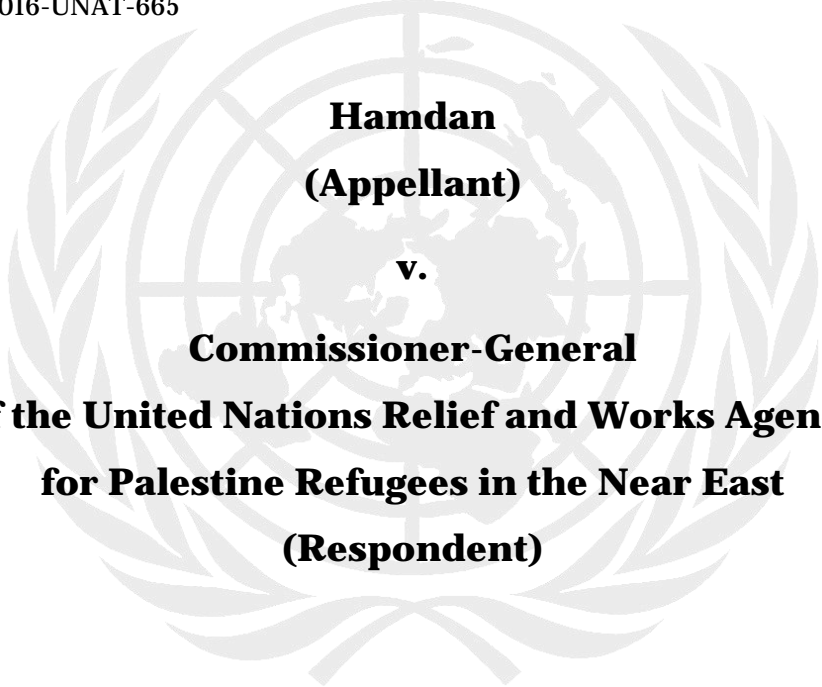




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2016-UNAT-665



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

JUDGMENT

Before:	Judge Sophia Adinyira, Presiding Judge Rosalyn Chapman Judge Inés Weinberg de Roca
Case No.:	2015-876
Date:	30 June 2016
Registrar:	Weicheng Lin

Counsel for Mr. Hamdan: Amer Abu-Khalaf, LOSA

Counsel for Commissioner-General: Lance Bartholomeusz

JUDGE SOPHIA ADINYIRA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal by Mr. Jihad Mohammad Hamdan of Judgment No. UNRWA/DT/2015/051, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or UNRWA Dispute Tribunal and UNRWA or Agency, respectively) on 11 October 2015, in the case of *Hamdan v. Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees*. On 9 December 2015, Mr. Hamdan filed his appeal. On 8 February 2016, the Commissioner-General filed his answer to the appeal.

Facts and Procedure

2. The following factual findings are undisputed:¹

... Prior to his appointment as Chief, Field Education Programme, Jordan Field Office (“CFEP”), the Applicant was a faculty member of the University of Jordan (“UJ”). On 26 November 2012, the Deputy Director of UNRWA Programme, Jordan Field Office (“D/DP/JFO”)[,] wrote to the President of the UJ informing him that the Applicant had been selected for the post of CFEP and requested that the UJ approve his secondment to UNRWA.

... Effective 20 January 2013, the Applicant was appointed as CFEP on a limited duration contract (“LDC”) for twelve months.

... On 24 January 2013, the UJ informed UNRWA of its approval of the Applicant’s secondment and advised that, as a consequence of the secondment, UNRWA would be responsible for the following costs:

- End of service remuneration for Dr. Hamdan to be based on the last total salary paid by the University of Jordan noting that according to his category he is eligible for three months remuneration for each year (emphasis in original).
- The participation of the United Nations in the Provident Fund.
- 1/6 One sixth of his salaries and allowances for every year he spends with the United Nations in addition to [one sixth] of the end of service remuneration in case the same is granted a sabbatical leave.
- The United Nations contribution to [the] Health Insurance Fund/University of Jordan.

¹ Impugned Judgment, paras. 2-24.

The commencement of his work with [UNRWA] will be considered an approval of the above provided.

... On 6 March 2013, the Field Human Resources Officer (“FHRO”) and the HR/Finance representative of the UJ met to discuss the UJ’s request that the Agency cover certain employment entitlements for the Applicant during his secondment. As reflected in a record of the meeting, dated that same day, the UJ representative advised that the conditions laid out in the 24 January 2013 letter to the Agency were standard conditions applicable to all teaching staff on secondment. Moreover, the UJ representative noted that through continuous payment of the contributions, the Applicant would retain his “staff” status at the UJ.

... By letter dated 1 May 2013, the FHRO responded to the UJ’s 24 January 2013 letter. In order to better understand the financial implications, the FHRO requested that the UJ provide the Agency with the exact amount and payment schedule of both payment requests for the current as well as future years. The FHRO noted that such payments were not part of UNRWA’s regular employment package and that the JFO was in the process of verifying the feasibility and legality of such payments.

... On 30 May 2013, the Applicant met with the D/DP/JFO and the FHRO. According to the FHRO’s email, dated 19 June 2013, the following items were discussed and agreed upon:

1. JFO to pay the end of service gratuity of up to [Jordanian Dinar (“JD”)] 750 per month served with a total of up to JD 9,000 annually. If the end of service gratuity amounts to a smaller sum, JFO only pays the requested sum to the Jordan University. If the end of service gratuity amounts to a higher sum exceeding JD 750 for each month served, the [staff member “s/m”] has to cover the remaining amount;
2. JFO to pay one-sixth of the s/m salary for every year spent at UNRWA in addition to the one-sixth of [E]nd of Service [G]ratuity if he was granted a sabbatical on the understanding that Dr. Jihad continues to serve during the sabbatical in his post of Chief, Field Education and that the end of service gratuity payment in point 1 above would stop at the point that this second payment request is raised. Payment will be made directly to the University upon receipt of an invoice.
3. S/[M] to pay the full contribution (employee’s and employer’s share) to the University’s pension scheme.
4. S/[M] to pay the full contribution (employee’s and employer’s share) to the University’s health insurance scheme and to waive his entitlement to enroll himself or his dependents to the UNRWA GMIP scheme.

... By letter dated 2 June 2013, the acting President of the UJ responded to the FHRO's 1 May 2013 letter, specifying the following amounts and payment schedule for the current year:

1. An end of service gratuity is **(5.952.900 J.D.) five thousand nine hundred fifty two dinars and nine hundred fills.**
2. **One sixth** of Dr. Hamdan's salary for one sabbatical year **(4[.]118.600 J.D) four thousand one hundred eighteen dinars and six hundred fills.**
3. **One sixth** of Dr. Hamdan's salary for an end of service gratuity for the sabbatical year **(992.150 J.D.)** nine hundred ninety two dinars and one hundred and fifty fills.

Note that the calculations were based on Dr. Hamdan's last gross salary from the University of Jordan which is **(2[.]1095.300 J.D.) two thousand fifty nine dinars and three hundred fills** (emphasis in original).

... By letter dated 26 June 2013, the Applicant was informed that his LDC would expire on 30 June 2013 and that he would be appointed to a one-year fixed[-]term contract effective 1 July 2013. As his period of service under the LDC would be considered as part of his six-month probationary period, his probationary period would end on 19 July 2013.

... On 26 June 2013, the Applicant signed a Letter of Appointment for a fixed-term appointment effective 1 July 2013 and expiring on 30 June 2014.

... By letter dated 21 July 2013, the Human Resources Career Management Officer, Jordan informed the Applicant that he had satisfactorily completed his probationary period and confirmed him in his post.

... By letter dated 3 November 2013, the Acting Director of UNRWA Operations, Jordan ("Acting DUO/J") requested from the UJ an extension of the Applicant's secondment to UNRWA for a second semester of the academic year 2013-2014.

... By letter dated 31 December 2013, the Acting DUO/J requested the UJ to confirm the exact amount of the end of service gratuity and to provide a detailed breakdown of the calculation associated with that figure. She also raised the issue of a hypothetical extension of the Applicant's appointment.

... By letters dated 1 January and 16 January 2014, the UJ set out the amounts due and the method of calculation with respect to the Applicant's secondment.

... By letter dated 25 March 2014, the Human Resources Services Officer, Jordan ("HRSO/J") notified the Applicant that he would reach the age of 60 on 30 July 2014 and noted his option to request an extension of his appointment beyond the age of 60.

... On 28 May 2014, the Applicant submitted a request to extend his service for two years beyond the age of retirement.

... By letter dated 5 June 2014, the Applicant was advised that his fixed-term appointment would be extended for one month to 30 July 2014.

... On 6 July 2014, the Applicant met with the DUO/J. The discussion was memorialised in an email dated 7 July 2014. The Applicant noted in his email the DUO/J's legal concerns with regard to the Agency's previous agreement to pay the UJ costs for the Applicant's secondment.

... From 8 to 27 July 2014, the Applicant was on certified sick leave after undergoing surgery.

... By letter dated 20 July 2014, the Head Field Human Resources Office, Jordan ("HFHRO") presented the Applicant with a two-year extension of his appointment ("the offer") beginning 1 August 2014 through 31 July 2016. The offer contained a provision in clause 5 which stated that:

The Agency does not have any responsibility or obligation to make any payments to you or the University of Jordan in relation to your secondment from the University of Jordan during the Term, including without limitation, payments in respect of your end of service gratuity and amounts owing due to sabbatical leave. By accepting this extension of your service, you acknowledge and release UNRWA from any demands, claims, costs, or expenses arising from or in any way related to your secondment from the University of Jordan during the Term.

... By email dated 22 July 2014, the Applicant wrote to the DUO/J, reminding him of the agreement between the Agency and the UJ to co-share the costs of his secondment. He expressed concern with regard to clause 5, noting that it explicitly cancelled the previous cost-sharing agreement. The Applicant concluded the letter noting that, while he appreciated the two year extension, he was appealing the inclusion of clause 5 and requesting that it be removed from the offer.

... By email dated 31 July 2014, the DUO/J responded to the Applicant's 22 July 2014 email noting that the 20 July 2014 offer had been drafted in consultation with Headquarters and that, under the circumstances he was not in a position to change the offer's terms.

... On 31 July 2014, the Applicant signed the extension of his contract.

... On 17 September 2014, the Applicant submitted a request for decision review. The Applicant did not receive a response.

3. Mr. Hamdan filed an application with the UNRWA DT contesting the inclusion of clause 5 in the contract he signed on 31 July 2014. In Judgment No. UNRWA/DT/2015/051, the UNRWA DT dismissed Mr. Hamdan's application. The UNRWA DT found that the contract was

binding on Mr. Hamdan. It rejected Mr. Hamdan's contention that he had signed the contract under duress because he was on sick leave and lacked adequate time to consider his options.

4. The UNRWA DT also found that Mr. Hamdan "should not have been surprised when he received the offer on 20 July 2014 with the inclusion of clause 5 ... [and] cannot claim that he was unaware that his contract would expire at the close of business on 31 July 2014 if he did not sign the extension".²

5. The UNRWA DT noted that "the agreement between the Agency and the UJ with regard to the cost-sharing of [Mr. Hamdan's] secondment was between the UJ and the Agency. [Mr. Hamdan] was not a party to that agreement, rather, he was the beneficiary of the agreement".³ Moreover, the UNRWA DT did not see any basis for Mr. Hamdan to have reasonably expected that his contract would be renewed and that the renewal would be under the same conditions as the previous contract. The Agency did not make any express promises to that effect.

6. Lastly, the UNRWA DT noted that while the Agency had delayed addressing the financial implications associated with Mr. Hamdan's previous contract, that delay did not constitute unfair treatment. The UNRWA DT did not find that "the omission [of the cost-sharing agreement] was arbitrary or motivated by factors inconsistent with proper administration. Rather, the omission was done in an attempt to save the Agency money".⁴

Submissions

Mr. Hamdan's Appeal

7. The UNRWA DT erred on a question of law and fact. Its decision to dismiss the application was flawed due to procedural irregularities. UNRWA concluded the agreement for Mr. Hamdan's secondment with Mr. Hamdan himself and not with the UJ, as evidenced by the FHRO's e-mail dated 19 June 2013. In fact, the negotiations for this agreement did not include any representative of the UJ. Moreover, the Agency did not sign an agreement with the UJ.

² *Ibid.*, para. 34.

³ *Ibid.*, para. 35.

⁴ *Ibid.*, para. 39.

8. Under the agreement, the Agency committed itself to paying Mr. Hamdan's sabbatical dues and the agreement did not include any condition regarding the Agency's commitment after his sabbatical. On the basis of the agreement and the explicit promises made therein, Mr. Hamdan applied for sabbatical leave for 2014-2015 before 8 May 2014, the UJ's deadline for a sabbatical leave application. Mr. Hamdan informed the DUO/J of his application for sabbatical leave.

9. The letter dated 31 December 2013 sent by the Acting DUO/J to the UJ requesting it to confirm the exact amount of the end of service gratuity gave Mr. Hamdan an assurance that the agreement between him and UNRWA was valid, and would govern their relationship during his sabbatical year which was to extend beyond the age of his retirement. The letter dated 25 March 2014 sent by the HRSO/J to Mr. Hamdan in relation to his retirement gave him further assurance.

10. It was not until 6 July 2014 that Mr. Hamdan learned that the Agency may not be able to pay the UJ the dues outlined in the agreement. While on sick leave, Mr. Hamdan received a two-year extension offer dated 20 July 2014. On 31 July 2014, Mr. Hamdan was under pressure to sign this agreement including the relevant clause 5 because:

1. The D/DUO/J phoned Mr. Hamdan on 31 July 2014 and told him "in a clearly threatening and assertive tone" that if he did not sign the offer before close of business he would not be able to enter the building on the next working day (Sunday, 3 August 2014), nor would he continue to have access to his e-mail;
2. Mr. Hamdan's sabbatical leave was not revocable and the UJ had made arrangements to replace him with another faculty member;
3. By that time of the year, almost all universities in Amman would have filled their vacant Linguistics posts and Mr. Hamdan "could remain unemployed for a whole year (2014-2015)" if he did not take the offer; and
4. Mr. Hamdan was still under medical treatment and at risk of blindness. He was "not in the mood of looking for job alternatives, if any".

11. Mr. Hamden respectfully requests that the Appeals Tribunal quash the Judgment of the UNRWA DT for failing to exercise its jurisdiction; remove clause 5 from the 20 July 2014 offer, order UNRWA to pay the UJ the sums determined by the secondment agreement retroactively and, confirm that the agreement covered the period from 20 January 2014 to the last day of his employment with UNRWA.

The Commissioner-General's Answer

12. The UNRWA DT did not err in law in any respect. Mr. Hamdan repeats the arguments he made before the UNRWA DT that the Agency did not have an agreement with the UJ, and that all of the Agency's commitments were made to him. The UNRWA DT did not err when it found that the agreement as to the cost-sharing of Mr. Hamdan's secondment was between the Agency and the UJ. Mr. Hamdan was not a party to that agreement, rather, he was a beneficiary of the agreement.

13. Mr. Hamdan's decision to sign the contract dated 31 July 2014 is binding.

14. In relation to the new, alleged elements of duress raised by Mr. Hamdan:

1. The DUO/J's e-mail was not a threat and did not constitute duress. Rather, it was a statement of fact, setting out the natural consequences of the expiry of his contract with the Agency.
2. The irrevocability of Mr. Hamdan's sabbatical leave was a natural consequence of his unilateral action, rather than of any act taken by UNRWA which could constitute duress, and a function of the policies of the UJ;
3. The fact that almost all universities in Amman would have already filled their vacant positions and Mr. Hamdan was not likely to find employment by 1 August 2015 were circumstances wholly out of UNRWA's control; and
4. DUO/J raised concerns about the cost-sharing agreement prior to Mr. Hamdan's sick leave so it was reasonable for the UNRWA DT to conclude that he could not claim to be unaware that his contract would expire on 31 July 2014 if he did not sign the extension.

15. Mr. Hamdan again raises the argument that he had a legitimate expectation that his fixed-term appointment would be extended under the same conditions set out in the FHRO's 19 June 2013 e-mail. He did not point to any error of law or fact made by the UNRWA DT in this regard. The UNRWA DT was correct in finding that Mr. Hamdan had no such legitimate expectation.

16. The Commissioner-General respectfully requests that the Appeals Tribunal reject each of Mr. Hamdan's pleas and dismiss the appeal in its entirety.

Considerations

17. Mr. Hamdan submits that the UNRWA DT erred on a question of law and fact and that its decision in dismissing the application was flawed by procedural irregularities.

18. It is obvious that Mr. Hamdan was not satisfied with the UNRWA Dispute Tribunal's decision. However, he merely repeats on appeal arguments that did not succeed before the UNRWA Dispute Tribunal.

19. The consistent jurisprudence of the Appeals Tribunal emphasizes that the appeals procedure is of a corrective nature and is not an opportunity for a dissatisfied party to reargue his or her case.

20. The Appeals Tribunal stressed in *Ilic* that:⁵

When the Appeals Tribunal hears an appeal, it does not simply re-try the case. The function of the Appeals Tribunal is to determine if the Dispute Tribunal has made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as prescribed in Article 2(1) of the Statute [of the Appeals Tribunal]. The appellant has the burden of satisfying the Appeals Tribunal that the judgment rendered by the Dispute Tribunal is defective. It follows that the appellant must identify the alleged defects in the judgment and state the grounds relied upon in asserting that the judgment is defective. It is not sufficient for an appellant to state that he or she disagrees with the outcome of the case or repeat the arguments submitted before the Dispute Tribunal.

⁵ *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29, citing *Tsoneva v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-045.

21. In *Al-Moued*, the Appeals Tribunal reiterated:⁶

It is apparent that [the Appellant] is not aware of his onus as an appellant. He is not correct in thinking that a person bringing an appeal does not have any onus of establishing that the Tribunal below erred in its decision and that an appeal is an opportunity to present the same arguments for decision by a higher Tribunal. That is a totally misconceived notion of the nature of an appeal.

22. Mr. Hamdan repeats the arguments he made before the UNRWA DT that the Agency did not have an agreement with the UJ and that all of the Agency's commitments were made to him. He fails to identify the apparent error of fact in the Judgment and the basis for contending that an error was made. Mr. Hamdan must satisfy this Tribunal that the finding of fact was not supported by the evidence or that it was unreasonable.⁷ A party cannot merely repeat on appeal arguments that did not succeed in the lower court. Rather, he or she must demonstrate that the lower court has committed an error of fact or law warranting intervention by the Appeals Tribunal.

23. Mr. Hamdan again raises the argument that he had a legitimate expectation that his fixed-term appointment would be extended under the same conditions as set out in the FHRO's 19 June 2013 e-mail.

24. Mr. Hamdan's earlier contract was for a fixed-term and there was no legitimate expectation of the renewal of his contract on the same terms. The Appeals Tribunal refers to UNRWA Area Staff Rule 109.5, which explicitly states that: "A staff member holding a fixed-term appointment shall automatically be separated from Agency service on the expiration date of that appointment, unless he/she has been reappointed or otherwise separated prior to that date".

25. The Appeals Tribunal has consistently affirmed the principle that there is no expectancy of renewal of fixed-term and temporary contracts. The fact that there is no such expectancy of renewal is always expressly stated on the face of every fixed-term or temporary contract.

⁶ *Al-Moued v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-458, para. 18.

⁷ *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123, para. 36.

26. In this regard, the UNRWA DT held:⁸

[T]he agreement between the Agency and the UJ with regard to the cost-sharing of the Applicant's secondment was between the UJ and the Agency. The Applicant was not a party to that agreement, rather, he was the beneficiary of the agreement. Moreover, the fixed-term appointment signed on 26 June 2013 contained a clause that explicitly stated that "this appointment does not carry an expectation of renewal". Therefore, the [UNRWA Dispute] Tribunal does not see any basis for the Applicant to reasonably have expected that: 1) his contract would be renewed; and 2) it would be under the same conditions as the previous contract.

27. Mr. Hamdan did not point to any error of law or fact made by the UNRWA DT. We therefore affirm the UNRWA DT's finding.

28. Accordingly, Mr. Hamdan's decision to sign the contract dated 31 July 2014 is binding on him as there is no evidence of duress.

29. The appeal has no merit.

Judgment

30. The appeal is dismissed. The UNRWA DT Judgment No. UNWRA/DT/2015/051 is affirmed.

⁸ Impugned Judgment, para. 35 .

Original and Authoritative Version: English

Dated this 30th day of June 2016 in New York, United States.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Chapman

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 24th day of August 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar