

Al-Ashi (Appellant)

٧.

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

JUDGMENT

Before: Judge Richard Lussick, Presiding

Judge Deborah Thomas-Felix

Judge Martha Halfeld

Case No.: 2017-1131

Date: 22 March 2018

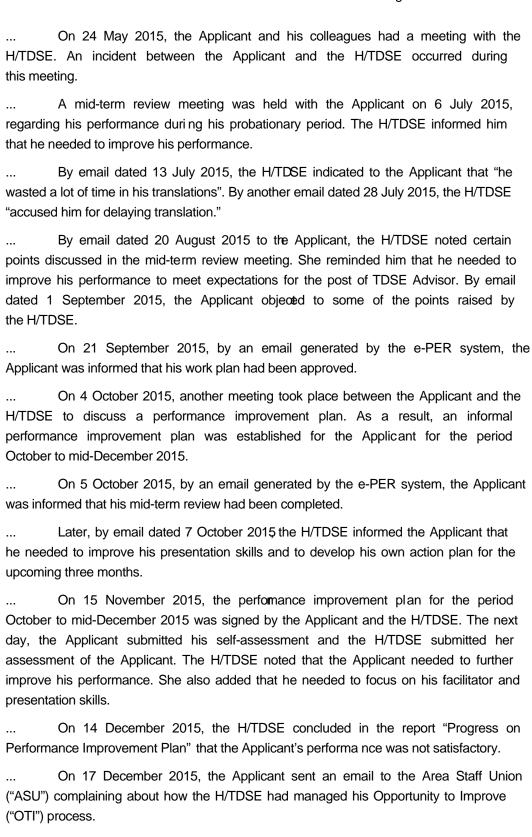
Registrar: Weicheng Lin

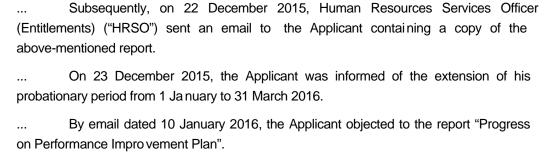
JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2017/032, rend ered 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 16 October 2017, in the case of *Al-Ashi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Ali Al-Ashi filed the appeal on 19 November 2017, and the Commissioner-General filed an answer on 13 February 2018.

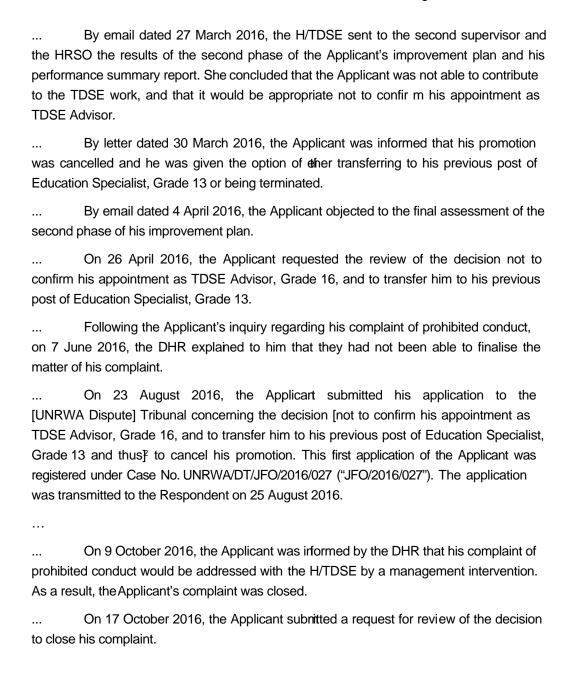
Facts and Procedure

- 2. The following facts are uncontested:1
 - ... Effective 27 September 1994, the Appicant was employed by the Agency as a Teacher "B", Grade 8, Step 1, at the Russaifeh Preparatory Boys School No. 1.
 - ... From 1 April 2014 to 30 June 2014, the Applicant was appointed as Acting Teacher Development and School Empowerment Advisor, Grade 16.
 - ... Effective 1 January 2015, the Applicant was transferred with promotion from Jordan Field Office ("JFO") to Headquarters, Amman ("HQA") to work as a Teacher Development School and Empowerment Advisor ("TDSE Advisor"), Grade 16, category "A", subject to a probationary service of 12 months.
 - ... By email dated 20 January 2015, the Applicant sent to his immediate supervisor, the Head, Teacher Development and School Empowerment Unit ("H/TDSE") a summary of tasks he had completed.
 - ... On 16 February 2015, the Applicant and the H/TDSE discussed the Applicant's work plan.





- ... By email dated 14 January 2016, the HRSO reminded the Applicant and the H/TDSE of the points that had been discussed during a meeting held on 12 January 2016, especially the objectives of the new improvement plan.
- ... By email dated 11 February 2016 to the H/TDSE, the Applicant sought her feedback with regard to the implementation of his improvement plan.
- ... On the morning of 14 February 2016, the Applicant submitted to the Director of



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UNRWA West Bank Field Office, Jerusalem which prevented the Commissioner-General from having access to the relevant documents and facilities needed to prepare and file his answer. He filed the answer within the 15-day extension on 13 February 2018.

Submissions

Mr. Al-Ashi's Appeal

- 5. Mr. Al-Ashi submits that the UNRWA DT erred in fact and in law when assessing the evidence before it and coming to the conclusion that he had failed to establish that the decision not to confirm his appointment as TDSE Advisor and to transfer him to his previous post was unlawful. The UNRWA DT was incorrect in finding that this decision was not tainted by improper motives or flawed by procedural irre gularities and that he had been properly and regularly assessed by the H/TDSE and consistenly informed of his shortcomings and ways to improve his performance. In this context, Mr. Al-Ashi submits that the UNRWA DT "missed essential facts" related to his professional experience and to a claim he had "started to pursue" with the Ethics Office and that the Judgment contained factual mistakes with respect to his mid-term review which he claims was conducted within one session instead of two. The UNRWA DT also failed to take into account that attendees of his outreach workshops had given very positive reviews and that he had received two reports stating his improvements shortly before Human Resources sent him an e-mail on 22 December 2015 informing him that his performance did not meet expectations. The UNRWA DT "failed to properly analyze" the incident regarding the allegedly delayed translation and erred in finding that an assessment by his second supervisor was not necessary. Furthemore, under the applicable legal framework of PD/A/4/Part VII/Rev.7, he should no t have been subjected to an OTlprocess while on probation.
- 6. Mr. Al-Ashi further argues that the UNRWA DT erred when it decided that he had failed to establish that the decision to close his compaint of prohibited conduct was unlawful. The UNRWA DT disregarded the fact that his supervisor had been acting in retaliation against him since his complaint to the Ethics Office by "providing negative assessments for all tasks carried out and eventually failing him on his probation assessment". The UNRWA DT failed to discuss several forms of harassment described in his application including his supervisor's repetitive requests for changes to his work plan and her refusal to grant him paternity leave. Further, the UNRWA DT did not properly analyse the situation surrounding the evaluation committee and incorrectly concluded that the "role play meeting" incident had been properly resolved by

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management intervention which had "rather [been] a brief conversation than a constructive intervention aimed at prevention of further infringements".

7. Moreover, the UNRWA DT erred in finding that the incident whereby his case had been leaked to a social media platform by his superv

Considerations

13. The impugned Judgment of the UNRWA DT consolidates two applications by Mr. Al-Ashi against the decisions of the Commissioner-General, namely: 1) not to confirm his appointment as a TDSE Advisor, Grade 16, and totransfer him to his previous post of Education Specialist, Grade 13; and 2) to close his complaint of prohibited conduct. The UNRWA DT dismissed both applications on the merits.

The decision not to confirm Mr. Al-Ashi's appointment and to transfer him to his previous post

- 14. Mr. Al-Ashi claims that the UNRWA DT erred in fact and in law when assessing the evidence before it and concluding that he had failed to establish that the decision not to confirm his appointment as TDSE Advisor and to transfer him to his previous post was unlawful. He argues that the UNRWA DT "failed to examine the relevant facts and apply legal and regulatory provisions concerning his performance evaluations during his probation period, which has resulted in the cancellation of [his] promotion and "missed essential facts regarding [his] professional experience".
- 15. The UNRWA DT was cognisant of the relevant regulatory framework, which it set out at paragraphs 74 and 75 of its Judgment as follows:
 - ... Area Staff Regulation 4.2 provides:

Appointments shall be subject to the satisfactory completion of not less than one month's probationary service.

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addition, it is clear from the interim reports that the Applicant's performance was not satisfactory despite the fact that he did make some improvements. Therefore, the [UNRWA Dispute] Tribunal holds that the Applicant's claim that he was misled by the H/TDSE regarding his first improvement plan is without merit.

17. The UNRWA DT went on to review Mr. Al-Ashi's assessment during the second improvement plan and concluded that "there was a constant communication between the Applicant and the H/TDSE", ⁷ and that the H/TDSE constantly evaluated his work and advised him on the ways to improve his performance. The UNRWA DT noted that his performance did not significantly improve and was still unsa tisfactory. The UNRWA DT concluded that

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- 27. In the present case, we are satisfied that the UNRWA DT considered all evidence relevant to the issues before it.
- 28. In our view, the UNRWA DT Judgment was thorough, well-reasoned, and fair. Its findings confirming that there were no instance s of procedural unfairness were supported by the facts and consistent with the applicable law.
- 29. Having considered all of Mr. Al-Ashi's submission s, we find that he has failed to persuade us that the UNRWA DT committed any error of law, fact or procedure in reaching its decision.
- 30. The appeal fails.