



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2020-UNAT-1022

Mohammed Abed AlRaheam ElShanti
(Appellant)

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 Nos.:	2019-1344 & 2020-1349
Date:	26 June 2020
Registrar:	Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Rachel Evers

6. Due to the Agency's financial crisis, in an interoffice memorandum dated 4 July 2018, the Deputy Commissioner-General ("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.

7. 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.

8. By letter dated 25 July 2018, the DUO/G informed Mr. ElShanti of the Agency's decision to abolish his post.

9. Following an agreement reached on 1 September 2018 between the DUO/G and the Local Staff Union ("LSU") in Gaza, Mr. ElShanti's FTA was extended on a full-time basis until the end of September 2018.

10. On 18 September (a)-2.2 (l)3.8 (St)-2.8 (a)3.3 (f)-0.3 1 Tf-0.03 (w)-.8 (Tw 34.109 03 (e)139 (a (e)

UNRWA DT in a reasoned judgment clarified the characterization of Mr. ElShanti's application as a challenge to the decision not to renew his fixed-term appointment.

24. ~~Mr. ElShanti~~ has not presented cogent arguments to support the conclno (l)-4.6 ()To5h.o (h-0.0012

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40. In the instant case, we are not able to see that this discretion was abused and hence we reject Mr. ElShanti's argument that this threshold has been met.

The characterization of the impugned administrative decision

41. Mr. ElShanti claims that the characterization of the impugned administrative decision by the UNRWA Dispute Tribunal was not correct as he was contesting the decision dated 25 July 2018 to abolish his post. There is no merit in Mr. ElShanti's claim for the reasons that follow.

42. The Dispute Tribunal has the inherent authority to individualize and define the administrative decision impugned by a party in a specific case, by adequately interpreting and comprehending the application submitted by the moving party, whatever name the party attaches to the document.⁴

43. In the case at hand, as per the documents on file, by letter dated 25 July 2018, Mr. ElShanti was individually notified by the Administration that his post would be abolished. Following an agreement reached on 1 September 2018, between the DUO/G and the LSU in Gaza, Mr. ElShanti's FTA was extended on a full-time basis until the end of September 2018. The memorandum of the agreement indicated that: "[i]t must be understood that failure to mobilise additional resources on a significant scale would[,] on October 1[,] lead to implementation of the individual letters shared on July 25, i.e. moving 510 full time to part time contracts and 68 separations". As a result of the failure to mobilize additional resources, on 30 September 2018, Mr. ElShanti was separated from the Agency upon the expiry of his FTA.

44. In view of the surrounding factual elements, after reviewing Mr. ElShanti's application, as well as the Commissioner-General's reply, the UNRWA DT characterized the decision contested by Mr. ElShanti as the decision not to renew his fixed-term appointment upon its expiry. The UNRWA DT, bearing in mind that the Agency's decision to abolish Mr. ElShanti's post was not a reviewable decision as, on its own, it had no direct impact on his terms of appointment, and it merely constituted an act leading to the non-extension of Mr. ElShanti's

⁴ *Farzin v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-

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organization has the power to restructure some or all of its departments or units, which includes the abolition of posts, the creation of new posts and the redeployment of staff.¹⁰

52. Subsequently, in order to consider the rationale for the non-renewal, the UNRWA DT assessed the comprehensive documentary record before it, including, *inter alia*, the Commissioner-General's e-mail dated 7 July 2017 related to the financial difficulties faced by the Agency, a subsequent update dated 16 August 2018 about the internal measures adopted by the Commissioner-General to address the financial crisis, as well as the already mentioned letter to all staff members in the GFO dated 6 March 2018 from the DUO/G, who highlighted the financial difficulties the Agency was facing due to the sudden decrease in contributions to the Agency.¹¹

53. Applying those principles to the specific facts of the case, the UNRWA DT concluded that:¹²

the rationale behind the non-renewal of the Applicants' appointments is clear from the CG's messages to staff members and from public information with respect to the significant decrease in funding from certain donors. As a result, it was within the Agency's discretionary authority to restructure some or all of its departments or units, including abolishing posts, creating new posts, and redeploying staff. It is clear from the CG's messages that the decrease in funding significantly affected the Agency's EA for the GFO and WBFO insofar as the CG decided to take some internal measures with

exercised arbitrarily or capriciously, were motivated by prejudice or other extraneous factors, or were flawed by procedural irregularity or error of law”.¹³

55. The Appeals Tribunal finds no reason to differ from these conclusions.

56. Having failed to establish any error of law or fact by the UNRWA DT, the appeal against Judgment No. UNRWA/DT/2019/051 fails.

Appeal of the UNRWA DT Judgment on interpretation

57. Article 12, paragraph 3, of the Statute of the UNRWA DT provides, as follows:

Either party may apply to the Dispute Tribunal for an interpretation of the meaning or the scope of the final judgement, provided that it is not under consideration by the Appeals Tribunal.

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for revision, always provided that such ignorance was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

65. Article 24 of the Rules of Procedure of the UNRWA DT provides:

1. Either party may apply to the Dispute Tribunal through the Registrar for a revision of an executable judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence.
2. The application for revision must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.
3. The application for revision shall be sent by the Registrar to the other party, who has 30 days after receipt to submit comments to the Registrar.

66. Having reviewed Mr. ElShanti's application for revision of its Judgment No. UNRWA/DT/2019/051, the UNRWA DT stated:

69. The Appeals Tribunal's jurisprudence on the issue of revision applications which come before i

74. In the same line of reasoning, we dismiss Mr. ElShanti's contentions that the UNRWA DT erred in fact and law in its characterization of the impugned administrative decision as reflected in its judgment on the application for revision and interpretation, as he did not contest the non-renewal decision and that he was clear in his decision review request that he contested the abolition of his post.

75. The issues alleged by Mr. ElShanti did not fall within the material scope of the trial on the application for revision but were the subject of the application on the merits before the UNRWA DT and the core issues addressed by the UNRWA DT in its Judgment No. UNRWA/DT/2019/051. Hence, Mr. ElShanti's submissions constitute, in reality, another disguised way to challenge Judgment No. UNRWA/DT/2019/051, which is not acceptable by the Appeals Tribunal. As already stated, Mr. ElShanti appears to treat the application for revision as an appeal of some sort. However, an application for revision is not a substitute for an appeal.²¹

