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UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D 'APPEL DES NATIONS UNIES

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Al-Ashi  
(Appellant)

v.

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

JUDGMENT

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Before:	Judge Richard Lussick, Presiding Judge Deborah Thomas-Felix Judge Martha Halfeld
Case No.:	2017-1131
Date:	22 March 2018
Registrar:	Weicheng Lin

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THE UNITED NATIONS APPEALS TRIBUNAL

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Judgment No. 2018-UNAT-838

JUDGE RICHARD LUSSICK, PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2017/032, 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 October 2017, in the case of *Al-Ashi v. Commissioner-General of the Uni*

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... On 24 May 2015, the Applicant and his colleagues had a meeting with the H/TDSE. An incident between the Applicant and the H/TDSE occurred during this meeting.

... A mid-term review meeting was held with the Applicant on 6 July 2015, regarding his performance during his probationary period. The H/TDSE informed him that he needed to improve his performance.

... By email dated 13 July 2015, the H/TDSE indicated to the Applicant that “he wasted a lot of time in his translations”. By another email dated 28 July 2015, the H/TDSE “accused him for delaying translation.”

... By email dated 20 August 2015 to the Applicant, the H/TDSE noted certain points discussed in the mid-term review meeting. She reminded him that he needed to improve his performance to meet expectations for the post of

... Subsequently, on 22 December 2015, Human Resources Services Officer (Entitlements) (“HRSO”) sent an email to the Applicant containing a copy of the above-mentioned report.

... On 23 December 2015, the Applicant was informed of the extension of his probationary period from 1 January to 31 March 2016.

... By email dated 10 January 2016, the Applicant objected to the report “Progress on Performance Improvement Plan”.

... By email dated 14 January 2016, the HRSO reminded the Applicant and the H/TDSE of the points that had been discussed during a meeting held on 12 January 2016, especially the objectives of the new improvement plan.

... By email dated 11 February 2016 to the H/TDSE, the Applicant sought her feedback with regard to the implementation of his improvement plan.

... On the morning of 14 February 2016, the Applicant submitted to the Director of

... By email dated 27 March 2016, the H/TDSE sent to the second supervisor and the HRSO the results of the second phase of the Applicant's improvement plan and his performance summary report. She concluded that the Applicant was not able to contribute to the TDSE work, and that it would be appropriate not to confirm his appointment as TDSE Advisor.

... By letter dated 30 March 2016, the Applicant was informed that his promotion was cancelled and he was given the option of either transferring to his previous post of Education Specialist, Grade 13 or being terminated.

... By email dated 4 April 2016, the Applicant objected to the final assessment of the second phase of his improvement plan.

... On 26 April 2016, the Applicant requested the review of the decision not to confirm his appointment as TDSE Advisor, Grade 16, and to transfer him to his previous post of Education Specialist, Grade 13.

... Following the Applicant's inquiry regarding his complaint of prohibited conduct, on 7 June 2016, the DHR explained to him that they had not been able to finalise the matter of his complaint.

... On 23 August 2016, the Applicant submitted his application to the [UNRWA Dispute] Tribunal concerning the decision [not to confirm his appointment as TDSE Advisor, Grade 16, and to transfer him to his previous post of Education Specialist, Grade 13 and thus] to cancel his promotion. This first application of the Applicant was registered under Case No. UNRWA/DT/JFO/2016/027 ("JFO/2016/027"). The application was transmitted to the Respondent on 25 August 2016.

...

... On 9 October 2016, the Applicant was informed by the DHR that his complaint of prohibited conduct would be addressed with the H/TDSE by a management intervention. As a result, the Applicant's complaint was closed.

... On 17 October 2016, the Applicant submitted a request for review of the decision to close his complaint.

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UNRWA West Bank Field Office, Jerusalem which prevented the Commissioner-General from having access to the relevant documents and facilities needed to prepare and file his answer. He filed the answer within the 15-day extension on 13 February 2018.

### Submissions

#### Mr. Al-Ashi's Appeal

5. Mr. Al-Ashi submits that the UNRWA DT erred in fact and in law when assessing the evidence before it and coming to the conclusion that he had failed to establish that the decision not to confirm his appointment as TDSE Advisor and to transfer him to his previous post was unlawful. The UNRWA DT was incorrect in finding that this decision was not tainted by improper motives or flawed by procedural irregularities and that he had been properly and regularly assessed by the H/TDSE and consistently informed of his shortcomings and ways to improve his performance. In this context, Mr. Al-Ashi submits that the UNRWA DT “missed essential facts” related to his professional experience and to a claim he had “started to pursue” with the Ethics Office and that the Judgment contained factual mistakes with respect to his mid-term review which he claims was conducted within one session instead of two. The UNRWA DT also failed to take into account that attendees of his outreach workshops had given very positive reviews and that he had received two reports stating his improvements shortly before Human Resources sent him an e-mail on 22 December 2015 informing him that his performance did not meet expectations. The UNRWA DT “failed to properly analyze” the incident regarding the allegedly delayed translation and erred in finding that an assessment by his second supervisor was not necessary. Furthermore, under the applicable legal framework of PD/A/4/Part VII/Rev.7, he should not have been subjected to an OT process while on probation.

6. Mr. Al-Ashi further argues that the UNRWA DT erred when it decided that he had failed to establish that the decision to close his complaint of prohibited conduct was unlawful. The UNRWA DT disregarded the fact that his supervisor had been acting in retaliation against him since his complaint to the Ethics Office by “providing negative assessments for all tasks carried out and eventually failing him on his probation assessment”. The UNRWA DT failed to discuss several forms of harassment described in his application including his supervisor's repetitive requests for changes to his work plan and her refusal to grant him paternity leave. Further, the UNRWA DT did not properly analyse the situation surrounding the evaluation committee and incorrectly concluded that the “role play meeting” incident had been properly resolved by

management intervention which had “rather [been] a brief conversation than a constructive intervention aimed at prevention of further infringements”.

7. Moreover, the UNRWA DT erred in finding that the incident whereby his case had been leaked to a social media platform by his superv



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Considerations

13. The impugned Judgment of the UNRWA DT consolidates two applications by Mr. Al-Ashi against the decisions of the Commissioner-General, namely: 1) not to confirm his appointment as a TDSE Advisor, Grade 16, and to transfer him to his previous post of Education Specialist, Grade 13; and 2) to close his complaint of prohibited conduct. The UNRWA DT dismissed both applications on the merits.

*The decision not to confirm Mr. Al-Ashi's appointment and to transfer him to his previous post*

14. Mr. Al-Ashi claims that the UNRWA DT erred in fact and in law when assessing the evidence before it and concluding that he had failed to establish that the decision not to confirm his appointment as TDSE Advisor and to transfer him to his previous post was unlawful. He argues that the UNRWA DT “failed to examine the relevant facts and apply legal and regulatory provisions concerning his performance evaluations during his probation period, which has resulted in the cancellation of [his] promotion” and “missed essential facts regarding [his] professional experience”.

15. The UNRWA DT was cognisant of the relevant regulatory framework, which it set out at paragraphs 74 and 75 of its Judgment as follows<sup>5</sup>

... Area Staff Regulation 4.2 provides:  
Appointments shall be subject to the satisfactory completion of not less than one month's probationary service.



addition, it is clear from the interim reports that the Applicant's performance was not satisfactory despite the fact that he did make some improvements. Therefore, the [UNRWA Dispute] Tribunal holds that the Applicant's claim that he was misled by the H/TDSE regarding his first improvement plan is without merit.

17. The UNRWA DT went on to review Mr. Al-Ashi's assessment during the second improvement plan and concluded that "there was a constant communication between the Applicant and the H/TDSE", <sup>7</sup> and that the H/TDSE constantly evaluated his work and advised him on the ways to improve his performance. The UNRWA DT noted that his performance did not significantly improve and was still unsatisfactory. The UNRWA DT concluded that



27. In the present case, we are satisfied that the UNRWA DT considered all evidence relevant to the issues before it.

28. In our view, the UNRWA DT Judgment was thorough, well-reasoned, and fair. Its findings confirming that there were no instances of procedural unfairness were supported by the facts and consistent with the applicable law.

29. Having considered all of Mr. Al-Ashi's submissions, we find that he has failed to persuade us that the UNRWA DT committed any error of law, fact or procedure in reaching its decision.

30. The appeal fails.

