



UNITED NATIONS

AT-617



Counsel for Mr. Saeed:

Self-represented

Counsel for Commissioner-General:

Lance Bartholomeusz

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2016-UNAT-617

... By memorandum dated 17 May 2013 to the Personnel Department, the CMO requested the renewal of [Mr. Saeed]'s contract for a further period of six months, i.e. up to 31 December 2013.

... [Mr. Saeed] was on sick leave from 3 June to 21 June 2013 [during which time he underwent surgery].

... By email dated 7 June 2013, the CMO approved a new workflow for the Finance Division. [Mr. Saeed claims that upon enquiring about the new workflow during his sick leave, he was informed the workflow was temporary.]

... On 24 June 2013, [Mr. Saeed] returned to duty after his sick leave [and was informed that he should comply with the new workflow].

... By email dated 24 June 2013 to the DMD copied to the Director of Human Resources ("DHR"), [Mr. Saeed] refused to accept the tasks assigned to him in the new workflow. He requested that an investigation be conducted in relation to the new workflow of the Finance Division and asked for leave pending the investigation.

... From 26 June 2013 to 30 August 2013, [Mr. Saeed] was on leave. He returned to duty on 2 September 2013. [Mr. Saeed claims that on this day, during a meeting with the DMD and the CMO, the CMO informed him that she had instructed staff to no longer follow Mr. Saeed's instructions.]

... [On] 3 September 2013, the Officer-in-Charge, Human Resources Department ("OiC, HRD") replied to [Mr. Saeed]'s email of 24 June 2013. In his letter, the OiC, HRD outlined [Mr. Saeed]'s underperformance leading up to the redistribution of duties to meet the operational needs of the Department. He found no grounds to conduct an investigation and encouraged [Mr. Saeed] to embrace the opportunity to improve his performance through the OTI process.

THE UNITED NATIONS APPEALS T

“administrative decision” which could be contested before the UNRWA DT, but rather only an intermediate decision giving a staff member the opportunity to improve his or her level of performance.⁵ Accordingly, the UNRWA DT found the entire application not receivable and dismissed the application.

Submissions

Mr. Saeed’s Appeal

4. Mr. Saeed’s submissions reiterate the salient facts giving rise to his application to the UNRWA Dispute Tribunal, claiming further that the change in workflow essentially deprived him of his functions and had him reporting to more junior staff. He does not make any submissions asserting error on the part of the UNRWA DT in addressing his application.

The Commissioner-General’s Answer

5. The appeal is not founded on any of the grounds provided for under the Appeals Tribunal Statute. Rather than demonstrating how the UNRWA DT erred in dismissing all the three elements of his application as not receivable, Mr. Saeed essentially re-argues the merits of his case, which is not permissible on appeal. The Commissioner-General submits that the UNRWA DT did not err as a matter of fact or law when it dismissed each of Mr. Saeed’s three claims and found his application not receivable. The Commissioner-General requests that the Appeals Tribunal dismiss the appeal.

Considerations

Request for an oral hearing

6. As a preliminary matter, this Tribunal denies Mr. Saeed’s request for an oral hearing finding that the parties’ applications have adequately clarified the issues submitted to the Appeals Tribunal for its decision.

⁵ *Ibid.*, para. 41.

Appeal against Judgment on the merits

7. As stated in *El Saleh*,⁶

The Appeals Tribunal emphasizes that the appeals procedure is of a corrective nature and, thus, 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 before the lower court. The function of the Appeals Tribunal is to determine if the UNRWA Dispute Tribunal has made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its

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as this directive was merely a consequence, confirmation and execution of the earlier decision establishing the new workflow. Thus, this directive cannot be impugned independently. As the basis of the Appellant's grievance arose from the original decision to approve a new workflow, which he had failed to impugn on time through decision review, Mr. Saeed was prevented from challenging the subsequent execution of the first decision in respect of the workflow.

12. Lastly, the decision to refer the Appellant to a formal OTI process was not a final decision; it was only an intermediate step, which we consider is incapable of affecting Mr. Saeed's terms of employment or conditions of service. Hence, the UNRWA Dispute Tribunal rightly considered the challenge non receivable, which accords with our jurisprudence.⁸

13. Therefore, we find that the appeal has no prospect of success on any of the grounds set forth in Article 2 of our Statute and must be dismissed in its entirety.

Judgment

14. The appeal is dismissed and the Judgment of the UNRWA Dispute Tribunal is affirmed.

⁸ *Nguyen-Kropp & Postica v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-509, para. 33 and footnotes 4-6.

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2016-UNAT-617