



**JUDGE K**





accepted the terms of the jurisdiction of the Appeals Tribunal pursuant to Article 2(10) of the Statute of the Appeals Tribunal. Under Article 2(7) of the Agreement, “[a]s a transitional measure and pursuant to paragraph 50 of General Assembly resolution 63/253 appeals by UNRWA staff members following a Joint Appeals Board report shall be receivable by the United Nations Appeals Tribunal if the final decision on the appeal was taken by the Commissioner General on or after 1 July 2009”.

15. The Registry of the Appeals Tribunal was advised by UNRWA to keep El Khatib’s case on hold until UNRWA implemented the Agreement into the UNRWA’s Staff Regulations and Rules. In September 2010, the UNRWA Administration informed El Khatib and the Registry that El Khatib could avail himself of the Agreement to appeal the Commissioner-General’s decision to the Appeals Tribunal within 90 calendar days.

16. On 3 December 2010, the Registry forwarded El Khatib’s appeal dated 10 August 2009 to UNRWA, which filed its answer on 19 January 2011.

### **Submissions**

#### **El Khatib’s Appeal**

17. The decision to eliminate his post caused serious injury to him. It prevented him from becoming the Officer-in-Charge of the ECSD, Gaza. It affected his reputation in the private business after he left UNRWA.

18. There was no obvious technical justification for abolishing his post and creating another one. The job description for the new post HCMD was almost identical to that of his post. The fact that the new post was not filled shows that there was no need to eliminate his post and create another one. No other engineering department in other fields (Jordan, Syria, Lebanon and West Bank) eliminated the Deputy FECSO position. Only Gaza was singled out. It is El Khatib’s belief that the real purpose behind the decision was to hire a specific person for the job.

19. The four-year delay in paying him his annual salary increments created in the minds of others that he was weak in his work.

20. El Khatib requests that this Court award him the following remedies: i) allowances from the time of the new post until his retirement; ii) apology in writing and its dissemination throughout UNRWA; and iii) compensation in the amount of USD 500,000 for the injuries caused by the mistreatment.

**UNRWA's Answer**

21. It is within the broad discretionary authority of the UNRWA Commissioner-General to create and abolish posts within UNRWA. In El Khatib's case, such discretionary authority was not exercised arbitrarily, motivated by prejudice or other extraneous factors, or tainted by any procedural irregularities. The abolition of El Khatib's post and the creation of two new posts was part of a comprehensive plan to restructure ECSD, Gaza, and to address concerns about the department's ability to meet the demands of increased magnitude and complexity of construction activities in Gaza. The restructuring involved hiring additional senior qualified staff to handle technical and administrative issues and establishing a more streamlined structure and was not informed by improper motives or prejudice. El Khatib has not produced any evidence in that regard.

22. El Khatib was considered fairly for suitable employment within UNRWA when his post was abolished. He was indeed transferred to a post at the same grade within the same department.

23. The issue of non-payment of annual salary increment is moot as El Khatib has been paid all outstanding annual increments. While he claims that the delay in payment

### Considerations

24. El Khatib joined UNRWA in 1981 as an Engineer (Grade 14), worked satisfactorily and rose to become Deputy FECSO at Grade 17 by 1 January 2001. FECSO, Gaza, was his supervisor. There is a background of some remarks regarding his performance in El Khatib's PERs from January 2001 onwards, reported by the respective FECSOs.

25. In his PER covering the period from January 2001 to June 2002, El Khatib was rated overall as good, with FECSO noting the unevenness in El Khatib's dealings with subordinates and the difficulty that El Khatib had in adopting the secondary role of Deputy FECSO. In his PER covering the period from July 2002 to December 2002, El Khatib's performance was rated as generally satisfactory though FECSO noted with concern El Khatib's tendency to "over delegate" and the tense working environment around El Khatib.

26. The subsequent PERs were delayed: the reports covering the periods from 1 January 2003 to 1 January 2004 and from 1 January 2004 to 1 January 2005 were not completed until 29 November 2006, and the report for 1 January 2005 to 1 January 2006 was not completed until 7 February 2007.

27. Some acrimony had been in the air between El Khatib and his superiors, as





36. We are constrained to overrule the UNRWA Commissioner-General and decide that El Khatib should be paid compensation of three months' net base salary.

**Judgment**

37. We grant this appeal in part and order that El Khatib be paid three months' net base salary as compensation.

Original and Authoritative Version: English

Dated this 8<sup>th</sup> day of July 2011 in Geneva, Switzerland.

*(Signed)*

Judge Garewal, Presiding

*(Signed)*

Judge Simón

*(Signed)*

Judge Weinberg de Roca

Entered in the Register on this 29<sup>th</sup> day of August 2011 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar