



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2015-UNAT-580

Kalil
(Appellant)

v.

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

Date: 30 October 2015

Registrar: Weicheng Lin

Counsel for Mr. Kalil: Self-represented

Counsel for Commissioner-General: Lance Bartholomeusz

JUDGE DEBORAH THOMAS -FELIX , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Order No. 057 (UNRWA/DT/2014) (hereafter, Order No. 057) and Judgment No. UNRWA/DT/2014/027, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Occupied Territories (UNRWA DT) (before it on 17u(M

provided the PER is done within 2 weeks of [Mr. Kalil] returning. The whole matter will need to go to the [Advisory Committee on Human Resources (ACHR)] given the one year versus three year extension but I do not think the staff member should be prejudiced on the immediate one year extension of contract because of the time needed to reach agreement on his PER.

7. On 13 December 2011, the Legal Adviser ~~replied~~ to the Chief of the Personnel Services Division, as follows:

[...] I would like to confirm that [Mr. Kalil]'s contract should be extended for a further period of 11 months (i.e., this plus original one month making a full one-year contract extension).

... [Mr. Kalil's PER] will be finalized [...] early in the New Year [and] will have an overall rating of meets expectations, and therefore both [the C/GLD] and I are comfortable with the one-year extension.

I understand that the whole [sic] will need to go to ACHR once the PER is finalized.

8. On 14 December 2011, the Personnel Services Division notified Mr. Kalil that his appointment would be extended to 14 November 2012, thereby constituting a full one-year extension. On 18 December 2011, Mr. Kalil accepted the one-year extension.

9. On 3 January 2012, upon Mr. Kalil's enquiry as to why his contract had only been extended for one year, the Human Resources Department informed Mr. Kalil that his one-year extension had been based on the recommendation of his supervisors.

10. On 5 January 2012, Mr. Kalil asked the Legal Adviser and the C/GLD why his contract extension was limited to one year instead of three years, as per UNRWA practice. He also informed them of his intention to resign from his post on 25 February 2012.

11. On 30 January 2012, Mr. Kalil formally notified his supervisors of his resignation, to be effective as of 5 March 2012.

12. On 11 February 2012, Mr. Kalil requested ~~review~~ of the decision to only extend his appointment for one additional year, rather than the standard three years. He received no response by the Agency.

13.

14. On 8 March 2012, Mr. Kalil separated from service.

15. On 8 June 2012, after the UNRWA Dispute Tribunal had rejected Mr. Kalil's request for a three-month extension of time in which to file his application, ¹ Mr. Kalil filed his application with the UNRWA Dispute Tribunal. He challenged the Agency's failure to renew his appointment for the standard three years and requested commensurate compensation for material and moral damages incurred on account of the Agency's actions.

16. On 4 October 2012, in light of the Commissioner-General's failure to submit a timely reply to his application, Mr. Kalil filed a *moti* on seeking to exclude the Commissioner-General from the proceedings. He requested entry of default judgment and summary judgment against the Commissioner-General.

17. On 14 October 2012, the Registry of th

21. On 6 January 2013, only after the Commissioner-General's reply had been served on Mr. Kalil and Mr. Kalil had requested a copy of the Commissioner-General's submission of 18 October 2012, the Registrar transmitted a copy to Mr. Kalil.

22. On 25 January 2013, Mr. Kalil requested leave to submit rejoinders on: (a) the Commissioner-General's comments on his motion of 4 October 2012 for default judgment, including the Commissioner-General's request for leave to re-enter the proceedings; and (b) the Commissioner-General's limited reply on receivability.

23. On 4 October 2013, Mr. Kalil filed a "Motion for Production of Documents and Evidence".

24. On 5 May 2014, the UNRWA Dispute Tribunal, by way of Order No. 057, ruled on all the parties' motions. The UNRWA DT, inter alia, granted the Commissioner-General's request to participate in the proceedings and file his reply, as well as Mr. Kalil's request to submit a rejoinder. With the exception of Mr. Kalil's request for confidentiality, consideration of which was deferred to the Judgment, the UNRWA DT denied the remainder of the requests.

25. On 15 September 2014, the UNRWA Dispute Tribunal rendered its Judgment. As Mr. Kalil did not seek rescission of the impugned decision, but only compensation for damages resulting from the decision not to renew his fixed-term appointment for a three-year period, the UNRWA DT limited itself to examining whether there was a causal link between the contested decision and the compensation sought. The UNRWA DT denied Mr. Kalil's request for material damages in the sum of 33 months' net base salary that he claims he would have received had he been awarded a three-year appointment, finding that any alleged damages were caused by his own resignation.

26. ~~████~~

33. The UNDT also erred in denying his request for confidentiality given that he is the victim of misconduct who has suffered emotional distress.

than the legality of the contested decision, since the absence of a causal link would of itself have caused the application to fail. Doing so served the interests of judicial economy.

37. The UNRWA DT did not err in finding that Mr . Kalil had voluntarily resigned. As the

48. Article 10(9) of our Statute provides that “[t]he judgments of the Appeals Tribunal shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal”. Our jurisprudence shows that the names of litigants are routinely included in judgments of the internal justice system of the United Nations in the interests of transparency and accountability, and personal embarrassment and discomfort are not sufficient grounds to grant confidentiality.⁷ Mr. Kalil does not make any case as to why he should be granted confidentiality on appeal and, consequently, we are not satisfied that there are any reasons warranting such an order. For the same reasons, we reject his request for the redaction of his name from the UNRWA DT Judgment and affirm the UNRWA DT’s reasoning in declining his confidentiality request.

- *Request to submit new evidence to the Appeals Tribunal*

49. Mr. Kalil requests the Appeals Tribunal receive into evidence four annexes which he claims he would have submitted to the UNRWA DT “had proper procedures been followed”.

50. Article 2(5) of our Statute provides, inter alia, that:

In exceptional circumstances, and where the Appeals Tribunal determines that the facts are likely to be established with documentary evidence, including written testimony, it may receive such additional evidence if that is in the interest of justice and the efficient and expeditious resolution of the proceedings. [...]

51. Save for the provisions of Article 2(5), all evidence is to be submitted to the first instance Tribunal.⁸ We have consistently held that “we will not admit evidence which was known to the party and could have, with due diligence, been presented to the UNDT. The UNDT is not a dress rehearsal.”⁹

Alleged procedural errors by the UNRWA DT

52. Mr. Kalil alleges a number of procedural errors by the UNRWA DT which he claims have undermined its Judgment, among which is its failure to hold an oral hearing at which Mr. Kalil could present additional proof to establish his claims of bad faith by his FRO and constructive termination, and the fact that the UNRWA DT issued its Judgment without having received a reply by the Commissioner-General as to the merits of Mr. Kalil's case.

53. At the outset, we note the large discretion afforded to the UNRWA Dispute Tribunal in relation to case management matters, pursuant to Article 14 of the UNRWA DT Rules, which provides that the UNRWA DT "may, at any time, either on an application of a party or of its own initiative make any order or give any direction which appears to the judge to be appropriate for a fair and expeditious disposal of the case and to do justice to the parties". Our jurisprudence has consistently held that the Appeals Tribunal will not lightly interfere with the broad discretion of the UNRWA DT in the management of its cases.¹⁰

54. The UNRWA DT equally enjoys broad discretion to decide whether an oral hearing is necessary, as is clear from the provisions of the UNRWA DT Statute and UNRWA DT Rules governing oral hearings. Pursuant to Article 9(2) of the UNRWA DT Statute, "[t]he Dispute Tribunal shall decide whether the personal appearance of the applicant or any other person is required at oral proceedings [...]". Article 11(1) of the UNRWA DT Rules similarly provides "[t]he Judge hearing a case *may* hold oral hearings".¹¹

55. In this case, the UNRWA DT was in possession of Mr. Kalil's application, which detailed his complaints, as well as the Commissioner-General's reply and supporting annexes. Although Mr. Kalil takes issue with the adequacy of the Commissioner-General's reply, claiming that it did not address the merits of his claims, but only

receivable did not render the reply incomplete. We are thus of the view that it was open to the UNRWA DT to consider that it had before it sufficient information to enable it to reach its decision without holding an oral hearing. We see no error in this regard and thus reject Mr. Kalil's claim that the UNRWA DT erred in its Judgment without having before it a reply by the Commissioner-General on the merits.

56. For the foregoing reasons, we also reject Mr. Kalil's contention that his due process rights to seek production of documents and build his case were violated by reason of the Commissioner-General's allegedly limited reply, and that the UNDT erred in rejecting his motion for production of documents. Mr. Kalil had the opportunity to present the facts underlying his case in his UNRWA DT application and it was open to the Commissioner-General to put forward the arguments that he did. Further, contrary to his contention, Mr. Kalil has no *right* to the production of documents, but only the right to request such production, which he duly exercised by his motion of 4 October 2013.

57. Article 9(1) of the UNRWA DT Statute, which provides "[t]he Dispute Tribunal *may order* production of documents or such other evidence *as it deems necessary*",¹² makes clear that the production of documents is equally a matter that falls within the UNRWA DT's discretion. In relation to a Tribunal's power to order the production of documents or other evidence it deems necessary and the issue of admissibility of evidence, we have consistently held "that the Judge hearing the case has an appreciation of all of the issues for determination and the evidence before it".¹³ In paragraph 23 of Order No. 057, the UNRWA DT rejected Mr. Kalil's request, finding that it had all the documents necessary for it to render its decision. Accordingly, we discern no error in procedure in the UNRWA DT's rejection of Mr. Kalil's motion for production of documents.

58. Mr. Kalil also contends that the UNRWA DT erred in granting the Commissioner-General leave to participate in the proceedings after he had failed to file his reply within the time limits prescribed by the UNRWA DT Rules. This argument is without merit. It is now settled that the UNRWA Dispute Tribunal may, under its Rules, permit the Respondent to file a tardy reply and to participate in the proceedings.¹⁴ Article 6(1) of the UNRWA DT Rules provides: "The

¹² Emphasis added.

¹³ *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-546, para. 35 and cites therein; *Wang v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-454, para. 36.

¹⁴ *Chahrour v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-406, para. 37, citing *Abu Jarbou v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2012-UNAT-321.

Respondent who has not submitted a reply within the requisite period shall not be entitled to take part in the proceedings *except with the leave of the Tribunal.*¹⁵

59. On 5 May 2014, the UNRWA DT, by way of Order No. 057 addressing a number of the parties' motions, granted the Commissioner-General's *ex parte* request of 18 October 2012 to participate in the proceedings and accepted his reply filed on 21 December 2012. Order No. 057 provides:¹⁶

While the Tribunal does not condone the Respondent's late filing, the [UNRWA Dispute] Tribunal finds it appropriate for a fair and expeditious disposal of the case and [to] do justice to the parties to accept the Respondent's reply, even if it is late.

60. We see no error in the manner in which the UNRWA DT exercised its discretion. While Mr. Kalil claims that the acceptance of the late reply caused him prejudice, in the same order the UNRWA DT also granted Mr. Kalil's motion of 25 January 2013 requesting an opportunity to file a rejoinder to the reply. Nonetheless, no rejoinder was filed. In the circumstances, Mr. Kalil's claim of prejudice must be dismissed.

61. Lastly, Mr. Kalil claims that the UNRWA DT erred in procedure in engaging in *ex parte* communications with the Commissioner-General in relation to the latter's 18 October 2012 request for leave to participate and file a reply on the merits. We have previously urged the UNRWA DT to act transparently when it allows such belated participation by the Respondent.¹⁷ Notwithstanding that the UNRWA DT continues to improperly engage in *ex parte* communications contrary to the guidance of this Tribunal, a practice we do not condone, we are not persuaded that this amounts to "underhanded behaviour" as alleged by Mr. Kalil. Further, as the UNRWA DT acted transparently when it addressed the issue of the Respondent's tardy reply in the Judgment,¹⁸ we are satisfied that no prejudice was caused to Mr. Kalil.

62. In conclusion, Mr. Kalil has not established any procedural errors warranting the reversal of the UNRWA DT Judgment.

¹⁵ Emphasis added.

¹⁶ Order No. 057, para. 18.

¹⁷ *Chahrour v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, as t-.05.6(urone)-4(n)ral in

expectation that his contract would be renewed for three years and not for the one year which he was offered in the past. In order for a staff member's claim of legitimate expectation of a renewal of appointment to be sustained, it must not be based on mere verbal assertion, but on a firm commitment to renewal revealed by the circumstances of the case as we found was established in the case of *Munir*.²² Notwithstanding his reliance on the terms of ISC No. 1/4/97, which we highlight are discretionary,²³ and the Agency's purported long-standing practice of granting three-year appointments upon satisfactory completion of the first two years, there is no evidence of a firm commitment to renew his contract for an additional three years; in fact, there is no evidence that Mr. Kalil even had discussions on the issue with his supervisor²⁴ Further, as the UNRWA DT correctly held, the fact that the decision to only extend Mr. Kalil's appointment for one year would have been submitted for review to the ACHR does not establish otherwise.²⁵

68. We have considered all of the other claims by Mr. Kalil and find them to be without merit.

69. In view of the foregoing, Mr. Kalil's appeal cannot succeed.

Judgment

70. The appeal is dismissed and the Judgment of the UNRWA Dispute Tribunal is affirmed.

²² *Munir v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-522, para. 24, citing *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153 and *Abdalla v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-138.

²³ *Supra*, footnote 3.

²⁴ *Cf. Munir v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-522, paras. 29-30.

²⁵ Impugned Judgment, para. 33.

Original and Authoritative Version: English

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

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Simón

(Signed)

Judge Faherty

Entered in the Register on this 18th day of December 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar