



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

Judgment No. 2020-UNAT-1020

**Khader Hamed Dibs
(Applicant)**
v.
**Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East
(Respondent)**

**JUDGMENT ON APPLICATION
FOR EXECUTION OF JUDGMENT**

Before:	Judge Dimitrios Raikos, Presiding Judge Martha Halfeld Judge John Raymond Murphy
Case No.:	2020-1347
Date:	26 June 2020
Registrar:	Weicheng Lin

Counsel for Mr. Dibs:	Amer Abu-Khalaf, LOSA
Counsel for Commissioner-General:	Rachel Evers

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an application for execution of Appeals Tribunal Judgment No. 2017-UNAT-798 in the matter of *Dibs v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, which was decided in New York on 27 October 2017 and issued on 8 December 2017. We grant the application in part.

Facts and Procedure

2. On 24 September 2014, Mr. Khader Hamed Dibs, a staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), in Shufat Camp Environmental Sanitation (Shufat Camp) in the Jerusalem Area, was shot while in his office at Shufat Camp. He suffered multiple bullet injuries on the lower limbs and subsequently was placed on sick leave from 24 September 2014 until 3 June 2015.

3. Between November 2014 and October 2015, the Department of Internal Oversight Services (DIOS) conducted an investigation into allegations that Mr. Dibs was engaged in unauthorised outside activities in breach of his neutrality obligations.

4. On 12 March 2015, Mr. Dibs requested to be referred to a medical board, as he was incapable of carrying out his duties. Mr. Dibs reiterated this request on 25 June 2015.

5. On 14 August 2015, by memorandum to the Director of UNRWA Operations, West Bank (DUO/WB), Mr. Dibs submitted a request for Special Leave With Pay (SLWP), as he had exhausted his leave credits. On 18 August 2015, the Applicant submitted a similar request to the Chief Area Office, Jerusalem.

6. On 29 September 2015, the medical board issued its report and concluded that Mr. Dibs was unfit to perform his duties as a Sanitation Foreman. The Chief, Field Health Programme (C/FHP) concurred with this conclusion on 6 October 2015.

7. By letter dated 2 November 2015, the DUO/WB informed Mr. Dibs of the findings of the investigation conducted by DIOS.

8. By letter dated 29 January 2016, the Head, Field Human Resources Office (H/FHRO) informed Mr. Dibs that he had been assessed unfit for service; however, his separation from service would be postponed since the investigation process concerning his alleged misconduct was still ongoing. Furthermore, the letter indicated that his request for SLWP was denied and that he would be suspended without pay as of 1 February 2016, pending the outcome of the investigation.

9. On 30 May 2016, Mr. Dibs, after having been unsuccessful in his request for review of the decisions in the letter of 29 January 2016, filed an application with the UNRWA Dispute Tribunal against the decisions of UNRWA 1) not to grant his request for SLWP; 2) not to proceed with the separation based on the conclusion of the medical board; and 3) to suspend him without pay pending the outcome of the investigation.

10. On 14 May 2017, the UNRWA DT handed down Judgment No. UNRWA/DT/2017/018 dismissing the application in its entirety.

11. On appeal, filed by Mr. Dibs with this Tribunal, the Appeals Tribunal issued Judgment No. 2017-UNAT-798 in the case of *Dibs v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. The Appeals Tribunal granted Mr. Dibs' appeal in part and vacated the UNRWA Dispute Tribunal's rejection of Mr. Dibs' complaints regarding the administrative decision to postpone his separation on medical grounds until the end of the disciplinary process. Further, the Appeals Tribunal rescinded the aforementioned administrative decision and remanded the case to the Agency to consider whether or not Mr. Dibs' injuries are attributable to the performance of his duties.

12. On 9 January 2020, Mr. Dibs filed an application for Execution of the Appeals Tribunal Judgment and the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East filed his observations on 7 February 2020.

Submissions

Mr. Dib's Application

13. Mr. Dibs submits that as of this date, Judgment No. 2017-UNAT-798 has not been executed by the Agency and requests the Appeals Tribunal to grant his application and award him compensation for the moral and pecuniary losses he has suffered because of this delay.

The Commissioner-General's Answer

14. The Commissioner-General admits with profound regret, that there has been considerable delay in finalizing this matter. The delay is attributable to changes in the Agency's Department of Internal Oversight Services leading to the departure of the Chief of Investigation (the officer with the conduct of the investigations) prior to the completion of investigations surrounding the shooting of Mr. Dibs at Shufat Camp.

15. Further, the Commissioner-General clarifies that the Agency is now seized of the relevant facts and a final determination of the issue whether or not Mr. Dibs' injuries are attributable to the performance of his duties will be made in the next couple of weeks.

Considerations

16. The relevant provisions of the Statute of the Appeals Tribunal (Statute) applicable to the present motion are: (i) Article 2(3), which provides in relevant part that the Appeals Tribunal may "issue all orders necessary or appropriate in aid of its jurisdiction and consonant with the present statute"; and (ii) Article 11(4), which provides that "[w]here a judgement requires execution within a certain period of time and such execution has not been carried out, either party may apply to the Appeals Tribunal for an order for execution of the judgement". Article 27 of its Rules of Procedure contains the same language as Article 11 of the Statute.

17. The Appeals Tribunal's respective Judgment does not provide for a time period within which the Agency should consider whether or not Mr. Dibs' injuries are attributable to the performance of his duties. However, that of itself does not debar Mr. Dibs from seeking execution of the Appeals Tribunal's Judgment once a reasonable time period has elapsed from the date upon which the Appeals Tribunal rendered its Judgment without it having been effected.¹

18. The Appeals Tribunal notes with concern that the Commissioner-General has not yet fully complied with the Appeals Tribunal's 2017 Judgment, despite the jurisprudence emphasizing the inviolability of a Tribunal order. Due diligence on the part of the Commissioner-General would have obviated the instant proceedings. The Appeals Tribunal

¹ Comp. *Fiala v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-645, para. 16; *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-059, para. 17.

has sympathy for UNRWA's organizational difficulties and appreciates the honesty and prompt admittance of the Agency's noncompliance with the judicial determination. However, we wish to emphasize that orders and judgments of the Tribunals must be executed with alacrity.

19. Pursuant to the above-referenced provisions, the Appeals Tribunal grants this part of the application for execution of Judgment and orders that the Commissioner-General fully execute the 2017 Judgment within 30 calendar days from the issuance of this Judgment.

20. The Commissioner-General is advised that failure to comply with the execution deadline established herein will result in a finding of manifest abuse of process and the award of costs, pursuant to Article 9(2) of the Statute and, possibly, a referral for accountability, pursuant to Article 9(5) of the Statute.

21. As to Mr. Dibs' claim for moral and pecuniary damages suffered by him "till the date this application is executed", we are of the view, however, that what is being requested by Mr. Dibs does not fall within the scope of the present application as defined by Article 11(4) of our Statute. In any case, in the precedent paragraph 20 of our present Judgment, we have already addressed the issue of the relief against the possible failure of the Agency to fully respect our Judgment, by way of advising the Agency thereupon.

22. In view of the foregoing, the application is granted in part.

Judgment

23. The application for execution of judgment is GRANTED in part and the Commissioner-General is ordered to fully execute Judgment No. 2017-UNAT-798, by issuing a final decision as to whether Mr. Dibs' injuries are attributable or not to the performance of his duties within 30 calendar days of the issuance of this Judgment (i.e., by no later than 5:00 p.m. (EDT, New York) on 26 August 2020).

Original and Authoritative Version: English

Dated this 26th day of June 2020.

(Signed)

Judge Raikos, Presiding
Athens, Greece

(Signed)

Judge Halfeld
Bournemouth, United Kingdom

(Signed)

Judge Murphy
Cape Town, South Africa

Entered in the Register on this 27th day of July 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar