



JNITE D NATIONS APPEALS TRIBUNAL
RIBUNAL D'APPEL DES NATIONS UNIES

Judgment

JNAT-602



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

JUDGMENT

Judge Luis María Simón, Presiding

Judge Sophia Adinyira

Judge Detorah Thomas-Felix

2015-699

30 October 2015

Weicheng Lin

Author: Amer Abu-Khalaf, Staff Legal Assistance

Commissioner-General: Lance Bartholomeusz

JUDGE LUIS MARÍA SIMÓN , PRESIDING .

... By Inter-Office Memorandum ("IOM") dated 25 August 2013, the DERP

The UNRWA DT found no evidence to support Mr. Zamel's claim that the DEPR had given a competitive advantage to Capgemini.

6. The UNRWA DT found that based on the e-mails exchanged between Mr. Zamel and the DERP from May 2013, it was clear that the DERP reproached Mr. Zamel "for acting

abolish Mr. Zamel's post was taken on 18 September 2013, more than two months after Mr. Zamel had been informed of the decision not to renew his appointment.

10. Moreover, according to Articles 13 and 14 of OD 20, ACHR recommendations must be made by consensus and in cases in which this is not possible, by majority vote. In the present case, the Administration (sic.) did not agree by consensus or majority vote on the limited extension of Mr. Zamel's appointment and the abolishment of his post before the recommendation was sent to the Commissioner-General for his approval. Instead, the decision was taken and communicated to Mr. Zamel by the DERP. Moreover, there was a clear conflict of interest in that the DCG, who was also Mr. Zamel's second reporting officer, chaired the ACHR discussion and decided that Mr. Zamel's post be abolished. She should have recused herself and designated an alternate chairperson, in accordance with OD 20.

11. The UNRWA DT further erred in fact by disregarding the evidence submitted by Mr. Zamel which proved that the aforementioned decisions were motivated by abuse of power, and erred in law and procedure by not finding so. When Mr. Zamel identified and collected evidence that the project delay was also attributable to Capgemini, the DERP began taking uncooperative actions against him, such as reassigning some of his duties to other staff members, especially those concerning the track of the Capgemini project's progress and performance. The UNRWA DT erred by failing to consider these facts, which clearly constituted an abuse of power. The UNRWA DT further failed to observe that on the evidence the DERP had a clear conflict of interest. According to the UNRWA Procurement Manual, the Procurement Department carries out the administrative activities following the change request which is approved by Change Management, who in the present case was the DERP himself.

12. The UNRWA DT further failed to observe that the investigation was performed by the Human Resources Division (HRD) rather than DIOS, which should have conducted it pursuant to Organization Directive No. 14 (Charter of the Department of the Internal Oversight Services). Moreover, HRD performed the investigation concerning Mr. Zamel's complaint of abuse of power against the DERP while simultaneously coordinating with the

address Mr. Zamel's claim that 75 per cent of the new consultant's duties were the same as those already carried out by Mr. Zamel.

13. Finally, the UNRWA DT erred in law by holding that the application against the decision to recruit a consultant was not receivable. The UNRWA DT failed to declare that his employment was affected. Mr. Zamel had the expertise to perform the functions of the new consultant position and his post was included in the Organization Structure for the 2014-2015 Biennium Budget. The fact that his post was abolished was tainted by improper motives and constituted an abuse of power.

14. Mr. Zamel requests that the Appeals Tribunal rescind the decisions to abolish his post and not to renew his appointment, award him compensation for loss of salary and entitlements at the P-5, step 6 level from 1 January 2014 until now, as well as moral damages, and reinstate him.

The Commissioner-General's Answer

15. The Commissioner-General contends that the UNRWA DT did not err in finding that the decision to abolish Mr. Zamel's post was lawful. Contrary to Mr. Zamel's contention, the decision to abolish his post was not taken prior to the Commissioner-General's decision of

decision to restructure the department was made in good faith and that such decision necessarily resulted in the abolishment of Mr. Zamel's post and the hiring of a consultant.

18. The UNWRA DT did not err in law by holding that Mr. Zamel's challenge to the decision to recruit a consultant was not receivable, because it was not an appealable decision. While Mr. Zamel alleges that the consultant's duties were substantially similar to those that he carried out, he fails to identify how the UNRWA DT erred in law. Specifically, he fails to show how the decision to recruit a consultant had direct legal consequences for Mr. Zamel's rights and obligations.

19. The Commissioner-General requests that the Appeals Tribunal reject Mr. Zamel's pleas and dismiss his appeal in its entirety.

Considerations

20. This Tribunal holds that the allegations of irregularity raised by Mr. Zamel in his

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28. In light of the above findings, we need not address the remainder of Mr. Zamel's contentions.

Judgment

29. The appeal is upheld and the UNRWA Dispute Tribunal Judgment is vacated. The Commissioner-General is ordered to pay Mr. Zamel compensation in the amount of three months' net base salary. The compensation is payable with interest at the US Prime Rate accruing from the date on which Mr. Zamel was separated from UNRWA to the date of payment. If the amount is not paid within the 60-day period counting from the date of issuance of this Judgment, an additional interest at five per cent shall be added to the US Prime Rate until the date of payment.

Original and Authoritative Version: English

Dated this 30th day of October 2015 in New York, United States.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Thomas-Felix

Entered in the Register on this 30th day of December 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar