



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

Judgment No. 2016-UNAT-687

**Mohanna
(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 Dimitrios Raikos Judge Sabine Knierim
Case No.:	2016-917
Date:	28 October 2016
Registrar:	Weicheng Lin

Counsel for Mr. Mohanna: Self-represented

Counsel for Commissioner-General: Lance Bartholomeusz

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2016/009, 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 3 March 2016, in the case of *Mohanna v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Hekmat Adel Mohanna filed the appeal on 11 April 2016, and the Commissioner-General filed an answer on 8 June 2016.

Facts and Procedure

2. The facts as found by the Dispute Tribunal read as follows:¹

... Effective 1 December 2013, the Applicant joined the Agency as Branch Manager (“BM”), Madaba, Department of Microfinance, Jordan, at Grade 16, Step 1 on a fixed-term appointment. The appointment was until 31 December 2013 and subject to a 12-month probationary period. By letter dated 13 January 2014, the fixed-term appointment was extended until 31 December 2014.

... By email dated 6 February 2014 to the Applicant, the Credit Operations Manager (“COM”) noted the Applicant’s management shortcomings and provided guidance on best managerial practices.

... By email dated 10 February 2014, the COM noted a number of the Applicant’s mistakes with respect to a specific loan application.

... By email dated 13 February 2014, the COM pointed out a number of the Applicant’s calculation errors in a specific loan application.

... By email dated 20 February 2014, the COM noted that the Applicant had not implemented the proper loan procedures.

... By email dated 25 February 2014, the Applicant was reminded by the Chief Field Microfinance Programme, Jordan (“CFMP”) of the importance of copying the COM on all email correspondence.

... By email dated 16 March 2014, the COM requested that the Applicant ensure a better level of accuracy in reviewing loan applications.

... By email dated 14 May 2014, the COM noted that he was troubled with the Applicant’s handling of a specific loan.

¹ Impugned Judgment, paras. 3-55.

... On 2 July 2014, the CFMP received a text message from the Applicant that contained a religious reference and obscene language. A few days later the Applicant sent a text message to the cashier referring to another staff member in obscene language.

... By email dated 3 July 2014, the CFMP noted that the Applicant was not following the appropriate procedures.

... On 6 July 2014, the CFMP pointed out the difference between the information he had given the Applicant and what the Applicant had conveyed to his staff.

... On 6 August 2014, the Applicant was placed on Special Leave With Pay ("SLWP") after having been detained by the Jordanian authorities for personal reasons.

... On 11 August 2014, the Applicant filed a complaint against the CFMP and requested that the Agency conduct an investigation.

... On 1 September 2014, the Jordan Field Intake Committee (the "Committee") reviewed the Applicant's complaint against the CFMP and decided to refer the case to the Deputy Director of UNRWA Operations, Programmes ("D/DUO/P") as a management issue.

... On 2 November 2014, the Applicant resumed his duties as the BM in Madaba.

... On 9 November 2014, the Applicant, COM, CFMP and an Administrative Officer met to discuss the Applicant's Mid-Point Evaluation Performance. The meeting was originally scheduled in July 2014, it however, was postponed due to a delay in the issuance of the financial statements and further delayed because the Applicant was on SLWP.

... By memorandum dated 19 November 2014 to the Field Human Resources Officer, the CFMP recommended not to confirm the Applicant's appointment.

... By email dated 21 November 2014 to the COM and the CFMP, the Applicant requested that a medical board examine him.

... By email dated 23 November 2014, the Head, Field Human Resources Office, Jordan ("H/FHRO") informed the Applicant that his complaint against the CFMP had been reviewed by the Committee and found to be a management issue. Accordingly, the complaint was referred to the D/DUO/P to be dealt with at an internal level.

... By letter dated 27 November 2014, the Director of UNRWA Operations, Jordan ("DUO/J") informed the Applicant that his appointment would not be confirmed because of his unsatisfactory performance. The Applicant continued to report to work throughout December 2014.

... On 9 December 2014, the Applicant submitted a request for review of the decision not to confirm his appointment.

... On 11 December 2014, a medical board was convened to examine the Applicant's fitness for duty.

... By email dated 14 December 2014, the Applicant sought advice with regard to his separation entitlements. By email dated 17 December 2014, the Staff Services Officer (“SSO”) informed the Applicant that if his mode of separation was the expiration of his fixed-term appointment, he would then be eligible to receive the Agency Provident Fund and to cash-in any outstanding annual leave.

... By email dated 20 December 2014, the SSO clarified that if a staff member were terminated on the expiry of his/her fixed-term appointment, he/she would not be entitled to a termination indemnity.

... On 23 December 2014, the Applicant met with the SSO to discuss and clarify the details of his separation benefits.

... On 24 December 2014, the medical board concluded that the Applicant was unfit for continued service with the Agency in any post. However, given that the Applicant had not been confirmed in his post, he was not entitled to a disability benefit.

... By letter dated 31 December 2014, the DUO/J informed the Applicant that his contract would not be extended beyond 31 December 2014.

... On 3 February 2015, the Head, Field Legal Office, Jordan (“H/FLO”) informed the Applicant that the medical board conclusions were rendered moot and therefore no further action would be taken.

... On 24 February 2015, the Agency paid the Applicant his leave encashment in the amount of 712.32 Jordanian Dinars.

... Following the H/FLO’s 3 February 2015 letter to the Applicant, on 12 March 2015, the Applicant submitted a request for review of the decisions to render the findings of the medical board moot and not to pay him a disability benefit.

... On 13 March 2015, the Applicant filed an application with the UNRWA Dispute Tribunal contesting the decision dated 27 November 2014 not to confirm his appointment. The application was registered under case number UNRWA/DT/JFO/2015/013.

... On 24 March 2015, the [UNRWA DT] transmitted the above application to the Respondent. On 23 April 2015, the Respondent submitted his reply to application number UNRWA/DT/JFO/2015/013.

... On 30 March 2015, the Applicant submitted a request for review of the decision not to pay him a termination indemnity. On 31 March 2015, the Agency responded to the Applicant’s request for decision review and informed him that his request was not receivable.

... On 10 April 2015, the Applicant filed an application with the [UNRWA DT] contesting the decisions to render the findings of the medical board moot and not to pay him a disability benefit. The application was registered under case number UNRWA/DT/JFO/2015/020.

... On 14 April 2015, the [UNRWA DT] transmitted the above application to the Respondent. On 14 May 2015, the Respondent submitted his reply to case number UNRWA/DT/JFO/2015/020.

... On 1 May 2015, the Applicant filed an application with the [UNRWA DT] contesting the decision not to pay him a termination indemnity. The application was registered under case number UNRWA/DT/JFO/2015/025.

... On 3 May 2015, the above application was transmitted to the Respondent. On 1 June 2015, the Respondent submitted his reply to case number UNRWA/DT/JFO/2015/025.

... By email dated 22 May 2015, the Applicant requested that the Agency issue him a certificate of service.

... On 27 May 2015, the Agency issued a certificate of service with the Applicant's service dates as 1 December 2013 to 27 November 2014.

... On 2 June 2015, the Applicant submitted a request for review of the calculation of his period of service as specified on his certificate of service.

... On 3 June 2015, the Applicant requested review of the calculation of his leave encashment payment.

... By letter dated 30 June 2015, the DUO/J upheld the decision to write the 27 of November 2014 as the Applicant's final day of service on his certificate of service.

... By letter dated 1 July 2015, the DUO/J dismissed the Applicant's request for calculation of his leave encashment payment stating that his request was late.

... On 23 July 2015, the Applicant filed an application with the [UNRWA DT] contesting the calculation of his leave encashment payment. The application was registered under case number UNRWA/DT/JFO/2015/058.

... On 23 July 2015, the Applicant filed an application with the [UNRWA DT] contesting the Agency's calculation of his period of service. The application was registered under case number UNRWA/DT/JFO/059.

... On 27 July 2015, the [UNRWA DT] transmitted the application for case number UNRWA/DT/JFO/2015/058 to the Respondent.

... O[n] 28 July 2015, the [UNRWA DT] transmitted the application for case number UNRWA/DT/JFO/2015/059 to the Respondent.

... On 26 August 2015, the Respondent submitted replies to case numbers UNRWA/DT/JFO/2015/058 and UNRWA/DT/JFO/2015/059.

... On 2 October 2015, the Respondent filed a motion requesting the [UNRWA DT] to consolidate the five applications into a single Judgment.

... By Order No. 110 (UNRWA/DT/2015) dated 13 October 2015, the [UNRWA DT] granted the Respondent's motion for consolidation and joined all five applications.

... By Order No. 124 (UNRWA/DT/2015) ("Order No. 124") dated 3 December 2015, the [UNRWA DT] ordered the Respondent to produce documents related to his handling of the Applicant's 11 August 2014 complaint against the CFMP.

... On 18 December 2015, the Respondent produced the requested documents *ex parte*. On 13 January 2016, the [UNRWA DT] transmitted the Respondent's response to Order [No.] 124 and the redacted annex to the Applicant.

... On 15 January 2016, the Applicant submitted his comments to the Respondent's response to Order No. 124 to the [UNRWA DT]. The Applicant copied the Respondent on the email. Despite failure to request leave, the [UNRWA DT] accepted the filing.

3. On 3 March 2016, the UNRWA DT issued the impugned Judgment in which it considered each of Mr. Mohanna's five applications and the parties' respective contentions. It dismissed all but one of Mr. Mohanna's five applications, accepting the one relating to his dates of service (registered under Case No. UNRWA/DT/JFO/2015/059).

4. With respect to Mr. Mohanna's first application (contesting the decision not to confirm his appointment during the probationary period), the UNRWA DT noted "numerous emails ... pointing out [Mr. Mohanna's] unsatisfactory performance and repeated failure to follow procedures".² It found the Committee's conclusion and recommendation regarding Mr. Mohanna's complaint, communicated to him on 23 November 2014, to be a valid use of its discretionary authority. It further found that the decision not to confirm Mr. Mohanna's appointment during his probationary period was not tainted by any procedural irregularities or prejudice, noting that "based on the record, it is clear that [Mr. Mohanna] was not confirmed due to his unsatisfactory performance".³ It also dismissed Mr. Mohanna's contention regarding his not being placed on an Opportunity to Improve Programme (OTI), finding that Mr. Mohanna was not entitled to benefit from the OTI as set forth in UNRWA Area Staff Personnel Directive A/23 on Performance Management and Area Staff Personnel Directive A/4/Part VII/Rev.7 (PD No. A/4/Part VII/Rev. 7) referred to therein, regarding staff under probation.

5. With respect to his second application (contesting the decisions to render the findings of the medical board moot and not to pay Mr. Mohanna a disability benefit), the UNRWA DT first determined that 27 November 2014 was the date upon which the Agency decided not to confirm

² *Ibid.*, para. 78.

³ *Ibid.*, para. 83.

Mr. Mohanna's appointment even though it did not take effect until 31 December 2014. Noting then that the medical board's conclusion was taken almost a month later, the UNRWA DT found that "it [was] clear that [Mr. Mohanna's] non-confirmation was based solely on his performance and not on his health incapacity".⁴ In light of that determination, it concluded that UNRWA Area Staff Rule 109.7 (Disability benefit) was inapplicable and that Mr. Mohanna was, therefore, not entitled to receive a disability benefit.

6. With respect to his third and fourth applications (contesting the decisions regarding the non-payment of a termination indemnity and the calculation of Mr. Mohanna's leave encashment payment, respectively), the UNRWA DT concluded that they were not receivable for failure to request review of those decisions within their respective 60-day time limits, as set forth in Area Staff Rule 111.2. In connection with the third application, the UNRWA DT noted that "as of 23 December 2014 [Mr. Mohanna] understood the separation benefits he was entitled to receive ... [and that it was] not contested that [he] requested decision review on 30 March 2015, which [was] beyond the 60-day time limit".⁵ In connection with the fourth application, the UNRWA DT concluded that "[b]ased on [Mr. Mohanna's] statement that the decision was made on 12 March 2015, his 3 June 2015 request for decision review was submitted beyond the 60-day time limit".⁶

7. Finally, with respect to Mr. Mohanna's fifth application (contesting the calculation of his period of service), the UNRWA DT found it was receivable. It further concluded that, as it had already determined "that [Mr. Mohanna] continued to be in service of the Agency until 31 December 2014",⁷ it ordered the Agency to amend the certificate of service accordingly.

Submissions

Mr. Mohanna's Appeal

8. Mr. Mohanna requests review of the decision taken by the UNRWA Dispute Tribunal to consolidate his five applications. He submits that the decision was biased and that the decision "weakened [his] position".

⁴ *Ibid.*, para. 87.

⁵ *Ibid.*, para. 92.

⁶ *Ibid.*, para. 93.

⁷ *Ibid.*, para. 95.

9. Mr. Mohanna also requests “relief” of the decision to render the findings of the medical board moot and not to pay him a disability benefit. He submits that Area Staff Rule 109.7 applies to his case even though he was not confirmed in his appointment on 27 November 2014 because, as the UNRWA DT found, he was still an UNRWA staff member at the time of the medical board’s determination.

10. Mr. Mohanna also seeks “relief” of the decision not to pay him a termination indemnity. He submits he is entitled to one because his service exceeded 13 months.

The Commissioner-General’s Answer

11. Mr. Mohanna’s appeal is not founded on any of the grounds provided for under Article 2(1) of the Statute of the Appeals Tribunal (Statute) and is, therefore, defective and should be dismissed entirely. Mr. Mohanna merely disagrees with the outcome of his case and is simply repeating the arguments he submitted before the UNRWA DT.

12. There is no merit to Mr. Mohanna’s claim that consolidating his five cases “weakened [his] position” nor is there any basis to his claim of bias. The UNRWA DT has wide discretion in case management and considered each of Mr. Mohanna’s applications and contentions.

13. Mr. Mohanna has not demonstrated how the UNRWA DT erred in law or fact when it concluded that Area Staff Rule 109.7 on disability benefits did not apply, that his non-confirmation was due to his underperformance and that his applications regarding termination indemnity and encashment payment were non-receivable for failure to request decision review of the corresponding decisions in a timely manner. He is merely repeating arguments made before the UNRWA DT.

Considerations

14. We deal first with a preliminary matter: Mr. Mohanna has applied for an oral hearing. He gives this reason: “Due to the fact that I can more explain directly what negative procedures have been taken by UNRWA DT since I do believe that their discussion was biased”. In our view, the UNRWA Dispute Tribunal’s decision was clearly based on the applicable law. As such, there was no possibility of bias. In any event, Article 18(1) of the Rules of Procedure of the Appeals Tribunal provides that we may hold an oral hearing if it would assist in the expeditious and fair disposal of the case. The assistance of an oral hearing is not necessary in the present case

as the issues for decision are clear from the facts and pleadings on record. Mr. Mohanna's application for an oral hearing is therefore dismissed.

15. Mr. Mohanna's appeal firstly challenges Order No. 110 (UNRWA/DT/2015) granting the Commissioner-General's motion for consolidation of all five applications filed by Mr. Mohanna into one judgment. Although there were five applications decided by the UNRWA DT in its consolidated Judgment, the appeal disputes only two of those decisions, namely: i) the decision affirming the Commissioner-General's decision to render the findings of the medical board moot and not to pay him a disability benefit; ii) the decision that Mr. Mohanna's application challenging the Commissioner-General's decision not to pay him a termination indemnity was not receivable.

16. Regarding his other three applications, Mr. Mohanna's appeal does not present any submissions challenging the UNRWA DT's Judgment that the decision not to confirm his appointment during his probationary period was not tainted by any procedural irregularities or prejudice. His application contesting the calculation of his leave encashment payment was ruled out of time and not receivable. His other application challenging the calculation of his period of service was decided in his favour.

Order granting the Commissioner-General's motion for consolidation

17. In disputing the UNRWA DT's order consolidating his five applications, Mr. Mohanna simply states: "The decision of consolidating my five applications is biased due to the fact that the Tribunal took into consideration the Respondent's interest while neglecting mine, thus such a decision weaken [s] my position through such an order."

18. We note from the Order that the UNRWA DT took into account Mr. Mohanna's objections to the motion. However, it considered that the contested decisions were interrelated. Also, the facts leading up to Mr. Mohanna's separation and decisions stemming from his separation would be identical. It therefore decided that "consolidating the five applications would be in the interests of judicial economy and appropriate for a fair and expeditious disposal of the cases".⁸ The UNRWA Dispute Tribunal also found that Mr. Mohanna "would not be

⁸ *Mohanna v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Order No. 110 (UNRWA/DT/2015), para. 14.

prejudiced by the consolidation as each contested decision will be dealt with separately and in full by the Tribunal, albeit in one Judgment”.⁹

19. Mr. Mohanna does not provide any basis for his allegation of bias, nor does he explain how the Order weakened his position.

20. The UNRWA Dispute Tribunal has broad discretion in relation to case management matters. Article 14 of the UNRWA DT Rules of Procedure provides that the UNRWA DT “may, at any time, either on an application of a party or of its own initiative make any order or give any direction which appears to the judge to be appropriate for a fair and expeditious disposal of the case and to do justice to the parties”. The Appeals Tribunal has consistently held that it will not lightly interfere with the broad discretion of the first instance tribunal in the management of its cases.¹⁰

21. We are satisfied that the UNRWA Dispute Tribunal properly exercised its discretion in matters of case management when it ordered that Mr. Mohanna’s five applications be consolidated into a single judgment. We reject his claim that the UNRWA Dispute Tribunal was biased in making this order and that his position was thereby weakened.

The UNRWA DT’s decision affirming the Commissioner-General’s decision to render the findings of the medical board moot and not to pay him a disability benefit

The UNRWA DT’s decision that Mr. Mohanna’s application challenging the Commissioner-General’s decision not to pay him a termination indemnity was not receivable

22. Mr. Mohanna’s appeal of these two decisions has no legal basis. Mr. Mohanna obviously disagrees with the decisions of the UNRWA DT, but does not advance any argument that has not already been thoroughly considered by the UNRWA DT.

⁹ *Ibid.*

¹⁰ *Namrouti v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-593, para. 33 and the many cases referenced therein.

23. It is not sufficient for him to merely state that he disagrees with the decisions and to repeat arguments submitted before the first instance court, as that court has a broad discretion to determine the weight it attaches to the evidence with which it is presented.¹¹ 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. “A party cannot merely repeat on appeal arguments that did not succeed in the lower court. Rather, he or she must demonstrate that the court below has committed an error of fact or law warranting intervention by the Appeals Tribunal.”¹²

24. Mr. Mohanna was obliged to bring his appeal within the jurisdiction of the Appeals Tribunal by basing it on any of the grounds set out in Article 2(1) of the Special Agreement between the United Nations and UNRWA, by alleging that UNRWA DT has:

- (a) exceeded its jurisdiction or competence;
- (b) failed to exercise jurisdiction vested in it;
- (c) erred on a question of law;
- (d) committed an error in procedure, such as to affect the decision of the case; or
- (e) erred on a question of fact, resulting in a manifestly unreasonable decision.

25. Mr. Mohanna does not identify any of these grounds in his appeal, and has failed to demonstrate that the UNRWA DT committed any error of fact or law in arriving at its decision.

26. Our perusal of the UNRWA Dispute Tribunal’s Judgment shows that it properly applied the applicable law in deciding Mr. Mohanna’s applications.

27. In regard to Mr. Mohanna’s challenge to the Commissioner-General’s decision to render the findings of the medical board moot and not to pay him a disability benefit, the UNRWA Dispute Tribunal correctly found that he did not meet the qualification for entitlement to a disability benefit prescribed by Area Staff Rule 109.7, in that his appointment was

¹¹ *Khashan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-502, para. 14; *Mahfouz v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-414, para. 15; *Dannan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-340, para. 14.

¹² *Khashan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-502, para. 14; *Dannan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-340, para. 14.

not terminated for reasons of health as required, but was terminated on the basis of his poor performance.¹³

28. Again, the UNRWA Dispute Tribunal correctly applied the relevant law in deciding that Mr. Mohanna's application challenging the Commissioner-General's decision not to pay him a termination indemnity was not receivable. The UNRWA Dispute Tribunal was cognizant of Area Staff Rule 111.2 and of the Appeals Tribunal's jurisprudence when it decided that Mr. Mohanna, as of 23 December 2014, understood the separation benefits he was entitled to receive, yet did not request decision review until 30 March 2015, which is beyond the 60-day time limit prescribed in Area Staff Rule 111.2. The UNRWA Dispute Tribunal did not err in finding that his application was not receivable for failure to request review of the decision within the set time limits.

29. The well-established jurisprudence of the Appeals Tribunal recognises that management evaluation or decision review is a mandatory first step in the appeals process and is a prerequisite to invoke the Dispute Tribunal's jurisdiction.¹⁴ The UNRWA DT committed no error when it determined that Mr. Mohanna's challenge to the decision not to pay him a termination indemnity was not receivable on the basis that he had not first sought timely decision review within the prescribed time limits.

30. Mr. Mohanna has not demonstrated any error of law or otherwise by the UNRWA Dispute Tribunal and the appeal must fail.

Judgment

31. The appeal is dismissed and Judgment No. UNRWA/DT/2016/009 is affirmed.

¹³ Area Staff Rule 109.7 (1) provides:

A staff member whose appointment has been terminated on the stated ground that he/she is for reasons of health incapacitated for further service with the Agency shall be eligible to receive a disability benefit as defined in paragraph 2 of this rule provided that he/she is less than 60 years of age and does not receive a termination indemnity under rule 109.9 .

¹⁴ *El-Shobaky v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-564, para. 23, citing among others *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-299, para. 17.

Original and Authoritative Version: English

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

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Raikos

(Signed)

Judge Knierim

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

(Signed)

Weicheng Lin, Registrar