



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2018-1216

Baramky
(Appellant)

v.

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

ORDER No. 342 (2019)

1. On 29 November 2018, the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT and Agency, respectively) issued Judgment No. UNRWA/DT/2018/065 in the case of *Baramky v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, dismissing Mr. Anton Suheil Baramky's applications against the decisions to 1) permanently transfer him from the Finance Department to the Cash for Work Programme and to 2) impose disciplinary measures on two staff members following the outcome of the investigations into Mr. Baramky's complaints against them.

2. On 7 December 2018, Mr. Baramky filed an appeal against the UNRWA DT Judgment. On 10 December 2018, Mr. Baramky filed a request for interpretation of judgment before the UNRWA DT asking that the UNRWA DT provide an interpretation of paragraph 55 of its Judgment in which the UNRWA DT rejected his request for moral damages on the ground that Mr. Baramky's moral damage was only attributable to the two staff members concerned and not to any fault of the Agency. By Order No. 230 (UNRWA/DT/2018) dated 11 December 2018, the UNRWA DT denied Mr. Baramky's request for interpretation of judgment holding that paragraph 55 of the Judgment "is clear and without need for interpretation".

3. On 7 January 2019, Mr. Baramky filed a Motion for Leave to File Additional Evidence before the United Nations Appeals Tribunal (Appeals Tribunal). Mr. Baramky sought leave to submit the Convention on the Privileges and Immunities of the United Nations (Convention) as additional evidence on appeal and as support of his request to interpret paragraph 55 of the UNRWA DT Judgment in light of Article VIII, Section 29(b) of the Convention to the effect that the Agency compensate Mr. Baramky for moral damages in the amount of USD 3,900,000.00 as long as the Agency does not waive the judicial immunity of the two staff members.

4. By Order No. 338 (2019) dated 28 January 2019, the Appeals Tribunal dismissed Mr. Baramky's motion. The Appeals Tribunal found that Mr. Baramky had failed to demonstrate exceptional circumstances justifying the granting of his motion and that he was essentially seeking leave to submit a legal instrument to support this appeal, which does not constitute evidence.

5. On 11 February 2019, Mr. Baramky filed a motion seeking leave to submit additional pleadings. He submits that the Commissioner-General insisted in the answer to his appeal that United Nations staff members enjoy functional immunity. The Convention clarifies that the United Nations shall make provisions for appropriate modes of settlement of disputes involving any official who, by reason of his or her official position, enjoys immunity, if immunity has not been waived by the Secretary-General. Therefore, according to Mr. Baramky, UNRWA had to find an appropriate mode of settlement or waive the immunity of both staff members to enable him to sue them at local courts and claim the amount of USD 3,900,000.

6. On 22 February 2019, the Commissioner-General filed his response objecting to the motion. He contends that Mr. Baramky is essentially filing supplemental pleadings addressing the merits of his appeal and he has no right to do so without the permission of the Appeals Tribunal. Furthermore, Mr. Baramky has not shown exceptional circumstances justifying the filing of the motion. The Commissioner-General submits that in his motion, Mr. Baramky has referred to specific provisions of the Convention and has made arguments based thereon. This is a frivolous and disingenuous attempt to circumvent the Appeals Tribunal's order rejecting Mr. Baramky's previous motion. The Commissioner-General seeks costs in the amount of USD 300 against Mr. Baramky for a manifest abuse of proceedings.

7. The Rules of Procedure of the Appeals Tribunal (Rules) provide for the parties to file appeals, answers, cross-appeals and answers to cross-appeals. They do not provide for an appellant to file comments on an answer. Nevertheless, other pleadings may be allowed under Article 31(1) of the Rules as well as Practice Direction No. 1. Under Section II.A.3 of Practice Direction No. 1, an appellant may make “[a] motion requesting the permission of the Appeals Tribunal to file a pleading after the answer to the appeal” and the Appeals Tribunal may grant such a motion “if there are exceptional circumstances justifying the motion”.

8. The matters that Mr. Baramky seeks to address in his motion do not demonstrate any exceptional circumstances justifying the need to file additional pleadings in response to the Secretary-General’s answer. Mr. Baramky’s motion merely reiterates or supplements the arguments already made in his appeal. At the same time, by quoting some of the excerpts of the Convention mentioned above, the motion seeks to by-pass the Appeals Tribunal Order not to admit said legal instrument.

9. While it is unacceptable for Mr. Baramky to disobey the Appeals Tribunal’s order, at this stage we find it sufficient to issue the admonition not to repeat such conduct before the Appeals Tribunal.

IT IS HEREBY ORDERED that Mr. Baramky’s motion seeking leave to file additional pleadings **IS DENIED**.

Original and Authoritative Version: English

Dated this 1st day of March 2019
in Juiz de Fora, Brazil.

(Signed)
Judge Martha Halfeld,
Duty Judge

Entered in the Register on this 1st day
of March 2019 in New York, United States.

(Signed)
Weicheng Lin, Registrar