



UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D 'APPEL DES NATIONS UNIES

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Judgment No. 2019-UNAT-960

Abdeljalil  
(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 Dimitrios Raikos, Presiding Judge Martha Halfeld Judge Graeme Colgan
Case No.:	2019-1259
Date:	25 October 2019
Registrar:	Weicheng Lin

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Counsel for Ms. Abdeljalil:	Alaa Ayoub
Counsel for Commissioner-General:	Rachel Evers



3. On 20 March 2019, the UNRWA DT issued Judgment No. UNRWA/DT/2019/016 dismissing the application. The UNRWA DT noted that under Ms. Aldejalil's contract, "[her] LDC carri[e]d no expectation of renewal or extension" and the "[r]enewal or extension of [her] LDC [was], *inter alia*, subject to availability of project funding, continuing need for position and satisfactory performance of the staff member".<sup>2</sup> Based on the wording of her contract, she was not entitled to have her contract renewed or extended. The UNRWA DT further found that in light of the limited funding available for the project, the Agency was only able to extend it by reducing the staffing level from 44 to 30 posts and Ms. Abdeljalil had failed to provide any evidence refuting the Agency's explanations regarding the criteria applied in the reduction of the staffing level. Finally, the UNRWA DT found that Ms. Abdeljalil's claim that she had been requested to report for work on 1 November 2017 had no bearing on the non-renewal decision

jurisprudence, a staff member has the burden to demonstrate that the Administration has not acted fairly, justly or transparently with the staff member and that its decision was motivated by bias, prejudice or improper motive. The UNRWA DT however ignored Ms. Abdeljalil's request to hear witnesses to support her claims.

7. The UNRWA DT failed to consider that specific procedures need to be followed when staff members' contracts are terminated. Ms. Abdeljalil submitted documents and supporting evidence to the UNRWA DT confirming that she was uniquely qualified in her field and that she was the most senior and capable staff member in her office with higher qualifications than any of her colleagues. Her managers were aware that the project was facing budget cuts and took on additional staff only to then terminate her contract, on the pretext that budget cuts had forced the reduction of staff. They acted in their own personal interest and without following established procedures.

8. The UNRWA DT committed a procedural error by rejecting Ms. Abdeljalil's request to submit relevant evidence, such as a recording of a telephone conversation between Ms. Abdeljalil and her senior administrative supervisor during which he directly threatened her that her insistence on proceeding with the case would have adverse consequences for her future employment prospects.

9. Moreover, the UNRWA DT did not treat the parties equally. Rather, it based its Judgment wholly on the arguments and allegations presented by the Agency without assessing their veracity and without considering the evidence submitted by Ms. Abdeljalil to refute the allegations. For example, Ms. Abdeljalil submitted that she had been officially informed by the project coordinator at the head office in Damascus acting on behalf of the Agency that her contract had been renewed and that she should cut short her maternity leave and report for duty on 1 November 2017. She complied with the instructions and continued to work for a month until she was informed that her contract had in fact not been renewed. The UNRWA DT however adopted the Agency's allegations without attempting to verify their veracity, even though Ms. Abdeljalil had asked that it hear the project coordinator in Damascus and other project staff members as witnesses. The UNRWA DT failed to consider the facts presented by Ms. Abdeljalil as well as her observations on the Agency's allegations.

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14. The UNRWA DT did not err in procedure requiring a reversal of the impugned Judgment. The UNRWA DT did not disregard any of the grounds on which the case was based and in fact addressed all of them in its Judgment. In any event, pursuant to the Appeals Tribunal's jurisprudence, the Tribunals need not address each and every claim made by a litigant, especially when a claim has no merit. Furthermore, the UNRWA DT was not required to call Ms. Abdeljalil's witnesses to testify before it. The Appeals Tribunal has established that as a general principle case management issues, including the question of whether to call witnesses, remain within the discretion of the UNRWA DT and the Appeals Tribunal will only intervene in clear cases of denial of due process affecting a party's right to produce evidence.

15. Ms. Abdeljalil's allegation that an UNRWA staff member informed her, by telephone, that her contract had been renewed after 31 October 2017 is belied by the facts, including the following: i) from the outset, it was clear to all concerned including Ms. Abdeljalil, that the EYP was of limited duration and so was Ms. Abdeljalil's post which was inextricably linked to the project; ii) all personnel, including Ms. Abdeljalil were notified on 1 June 2017 of the project's scheduled expiration on 31 October 2017; iii) the EYP leadership prepared a business case, which was subsequently approved on 15 November 2017 to get approval of the extension of the project from 1 November 2017 to 30 April 2018, and the staffing for that period. The number of posts was reduced from 75 to 44 in October 2017 to 30 in November 2017 to seven in 2018; iv) Ms. Abdeljalil was aware that her maternity leave would end on the contract expiry date; v) on 22 October 2017, the EYP leadership held an appreciation event, at which all the EYP personnel, including Ms. Abdeljalil, were given a token of appreciation for their service; and vi) when Ms. Abdeljalil reported to work on 1 November 2017, she was made aware that her contract could not be further extended.

16. The Commissioner-General requests the Appeals Tribunal to dismiss the appeal in its entirety and, pursuant to Article 9(2) of the Appeals Tribunal Statute, award costs in the amount of USD 300 for a manifest abuse of the appeals proceedings.

#### Considerations

17. The UNRWA DT rejected Ms. Abdeljalil's application contesting the decision not to renew her contract, and she appeals that decision on the grounds that the UNRWA DT committed substantive errors that led it to reach a manifestly unreasonable decision. For the

reasons that follow, this Tribunal determines that the UNRWA DT's conclusions are correct.

*Applicable law*

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Moreover service under LDC shall not be considered as qualifying service for any benefits under any other appointment including an A or X category appointment.

19. It is well settled jurisprudence that an international organization necessarily has the power to restructure some or all of its departments or units, including the abolition of posts, the creation of new posts, and the redeployment of staff<sup>3</sup> The Appeals Tribunal will not interfere with a genuine organizational restructuring even though it may have resulted in the loss of employment of staff. However, even in a restructuring exercise, like any other administrative decision, the Administration has the duty to act fairly, justly, and transparently in dealing with staff members. <sup>4</sup>

20. We recall our jurisprudence that fixed-term appointments or appointments of limited duration carry no expectation of renewal or conversion to another type of appointment. <sup>5</sup>

21. Even the renewal of the appointment of a staff member on successive appointments does not, in and of itself, give grounds for an expectancy of renewal, unless the Administration has made an express promise that gives the staff member an expectancy that his or her appointment will be extended, or there is a firm commitment to renewal revealed

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<sup>3</sup> *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902, para. 34, citing *Loeber v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-844, para. 18, citing in turn *De Aguirre v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-705; *Khalaf v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-678; *Matadi et al. v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-592; *Bali v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-450; *Simmons v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-425; *Pacheco v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-281; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-236; *Liverakos v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-206; *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123; and *Dumornay v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-097.

<sup>4</sup> *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902, para. 34, citing *Loeber v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-844, para. 18.

<sup>5</sup> *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902, para. 44, citing in turn *He v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-825, para. 40; *Muwambi v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-780, para. 25, in turn citing *Ncube v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-721, para. 15; *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-311, para. 32; *Badawi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2012-UNAT-261, para. 33; *Schook v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-216, para. 3; *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153, paras. 39-42; *Syed v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-061, para. 13.



by the circumstances of the case<sup>6</sup> The jurisprudence requires this promise at least be in writing. <sup>7</sup>

22. Nevertheless, an administrative decision not to renew a fixed-term appointment can be challenged on the grounds that the Administration has not acted fairly, justly or transparently with the staff member or was motivated by bias, prejudice or improper motive.<sup>8</sup> The staff member has the burden of proving such factors played a role in the administrative decision. <sup>9</sup>

23. The Appeals Tribunal has consistently held that:<sup>10</sup>

When judging the validity of the Secretary-General's exercise of discretion in administrative matters, as in the case of a non-renewal decision, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The UNDT can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Dispute Tribunal to substitute its own decision for that of the Secretary-General.

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<sup>6</sup> *Kalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-580, para. 67, citing *Munir v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-522, para. 24, citing in turn

24. The Appeals Tribunal has held that “[a]n administrative decision not to renew [a fixed-term appointment] must not be deemed unlawful on the sole ground that the decision itself does not articulate any reason for the non-renewal. But that does not mean that the Administration is not required to disclose the reasons not to renew the appointment.”<sup>11</sup> “Rather, the Administration has an obligation to state the reasons for an administrative decision not to renew an appointment to assure the Tribunals’ ability to judicially review the validity of the Administration’s decision.”<sup>12</sup>

25. We have reviewed the UNRWA DT’s Judgment and find that Ms. Abdeljalil’s case was fully and fairly considered; we can find no error of law or fact in its decision. The UNRWA DT properly reviewed the contested decision in accordance with the applicable law.

26. In the first place, as correctly found by the UNRWA DT,<sup>13</sup> it is a matter of record that the decision contested by Ms. Abdeljalil before the UNRWA DT was a decision not to renew her LDC ending on 31 October 2017, coinciding with the EYP’s then expiration date. This is evidenced in the content of the last extension of her contract (commencement on 1 July 2017) indicating that the expiry date of that extension would be 31 October 2017.

27. As it is clear from the material law and our jurisprudence, the separation as a result of termination initiated by the Commissioner-General in cases of abolition of posts or reduction of staff differs substantially from the separation as a result of expiration of a fixed-term or a limited duration appointment, which takes place automatically, without prior notice, on the expiration date specified in the letter of appointment.<sup>14</sup> Therefore, as correctly contended by the Commissioner-General, there was no administrative decision to terminate Ms. Abdeljalil’s contract prior to its expiration but a decision denying its renewal beyond the expiration date.

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<sup>11</sup> *Obdeijn v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-201, para. 32.

<sup>12</sup> *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902, para. 50; citing *He v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-825, para. 46 (internal footnote omitted).

<sup>13</sup> Impugned Judgment, para. 24.

<sup>14</sup> *Koumoin v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-119, para. 20. Comp. also *Kule Kongba v. Secretary General of the United Nations*, Judgment No. 2018-UNAT-849, para. 24 and *Liu v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-659, para. 17.

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her experience was limited to business development training. In this regard, the Applicant did not provide any evidence refuting these explanations of the Respondent.

33. We find no reason to differ from this conclusion. Though with a different reasoning, the Appeals Tribunal holds that, by applying the aforementioned objective criteria of (at least one coordinator and one trainer for each location, staff members with the capacity to do more than one task with notable experience and performance) the Agency, in exercising its discretionary authority to determine the reduction of the staffing level from 44 to 30 posts, adhered to the principles of equality, objectivity and transparency in dealing with this issue and comports with our jurisprudence on the exercise of discretion in administrative matters. Moreover, Ms. Abdeljalil failed to establish that the decision not to renew her contract discriminated against her or was tainted by improper motives, unfairness or lack of transparency, and we do not find any indication to this effect.

34. Ms. Abdeljalil submits that the UNRWA DT erred as a matter of fact or law in not finding that her contract was unlawfully terminated before she had completed her maternity leave, in contravention of the UNRWA Area Staff Rules. In this respect, Ms. Abdeljalil points to paragraph 2 of Area Staff Rule 1063, which stipulates that “[s]taff members on fixed-term appointment may be granted maternity leave along the same lines provided that their appointment is expected to continue for at least six months after return to duty from maternity leave”.

35. We do not find merit in this submission as Ms. Abdeljalil’s case does not fall within the ambit of this provision but within that of Area Staff Rule 106.3.1, which specifically provides, under clause (E) thereof, that “[a]dditional requirements exist for staff members holding LDC contracts, as set out in Personnel Directive A/4, Part II”. Personnel Directive A/4, Part II, para. 67 provides as follows:

*Maternity leave*

67. A staff member who will have served continuously for one year at the anticipated date of delivery shall be entitled to maternity leave of 12 consecutive weeks or until the end of her current LDC, whichever is the earlier. A staff member who is not entitled to maternity leave is entitled to take five consecutive weeks of special leave without pay. A certificate from a registered medical practitioner indicating the estimated date of confinement and fitness to work must be submitted in both cases. NB: this entitlement is different from that allowed to regular (Cat A or X) staff.

36. The plain language of the latter provisions makes it clear, *inter alia*, that the

appointment to be sustained, it must not be based on mere verbal assertion, but on a written promise.<sup>17</sup>

41. Notwithstanding her reliance on the fact that her contract with the Agency had been consistently renewed over the preceding seven years, there is no evidence of an express promise or at least a firm commitment to renew her contract beyond the expiration date of 31 October 2017. Although a staff member may challenge the non-renewal of an appointment on the ground that the Administration made an express promise that gave rise to a legitimate expectation of renewal, there is no legal authority for the proposition that an implied promised renewal stems from the past renewals of an appointment. On the contrary, this promise should be explicit and in writing. Last but not the least, the existing law (Personnel Directive A/4, Part II, para. 48) prescribes that an LDC is extended by issuing an Extension Letter to the original Letter of Appointment, which is not the case here.

42. Further, Ms. Abdeljalil's submission that the UNRWA Dispute Tribunal made an error of procedure by not calling the witness

dispensation of justice.<sup>21</sup> We will intervene only in clear cases of denial of due process of law affecting a party's right to produce evidence.<sup>22</sup>

44. In the instant case, we do not accept Ms. Abdeljalil's argument that this threshold has been met.

45. First, under Article 2(1)(d) of its Statute, the Appeals Tribunal is competent to hear and pass judgment on an appeal filed against a judgment rendered by the Dispute Tribunal in which it is asserted that the latter has committed an m(0i4.9(mH3a(to hear ))2i4.9(mH3a(to hear ))6.185-6)6.1

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51. Finally, the Commissioner-General requests the Appeals Tribunal to award costs in the amount of USD 300 for a manifest abuse of the appeals proceedings. This Tribunal may award costs in terms of Article 9(2) of the Appeals Tribunal Statute if it determines that a party has

Judgment

53. The appeal is dismissed and Judgment No.UNRWA/DT/2019/016 is hereby affirmed.

Original and Authoritative Version: English

Dated this 25<sup>th</sup> day of October 2019 in New York, United States.

*(Signed)*

Judge Raikos, Presiding

*(Signed)*

Judge Halfeld

*(Signed)*

Judge Colgan

Entered in the Register on this 20<sup>th</sup> day of December 2019 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar