



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

**Abusondous
(Respondent/Applicant)**

v.

Commissioner-General



JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2017/023, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or UNRWA Dispute Tribunal and UNRWA or Agency, respectively) on 4 June 2017, in the case of Abusondous v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East. The Commissioner-General filed the appeal on 3 August 2017, and Mr. Ra'ad Abusondous¹ filed his answer on 12 September 2017.

Facts and Procedure

2. The following facts are uncontested:²

... Effective 1 August 2010, the Applicant was appointed to the post of Assistant Head Safety and Security Officer ("AHSSO") at the Administration Support Department, Security Section, Headquarters Amman ("HQA"), Grade 16. The post was reclassified to the post of Senior Safety and Security Officer ("S/SSO"), Grade 17, and effective

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[Human Resources]” and the UNRWA DT’s order thus fell within the its statutory competence under Article 10(5) of the UNRWA DT Statute.

9. In light of the foregoing, Mr. Abusondous requests that the Appeals Tribunal affirm the UNRWA DT Judgment and dismiss the appeal in its entirety.

Considerations

10. In this case, the main issue is whether the UNRWA DT erred on a question of law and/or fact resulting in a manifestly unreasonable decision when it concluded that the decision not to assign Mr. Abusondous as A/CSS and not to pay him an AAA was unlawful.

11. In *Husseini*,⁶ the Appeals Tribunal stated, *inter alia* , as follows:

... (...) While circulars may be lower in the contractual hierarchy to the staff regulations and directives, they are of equal standing as legal instruments potentially introducing or establishing implied terms of the contract. In nature and in practical terms they are employment policy guidelines and thus differ from provisions that might be regarded strictly as terms or conditions of employment agreed *ab initio* . Both the [Area Staff Circular (ASC)] and [Area Personnel Directive (APD)] bestow discretion on the Agency to pay an AAA. Thus clause 1 of the ASC provides that the staff member “may, in exceptional cases, be granted an AAA” and clause 2.1 of the APD states that “an [AAA] may be authorized for a staff member”. The issuances thus bestow discretionary powers which must be exercised reasonably, fairly and flexibly in accordance with their internal substantive legal requirements. A staff member thus has no contractual right to receive an AAA. He or she, however, does have an expectation that the Agency will exercise its discretion to grant an AAA properly.

12. Moreover, we wish to emphasise that when the UNRWA DT is examining the validity of the Commissioner-General’s exercise of discretion in administrative matters, the Dispute Tribunal is tasked to examine whether

13. We agree with the UNRWA DT's findings that while ASC No. A/04/2010 did not provide a right to Mr. Abusondous to receive an AAA, he did have an expectation that the Agency would "properly exercise its discretion to grant an AAA and [would] be fair in its dealings with him".⁸

14. The UNRWA DT reasoned that the Agency's justification of the decision not to appoint Mr. Abusondous as OiC and not to grant him an AAA, namely that the Agency would not have been in a position to meet the 120-day maximum time period to fill the vacancy set by paragraph 3 of ASC No. A/04/2010, was not a reasonable ground for the denial as the provision does not specifically preclude flexibility beyond the 120-day time limit.

15. The UNRWA DT also found that although there could possibly have been reasonable and fair grounds for UNRWA's decision, the Agency had failed to clearly explain its reasoning and provide such grounds.

16. We find no fault with this reasoning; we concur and uphold the findings of the UNRWA DT.

⁸ Impugned Judgment, para. 29.

Judgment

17. The appeal is dismissed and Judgment No. UNRWA/DT/2017/023 is hereby affirmed.

Original and Authoritative Version: English

Dated this 22nd day of March 2018 in Amman, Jordan.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Raikos

(Signed)

Judge Knierim

Entered in the Register on this 23rd day of May 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar