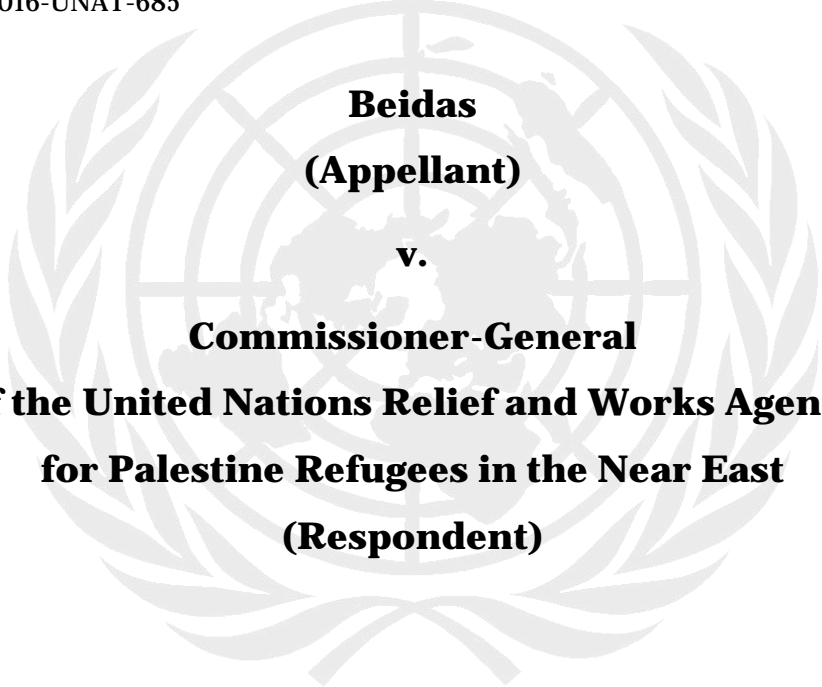




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2016-UNAT-685



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

JUDGMENT

Before:	Judge Richard Lussick, Presiding Judge John Murphy Judge Dimitrios Raikos
Case No.:	2016-907
Date:	28 October 2016
Registrar:	Weicheng Lin

Counsel for Ms. Beidas:	Self-represented
Counsel for Commissioner-General:	Rachel Evers

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Muna Sami Mufleh Beidas of Judgment No. UNRWA/DT/2016/005, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or Dispute Tribunal and UNRWA or Agency, respectively) in Amman on 10 February 2016 in the case of *Beidas v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees*. Ms. Beidas filed her appeal on 8 March 2016, and the Commissioner-General of UNRWA filed his answer on 13 May 2016.

Facts and Procedure

2. The UNRWA Dispute Tribunal dismissed two applications filed by Ms. Beidas in which she contested the following decisions: (1) the Agency's decision to transfer her from Nazzal First Preparatory School for Girls (Nazzal Prep) to Taj Preparatory School for Girls (Taj Prep) (Case No. UNRWA/DT/JFO/2014/057); and (2) her performance evaluation for the period from 1 September 2013 to 31 August 2014 (Case No. UNRWA/DT/JFO/2015/005).

3. The following facts and procedural history are taken from the UNRWA DT Judgment:¹

... Effective 9 September 1995, the Applicant joined the Agency as a Science Teacher "B" Grade 9, Step 1, in Damascus, Syria.

... On 31 August 2002, the Agency approved the Applicant's request to transfer to Jordan. At the time relevant to the first application, the Applicant was working as a Teacher, Grade 11, Step 17 at (...) Nazzal Prep (...). At the time relevant to the second application, the Applicant was working as a Teacher, Grade 11, Step 18 at (...) Taj Prep (...).

... Several complaints were filed against the School Principal ("SP") of Nazzal Prep by the teachers, including the Applicant, with regard to the SP's behaviour and attitude. Following these complaints, the Chief Area Officer ("CAO") and the Acting Area Education Officer ("AAEO") held meetings on 25 September 2013 and 8 October 2013 with the SP and the teachers of Nazzal Prep in an attempt to improve the working environment. The situation did not improve and the Administration

¹ Impugned Judgment, paras. 3-27.

continued to receive both verbal and written complaints from the teachers of Nazzal Prep.

... On 11 December 2013, the Applicant filed a complaint against the SP with the Ethics Office.

... Effective 1 January 2014, the Applicant's post was reclassified and upgraded.

... On 8 January 2014, the CAO and AAEO held another meeting with the SP and the teachers of Nazzal Prep.

... On 9 February 2014, the SP filed a complaint against the Applicant and requested that the "Legal Office" conduct an investigation into the Applicant's behaviour.

... In response to the new complaints, on 20 March 2014, the Administration held another meeting between the Nazzal Prep teachers and the SP.

... On 24 and 27 March 2014, the SP filed additional complaints against the Applicant.

... On 27 March 2014, a teacher in the Nazzal Prep submitted a complaint against the Applicant.

... On 19 June 2014, the SP and the Applicant participated in mediation. The mediation was not successful.

... On 24 June 2014 and 8 July 2014, the SP submitted complaints against the Applicant alleging that she had engaged in corporal punishment.

... The Chief[,] Field Education Programme ("CFEP") dismissed the SP's allegations that the Applicant had engaged in corporal punishment. The CFEP did not submit the SP's complaints to the Jordan Field Intake Committee (the "Committee")[.]

... On 4 September 2014, the Applicant was informed by telephone of her impending transfer from Nazzal Prep and was offered the choice of two vacant posts. The Applicant rejected the transfer and refused to make a choice. The Deputy Director of UNRWA Operations, Jordan recommended that the Applicant be transferred to Taj Prep.

... On 4 September 2014, the Applicant received and signed her 2014 electronic Performance Evaluation Report ("e-PER") for the period [from] 1 September 2013 to 31 August 2014. On the signature page, the Applicant noted her objection to the evaluation.

... On 7 September 2014, the Applicant was notified in writing of the decision to transfer her to Taj Prep effective 8 September 2014.

... On 9 September 2014, the Applicant requested review of the decision to transfer her to Taj Prep.

... On 2 October 2014, the Director of UNRWA Operations, Jordan (“DUO/J”) replied to the Applicant’s request for decision review and affirmed her transfer to Taj Prep.

... On 21 October 2014, the Applicant requested review of the decision to evaluate her as “Does not completely meet[] expectations” for the competency of “Attitude and integrity” in her e-PER of 2014.

... On 20 November 2014, the DUO/J replied to the Applicant’s request for decision review of her e-PER rating. The DUO/J noted that the Applicant’s overall e-PER rating was “fully meets expectations” and therefore in accordance with the Agency’s policy on performance management, only an overall rating of “does not fully meet expectations” can be contested.

... On 30 November 2014, the Jordan Field Office (“JFO”), authorised an investigation into the allegation that the Applicant had engaged in corporal punishment.

... On 28 December 2014, the Applicant filed an application with the UNRWA Dispute Tribunal (...) contesting the decision to transfer her to Taj Prep. ...

...

... On 3 February 2015, the [UNRWA Dispute] Tribunal received a second application from the Applicant contesting her e-PER rating. ...

... By Order No. 016 (UNRWA/DT/2015) dated 11 February 2015, the [UNRWA Dispute] Tribunal granted the Respondent’s request for an extension of time and accepted the Respondent’s late filing to case number UNRWA/DT/JFO/2014/057.

4. The UNRWA Dispute Tribunal consolidated the two applications filed by Ms. Beidas and disposed of them in a single Judgment, issued on 10 February 2016, by which it dismissed the applications. The UNRWA DT found that the decision to transfer her to Taj Prep was made in the interests of both the Agency and the students of Nazzal Prep. The decision was prudent in light of the unhealthy working environment at Nazzal Prep. The UNRWA DT noted that there was an irreparable breakdown of the relationship between Ms. Beidas, the SP, and the other teachers. The SP voluntarily transferred to another school. As Ms. Beidas refused to accept a transfer, the Agency unilaterally transferred her to a different school.

5. The UNRWA Dispute Tribunal found that Ms. Beidas had not established that the decision to transfer her was improperly motivated. The UNRWA Dispute Tribunal noted that the SP’s allegations of corporal punishment against Ms. Beidas were made in June and

July 2014, prior to the decision to transfer Ms. Beidas in September 2014. The CFEP elected not to investigate the allegations or to submit them to the Committee. The JFO made the decision to investigate Ms. Beidas nearly two months after her transfer. The UNRWA Dispute Tribunal found that it was clear that the Chief, Field Education Programme transferred Ms. Beidas due to a failed working relationship with the SP and not on the basis of the corporal punishment allegations, which he had dismissed as unsubstantiated. The UNRWA Dispute Tribunal concluded that the Commissioner-General's decision to transfer Ms. Beidas was a proper use of his discretionary authority under Area Staff Regulation 1.2.

6. Turning to Ms. Beidas' performance evaluation for 2013-2014, the UNRWA Dispute Tribunal found that Ms. Beidas did not contest an appealable administrative decision. The UNRWA DT noted that Ms. Beidas had received an overall rating of "completely meets expectations", which was a satisfactory rating. Ms. Beidas could not contest the rating as it was a positive decision in her favour and therefore did not have a direct impact on the terms of her appointment. Despite receiving the rating of "does not completely meet expectations" for the "Attitude and integrity" competency, Ms. Beidas received an overall rating of "completely meets expectations". The one negative rating did not affect the terms or conditions of her appointment. The UNRWA DT noted that, following her performance evaluation, she was awarded an annual step increment based on her satisfactory work performance.

Submissions

Ms. Beidas' Appeal

7. Ms. Beidas contends that the UNRWA Dispute Tribunal erred in fact and law by failing to consider her submissions and all of the evidence on the record. With regard to the decision to transfer her, the UNRWA DT failed to properly consider that she was notified of the decision outside official working hours and she was not provided with the reasons or legal basis for the decision. The UNRWA DT also failed to consider a letter from several teachers to the Agency protesting against the decision.

8. The UNRWA Dispute Tribunal failed to take into account her submissions filed on 30 March 2015, which demonstrated the Agency's bias in favour of the SP, and the fact that she had not refused a transfer to another school. The UNRWA DT also did not properly

consider her submission filed on 21 December 2015, which demonstrated that the Agency did not heed the earlier advice of the Director of Education for South Amman to transfer the SP, and that she was unfairly held responsible for the worsening conditions at the Nazzal Prep. Further, the UNRWA DT did not consider the Agency's failure to look into the matters that she had raised in her harassment complaint to the Ethics Office.

9. With regard to her performance evaluation for 2013-2014, Ms. Beidas argues that the UNRWA Dispute Tribunal failed to consider her submissions filed on 21 December 2015 regarding the flawed performance evaluation process. In her submissions, Ms. Beidas argued that the rating for the "Attitude and integrity" competency that the SP gave her was unfounded, an abuse of power, and not objective. The SP did not share her views about performance shortcomings with Ms. Beidas or give Ms. Beidas an opportunity to improve. Ms. Beidas noted that her rating in her performance evaluation for 2014-2015 was "distinguished and best performer", which refuted the SP's rating for the "Attitude and integrity" competency for 2013-2014.

10. Ms. Beidas requests the Appeals Tribunal to rescind the Judgment, order that she be returned to her original school, and order that the Judgment be removed from her personnel file. She also requests an award of compensation for her financial costs and moral damages.

The Commissioner-General's Answer

11. The Commissioner-General contends that the UNRWA Dispute Tribunal correctly dismissed the applications filed by Ms. Beidas. Ms. Beidas has failed to demonstrate that the UNRWA Dispute Tribunal did not take into account her submissions and the evidence that she adduced in the cases. Her submissions and the letter protesting her transfer are mentioned in the Judgment.

12. Ms. Beidas has also failed to demonstrate that her submissions would have affected the outcome of the cases. The UNRWA Dispute Tribunal has the discretion to address only those submissions that it finds relevant. The UNRWA DT granted all of the motions made by Ms. Beidas to file additional submissions and she had every opportunity to argue her case.

13. The Commissioner-General contends that Ms. Beidas has not identified grounds of appeal that are set out in Article 2(1) of the Appeals Tribunal Statute. Several of the grounds of appeal are mere repetitions of Ms. Beidas' contentions before the UNRWA Dispute Tribunal. Ms. Beidas merely disagrees with the Judgment and seeks to reargue her case.

14. The Commissioner-General requests the Appeals Tribunal to dismiss the appeal in its entirety.

Considerations

15. The UNRWA DT's Judgment consolidates two applications by Ms. Beidas contesting the following decisions: (1) the Agency's decision to transfer her from one preparatory school to another; and (2) her performance evaluation for the period from 1 September 2013 to 31 August 2014.

16. In respect of her first application, the UNRWA DT found that the transfer was a proper exercise of the Commissioner-General's discretionary authority and that Ms. Beidas had failed to establish that the decision was biased, capricious or improperly motivated.

17. In reaching that decision, the UNRWA DT was cognisant of Area Staff Regulation 1.2, which provides that staff members are subject to the authority of the Commissioner-General and to assignment by him to any of the activities or offices of the Agency in or outside the area of its operations.

18. The UNRWA DT was also aware of the Appeals Tribunal's jurisprudence confirming the Administration's discretion to appoint, transfer and promote staff. The Appeals Tribunal has held that as a matter of general principle, in exercising its judicial review, the UNRWA DT will not lightly interfere with the exercise of managerial discretion in matters such as staff transfers.² In *Kamunyi*, the Appeals Tribunal stated: "[I]t is within the Administration's discretion to reassign a staff member to a different post at the same level

² *Abdullah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-482, para. 59.

and [...] such a reassignment is lawful if it is reasonable in the particular circumstances of each case and if it causes no economic prejudice to the staff member.”³

19. The UNRWA DT gave full consideration to Ms. Beidas’ claim that the transfer was a disguised disciplinary measure following allegations of her corporal punishment of students. However, it found that the evidence established that prior to her transfer, the CFEP had dismissed these allegations as unsubstantiated and it was not until almost two months after the transfer that the JFO authorised an investigation. The UNRWA DT therefore concluded, correctly in our view, that Ms. Beidas’ transfer was prompted by a failed working relationship with the SP, and not on the basis of the corporal punishment allegation.

20. Ms. Beidas’ claim that the UNRWA DT failed to consider her submissions and all of the evidence on record has no merit. The Judgment of the UNRWA DT shows that it considered all of the relevant evidence. It was not necessary for it to address each and every submission made by her.⁴

21. We find that the UNRWA DT made no error of law or fact in deciding that the Commissioner-General’s decision to transfer Ms. Beidas was a proper exercise of his discretionary authority.

22. Ms. Beidas’ second application challenging her performance evaluation was dismissed by the UNRWA DT as not receivable.

23. The evidence before the UNRWA DT was that under one of the competencies in her performance evaluation she had received a rating of “Does not completely meet [] expectations”. However, her overall rating was “Completely meets expectations”. Following this evaluation she was awarded an annual increment from Step 17 to Step 18 based on her satisfactory work performance.

24. The UNRWA DT considered that its jurisdiction was restricted to hearing and passing judgment on applications by staff members contesting administrative decisions alleged to be in non-compliance with the terms of appointment or the contract of employment.⁵ It took

³ *Kamunyi v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-194, para. 3.

⁴ *Hepworth v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-503, para. 38; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-328, para. 23.

⁵ Impugned Judgment, paras. 64 and 65, citing Area Staff Regulation 11.1(A)(i) and Article 2.1(a) of the Statute of the UNRWA DT.

note of the Appeals Tribunal's consistent jurisprudence that the key characteristic of an administrative decision subject to judicial review is that the decision must produce direct legal consequences affecting a staff member's terms and conditions of appointment; the administrative decision must "have a direct impact on the terms of appointment or contract of employment of the individual staff member".⁶

25. The UNRWA DT considered that in the present case, the one competency recording a negative rating did not detract from the overall rating of "Completely meets expectations" and that therefore the performance evaluation did not affect the terms and conditions of her contract and was thus not an appealable administrative decision.

26. We can find no error in this reasoning. The UNRWA DT's decision was a correct application of the relevant law.

27. It follows from the foregoing that Ms. Beidas has failed to establish any error in the UNRWA DT's Judgment.

28. The appeal fails.

Judgment

29. The appeal is dismissed and Judgment No. UNRWA/DT/2016/005 is affirmed.

⁶ Impugned Judgment, para. 66, citing *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, para. 49.

Original and Authoritative Version: English

Dated this 28 day of October 2016 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Raikos

Entered in the Register on this 20th day of December 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar