



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2020-1387

Zaqqout

(Applicant)

v.

Commissioner-General

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

(Respondent)

ORDER No. 385 (2020)

1. Mr. Zaqqout's appeal is due to be considered by this Tribunal during the next two weeks in its Fall Session. Mr. Zaqqout has applied, belatedly, for several interlocutory orders by motions he has filed and to which the Respondent has replied.
2. First, Mr. Zaqqout seeks an order that the Respondent produce to this Tribunal some 24 documents or sets of documents, together with English translations of three of these, which he says are relevant to his appeal but which he does not have and which, by implication, were not before the UNRWA DT.
3. The Respondent opposes this motion saying that, at best, these documents address the substantive merits of his claims whereas his case in the UNRWA DT was dismissed for non-receivability reasons. The Respondent says that, in any event, Mr. Zaqqout has not made out the statutory grounds for receipt of further evidence on appeal.
4. Next, Mr. Zaqqout seeks a postponement of the consideration and decision of his appeal. This application follows naturally from his first. That is, if the documents he seeks must be produced, and, after submissions are made on them, they are considered, his appeal will not be able to proceed at the current session of the Tribunal. It follows that if leave is granted to direct production of the documents, then the appeal should be postponed. Equally, it must follow that if leave is not granted, then there is no reason to

postpone the appeal. It has been set down for hearing and is otherwise ready to proceed. The circumstances in which an appeal will be postponed will be rare, especially when an application has been made as late as in this case.

5. Although subject to Article 2(5) set out below, Article 8(1) of the Statute of the United Nations Appeals Tribunal (Appeals Tribunal) is applicable to this application. It provides: “The Appeals Tribunal may order production of documents or such other evidence as it deems necessary, subject to article 2 of the present statute”.

6. Article 2(5) of the Statute of the Appeals Tribunal, to which Article 8(1) is subject, provides materially:

In exceptional circumstances, and where the Appeals Tribunal determines that the facts are likely to be established with documentary evidence, including written testimony, it may receive such additional evidence if that is in the interest of justice and the efficient and expeditious resolution of the proceedings. Where this is not the case, or where the Appeals Tribunal determines that a decision cannot be taken without oral testimony or other forms of non-written evidence, it shall remand the case to the Dispute Tribunal. The evidence under this paragraph shall not include evidence that was known to either party and should have been presented at the level of the Dispute Tribunal.

7. It is relevant, also, that the substance of this appeal rests essentially on two questions. The first is whether the UNRWA DT correctly concluded that Mr. Zaqqout’s challenges were unreceivable because they challenged administrative decisions that were favourable to him. The second is whether the UNRWA Dispute Tribunal, in concluding that the Agency’s decision not to extend Mr. Zaqqout’s limited duration contract, or to not renew it with a further limited duration contract, erred because he had no lawful expectation of such continued employment.

8. If Mr. Zaqqout is successful on either (or both) of these issues, then it is likely that the Appeals Tribunal will have to remand the case to the UNRWA DT for decision of the case on its merits. If that occurs, it will be open to Mr. Zaqqout to seek to persuade the UNRWA Dispute Tribunal to consider the documentary evidence he asserts is relevant to, and admissible in, his case. I should not, however, be thought to express any view on the decision of such an application; that would be for the UNRWA DT to determine.

9. However, it is well-established UNAT jurisprudence that an appellant cannot re-define his or her case on appeal to this Tribunal by seeking to introduce new issues for decision that had not been put before the first instance tribunal.

10. It is difficult for an applicant before the UNRWA Disputes Tribunal, and now an appellant before the Appeals Tribunal, who is not professionally represented and whose first language is not that of the forum in which the case is heard, to formulate his or her case to ensure that all relevant evidence and issues are put before the first instance tribunal. But that is the rule of practice in these matters.

11. I have considered carefully the detailed grounds filed by Mr. Zaqqout in support of his applications as these have been translated into English. I must apply the mandatory and narrow tests for admission of new evidence before the Tribunal can compel the Respondent to produce the document for use by Mr. Zaqqout on his appeal.

12. The statutory tests set out above for the production and admission of new evidence have not been met by Mr. Zaqqout. He has not addressed whether, let alone established that, the evidence he wishes the Appeals Tribunal to consider was not known to either party at the time of the UNRWA DT's hearing. Nor has Mr. Zaqqout established that the circumstances in which this evidence should be admitted are "exceptional". The Tribunal's power under Article 8(1) set out above cannot be exercised unless these Article 2(5) tests are met.

13. I decline to order production of these documents by the Respondent and, accordingly, the application for postponement of the appeal is likewise refused. The appeal will be considered at the Tribunal's Fall Session in the next two weeks.

IT IS HEREBY ORDERED that Mr. Zaqqout's request for postponement of consideration of Case No. 2020-1387 is **REJECTED**.

Original and Authoritative Version: English

Dated this 19th day of October 2020
in Auckland, New Zealand.

(Signed)
Judge Graeme Colgan,
Presiding Judge

Entered in the Register on this 19th day
of October 2020 in New York, United States.

(Signed)
Weicheng Lin, Registrar