



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

Judgment No. 2018-UNAT-837



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

JUDGMENT

Before:	Judge Dimitrios Raikos, Presiding Judge Deborah Thomas-Felix Judge Martha Halfeld
Case No.:	2017-1130
Date:	22 March 2018
Registrar:	Weicheng Lin

Counsel for Mr. Isteti:	Self-represented
Counsel for Commissioner-General:	Rachel Evers

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2017/034, 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 6 November 2017, in the case of *Isteti v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Mohammad Shareef Mustafa Isteti filed the appeal on 17 November 2017, and the Commissioner-General filed an answer on 16 January 2018.

Facts and Procedure

2. The following facts have been established by the UNRWA DT:¹

... Effective 13 September 1982, [Mr. Isteti] was offered a temporary indefinite appointment as a Teacher A, Grade 9, Step 1, at Amman Area, Jordan. After several promotions and transfers, at the material time of the application, [Mr. Isteti] was employed as an Associate Professor at the Faculty of Arts and Education (“FESA”), Grade 15, Step 18.

... By letter dated 13 April 2014, [Mr. Isteti] was notified that he would reach the age of retirement on 18 September 2014.

... On 17 April 2014, [Mr. Isteti] submitted a request to be retained in service after the age of retirement. This request was duly approved by the Director of UNRWA Operations, Jordan (“DUO/J”) on 29 June 2014.

... By letter dated 6 June 2014, [Mr. Isteti] was informed of his new retirement date of 18 September 2016.

... On 9 April 2016, the Agency advertised a vacancy announcement for [Mr. Isteti’s] post to be filled upon his retirement.

... By email dated 21 June 2016, [Mr. Isteti] submitted to the DUO/J a request for an extension of the service beyond the age of 62.

... By email dated 2 August 2016, the Head, Field Human Resources Office, Jordan (“H/FHRO/J”) rejected [Mr. Isteti’s] request.

... By letter dated 7 August 2016, [Mr. Isteti] requested review of the decision not to extend his service beyond the age of 62. By email dated 18 August 2016, the Director of Human Resources (“DHR”) affirmed the decision of 2 August 2016.

¹ Impugned Judgment, paras. 2-11.

... By letter dated 18 August 2016, [Mr. Isteti] was reminded of his retirement date of 18 September 2016.

... On 25 August 2016, [an] application was filed with the UNRWA Dispute Tribunal (...). The application was transmitted to the Respondent on 29 August 2016.

3. On 6 November 2017, the UNRWA DT issued its Judgment dismissing Mr. Isteti's application. The UNRWA DT held that the Agency was justified in refusing Mr. Isteti's second request for an extension beyond his retirement age because his post was already advertised long before his second request. Consequently, the Agency had already selected a candidate to fill the post. The UNRWA DT further held that Mr. Isteti's contentions that he should have been extended since he offered to work without pay was without legal merit as the Agency cannot appoint a staff member to a post and not pay the corresponding salary. Regarding Mr. Isteti's claim that he was discriminated against, the UNRWA DT noted such discrimination could only exist if he was treated differently from individuals in the same circumstance and thus, reviewed examples of other staff members that Mr. Isteti proffered. In this regard, the UNRWA DT found the staff members in these examples were not in situations similar to that of Mr. Isteti and thus, held that he failed to offer evidence that he was subject to discrimination. Lastly, the UNRWA DT held that Mr. Isteti's argument that Jordanian law permits staff to remain in service until age seventy was without legal merit as the Agency is not bound by the laws of member states, but is governed by its internal laws and regulations.

Submissions

Mr. Isteti's Appeal

4. Mr. Isteti's appeal form is not accompanied by a brief. His response to the appeal form titled, "Relief claimed" states as follows:

The review of [UNRWA DT] Judgment because it has:

[...] Erred on a question of fact, resulting in a manifestly unreasonable decision.

Before my retirement day of the job, I asked UNRWA to stay in my job for additional time (9 months) to complete the required period to transfer from associate professor rank to full professor rank, in any case they see it is suitable for the UNRWA, and I offered to work without pay as a volunteer in this extended period, but they refused despite they gave an extension to other persons. [...]

The Commissioner-General's Answer

5. The Commissioner-General requests that the Appeals Tribunal dismiss Mr. Isteti's appeal in its entirety. Firstly, the Commissioner-General argues that Mr. Isteti did not attach an appeal brief, which is mandatory, and therefore, has not provided any explanation or legal basis which renders his appeal not well-founded. It is not sufficient under the Appeals Tribunal's jurisprudence for an appellant to merely disagree with the findings of the UNWRA DT as the appellant must identify the error. Mr. Isteti does not explain how the UNRWA DT erred in dismissing his application and fails to meet his burden before the Appeals Tribunal. Secondly, the Commissioner-General submits that the UNRWA DT did not err in fact or law that would require a reversal. The UNRWA DT referenced relevant legal provisions and reviewed the underlying facts correctly. The UNRWA DT further correctly held that Mr. Isteti failed to provide evidence that he was subject to discrimination.

Considerations

6. Article 2(1) of the Appeals Tribunal's Statute (Statute) provides that:

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal 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.

7. These provisions are supplemented by Article 8(2) of the Appeals Tribunal's Rules of Procedure (Rules), which provides that: "The appeal form shall be accompanied by:
(a) A brief that explains the legal basis of any of the five grounds for appeal set out in Article 2(1) of the Statute that is relied upon (...)"

8. It follows from the above provisions that a party appealing a judgment of the first instance Tribunal (the UNDT or UNRWA DT) will not succeed in having the judgment reversed, modified or the case remanded, unless the appeal challenges the impugned judgment on one or more of the grounds referred to in Article 2(1)(a) to (e) of the Statute.

9. In the present case, Mr. Isteti's appeal form is not accompanied by a brief explaining the legal basis for his appeal. In his appeal form, in part IV, under the title, "Relief claimed", Mr. Isteti submits that,

Before my retirement day of the job, I asked to stay in my job for additional time (9 months) to complete the required period to transfer from associate professor rank to full professor rank, in case they see it is suitable for the UNRWA, and I offered to work without pay as a volunteer in this extended period, but they refused despite they gave an extension to other persons [...]

10. As the Commissioner-General properly notes, Mr. Isteti has failed to identify, by citation to any provision in Article 2(1) of the Statute, the grounds for his appeal, as he must. The appeal must be dismissed in light of the above, and of the fact that Mr. Isteti has simply reproduced an argument already submitted to the UNRWA DT, without explaining in what respect the UNRWA DT, has erred by rejecting this argument as unfounded, exceeded or failed to exercise its jurisdiction, erred on a question of law, committed an error in procedure or erred on a question of fact resulting in a manifestly unreasonable decision. Thus, Mr. Isteti's appeal is defective and is not allowed.²

² *Abdel Rahman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-610, para. 20; *Kovacevic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-071, paras. 17-20; *Vangelova v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-046, paras. 19 and 20; *Tsoneva v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-045, paras. 10 and 11.

Judgment

11. The appeal is dismissed and Judgment No. UNRWA/DT/2017/034 is hereby affirmed.

Original and Authoritative Version: English

Dated this 22nd day of March 2018 in Amman, Jordan.

(Signed)

Judge Raikos, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Halfeld

Entered in the Register on this 23rd day of May 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar