



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2019-UNAT-923



Baramky
(Appellant)

v.

Commissioner-General

Date:

28 June 2019

Counsel for Mr. Baramky:

Self-represented

Counsel for Commissioner-General:

Rachel Evers

JUDGE MARTHA HALFELD , PRESIDING .

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the UNRWA DT denied Mr. Baramky's request for interpretation of judgment holding that paragraph 55 of the Judgment was clear and did not require interpretation.

6. On 7 January 2019, Mr. Baramky filed a motion for leave to file additional evidence before the Appeals Tribunal. By Order No. 338 (2019) dated 28 January 2019, the Appeals Tribunal dismissed Mr. Baramky's motion.

7. On 11 February 2019, Mr. Baramky filed a motion seeking leave to submit additional pleadings. By Order No. 342 (2019) dated 1 March 2019, the Appeals Tribunal dismissed Mr. Baramky's motion.

Submissions

Mr. Baramky's Appeal

8. Mr. Baramky submits that he had raised the issue of a written apology by Mr. Y. A. in his application to the UNRWA DT and he had never been asked by the UNRWA DT to submit additional claims concerning the apology before the issuance of its final decision. The UNRWA DT's finding that the written apology by Mr. Y. A. was no longer an issue among the parties because Mr. Baramky had not submitted any additional claim after receiving the Commissioner-General's response on 6 August 2018 was merely a personal assumption.

9. The UNRWA DT, having received Mr. Baramky's request for compensation, found that Mr. Baramky's moral damage was only attributable to Mr. P. F. and Mr. Y. A. and not to any fault of the Agency. Mr. Baramky contends that therefore, as long as UNRWA provides judicial immunity to Mr. P. F. and Mr. Y. A. in national courts, it must provide remedies to compensate him for moral and psychological damages in the amount of USD 3,900,000

The Commissioner-General's Answer

10. The Commissioner-General submits that Mr. Baramky has failed to identify, by citation to any provision in Article 2(1) of the Appeals Tribunal Statute, the grounds for his appeal, and as such, his appeal is defective. Mr. Baramky has failed to demonstrate in what respect the UNRWA DT, by dismissing his claim for moral damages, exceeded or failed to exercise its jurisdiction, erred in law or erred in fact resulting in a manifestly unreasonable decision or committed an error in procedure. Mr. Baramky does not challenge the reasons for dismissing

his claim for moral damages and merely disagrees with the outcome of his case. Failure to raise claims under the Appeals Tribunal Statute and to explain how the UNRWA DT erred in deciding his claims is a sufficient basis for the Appeals Tribunal to di

Considerations

15. Article 2(1) of the Appeals Tribunal Statute provides that:

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal[²] in which it is asserted that the Dispute Tribunal 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.

16. This appeal raises two issues for consideration and determination. The first issue is whether the UNRWA DT erred on a question of law or fact, resulting in a manifestly unreasonable decision, or committed an error in procedure, such as to affect the decision of the case, when it found that, despite the fact that the Commissioner General had not been able to confirm whether Mr. Y. A. had apologized to Mr. Baramky as required by the disciplinary measure of the letter of censure, this was no longer an issue between the parties, since Mr. Baramky had not raised any further claim about the lack of such an apology.

18. In his appeal, Mr. Baramky claims that he had never been asked to submit such comments and that the decision was based on a mere assumption. He does not contest the regularity of the procedure and he no longer challenges the disciplinary measures imposed on the staff members. All he seeks in his appeal is the implementation of the sanction imposed on Mr. Y. A. by the letter of censure.

19. However, Mr. Baramky's claim for implementation of the sanction is raised, it would seem, for the first time on appeal. While contesting the reasoning of the UNRWA DT's Judgment that this was no longer an issue between the parties, he raises a new claim – the implementation of the sanction imposed on Mr. Y. A. – that should have previously been the object of a new administrative decision. In light of the foregoing, while we find that

Judgment

22. The appeal is dismissed and Judgment No. UNRWA/DT/2018/065 is affirmed.

Original and Authoritative Version: English

Dated this 29th day of March 2019 in New York, United States.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge 7/TTd Stat (Signed)