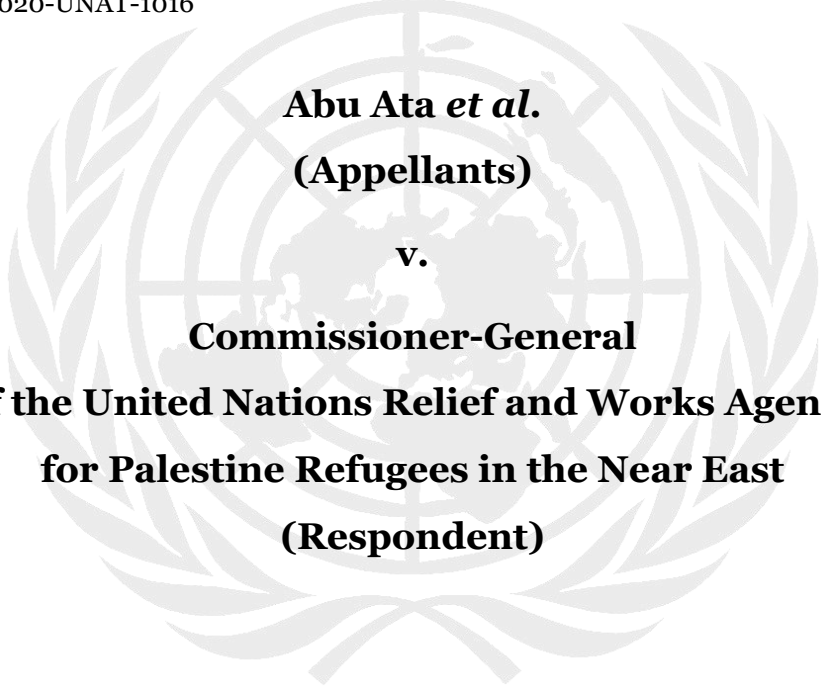




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2020-UNAT-1016



**Abu Ata *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 Dimitrios Raikos, Presiding Judge Sabine Knierim Judge John Raymond Murphy
Case No.:	2019-1336
Date:	26 June 2020
Registrar:	Weicheng Lin

Counsel for Appellants:	Amer Abu Khalaf, LOSA
Counsel for Respondent:	Rachel Evers

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by 247 Appellants against Judgment No. UNRWA/DT/2019/044 rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT) on 9 September 2019 in the case of *Abu Ata et al. v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. The Appellants filed their appeal on 5 December 2019 and the Commissioner-General of UNRWA filed his answer on 5 February 2020. We reject the appeal and uphold the decision of the UNRWA DT.

Facts and Procedure

2. The 247 appellants (“the Appellants”), at the time of filing their applications with the UNRWA DT, were employed by the Agency under temporary indefinite appointments (“TIAs”) in the Gaza Field Office (“GFO”).

3. In a statement to staff members on 17 January 2018, the Commissioner-General (“CG”) announced that the Government of the United States was limiting its contribution to the Agency to USD 60 million in 2018, compared to its contribution of more than USD 350 million in 2017.

4. In a letter to all staff members in the GFO dated 6 March 2018, the Director of UNRWA Operations, Gaza (“DUO/G”) highlighted the financial difficulties the Agency was facing due to the sudden decrease in contributions to the Agency and explained that the reduction in funding had plunged the Agency into a “dramatic and sudden existential crisis”.

5. On 4 July 2018, the Deputy Commissioner-General of the Agency (“D/CG”) recommended to the CG that the CG authorise an increase of 548 part-time posts for the GFO, the redeployment of 280 staff members, and the separation of 113 staff members. The CG approved the D/CG’s recommendation on 5 July 2018.

6. In an update to staff members on 7 July 2018 about the impact of the financial crisis, the CG described the aforementioned measures that the Agency was taking to better address the challenges of the funding cut as follows:

We are engaging donors very actively but we need to be crystal clear about the necessity for some internal measures in order to limit the threats to our core services to Palestine refugees.

The US funding cut is directly impacting our emergency interventions and we ran out of EA funding for the occupied Palestinian territory at the end of June. [...]

You can be certain that we will continue to fundraise for these activities but currently, we need to take some difficult measures that prioritize refugees with the most critical needs. This is our humanitarian responsibility.

Emergency interventions in the West Bank are, proportionately, the most heavily impacted because they have been supported almost entirely by the US for years, and those resources are no longer available in 2018. ...

In Gaza, poverty and unemployment rates are at very high levels, and almost a million refugees – more than 50 percent of the population – depend on food aid from UNRWA. Food assistance is an absolute humanitarian necessity and a priority. We are therefore taking all measures possible to protect this vital assistance, including advancing program budget funds. To successfully do so, we have to adjust some other interventions.

One of them is our community mental health program. We are determined to alleviate the impact on refugees who rely on our mental health services. We are looking at ways to preserve at least a part of that intervention. Our job creation – cash for work – intervention in Gaza will also need to be scaled down further, as funds are no longer available to continue it at the current level.

Transitional shelter cash assistance is also being reviewed. The scheduled payment at the end of July 2018 will proceed. Further payments would require additional, dedicated resources.

7. On 25 July 2018, all the Appellants individually received a letter signed by the DUO/G, informing them that their posts would be abolished. In these letters, some of the Appellants were offered new TIAs on a part-time basis, while others were only informed that they would be considered for new part-time positions.

8. For the Appellants who were offered new TIAs on a part-time basis, the impugned decisions of 25 July 2018 read, in relevant parts, as follows:

I regret to inform you that, for the reasons explained above, your post on a full-time basis will be abolished. This letter serves as notice of “provisional redundancy” effective the date of this letter, in accordance with Area Personnel Directive A/9/Rev.10. In line with the Agency’s obligation to make reasonable efforts to find a suitable placement for you as well as programme needs, you are hereby offered a new

post on an indefinite appointment at a part-time basis of 50%. Your grade will remain unchanged.

[...]

If you accept this offer, you will be transferred effective 1 September 2018.

9. For the Appellants who were not offered new TIAs on a part-time basis, the 25 July 2018 letters were slightly different and read, in relevant parts, as follows:

I regret to inform you that, for the reasons explained above, your post on a full-time basis will be abolished. This letter serves as notice of “provisional redundancy” effective the date of this letter, in accordance with Area Personnel Directive A/9/Rev.10.

New structures and positions will present some limited opportunities for existing staff, including part-time contracts. In the review and organizational design exercise, new positions are being established. In your case, unless you tell me otherwise, you will be considered for new part time positions of (Area Mental Health and Psychosocial Support (MHPSS) Supervisor in Health or Education Mental Health and Psychosocial Support (MHPSS) Specialist in Education) at Grade 13.

If you are offered and accept a new position, you will be transferred effective 1 September 2018.

10. In a subsequent update dated 16 August 2018 about the internal measures to address the financial crisis, the CG informed all staff members as follows:

Specifically, we still need \$217 M, which includes \$123 M for our Program Budget activities and \$94 M for our Emergency Appeals. This is a lot of money.

This critical gap forced us to take painful measures of reduction in our Emergency Services in the West Bank and Gaza. These were Agency-wide decisions, taken because we have run out of funding for Emergency Programs in these two fields.

I fully recognize the dramatic impact these measures have had on staff members who lost their jobs and others for whom part time arrangements were necessary. In particular in Gaza, where unemployment rates are extremely high and alternatives very difficult to find, I truly regret that we had no choice under the circumstances, and no other solutions could be found. I understand that affected colleagues felt a need to express deep frustration and anger.

It was however necessary to take certain steps in order to protect vital UNRWA services benefitting Palestine refugees. For example the Agency managed to preserve the food distributions for 1 Million people in Gaza. This remains a key priority and

that we have been able to maintain the intervention after an immense loss of income is a very big achievement.

Today, I wish to announce my decision to open UNRWA schools for 526[,]000 students in the West Bank, including East Jerusalem, Gaza, Jordan, Lebanon and Syria. This is another major priority. It reflects UNRWA's deep commitment to protecting the dignity of Palestine refugees, the core of its service delivery and its mandate.

11. The majority of the Appellants submitted requests for decision review in either August or September 2018.

12. Following an agreement reached on 1 September 2018 between the DUO/G and the Local Staff Union in Gaza, the Appellants' TIAs were extended on a full-time basis until the end of September 2018. The Appellants were individually notified thereof by letters dated 21 October 2018, which read, in relevant part, as follows:¹

With reference to [the] Director's letter dated 25 July 2018 and because of the continuing financial crisis and shortfall in funding for the Emergency Appeal, you are hereby notified of reclassification of your category from full-time to part-time without any break in service.

The reclassification is effective from 1 October 2018 and does not change your contractual status as an Area staff member with **Indefinite Appointment Category "A"**.

This reclassification is temporary due to the financial crisis as mentioned above, and, is subject to the provisions of the Agency's Staff Regulations, Rules, Personnel Directives and related issuances applicable to Area staff members on part-time service, including Area Staff Rule 103.8 paragraph 3 and the same may be amended from time to time.

13. Between 21 October and 17 December 2018, the Appellants filed their applications with the UNRWA DT. Between November 2018 and May 2019, the UNRWA DT made various interlocutory orders; most importantly it consolidated the individual applications of all the Appellants.

14. In a statement on 1 May 2019, the CG announced a decision to reinstate 500 part-time staff members in the GFO to full-time employment from 1 May to 31 December 2019. The relevant part of his statement read as follows:

¹ Emphasis in original.

Today, I am pleased to announce a series of measures that will positively impact Palestine refugees and staff. These actions are the result of close coordination between field teams, headquarters departments and the Executive Office and I wish to thank the colleagues involved in their preparation.

In May [2019] ... we will reinstate some 500 community mental-health workers and other part-time staff in Gaza, to full-time employment from 1 May to 31 December. This is a special measure to respond to the critical consequences that years of blockade and conflict are having, mainly on boys and girls in Gaza, with 68% of children suffering from either depression, sleep irregularities, anxiety and other forms of trauma.

15. Although not entirely clear from the record, the Appellants appear to have benefited from the decision of 1 May 2019 to reinstate 500 staff members back to full-time employment. Their challenge was thus limited to the contested decision of 25 July 2018 declaring them provisionally redundant and offering new TIAs on a part-time basis (which TIAs were later extended on a full-time basis until the end of September 2018) due to lack of funding. The UNRWA DT held that the decision was lawful, reasonable and did not violate the acquired rights of the Appellants. It accordingly dismissed the 247 applications.

Submissions

The appeal of Abu Ata *et al.*

16. The Appellants submit that the UNRWA DT erred in fact and in law when assessing the evidence before it and coming to the conclusion that they had failed to establish that the contested decision was arbitrary, capricious or procedurally unfair.

17. The Appellants claim that the UNRWA DT erred in failing to address the contractual relationship and circumstances between each individual Appellant and the Agency by consolidating their cases and not dealing with each application individually.

18. The Appellants maintain that the UNRWA DT disregarded Area Staff Regulation 12.1 which allows amendment of the regulations without prejudice to the acquired rights of staff members. The CG, they contend, entirely ignored their acquired rights when making the contested decision.

19. The Appellants claim furthermore that the UNRWA DT erred in fact and law by failing to look into and analyze PD A/9/Rev. 10, paras. 33-44 on Redundancy before making its conclusions.

20. The Appellants argue that the UNRWA DT erred in fact and law by accepting unjustifiable evidence from the Agency that some Appellants had failed to submit their requests for decision review.

21. The Appellants ask the Appeals Tribunal to reverse the Judgment of the UNRWA DT, to order their reinstatement to their former posts and to award them compensation for financial loss.

The Commissioner-General's Answer

22. The CG contends that the Judgment of the UNRWA DT was free of error and correct in its conclusion that the Appellants failed to establish that the reclassification of their TIAs had been exercised arbitrarily or capriciously or had been flawed by procedural irregularity or error of law.

23. The CG acted reasonably, fairly and justly in the context of the financial crisis.

24. The reliance on the Area Staff Regulation to assert acquired rights is patently misplaced. No amendment to the staff regulations was relevant or in contention.

25. The CG finally submits that the UNRWA DT did not err in consolidating the applications on the grounds of convenience and on the basis that the applications required the determination of common questions of law and fact.

26. The CG asks the Appeals Tribunal to dismiss the appeal.

Considerations

Preliminary issues

27. The Commissioner-General, in his reply dated 14 May 2019 to the applications of the Appellants before the UNRWA DT, provided a list of Appellants who had either not submitted decision review requests or failed to submit timely decision review requests. The

UNRWA DT, after having reviewed the above list and the requests for decision review annexed to the relevant applications, identified the applications of Nabila El Hawajir, Rasem Shamiya, Muna Qasem, Najah Abu Shawish, Shirin Mousa, Niveen El Masri, Mustafa El-Mudalal, Mohammad Safi, Nabil Abu Warda and Alaa Husain as not receivable either because they had failed to establish that they had submitted a timely decision review request or because their requests for decision review were not dated.² On appeal, the said Appellants take issue with this finding of the UNRWA DT, however unsuccessfully, as they have not demonstrated how the UNRWA DT's finding on receivability is erroneous in law and fact. They do not even argue in a specific way that they had properly submitted a request for decision review. Therefore, this ground of appeal is without merit.

Merits

28. We deal first with the challenge to the consolidation of the applications. The UNRWA DT, having reviewed the applications and having noted the common questions of law and fact, considered it appropriate to consolidate the applications and issue only one judgment. Its decision in that regard was within its discretion and justifiable. Where separate applications have been filed and it appears to the UNRWA DT convenient to do so, it may on application of any party consolidate the applications whereupon the applications shall proceed as one application. The overriding consideration is convenience, expedience and judicial economy.

29. The UNRWA DT may order consolidation if it is satisfied that such a course of action is favoured by the balance of convenience and that there is no possibility of substantial prejudice to any party. The convenience of consolidating the applications in this case is self-evident. All the Appellants were in exactly the same position and the contested decision affected them all equally. The facts and the applicable law were the same for each application. Moreover, the Appellants have not made any claim that anyone of them was substantially prejudiced in any respect. The UNRWA DT accordingly exercised its discretion lawfully and appropriately and the Appellants are entitled to no relief on this score.

30. With respect to the abolition of the Appellants' posts and the declaration that they were provisionally redundant, it is a well established principle in our jurisprudence that an international organization necessarily has the power to restructure some or all of its

² Impugned Judgment, para.49.

departments or units, including the abolition of posts, the creation of new posts, and the redeployment of staff. The Appeals Tribunal will not interfere with a genuine organizational restructuring even though it may have resulted in the loss of employment of staff. However, even in a restructuring exercise, like any other administrative decision, the Administration has the duty to act fairly, justly, and transparently in dealing with staff members.³

31. The evidence shows irrefutably that the decision declaring the Appellants provisionally redundant and the reclassification of their posts from full-time to part-time were related to the financial crisis that the Agency was facing as spelt out in the CG's messages to staff members in July and August 2018. It was common knowledge that the Agency had experienced a significant decrease in funding from certain donors, most notably the Government of the United States. The resultant situation compelled the Agency to restructure some of its departments or units, including abolishing posts, creating new posts, letting FTAs or LDCs lapse and redeploying staff. The CG was constrained to make certain unenviable operational choices. He decided to take measures to prioritize and secure the Agency's community mental health programme and cash for work programme in Gaza in order to protect vital food assistance to a million refugees. To do that, he was obliged to restructure and to make job cuts. The decision was taken in good faith and on a reasonable basis. There was a *bona fide* reason to restructure and it was operationally rational to abolish the posts and reclassify them from full-time to part-time posts at that time.

32. As noted above, if an exercise of discretion by the CG is legal, rational, procedurally correct and proportional, there will be no basis for interference. The Appellants have not identified any relevant matters that were ignored or any irrelevant matters that were considered in the decision to abolish the posts and reclassify them from full-time to part-time. The Appellants received proper notice of the decision, which was later delayed by one month, and were offered, and accepted, reasonable alternatives intended to avoid their dismissal, which, in the end, turned out to be temporary measures. Absent any evidence of any improper motive or irrational consideration, and given the *bona fide* and operational necessity to restructure, there is no basis to conclude that the CG acted unreasonably in relation to the Appellants.

³ *Abdeljalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-960, para. 19; *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902, para. 34.

33. The argument advanced by the Appellants that the UNRWA DT totally disregarded Personnel Directive No. A/9/Rev.10 on redundancy or that it ignored the entire regulatory framework that guides the contractual relationship between the Appellants and the Agency is not correct. The UNRWA DT dealt with this issue and held correctly that the Administration had acted in good faith and fulfilled its obligation under the said provisions by offering the Appellants new TIAs, albeit on a part-time basis, and later, by announcing their reinstatement to full-time employment, effective as early as 1 May 2019.⁴

34. With regard to the Appellants' contention that their acquired rights were violated, it must be kept in mind that their contractual status is subject to the provisions of the staff regulations and issuances which allow, under the aforementioned circumstances, for the restructuring by the Administration of its departments or units, including abolishing posts. Moreover, as the CG correctly argues, no Staff Regulations were amended in this instance and thus Area Staff Regulation 12.1 has no application. In so far as an offer of future employment on a different basis might be construed substantively as an amendment of contractual rights (which formally it is not), in the circumstances of this case such "amendment" was reasonable and did not involve the confiscation or spoliation of any right or benefit of the Appellants. The decision of the CG to abolish, reclassify and offer the Appellants part-time positions was based on a precise assessment of the situation in issue. The proposed change was necessary and reasonably related to the objective of prioritizing and securing the core activities of the Agency. The decision, moreover, in keeping with the principle of proportionality, sought to minimize harm to the Appellants. Therefore, the contention about the acquired rights is without merit.

35. In the premises, the appeal must be dismissed.

⁴ Impugned Judgment. para. 71.

Judgment

36. The appeal is dismissed and Judgment No. UNRWA/DT/2019/044 is affirmed.

Original and Authoritative Version: English

Dated this 26th day of June 2020.

(Signed)

Judge Raikos, Presiding
Athens, Greece

(Signed)

Judge Knierim
Hamburg, Germany

(Signed)

Judge Murphy
Cape Town, South Africa

Entered in the Register on this 16th day of July 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar