

Judgment No. 2020-UNAT-1017



Counsel for Appellants:







FTAs on a full-time basis beyond 31 August 2018 (later extended to 30 September 2018) due to lack of funding and to offer them new appointments on a part-time basis of 50%.

15. In its judgment dated 9 November 2019, the UNRWA DT consolidated the applications of Salhi et al. It held that the applications of M ariyam Al Ashal (No. 39 of the Applicants) and Tahani Abu Ghali (No. 43 of the Applicants) were not receivable either because they had failed to establish that they had submitted a timely decision review request or because their requests for decision review were not dated. The other 68 applications were receivable, but they were dismissed on the merits. The UNRWA DT held that the contested decision was lawful, reasonable and did not

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21. The Appellants ask the Appeals Tribunal to reverse the Judgment of the UNRWA DT, to order their reinstatement to their former posts and to award them compensation for financial loss.

The Commissioner -General 's answer

22. The CG contends that the Judgment of the UNRWA DT is not a final and definitive decision.

convenience and that there is no possibility of substantial prejudice to any party. The convenience of consolidating the applications in this case is self-evident. All the Appellants were in exactly the same position and the contested decision affected them all equally. The facts and applicable law were the same for each application. Moreover, the Appellants have not made out any cogent case that anyone of them was substantially prejudiced in any respect. The UNRWA DT accordingly exercised its discretion lawfully and appropriately and Salhi *et al.* are entitled to no relief on this score.

27. It may be noted at the outset that the Appellants accepted the renewal of their appointments on 1 October 2018 on different terms. They thus acquiesced in the contested decision but challenged it simultaneously. It is an established principle of international administrative law that an applicant's right to review of a contested administrative decision can be pre-empted should s/he, by unequivocal conduct inconsistent with an intention to seek review, acquiesce in the decision. In the present case, the evidence is not clear on whether in acquiescing in the decision Salhi *et al.* reserved their rights of review. Furthermore, the CG has not pleaded pre-emption. Accordingly, we will assume there was no pre-emption in this case.

*Lawfulness of the reclassification of the FTAs*

28. Area Staff Rule 109.5 provides that an FTA shall expire without prior notice on the expiration date specified in the letter of appointment. Area Staff Circular No. 4/95, dated 5 April 1995, on Area staff posts and appointments, provides, in paragraph 6, that the extension of appointments will depend on the Agency's continuing need for the post, the availability of funding and the staff member's performance. The Appellants' letters of appointment provided clearly that their appointments did not carry an expectation of renewal or conversion to any other type of appointment. It is also a well-established principle in our jurisprudence that fixed-term appointments carry no expectation of renewal or conversion to another type of appointment. It is thus indisputable that the Appellants' FTAs did not carry an expectation of renewal or conversion to any other type of appointment. Nevertheless, an administrative decision not to renew an FTA can be challenged on the grounds of legality, reasonableness and procedural fairness!

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<sup>1</sup> See, for example, *Pinea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-311, paragraph 32.

29. The evidence shows indisputably that the decision not to renew the full-time FTAs but to reclassify them to part-time FTAs was related to the financial crisis that the Agency was facing as set out fully in the CG's messages to staff members in July and August 2018. It was common knowledge that the Agency had experienced a significant decrease in funding from certain donors, most notably the Government of the United States. The resultant situation compelled the Agency to restructure some of its depart[789t wowu-3 (s)-0.7 (t 0.18Hn-1.8 (n) T2)-2.1 (ueC>



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