



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2016-UNAT-687



Mohanna
(Appellant)

v.

Commissioner-General

Counsel for Mr. Mohanna:

Self-represented

Counsel for Commissioner-General:

Lance Bartholomeusz

... On 2 July 2014, the CFMP received a text message from the Applicant that contained a religious reference and obscene language. A few days later the Applicant sent a text message to the cashier referring to another staff member in obscene language.

... By email dated 3 July 2014, the CFMP noted that the Applicant was not following the appropriate procedures.

... On 6 July 2014, the CFMP pointed out the difference between the information he had given the Applicant and what the Applicant had conveyed to his staff.

... On 6 August 2014, the Applicant was placed on Special Leave With Pay ("SLWP") after having been detained by the Jordanian authorities for personal reasons.

... On 11 August 2014, the Applicant filed a complaint against the CFMP and requested that the Agency conduct an investigation.

... On 1 September 2014, the Jordan Field Intake Committee (the "Committee") reviewed the Applicant's complaint against the CFMP and decided to refer the case to the Deputy Director of UNRWA Operations, Programmes ("D/DUO/P") as a management issue.

... On 2 November 2014, the Applicant resumed his duties as the BM in Madaba.

... On 9 November 2014, the Applicant, COM, CFMP and an Administrative Officer met to discuss the Applicant's Mid-Point Evaluation Performance. The meeting was originally scheduled in July 2014, it however, was postponed due to a delay in the issuance of the financial statements and further delayed because the Applicant was on SLWP.

... By memorandum dated 19 November 2014 to the Field Human Resources Officer, the CFMP recommended not to confirm the Applicant's appointment.

... By email dated 21 November 2014 to the COM and the CFMP, the Applicant requested that a medical board examine him.

... By email dated 23 November 2014, the Head, Field Human Resources Office, Jordan ("H/FHRO") informed the Applicant that his complaint against the CFMP had been reviewed by the Committee and found to be a management issue. Accordingly, the complaint was referred to the D/DUO/P to be dealt with at an internal level.

... By letter dated 27 November 2014, the Director of UNRWA Operations, Jordan ("DUO/J") informed the Applicant that his appointment would not be confirmed because of his unsatisfactory performance. The Applicant continued to report to work throughout December 2014.

... On 9 December 2014, the Applicant submitted a request for review of the decision not to confirm his appointment.

... On 11 December 2014, a medical board was convened to examine the Applicant's fitness for duty.

... On 14 April 2015, the [UNRWA DT] transmitted the above application to the Respondent. On 14 May 2015, the Respondent submitted his reply to case number UNRWA/DT/JFO/2015/020.

... On 1 May 2015, the Applicant filed an application with the [UNRWA DT] contesting the decision not to pay him a termination indemnity. The application was registered under case number UNRWA/DT/JFO/2015/025.

... On 3 May 2015, the above application was transmitted to the Respondent. On 1 June 2015, the Respondent submitted his reply to case number UNRWA/DT/JFO/2015/025.

... By email dated 22 May 2015, the Applicant requested that the Agency issue him a certificate of service.

... On 27 May 2015, the Agency issued a certificate of service with the Applicant's service dates as 1 December 2013 to 27 November 2014.

... On 2 June 2015, the Applicant submitted a request for review of the calculation of his period of service as specified on his certificate of service.

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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-confirmation was based solely on his performance and not on his health incapacity".⁴ 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".⁵ 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 request for decision review was submitted beyond the 60-day time limit".⁶

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";⁷ 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".

⁴ *Ibid.*, para. 87.

⁵ *Ibid.*, para. 92.

⁶ *Ibid.*, para. 93.

⁷ *Ibid.*, para. 95.

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prejudiced by the consolidation as each contested decision will be dealt with separately and in

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.¹¹ 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.”¹²

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

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

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

Mr. Mohanna's application as of 2015.7 (December) - 5.4.2014, under the
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