel with non-staff status. He was not a staff member of the Agency. Therefore, he was not entitled to any benefit beyond authorized leave, sick leave, insurance and compensation for injury, illness, or death directly attributable to the performance of services under his contract, as set out in Section 27 of CPD/2 that was in effect at the time that the contested decisions were taken.

44. In addition, by his own admission Mr. Hamad's contracts do not mention payment of any compensation upon expiration. However, he asks whether the Agency usually paid compensation for "daily staff working over a [y]ear or not prior to the rule change". He alleges that there is bad

faith because precedents exist to that effect but he as an applicant cannot obtain access to such documents.

45. Besides the fact that Mr. Hamad's admission settles the issue of his entitlement to a separation benefit, we note that the Commissioner-General tendered as evidence before the UNRWA DT a sample daily-paid contract applicable at the relevant time. The sample contract states in relevant part:

(...) it is expressly understood and agreed that [the service provided] shall not be entitled to any benefit payment, subsidy, compensation, or other entitlement other than those expressly provided for in this contract.

46. Mindful of the fact that Mr. Hamad's daily-paid service contract cannot be fundamentally different from contracts normally used for the same purpose, we are of the view that this piece of evidence, corroborated also by his admission, confirms the UNRWA DT's conclusion that separation benefits do not accrue on daily-paid service contracts.

47. In addition, Mr. Hamad further argues that the impugned Judgment is totally unfair as it does not provide justice for his rightful claims. He contends that even if a new rule exists not to pay compensation to anyone, no matter the length of consecutive service, the rule would only apply to new staff and not daily-paid workers or staff hired prior to the introduction of the new rule.

48. We note the fact that Mr. Hamad began working for the Agency on 1 April 2006 on a daily-paid service contract. The relevant administrative issuance addressing daily-paid service at the time Mr. Hamad entered into his initial contract in 2006 was GSC 05/2010. Section 1 of GSC 05/2010 provided that the nature of assignments for which the Agency engaged daily-paid workers under service contracts were strictly time-limited. This means that Mr. Hamad's daily-paid service contract was not continuous from 1 April 2006 to 31 August 2022. On the contrary, he was successively offered new daily-paid contracts at different intervals between 2006 and 2022. Consequently, upon each expiry of his daily-paid service contract, it was successively renewed.

49. This proves that Mr. Hamad was bound by the Agency's regulations and issuances issued before each renewal of his daily-paid contract. For instance, GSC 05/2010, effective 1 August 2010, GSC 02/2015, effective 1 July 2015, and CPD/2, effective 17 January 2022, applied to any of his daily-paid service contracts entered into after 1 August 2010, 1 July 2015, and 16 January 2022, respectively. In light of this, Mr. Hamad's argument that new rules did not apply to him is erroneous.

50. Accordingly, the UNRWA DT did not err in finding that the first contested decision was lawful.

*Whether the UNRWA DT erred in upholding the decision not to amend Mr. Hamad's SCD*

51. Mr. Hamad submits that the Agency showed bad faith by applying a mandatory break in service prior to the start of his FTA to ensure that his SCD reflected the date of his FTA and not the date of his prior daily-paid service contract, in order to avoid potential payment of several more months of entitlements upon separation.

52. The UNRWA DT concluded that the break in service was not effected in bad faith and was not an attempt to deprive Mr. Hamad of an earlier SCD. The UNRWA DT observed that his break in service was mandatory under Section 21.d of CPD/2. The UNRWA DT also concluded that Mr. Hamad failed to demonstrate that he would have been entitled to an earlier SCD without that break in service.

53. In light of the above, the basic question for our determination at this point is whether the mandatory one-month break in service prior to Mr. Hamad's FTA justifies the Agency's decision not to amend his SCD to include the previous date on which he began working on daily-paid service contracts for the Agency. To answer this question, we turn to Mr. Hamad's letter of appointment.

54. With regard to the letter of appointment, we have held in *Badawi*:<sup>19</sup>

(...) The issuance of a letter of appointment signed by the appropriate United Nations official or someone acting on his or her behalf is more than a mere formality. Rather, the letter of appointment governs the conditions of the employment relationship, along with the rules and regulations of the Agency which are incorporated into the contract[.]

55. Mr. Hamad's letter of appointment is the controlling document in the present case. As UNRWA Area Staff Regulation 4.1(B)(ii) provides: "The letter of appointment shall state: (...) (ii) the nature of the appointment".

56. The language of Mr. Hamad's letter of appointment dated 14 October 2022 is clear and unambiguous. It provided, under Section 8, as follows:<sup>20</sup>

<sup>19</sup> *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. 28 (internal citations omitted).

<sup>20</sup> Emphasis added.

It is expressly understood and agreed that your employment by the Agency shall be governed exclusively by this present letter of appointment and that *any and all previous* letters of appointments or *contracts of service* between you and the Agency are hereby irrevocably cancelled and revoked.

57. Section 8 of Mr. Hamad's letter of appointment had the effect of severing any and all previous periods of his daily-paid service in the determination of his SCD. Therefore, by accepting the offer, subject to the terms and conditions therein, and as specified in the letter of appointment and those laid down in the UNRWA Area Staff Regulations, Rules, Personnel Directives as well as related issuances applicable to area staff members, Mr. Hamad irrevocably consented to the non-computation of his SCD on the basis of periods of work performed before the commencement of his FTA.

58. Therefore, the UNRWA DT did not err in upholding the second contested decision.

*Final remark of our concern*

59. We are concerned that after having been engaged consistently for more than 16 years, the effect of the failure to accord Mr. Hamad any benefits of employment is harsh. Equally harsh was the requirement that he accept the FTA offered to him subject to consenting that his SCD not be computed and that he would not have any claim to benefits arising from the extended period of his prior employment. In spite of this, regrettably, Mr. Hamad must endure an equally harsh outcome since he is unable to obtain any relief, given the rules which apply to the determination of the matter.

60. That notwithstanding and based on the foregoing, we hold that Mr. Hamad's appeal stands to be dismissed and the impugned Judgment affirmed.

**Judgment**

61. Mr. Hamad's appeal is dismissed, and Judgment No. UNRWA/DT/2023/036 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 25<sup>th</sup> day of October 2024 in New York, United States.

*(Signed)*

Judge Forbang, Presiding

*(Signed)*

Judge Savage

*(Signed)*

Judge Colgan

Judgment published and entered into the Register on this 3<sup>rd</sup> day of December 2024 in New York, United States.

*(Signed)*

Juliet E. Johnson, Registrar