

Judgment No. 2016-UNAT-687

Mohanna (Appellant)

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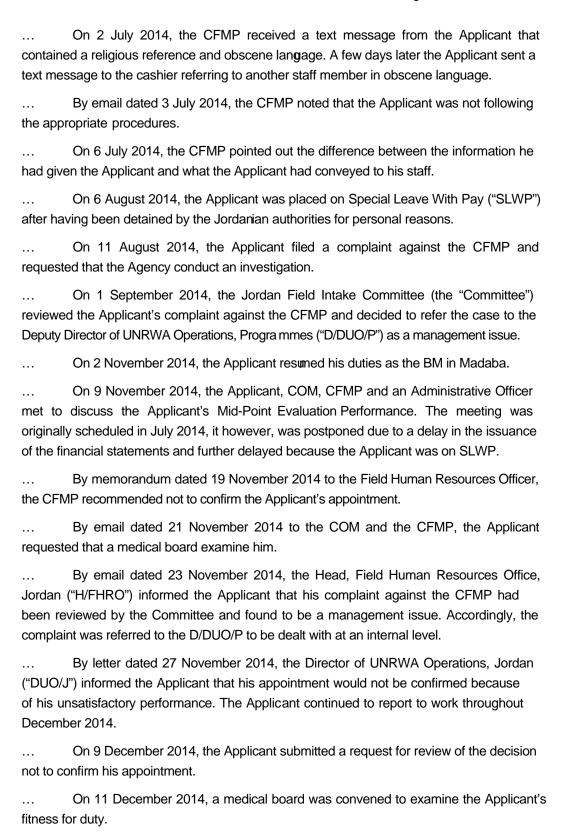
Commissioner-General



Counsel for Mr. Mohanna: Self-represented

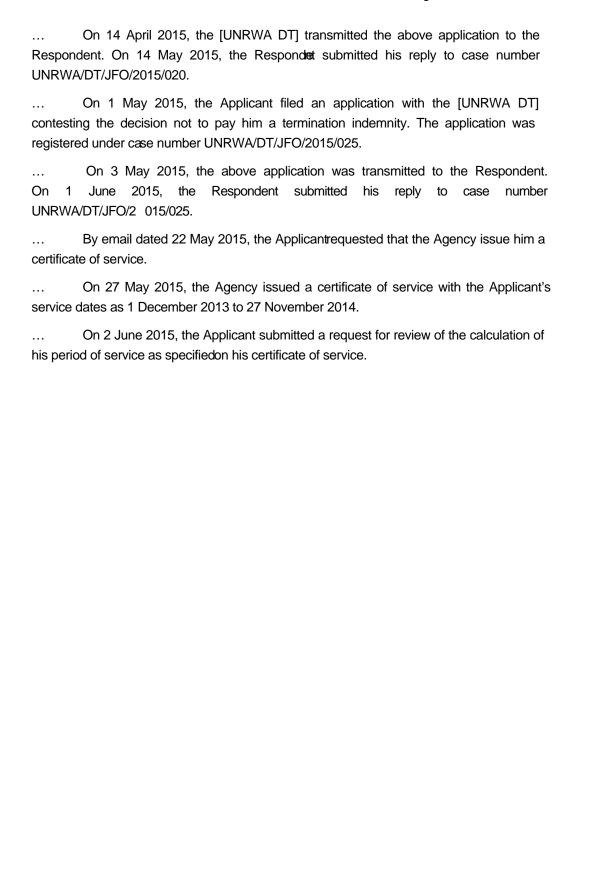
Counsel for Commissioner-General: Lance Bartholomeusz

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THE UNITED NATIONS APPEALS TRIBUNAL						
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Mr. Mohanna's appointment even though it did not take effect until 31 December 2014. Noting then that the medical board's conclusion was taken almost a month later, the UNRWA DT found that "it [was] clear that [Mr. Mohanna's] non-co nfirmation was based solely on his performance and not on his health incapacity". In light of that determination, it concluded that UNRWA Area Staff Rule 109.7 (Disability benefit) was inapplicable and that Mr. Mohanna was, therefore, not entitled to receive a disability benefit.

- 6. With respect to his third and fourth applications (contesting the decisions regarding the non-payment of a termination indemnity and the calculation of Mr. Mohanna's leave encashment payment, respectively), the UNRWA DT concluded that they were not receivable for failure to request review of those decisions within their respective 60-day time limits, as set forth in Area Staff Rule 111.2. In connection with the third application, the UNRWA DT noted that "as of 23 December 2014 [Mr. Mohanna] understood the separation benefits he was entitled to receive ... [and that it was] not contested that [he] requested decision review on 30 March 2015, which [was] beyond the 60-day time limit". <sup>5</sup> In connection with the fourth application, the UNRWA DT concluded that "[b]ased on [Mr. Mohanna's] statement that the decision was made on 12 March 2015, his 3 June 2015 requestor decision review was submitted beyond the 60-day time limit". <sup>6</sup>
- 7. Finally, with respect to Mr. Mohanna's fifth application (contesting the calculation of his period of service), the UNRWA DT found it was receivable. It further concluded that, as it had already determined "that [Mr. Mohanna] continued to be in service of the Agency until 31 December 2014", it ordered the Agency to amend the certificate of service accordingly.

#### Submissions

#### Mr. Mohanna's Appeal

8. Mr. Mohanna requests review of the decision taken by the UNRWA Dispute Tribunal to consolidate his five applications. He submits that the decision was biased and that the decision "weakened [his] position".

<sup>4</sup> *Ibid.*, para. 87.

<sup>&</sup>lt;sup>5</sup> *Ibid.*, para. 92.

<sup>6</sup> Ibid., para. 93.

<sup>&</sup>lt;sup>7</sup> *Ibid.*, para. 95.

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- 23. It is not sufficient for him to merely state that he disagrees with the decisions and to repeat arguments submitted before the first instance court, as that court has a broad discretion to determine the weight it attaches to the evidence with which it is presented.<sup>11</sup> The consistent jurisprudence of the Appeals Tribunal emphasizes that the appeals procedure is of a corrective nature and is not an opportunity for a dissatisfied party to reargue his or her case. "A party cannot merely repeat on appeal arguments that did not succeed in the lower court. Rather, he or she must demonstrate that the court below has committed an error of fact or law warranting intervention by the Appeals Tribunal." <sup>12</sup>
- 24. Mr. Mohanna was obliged to bring his appeal within the jurisdiction of the Appeals Tribunal by basing it on any of the grounds set out in Article 2(1) of the Special Agreement between the United Nations and UNRWA, by alleging that UNRWA DT has:
  - (a) exceeded its jurisdiction or competence;
  - (b) failed to exercise jurisdiction vested in it;
  - (c) erred on a question of law;
  - (d) committed an error in procedure, such as to affect the decision of the case; or
  - (e) erred on a question of fact, resulting in a manifestly unreasonable decision.
- 25. Mr. Mohanna does not identify any of these grounds in his appeal, and has failed to demonstrate that the UNRWA DT committed any error of fact or law in arriving at its decision.
- 26. Our perusal of the UNRWA Dispute Tribunal's Judgment shows that it properly applied the applicable law in deciding Mr. Mohanna's applications.
- 27. In regard to Mr. Mohanna's challenge to th

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not terminated for reasons of health as required, but was terminated on the basis of his poor performance.<sup>13</sup>

- 28. Again, the UNRWA Dispute Tribunal correctly applied the relevant law in deciding that Mr. Mohanna's application challenging the Commi ssioner-General's decision not to pay him a termination indemnity was not receivable. The UNRWA Dispute Tribunal was cognizant of
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