Judgment No. 2013-UNAT-371

Brisson

(Appellant)

v.

Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East

(Respondent)

[redacted]

Counsel forCounsel forRe.2 63812 85Tj[(Counse1 No)5.4(.. 201(né Bouin/Matthieu PerraudsTc-.-812

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Lionel Brisson against Judgment No. UNRWA/DT/2012/043, issued by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT and UNRWA or Agency, respectively) on 11 September 2012 in the case of *Brisson v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Brisson appealed on 26 November 2012 and the Commissioner-General of UNRWA (Commissioner-General) answered on 4 February 2013.

Facts and Procedure

2. The UNRWA DT made the following findings of fact, which are not disputed by the parties:[1]

> ... From the time he entered the service of the Agency on 1 December 1993 on a fixed-term appointment until he reached retirement age in July 2005, the Applicant served successively as Director of UNRWA Affairs, Lebanon, Director of UNRWA Operations, Gaza and Director of Operations in Headquarters Gaza.
>
> ... The Applicant's last contract extension was from 1 December 2004 to 31 December 2005, when he was separated from the Agency. On 6 July 2005, the Applicant turned 60 years old, which was the age of retirement for international staff members at the Agency.
>
> ... On 9 November 2005, the Applicant was injured in a bombing at the Grand Hyatt Hotel in Amman, Jordan, where he was on official duty for the Agency.

3. In Judgment No. UNRWA/DT/2012/043, the UNRWA DT noted that "[a]n actionable administrative decision arises in the application of specific International Staff Regulations and Rules" and that "[n]o such Regulation or Rule provides for compensation for loss of earning capacity beyond the normal age of retirement".[2] The UNRWA DT therefore concluded that UNRWA's decision not to compensate Mr. Brisson for his loss of earning capacity beyond the normal age of retirement was not an appealable administrative decision within the meaning of International Staff Regulation 11.1(A). The UNRWA DT added that the application was receivable, *ratione temporis*, but rejected it as not receivable, *ratione materiae*.

Submissions

Mr. Brisson's Appeal

4. Mr. Brisson submits that the UNRWA DT erred in law by rejecting his claim on the ground that staff members of the Organization cannot stay in active service beyond the normal retirement age of 60 years and that no provision in his contract or the Staff Regulations provide for compensation for loss of earning capacity beyond the normal age of retirement.

5. Mr. Brisson points to Article 11.1 of Appendix A to the UNRWA International Staff Rules which provides that the entitlement to compensation is not dependant on "whether or not the staff member is continued in the employment of the Agency or is separated". Furthermore, while Article 9.2 of the UNRWA International Staff Regulations provides that the normal retirement age is 60, it also provides that "[t]he Commissioner-General may, in the interest of the Agency, extend this age limit in exceptional cases", which is exactly what happened in his case. Mr. Brisson reached the normal retirement age on 6 July 2005 and the bombing which caused Mr. Brisson's injuries took place on 9 November 2005. He therefore fell under the exception provided for in Article 9.2. The right to compensation acquired by the application of this exception is not limited in time and is based solely on the causafe1(for loe002 Tc..3716)-3.9(b)-.6(sa)1.9(nd)-54(w-5.4n

7. Mr. Brisson submits that he was in the service of the Agency at the time he suffered the injuries and that it was as a consequence of the injuries that he was forced to retire. He claims that his disability is "total" and that he is not in a position to carry out any professional activity. The type of career Mr. Brisson had would have allowed him to work at least until 2015, either within the United Nations common system or in France.

8. Mr. Brisson emphasizes the exceptional circumstances of his case: his rank; the exception made by the Commissioner-General with respect to his retirement age; and a criminal attack causing injuries to a staff member who was in the service of the Organization beyond the normal retirement age.

9. Mr. Brisson requests that the Appeals Tribunal reverse the UNRWA DT Judgment and award him USD 1,440,000.00 pursuant to Article 11.2(d) of Appendix A to the International Staff Rules. This amount would compensate him for his loss of earning capacity until 2015.

The Commissioner-General's Answer

10. The Commissioner-General contends that the UNRWA DT did not err on a question of law. He contends that Mr. Brisson mainly repeats the arguments he made before the UNRWA DT without demonstrating how the UNRWA DT erred.

11. The Commissioner-General submits that the UNRWA DT correctly found that there is no provision in UNRWA's regulatory framework or in Mr. Brisson's contract of employment providing for loss of earning capacity beyond the normal age of retirement.

12. The Commissioner-General submits that, contrary to Mr. Brisson's assertion that neither UNRWA International Staff Regulation 9.2 nor Article 11.2 of Appendix A to the UNRWA International Staff Rules limit the duration for payment of compensation, the provisions on compensation due to partially disabled staff members clearly limit the period in which compensation must be paid.

13. The Commissioner-General requests that the Appeals Tribunal affirm the UNRWA DT Judgment and dismiss the appeal in its entirety.

Considerations

14. The UNRWA DT decided that the Agency's decision not to compensate Mr. Brisson for his loss of earning capacity beyond the normal age of retirement was not an appealable administrative decision within the meaning of UNRWA International Staff Regulation 11.1(A).

15. Article 2 of the UNRWA DT Statute provides:

> 1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Commissioner-General as the Chief Executive Officer of UNRWA:
>
> (a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance[.]

16. Like any other administrative decision, a decision not to compensate can be challenged as the Administration has the duty to act fairly, [illegible] management members

...

(b) Without prejudice to the staff member's entitlement under other provisions ... the salary and allowances which the staff members was receiving ... until either:

(i) He or she returns to duty; or

(ii) If, by reason of his or her disability, he or she does not return to duty, then until the date of the termination of his or her appointment or the expiry of one calendar year from the first day of absence resulting from the injury or illness, whichever is the later....;

(c) Immediately following the date on which the salary and allowances

> capacity in his or her normal occupation or an equivalent occupation appropriate to his or her qualifications and experience.

21. Both provisions therefore establish that the allowance is to be paid until the date of the termination of the appointment or the expiry of one calendar year counted from the first day of absence resulting from the injury or illness, irrespective of the age of the staff member.

22. Pursuant to Article 1 of Appendix A, these provisions apply to all international staff members of the Agency holding a fixed-term appointment. Mr. Brisson held a fixed-term appointment.

23. Fixed-term appointments end at the age of retirement, either at the age of 60 or 62, depending on whether a staff member entered the United Nations Joint Staff Pension Fund before or after 1 January 1990 (Staff Regulation 9.2).

24. Mr. Brisson's fixed-term appointment was extended from December 2004 to December 2005 subject to the Staff Regulations and Rules. No exceptional circumstance was invoked for an extension beyond July 2005, when he reached 60.

25. The former United Nations Administrative Tribunal was seized with a similar question of refusal to pay compensation beyond the age of retirement in *Meron*. In response to a request by the former Administrative Tribunal for information regarding the Organization's policy on this issue, the ABCC, by letter dated 19 July 2004, provided the following explanation:

> Compensation awarded under article 11.2 (d) for loss of earning capacity is sometimes awarded for a short period of time, if the claimant is expected to recover sufficiently to resume working. In cases where the claimant cannot return to work, the Board awards compensation up to the normal age of retirement, i.e. either up to age 60 or 62, depending on the claimant's entry on duty date. *In the past, such compensation awards were paid up to the claimant's death, or for as long as the disability existed, as in the case of compensation awarded under article 11.1 (c).* In recent years, however, the Board has decided that the Organization does not have an obligation to award compensation for the loss of earnings beyond the normal age of retirement and it has applied this interpretation of article 11.2 (d) uniformly. The claimant is advised as to when the benefit will terminate, and this date is included in the

> Secretary-General's decision.[4] (Emphasis added by the former Administrative Tribunal)

26. Based on the information that the former Administrative Tribunal gathered from the ABCC, the policy change took place in 1997.[5] Therefore, staff members who requested such pension as a result of an accident suffered in the service of the Organization post 1997, have been granted it "with the proviso that it would be paid *only until they retired*".[6]

27. Mr. Brisson's accident occurred long after the policy change in 1997. The changed policy has been applied to Mr. Brisson in the same way as it has been applied to other staff members in similar situations. Mr. Brisson had reached retirement age at the time of the incapacitating injury and his appeal must therefore be dismissed.

Judgment

28.

Original and Authoritative Version: English

Dated this 17th day of October 2013 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Weinberg de Roca, Presiding	Judge Faherty	Judge Simón

Entered in the Register on this 19th day of December 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar