Judgment No. 2014-UNAT-482

Abdullah

(Appellant)

v.

Commissioner-General

of the United Nations Relief and Works Agency

for Palestine Refugees in the Near East

(Respondent)

[redacted]

Date: 17 October 2014

Re

Counsel for Mr. Abdullah: Self-represented

Counsel for Commissioner-General: Anna Segall

JUDGE MARY FAHERTY, PRESIDING.

1. The United Nations Appeals Tribunal has before it an appeal filed by Mr. Mohammad Mustafa Abdullah against Judgment No. UNRWA/DT/2013/037/Corr.01, 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, respectively) on 22 October 2013 in the case of *Abdullah v. Commissioner-General of UNRWA*. Mr. Abdullah appealed on 6 January 2014 and the Commissioner-General of UNRWA (Commissioner-General) answered on 18 April 2014.

Facts

2. The following facts are taken from the UNRWA DT Judgment:[1]

> ... On 17 September 1992 the Applicant commenced employment with the Respondent as a Teacher at Grade 6, Step 1 in the Irbid area, Jordan. A the material time, the Applicant was employed as a Teacher, Grade 10, Step 12, at Irbid Town Preparatory Boys School ("ITPB School"). The Applicant is currently employed as a Teacher at Grade 10, Step 13 at Husn Camp Preparatory Boys School No. 1 ("HCPB School").
>
> ... By memorandum dated 27 August 2011, the Head Teacher ("HT") at ITPB School filed a complaint with the Chief Area Office, Irbid ("CAO/I") against the Applicant concerning incidents that had allegedly taken place on 23 and 24 August 2011. The HT alleged that, after a meeting with teaching staff (including the Applicant) on 23 August 2011 about leave and the allocation of classes amongst Arabic teachers at ITPB School, the Applicant hit the table in disagreement. The HT also alleged that the Applicant refused the lighter workload of 25 periods which had been offered to him and claimed he needed more leave because he worked very hard.
>
> ... On 5 September 2011, the Applicant, the Area Education Officer, Irbid ("AEO/I") and the CAO/I met in the CAO/I's office to discuss the HT's complaint. The complaint was read to the Applicant who denied its contents orally. When the Applicant was asked to put his reply in writing, he refused and said he would do it at home.

[1] Impugned Judgment, paras. 2-17 (internal footnotes omitted).

... By letter to the Director of UNRWA Operations, Jordan ("DUO/J") dated 7 September 2011, the Applicant raised concerns regarding the neutrality and accuracy of the "*verbal investigation*" procedures into the HT's complaint. The alleged "*verbal investigation*" was the meeting [of 5 September 2011].

... By email dated 7 September 2011, the CAO/I wrote to the Legal Counsel of UNRWA – Jordan ("Legal Counsel") explaining that he and the AEO/I, after speaking with the Applicant on 5 September 2011, established a Fact Finding Committee

... By letter to the DUO/J dated 20 September 2011, the Applicant objected to the decision to transfer him to HCPB School, stating:

... By letter to the CAO/I dated 17 October 2011, the Applicant inquired about the nature of the transfer, specifically whether it was "technical, administrative, or disciplinary". He also inquired about the length of time that he was expected to spend at the new school and whether he would be eligible to be considered for reassignment to ITPB School in the futureeIBUNAL

5. On 22 October 2012 Mr. Abdullah requested the UNRWA DT to translate the Commissioner-General's reply from English into Arabic and further requested "a translation of the investigation file", including witness statements taken by the FCC. The UNRWA DT understood the request as Mr. Abdullah seeking that the witness statements (which were all in Arabic) be translated into English.

6. On 23 October 2012, the UNRWA DT declined Mr. Abdullah's request for a translation of the Commissioner-General's reply. However, on the same date, the documents pertaining to the interviews and statements of witnesses (which were in Arabic) were disclosed to Mr. Abdullah, with the names of witnesses and staff members redacted for privacy considerations.

7. By Order dated 29 May 2013, Mr. Abdullah was provided with the minutes (in Arabic) of the meetings held by the HT on 23 and 24 August 2011.

8. On 5 June 2013, Mr. Abdullah filed his observations on the Commissioner-General's reply and the UNRWA DT provided a courtesy copy of its translation into English of Mr. Abdullah's observations to the parties on 2 July 2013.

9. On 25 July 2013, following a request from Mr. Abdullah dated 9 June 2013, the UNRWA DT transmitted courtesy copies to the parties of its English translation of the HT's complaint and the 7 September 2011 interviews of witnesses which had been conducted by the FFC. On 31 July 2013, the parties were furnished with courtesy copies of the UNRWA DT's translation into English of the minutes of the meetings of 23 and 24 August 2011. On 1 August 2013, Mr. Abdullah filed his observations on the Tribunal's English translations of the witness statements.

The UNRWA DT Judgment

10. The UNRWA DT dismissed Mr. Abdullah's claims, finding that the Commissioner-General's decision to transfer him to another school was not a disciplinary measure. In the UNRWA DT's opinion, the Commissioner-General "acted in the interest of the Agency, which serves the school and its students, by transferring [Mr. Abdullah] to another school",[3] and Mr. Abdullah "wrongly interpreted or wrongly assumed that the

[3] Impugned Judgment, para. 61.

transfer was a disciplinary measure for misconduct".[4] Furthermore, the UNRWA DT found that "[t]he record indicates that the transfer did not affect [Mr. Abdullah]'s contractual rights, conditions of employment or salary".[5] The UNRWA DT also dismissed Mr. Abdullah's further claims that the transfer was motivated by bias and tainted by irregularities, finding that Mr. Abdullah "failed to submit any evidence, beyond mere statements, that the [Commissioner General]'s decision to transfer him to another school in the same Irbid area at the same level and with no pecuniary loss was tainted by bias, motivated by extraneous factors, or was flawed by procedural irregularity or error of law".[6]

11. Moreover, the UNRWA DT held that Mr. Abdullah failed to prove his claim that he suffered stress or incurred financial expense as a result of his transfer such as would merit an award of compensation.

Submissions

Mr. Abdullah's Appeal

Errors of procedure

12. Mr. Abdullah submits that the UNRWA DT committed errors of procedure in:

(i) allowing the Commissioner General to take part in the proceedings even though he had filed his reply outside of the prescribed time limit. Mr. Abdullah contends that the failure of the Commissioner-General to comply with the relevant time limits took place at the initiative of the UNRWA DT, "under its oversight and in its full view". He requests that the Appeals Tribunal find that the Commissioner-General's delay in replying to his application, and the legitimizing of that course of action "amount[ed] to justice delayed and, hence, justice denied";

(ii) refusing to provide Mr. Abdullah with an Arabic translation of the Commissioner-General's reply (which was in English). Mr. Abdullah maintains that this refusal undermined his legal position as enshrined in Article 6 of the Universal Declaration of Human Rights.[7] He requests the Appeals Tribunal to find that

[4] *Ibid.*
[5] Impugned Judgment, para. 62.
[6] Impugned Judgment, para. 68.
[7] "Everyone has the right to recognition everywhere as a person before the law."

(iv) declining to award compensation. Mr. Abdullah submits that there was no requirement for him to submit medical evidence, in light of the fact that he had incurred moral damages and that his reputation had been damaged. Further, the UNRWA DT erred in not compensating him for the expenses associated with his transfer.

Errors on questions of law

15. Mr. Abdullah contends that the UNRWA DT erred in law in:

(i) not recognizing the guide of the Department of Internal Oversight Services (DIOS) to conducting misconduct investigations as a relevant administrative issuance; and

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(ii) finding that Mr. Abdullah's transfer was not a disciplinary measure, a finding which Mr. Abdullah says is contradicted by the UNRWA DT's finding at paragraph 58 of its Judgment.

The UNRWA DT's actions in excess of its jurisdiction

16. Mr. Abdullah argues that the UNRWA DT exceeded its jurisdiction in:

(i) determining, essentially, that the relationship between Mr. Abdullah and the HT was untenable; and

(ii) negating Mr. Abdullah's complaint concerning his transfer by finding that Mr. Abdullah had previously applied for the position of head teacher in schools outside of the Irbid area. He submits that there is no basis for the comparison made by the UNRWA DT because the positions Mr. Abdulla

18. There is no obligation on the UNRWA DT to provide Mr. Abdullah with an Arabic translation of the Respondent's reply. Moreover, the failure to provide such a translation was not prejudicial to him since he filed observations on that reply which were duly considered by the UNRWA DT in the course of its Judgment.

19. Furthermore, the imposition by the UNRWA DT of confidentiality regarding the names of witnesses and staff members, at the Commissioner-General's request, was within that Tribunal's discretion pursuant to Article 13 of its Rules of Procedure. The Commissioner-General further submits that the UNRWA DT properly exercised its discretion in declining to hold an oral hearing.

Alleged errors of fact

20. With regard to the UNRWA DT designation of the meeting of 5 September 2011 as informal, the Commissioner-General submits that Mr. Abdullah has not met the standard required by the Appeals Tribunal for it to render the UNRWA DT's decision manifestly unreasonable. In any event (irrespective of the status of the meeting), the Commissioner-General concluded that there was no misconduct on the part of Mr. Abdullah.

21. Similarly, Mr. Abdullah had not put forward any argument to suggest that the UNRWA DT's finding that the relationship between him and the HT was tense led to a manifestly unreasonable decision. The available documentary records made it reasonable for the UNRWA DT to infer that the relationship between Mr. Abdullah and the Head Teacher was tense. In this regard, reliance is placed on Mr. Abdullah's letter to the Executive Director of 20 September 2011.

The alleged failure to exercise jurisdiction

22. With regard to Mr. Abdullah's complaint that the UNRWA DT should have changed the wording of the contested decision, the Commissioner-General argues that the UNRWA DT is not clothed with jurisdiction to substitute or make amendments to impugned administrative decisions. Rather, the limit of its jurisdiction is set out in Article 10(5) of its Statute.

23. The UNRWA DT properly declined to order compensation for Mr. Abdullah as he had not submitted evidence of moral damage or financial harm. In this regard, the UNRWA DT properly applied the guidelines outlined in the Appeals Tribunal jurisprudence. Furthermore, Mr. Abdullah made no claim regarding the cost of his commute before the UNRWA DT.

Alleged errors of law

24. The UNRWA DT did not err in law in determining that the DIOS guide on best practice in conducting investigations did not form part of Mr. Abdullah's contract as the guidelines did not have the legal authority of a staff regulation, rule or other administrative issuance. The UNRWA DT correctly referenced the legal framework relating to misconduct and correctly concluded that Mr. Abdullah's transfer was not a disciplinary measure. Moreover, the Tribunal correctly concluded that the transfer was not impugned by any abuse of discretion or misuse of authority.

The alleged excess of jurisdiction

25. The inferences made by the UNRWA DT, having appraised the evidence, and the consequent legal and factual reasoning arrived at by that Tribunal fell entirely within its competence and jurisdiction.

Summary

26. The Commissioner-General requests the Appeals Tribunal to reject each of Mr. Abdullah's pleas and to dismiss his appeal in its entirety.

Considerations

27. Mr. Abdullah requested an oral hearing, but the Appeals Tribunal declined the request being satisfied that the issues for deliberations in the appeal are sufficiently set out in the parties' submissions.

28. Mr. Abdullah raises several grounds of appeal, namely, the UNRWA DT committed errors of procedure; erred on questions of fact; failed to exercise the jurisdiction vested in it; acted in excess of jurisdiction; and erred on questions of law.

Claimed errors of procedure on the part of the UNRWA DT

(i) The admission of the Commissioner-General's reply

29. The issue to be determined by the Appeals Tribunal is whether the UNRWA DT erred in allowing the Commissioner-General to participate in the proceedings even though his reply was filed more than six months after the due date. Mr. Abdullah submits that granting the Commissioner-General permission to participate amounted to "justice denied" to him.

30. In *Chahrour*, we stated: "It is now settled that the Dispute Tribunal may, under its Rules, permit the Respondent to file a tardy reply and to participate in the proceedings. In the past, this Tribunal has urged the UNRWA DT to act transparently when it allows such participation."[9]

31. In the present case, Mr. Abdullah's request to preclude the Commissioner-General .1(rul2(g).71s ev8)-5.9(l(c)-5-5.20.8251 0 5D-.0003Tc.2291 Tw.825A22 Tt)-ipation."

(iv) The failure to hold an oral hearing

5 September 2011 and he denied its content. Following the complaint, an FFC was

reaching its conclusion on the nature of the relationship between Mr. Abdullah and the school principal.

58. This relationship was the starting point for the CAO/I's exercise of discretion. Area Staff Regulation 1.2 provides:

> 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. The Commissioner-General may establish special conditions of service for staff members assigned to any of the activities or offices of the Agency outside its area of operations. Staff members are responsible to the Commissioner-General in the exercise of their functions. The whole time of [sic] staff members shall be at the disposal of the Commissioner-General, who will establish a normal working week.

Area Staff Regulation 4.3 stipulates as follows: "Due regard shall be paid in the appointment, transfer and promotion of staff to the necessity for securing the highest standards of efficiency, competence and integrity."

59. 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. In *Kamunyi*, the Appeals Tribunal has stated: "[I]t is within the Asdministatio

Original and Authoritative Version: English

Dated this 17th day of October 2014 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Faherty, Presiding	Judge Lussick	Judge Simón

Entered in the Register on this 23rd day of December 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar