



JUDGE RICHARD LUSSICK , PRESIDING .

1. The United Nations Appeals Tribunal has before it an appeal filed by Mr. Abdol Razeq Yousef Khashan against Judgment No. UNRWA/DT/2014/001, 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 16 January 2014 in the case of *Khashan v. Commissioner-General of UNRWA*. Mr. Khashan appealed on 28 January 2014 and the Commissioner-General of UNRWA answered on 26 March 2014.

#### Facts and Procedure

2. The facts as established by the Dispute Tribunal of UNRWA read as follows:<sup>1</sup>

... Abdel Razeq Khashan (the “Applicant”) filed an application contesting the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (the “Respondent”) not to include, in his end-of-service retirement benefit, an allowance that he had received in addition to his base salary.

#### Facts

... By letter dated 30 September 1999, Mr. Gunnar Lofberg, the Director of UNRWA Operations, Jordan (“DUO/J”) informed the Applicant, a Technical Instructor in Mechanical Engineering, grade 12, at Wadi Seer Training Center [(W.S.T.C.)], Amman, Jordan, that his post was being deleted and that he was being declared “provisionally redundant” with effect from 1 January 2000. However, as an alternative to redundancy the Agency was offering the Applicant a transfer, with grade protection, to a post of Assistant Head Teacher or Vocational Activities Teacher.

... By memorandum dated 5 October 1999, the Applicant accepted a transfer to the post of Assistant Head Teacher and by letter to the Applicant dated 12 October 1999, the Agency informed him that he had been assigned to the post of Assistant Head Teacher at Ashrifiyeh Preparatory Boys School No. 2 with effect from 9 October 1999. This transfer included grade protection at grade 12.

... The Respondent stated in his Reply:

As a result of a Progression exercise conducted in 2011, the Agency eliminated the 10% administrative allowance for all Head Teacher, Grade 12 posts. As a result, the Appellant, who had since



The reason behind not getting the benefit [...] was the transfer to a lower-grade post because of the arbitrary and unfair transfer made by some officials who were later terminated and their mismanagement and lack of integrity was proven and known.

Please note that there is a decision from the Office Director of the salary and allowance protection because he/she is aware of the injustice resulted against me. It is available in my file in the Personnel.

... On 16 December 2012, having not received a response to his request for decision review, the Applicant filed an application to the [UNRWA Dispute] Tribunal contesting the decision. The application was transmitted to the Respondent on 18 December 2012.

... By letter dated 24 December 2012, MsMarta Colburn, the DUO/J, responded to the Applicant's request for decision review confirming that the decision would be upheld and citing Area Staff Rules 109.2 and 112.3(D).

... On 17 January 2013[,] the Respondent filed his Reply to the Application.

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... On 24 September 2013, the Respondent filed a Supplement to the Reply in English.

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... [...] The Tribunal finds that the calculations [for Mr. Khashan's end of service retirement benefit] were reached after a correct application of the relevant rules.<sup>2</sup>

4. The UNRWA DT also discussed the allegations raised by Mr. Khashan in respect of his transfer to the post of Assistant Head Teacher in October 1999, but dismissed them as not receivable as a separate head of claim.

#### Submissions

##### Mr. Khashan's Appeal

5. The decision to transfer him to a different field was unfair and affected him "physiologically and socially as well as technically". He was however obliged to accept the transfer as there was no alternative available to him and to reject that decision would have entailed more losses to him.

6. Mr. Khashan argues that "deleting the allowance [...] during the last period of [his] work increased [his loss] which reached fifty eight JD from [his] basic salary".

7. Mr. Khashan alleges that he was not selected for unspecified higher level posts in the same field of specialization because of "unjust treatment".

8. Mr. Khashan voices his "disagreement" with the UNRWA DT Judgment and requests that this Tribunal review his case file which will "show facts of unjust treatment".

##### The Commissioner-General's Answer

9. The UNRWA Dispute Tribunal did not err in confirming the Agency's decision not to include the TPA in the calculation of

12. The Commissioner-General asks that the Appeals Tribunal reject Mr. Khashan's appeal.

Considerations

13. Mr. Khashan states in his appeal that he does not agree with the UNRWA DT's decision. He claims that the decision to transfer him was unfair and affected him adversely, but that he could not reject it because he was obliged to continue working for UNRWA as there was no available alternative. He also claims that he was the subject of "unjust treatment" in that his applications for higher posts were ignored. However, Mr. Khashan does not assert in his appeal that the UNRWA DT erred in its decision.

14. It is not sufficient for an appellant merely to state that he disagrees with the UNRWA Dispute Tribunal's decision and to repeat the arguments submitted before the first instance court, as the UNRWA Dispute Tribunal has a broad discretion to determine the weight it attaches to the evidence with which it is presented.<sup>3</sup> The consistent jurisprudence of the Appeals Tribunal emphasizes that the appeals procedure is of a corrective nature and is not an opportunity for a dissatisfied party to re argue his or her case: "A party cannot merely repeat on appeal arguments that did not succeed in the lower court. Rather, he or she must demonstrate that the court below has committed an error of fact or law warranting intervention by the Appeals Tribunal."<sup>4</sup>

15. The Appellant must bring the appeal within the jurisdiction of the Appeals Tribunal by basing the appeal on any of the grounds set out in Article 2.1 of the Special Agreement between the United Nations and UNRWA, by alleging that the UNRWA DT has:

- (a) exceeded its jurisdiction or competence;
- (b) failed to exercise jurisdiction vested in it;
- (c) erred on a question of law;

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- (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.

16. Mr. Khashan did not identify any of these grounds in his appeal and has failed to demonstrate that the UNRWA DT committed any error of fact or law in arriving at its decision. While it is understandable that Mr. Khashan would not be happy with the UNRWA DT's decision, the finding by the UNRWA DT that his retirement benefit was correctly calculated in accordance with the relevant staff rules cannot be faulted. In protesting against the non-inclusion of his TPA in his retirement benefit, Mr. Khashan has failed to appreciate the distinction between an allowance and base salary. There is no provision in the UNRWA retirement system which would permit such an allowance to be included in the calculation of his retirement benefit. Upon retirement, Mr. Khashan was no longer entitled to the TPA paid to him during his employment.

17. The UNRWA DT considered that the calculation of Mr. Khashan's retirement benefit was governed by Area Staff Rules 109.2(5) and(7) and 112.3(D). Paragraphs 5 and 7 of Area Staff Rule 109.2 state:





Original and Authoritative Version: English

Dated this 26<sup>th</sup> day of February 2015 in New York, United States.

*(Signed)*

Judge Lussick, Presiding

*(Signed)*

Judge Weinberg de Roca

*(Signed)*

Judge Thomas-Felix

Entered in the Register on this 17<sup>th</sup> day of April 2015 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar