





THE UNITED N

... By e-mail dated 25 November 2011, Mr. Savage wrote to a number of staff members, including Ms. Traonvouez, advising that the Applicant had returned to work that day and seeking advice as to how to proceed. Mr. Savage stated:

I am unsure of what the HR/Legal provisions are regarding this situation and seek your guidance please, and will employ [the Applicant] against one of my vacant posts (ISLO) if this is feasible until I am advised of options available.

... On 4 December 2011, Mr. Savage sent an internal briefing note to the Deputy Director of UNRWA Operations, West Bank through Ms. Traonvouez recommending that the Applicant resume his previous employment in the post of Security Supervisor and that his replacement be offered a promotion to the post of Clerk B. The internal briefing note included a handwritten note signed by Ms. Traonvouez reading "OK with this proposal". At the hearing Ms. Traonvouez stated that the post of Clerk B, grade 6 was never offered to the Applicant's replacement in writing because she was not comfortable forcing anyone to transfer to a post they didn't want to take.

... By letter dated 5 January 2012 and addressed to the Director and Deputy Director of UNRWA Operations, West Bank, the Chairperson of the Area Staff Union, West Bank, and others, the Applicant contested the decision not to place him in his previous post of Security Supervisor. He stated:

... during the two-year leave I have not been informed by any side and by any way from the administration nor the recruitment department that I will lose my job if I extended the leave.

...

... On 21 May 2012, the Applicant sought administrative review of the decision not to reinstate him to his original post and to transfer him to Shufat Camp. He stated:





ultimatum. Mr. Hamayel maintains that the UNRWA DT was at liberty to believe his submissions and find them credible. On the other hand, Mr. Hamayel notes that while he submitted evidence of his ailments, the UNRWA DT did not consider those documents to support the judgment for damages.

11. Mr. Hamayel requests that the Appeals Tribunal uphold the Judgment and dismiss the appeal in its entirety.

### **Considerations**

12. The Commissioner-General of UNRWA appeals on the grounds that the UNRWA DT erred in law by:

- a. Finding that the UNRWA Administration's decision not to inform Mr. Hamayel that his post would not be held for him during his second year of SLWOP was arbitrary and unreasonable, thereby vitiating UNRWA's decision to transfer Mr. Hamayel to Shufat Camp; and
- b. Awarding moral damages.

Appeal on merits

13. Area Staff Personnel Directive No. A/5/Rev.5, in effect at the material time, did not make any specific provision regarding the placement of a staff member on return from a second year of SLWOP with another organization.

14. In this context, the FHRO/WB decided, two weeks before Mr. Hamayel began his second year of SLWOP, not to hold his UNRWA post for his return and to recruit a replacement. The FHRO/WB did not inform Mr. Hamayel of the decision prior to communicating the approval



16. The Commissioner-General also submits that the decision to transfer Mr. Hamayel to another similar post (at the same grade, with the same responsibilities and the same salary) was lawful and fell within his discretionary power.

17. The Appeals Tribunal recalls its jurisprudence that the discretionary power of the Administration is not unfettered.<sup>2</sup> The Commissioner-General has an obligation to act in good faith and comply with applicable laws. Mutual trust and confidence between the employer and the employee is implied in every contract of employment. And both parties must act reasonably and in good faith.

18. In the present case, though there was no explicit provision in Area Staff Regulation 1.2 requiring notification, it was both logical and reasonable to expect the UNRWA Administration to inform Mr. Hamayel that taking a second year of SLWOP would cause him to lose his post. Even though Mr. Hamayel had no lien on his post, the UNRWA Administration should have paid due regard to the interests of Mr. Hamayel and informed him when his post was advertised.

19. We affirm the UNRWA DT's decision that the lapses on the part of the UNRWA Administration were arbitrary and unreasonable.

20. The appeal accordingly fails on the merits.

Moral damages

21. Before the UNRWA DT, Mr. Hamayel sought two years' compensation for psychological and moral damage and the suffering and stress that "were the major reason behind [his] diabetes and the high blood pressure".

22. Although Mr. Hamayel "produced evidence that he ha[d] diabetes", the UNRWA DT found it "unsafe ... to conclude on the basis of the evidence before it that the condition was either caused or aggravated by the stress which he undoubtedly suffered by the way he has been treated".

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<sup>2</sup> Pérez-Soto v. Secretary-General of the United Nations, Judgment No. 2013-UNAT-329; Bertucci v. Secretary-General of the United Nations, Judgment No. 2011-UNAT-121; Asaad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, Judgment No. 2010-UNAT-021.

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THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2014-UNAT-459