



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

Judgment No. 2016-UNAT-634

Jaber *et al.*
(Appellants)

v.

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

JUDGMENT

Before: Judge Inés Weinberg de Roca, Presiding
Judge Deborah Thomas-Felix
Judge Luis María Simón

Case Nos.: 2015-840 to 2015-843

Date: 24 March 2016

Registrar: Weicheng Lin

Counsel for Jaber *et al.*: Amer Abu-Khalaf/LOSA

Counsel for Commissioner-General: Lance Bartholomeusz

JUDGE INÉS WEINBERG DE ROCA, PRESIDING.

1. On 2 June 2015, the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) issued four judgments, Judgment No. UNRWA/DT/2015/031 in the case of *Jaber v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2015/032 in the case of *Shalabi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2015/033 in the case of *Baidoun v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, and Judgment No. UNRWA/DT/2015/034 in the case of *Al Sayyad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*.

2. On 23 July 2015, Mr. Khaled Jaber appealed Judgment No. UNRWA/DT/2015/031, Mr. Mohammad Shalabi appealed Judgment No. UNRWA/DT/2015/032, Mr. Muayad Mahmoud M. Baidoun appealed Judgment No. UNRWA/DT/2015/033 and Mr. Yousef Mohammad Y. Al Sayyad appealed Judgment No. UNRWA/DT/2015/034. By Order No. 235 (2015) dated 10 September 2015, the President of the United Nations Appeals Tribunal (Appeals Tribunal) granted the Commissioner-General's motion for consolidation of the four appeals (*Jaber et al.*) and his request to file one answer. On 24 September 2015, the UNRWA Commissioner-General filed an answer to the four appeals by *Jaber et al.*

Facts and Procedure

3. Mr. Jaber joined the Agency as a Paymaster in the Cash Office (CO) of the West Bank Field Office (WBFO), Finance Department, on a fixed-term appointment on 2 February 2000. Effective 1 March 2010, he was transferred to the post of Cashier in the CO.

4. Mr. Shalabi entered the service of the Agency as a Grade-9 Finance Clerk in the CO of the WBFO on 16 February 2004. He was promoted to Grade 10 effective 1 January 2011.

5. Mr. Baidoun commenced his employment with the Agency on 1 January 2011. Six months later, he was appointed as a Finance Assistant in the CO of the WBFO on a limited duration contract (LDC).

6. Mr. Al Sayyad began his service with the Agency on 13 December 2004. He was appointed as a Grade-10 Paymaster in the CO of the WBFO effective 1 July 2011.

7. In October 2012, the Department of Internal Oversight Services (DIOS), UNRWA, received information about suspected fraud in the CO. The first reported case was partially investigated by the WBFO in July 2012. When further frauds were discovered a few months later amounting to USD 1,600, senior management of the WBFO contacted DIOS for an investigation.

8. By letters dated 18 October 2012, the Director of UNRWA Operations, West Bank (DUO/WB) informed each of Jaber *et al.* that he was suspended from duty with pay pending the investigation into the suspected fraud in the CO. On 23 and 24 July 2013, each of Jaber *et al.* was interviewed by DIOS.

9. In a report dated 6 January 2014, the DIOS investigation concluded that a total of USD 5,679 had been misappropriated from the CO, but it could not determine who was responsible for the creation of false documents and the misappropriation.

10. By letters dated 31 March 2014, the DUO/WB informed each of Jaber *et al.* that the investigation was complete and that while fraud had taken place, fault could not be attributed to anyone.

11. On 16 April 2014, Mr. Jaber received an e-mail explaining the deficiencies in the CO setup as identified by the auditors and the new procedures to be implemented in order to improve security. One key change was to replace the post of “Cashier” encumbered by Mr. Jaber with two roles: the Cashier-Cheque and the Cashier-Cash. Mr. Jaber chose to become Cashier-Cheque.

12. Both Mr. Shalabi and Mr. Al Sayyad returned to work on 23 April 2014. Mr. Baidoun, on the other hand, was also scheduled to return to work on 23 April 2014, but on that day, he tendered his resignation, which was accepted by the Agency two days later.

13. In August 2014, after having submitted separate requests for decision review, each individual of Jaber *et al.* filed an application with the UNRWA Dispute Tribunal against the decisions to suspend all of them from duty with pay for nearly 18 months without any compensation following the closure of the investigation.

14. On 2 June 2015, the UNRWA Dispute Tribunal issued the four Judgments now under appeal, dismissing the applications by Jaber *et al.* In respect of Jaber *et al.*'s argument that their prolonged suspension pending investigation was unreasonable, in violation of their due process rights and amounted to an abuse of authority, the UNRWA Dispute Tribunal did not find the duration of the investigation unreasonable given the complex financial issues and voluminous documents involved. It found that the 18-month delay in closing the investigation was not due to the Agency's negligence and that it did not violate Jaber *et al.*'s due process rights. As there was no breach of Jaber *et al.*'s rights, the UNRWA DT rejected their requests for compensation. It also rejected Jaber *et al.*'s requests that the Agency issue an apology and that the UNRWA Dispute Tribunal issue a declaration of their innocence. In addition, the UNRWA Dispute Tribunal rejected Mr. Jaber's challenge of the decision to replace his post of Cashier with two positions of Cashier-Cheque and Cashier-Cash, finding that the UNRWA Commissioner-General had acted within his discretion to change the systems and processes in the CO in order to prevent future fraud.

Submissions

Jaber *et al.*'s Appeals

15. The contentions advanced by Jaber *et al.* are identical, except in so far as they relate to the effects of the investigation on their respective personal and family lives. These common contentions may be summarized as follows.

16. The UNRWA Dispute Tribunal erred in law by finding that the duration of the investigation was not unreasonable. While the case entailed serious financial issues and sensitive documentation, the abnormal and excessive delay in carrying out the investigation was unjustified and not attributable to actions taken by Jaber *et al.* The Agency's explanations about the complexity of the fraud, the need to hire external assistance, the poor performance by the external investigator and the difficulties in contacting a number of witnesses were irrelevant. The delay was due to incompetence, inefficiency and negligence of DIOS, and it breached the international standards and Jaber *et al.*'s rights.

17. The UNRWA Dispute Tribunal erred in law and procedure by deciding that the delay in closing the investigation was not due to the Agency's negligence and, moreover, that Jaber *et al.*'s due process rights were not violated. It overlooked the evidence submitted

in this regard. The 18-month investigation not only prejudiced Jaber *et al.*'s due process rights but also turned their administrative leave into a *de facto* disciplinary measure, in violation of UNRWA's Regulations and Rules. It caused anxiety, defamation and humiliation to Jaber *et al.* The ruling by the UNRWA Dispute Tribunal is inconsistent with the jurisprudence of the Appeals Tribunal and other international administrative tribunals.

18. The UNRWA Dispute Tribunal erred in law by concluding that moral damages could not be awarded, as the Agency was duty bound to investigate fraud allegations. The charge of fraud affected not only Jaber *et al.*'s professional careers but also their personal lives leading to the onset of many psychological disorders. By this finding, the UNRWA Dispute Tribunal also disregarded the social cultural damage and humiliation Jaber *et al.* suffered within the Arab society.

19. Jaber *et al.* request that the Appeals Tribunal vacate the Judgments and order an unspecified amount of moral damages for Messrs. Jaber and Al Sayyad, and two years' net base salary for Messrs. Baidoun and Shalabi.

The Commissioner-General's Answer

20. The UNRWA Dispute Tribunal did not err in law when it found that the duration of the investigation was not unreasonable. The Appellants merely disagree with this finding and seek to reargue their cases. They have failed to identify any error of law or fact in that finding; nor have they adduced evidence to substantiate their assertion of incompetence, inefficiency and negligence on the part of DIOS, or to show how the Agency's decision to hire external experts to assist with a complex investigation rendered it incompetent, inefficient or negligent or how the Agency breached UNRWA's Organization Directive No. 14, DIOS' Guide to Conducting Misconduct Investigations, the standards of competence, efficiency, reasonableness and fairness of the United Nations Charter or the Uniform Standards for Investigations.

21. The UNRWA Dispute Tribunal did not err in law or procedure by deciding that the delay in closing the investigation was not due to the Agency's negligence and that Jaber *et al.*'s due process rights were not violated. Jaber *et al.* have not adduced any argument demonstrating why their suspension with pay was not justified. At no point in time was the Appellants' suspension from duty with pay converted into a disciplinary

measure. Moreover, no disciplinary measures were imposed after the conclusion of the investigation and the Appellants were reinstated. There was a continuous effort to complete the investigation on the part of the Agency. The length of the investigation was due to a series of factors, none of which was attributable to the Agency.

22. The UNRWA Dispute Tribunal did not err in law by concluding that moral damages could not be awarded as there was no breach of Jaber *et al.*'s due process rights. There exists no nexus between the jurisprudence referenced by the Appellants and the cases at hand, in respect of due process and moral damages.

23. The Commissioner-General maintains that the decisions to suspend Jaber *et al.*, including Messrs. Baidoun and Shalabi, were justified, as the Agency needed to complete the investigation before it could rule them out as suspects. The cause of their situation was not the Agency's decision to suspend or investigate them, but the fact that the fraud had occurred in the office where they worked.

24. The Commissioner-General requests that the Appeals Tribunal affirm the UNRWA DT Judgments and dismiss the four appeals in their entirety.

Considerations

25. UNRWA's Area Staff Rule 110.2 regarding suspension pending investigation reads:

If a charge of misconduct is made against a staff member ... and the Commissioner-General considers that the charge is "prima facie" well founded or that the staff member's continuance in office pending an investigation of the charge would prejudice the interests of the Agency, then the staff member may be suspended from duty, with or without pay, pending investigation, the suspension being without prejudice to the rights of the staff member.

26. The DIOS Guide to conducting misconduct investigations dated December 2010 explains that:

The amount of time that it takes to investigate an allegation will largely depend on the terms of reference and the amount of resources you assign to the inquiry. The complexity of the case, logistical issues and the availability of witnesses are all issues which will have an impact on the ability of the investigators to complete the inquiry within established time lines. Whilst a timely conclusion to the inquiry is in the

interests of both the Agency and the subject staff member, it is also important that the investigation be thorough and that all reasonable avenues of inquiry be exhausted.

27. Fraud undermines the very integrity of the Organization. When an investigation is complex, it has to be exhaustive.

28. Jaber *et al.* accept in their appeals that the “[c]ase entailed serious financial issues and sensitive documentation”. No evidence has been provided establishing undue delay in the investigation.

29. Article 9 of the Statute of the Appeals Tribunal requires compensation for harm to be supported by evidence.

30. Jaber *et al.* suffered no pecuniary injury since they were paid during the whole period of the investigation.

31. Additionally, they did not present any evidence showing they suffered mental distress during the investigation, and such evidence was necessary for an award of moral damages; thus, moral damages were not warranted.

32. For these reasons, there is no merit to Jaber *et al.*'s claim that the UNRWA DT erred in not awarding them compensation for the lengthy administrative delay during the investigation.¹

Judgment

33. The UNRWA Dispute Tribunal Judgments are affirmed.

¹ *Abu Jarbou v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-292, paras. 45-46.

Original and Authoritative Version: English

Dated this 24th day of March 2016 in New York, United States.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Simón

Entered in the Register on this 13th day of May 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar