



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2017-UNAT-769



Haj Saleh



Counsel for Mr. Haj Saleh:

Self-represented

Counsel for Commissioner-General:

Rachel Evers

JUDGE MARTHA HALFELD, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2016/030, 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 23 October 2016, in the case of *Haj Saleh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Ghassan Nimer Haj Saleh filed the appeal on 9 January 2017, and the Commissioner-General

of the Area Staff Regulations, Rules or other administrative issuances cannot create any right for

10. The UNRWA Dispute Tribunal accurately determined that on the basis of his job description Mr. Haj Saleh was not a teacher. The questions and observations about his job description that Mr. Haj Saleh makes in his appeal do not demonstrate any error of law, fact or procedure in relation to UNRWA DT's interpretation of his job description.

11. Contrary to Mr. Haj Saleh's allegation, the UNRWA Dispute Tribunal addressed both the Agency's assertion that other administrative staff performing teaching assignments as part of the parallel education programme were remunerated on the same basis as Mr. Haj Saleh, and Mr. Haj Saleh's claim that some staff were paid the "teaching staff allowance".

12. As for placing Mr. Haj Saleh on the list of "teaching staff" which was shared with Balqaa University, the Commissioner-General states that this practice "simply reflects the reality that [Mr. Haj Saleh] delivers lectures on physical education at WSTC, albeit in addition to his regular duties as a Recreation Officer". An external communication providing a factual determination regarding staff members performing teaching tasks at WSTC should be distinguished from internal policies regarding the remuneration of additional work performed by staff members.

13. UNRWA's regulatory framework has no specific rules regarding the payment of special allowance for additional work as part of the competitive education programme at the Agency's vocational training centres. However, the Agency applied the same additional allowance rules for physical education lectures that Mr. Haj Saleh gave under both parallel and competitive education programmes, and Mr. Haj Saleh was remunerated on the basis of the same overtime rules for his additional work under both programmes.

14. The UNRWA DT's findings in relation to Mr. Haj Saleh's job description and the references to the remuneration of other staff members were factually and legally accurate. There is no basis for his assertions of partiality and bias.

15. The Commissioner-General requests that the Appeals Tribunal dismiss Mr. Haj Saleh's appeal in its entirety.

Considerations

16. The UNRWA DT held that Mr. Haj Saleh is a Recreation Officer (non-teaching staff), Grade 10, who was selected to carry out additional assignments related to the PEP, outside

duty hours. For that, he received an overtime allowance in accordance with UNRWA's overtime rules, pursuant to paragraph 3.2.3.1 of Annex E to the revised Part XI of PD A/3.

17. Mr. Haj Saleh claims that the functions of Recreation Officer and physical education lecturer are equivalent and that the UNRWA Dispute Tribunal failed to investigate the facts and took the Agency's response at its face value. He also claims that he has been doing additional work since September 2000 in competitive education, and not in parallel education, which only came to light in 2009-2010.

18. Mr. Haj Saleh signed an undertaking on 2 May 2011, agreeing to work on the PEP at the rate determined by the Agency (JD 9 for a holder of a Master's degree). Mr. Haj Saleh's acceptance of the payment established for the PEP in 2011 is not compatible with his subsequent claim for retroactive readjustments, after PD A/3 was revised in 2012.

19. The Appeals Tribunal concludes that the extra and external activities as a lecturer for physical education do not have the consequence to modify the job duties or title of Mr. Haj Saleh's post, nor do they engender compen

3.2.3.1. *posts up to grade 12 will be compensated by following UNRWA overtime rules* (i.e. an extra payment per hour of overtime worked);³ ...

20. The Appeals Tribunal therefore finds that the UNRWA DT properly treated the question of Mr. Haj Saleh's additional work in light of PD A/3 related to the parallel education programme, since there is no evidence of any specific rules regarding the competitive education programme.

21. Furthermore, Mr. Haj Saleh's regular and extra duties were in line with the functions and responsibilities of Recreation Officer. According to the area staff post description dated 1 July 1974, the post of Recreation Officer belongs to the Vocational Teacher Training Division of the Education Department. The functions and responsibilities of that post include the "custodian of all sports and recreational supplies and equipment" and the performance of "such other duties as may be assigned".

22. The UNRWA Dispute Tribunal has no competence under its Statute to transfer Mr. Haj Saleh from the post of "Recreation Officer" to the post of "Teacher", as requested in the application, since that would involve inappropriate interference in the Agency's organizational proceedings.⁴

23. In view of the foregoing, and despite the strong allegations of bias, fallacies

25. According to Article 2 of the Appeals Tribunal's Statute, the competence of this Tribunal is limited to certain issues. For a first instance decision to be vacated or overturned, an appellant must provide proof that the first instance tribunal, in rendering its judgment, exceeded its jurisdiction or competence, failed to exercise jurisdiction vested in it, erred on a question of law, committed an error in procedure such as to affect

Judgment

27. The appeal is rejected and Judgment No. UNRWA/DT/2016/030 is affirmed.

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