



**UNITED NU**



1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or the Agency) against Judgment No. UNRWA/DT/2012/025, rendered by the UNRWA Dispute Tribunal (UNRWA DT) on 14 June 2012 in the case of *Jibara v. Commissioner-General of UNRWA*. The Commissioner-General appealed on 30 July 2012. Mr. Raed Jibara cross-appealed on 13 August 2012. He answered the Commissioner-General's appeal on 20 September 2012. On 19 October 2012, the Commissioner-General answered Mr. Jibara's cross-appeal.

**Facts and Procedure**

2. Mr. Jibara joined UNRWA in September 1993

5. The UNRWA Administration conducted an in-person interview with Mr. Jibara after his release.

6. Effective 4 December 2009, Mr. Jibara's contract with UNRWA was terminated "in the interest of the Agency". This decision was taken in light of Mr. Jibara's conviction and imprisonment and pursuant to the "Agency Policy in respect of Staff who are arrested, detained or brought to trial" dated 1 February 1984 (Detained staff policy), which reads in part:

If a staff member is brought to trial and convicted and a prison sentence of three months or more is imposed, his appointment will normally then be terminated in the interests [of] the Agency unless the facts of the case are such that the Agency considers that the staff member has not been at fault.

7. Mr. Jibara appealed. In Judgment No. UNRWA/DT/2012/025, the UNRWA DT set aside the decision to terminate Mr. Jabara's service and ordered his reinstatement or, as an alternative, compensation in the amount equivalent to two years' net base salary. The UNRWA DT concluded that the weapons found in Mr. Jibara's house were legally in his possession, and that he was not at fault, but was a victim of an illegal search and detention by the Israeli occupying force. Contrary to the Agency's arguments, the UNRWA DT did not believe that there would be any negative repercussions with the host government because the host government in question was the PNA and the Town of Qalqilia, both of which asked Mr. Jibara to store the weapons until the family dispute was settled and, moreover, had written to the Agency in support of Mr. Jibara and requested that the Agency reconsider the decision to terminate Mr. Jibara's service. The UNRWA DT also surmised that the Agency's relations with the donors and the United Nations would not suffer if it decided to reinstate Mr. Jibara because "they would object to [his] illegal arrest, illegal detention and illegal imprisonment". The UNRWA DT was of the view that in applying the Detained staff policy to Mr. Jibara, the Agency reneged on the Oslo Accords and legitimized non-existent Israeli jurisdiction over Area A, where Mr. Jibara was residing under the administrative and security control of the PNA.

## **Submissions**

### **The Commissioner-General's Appeal**

8. The UNRWA DT erred in law by finding that the Detained staff policy did not apply in Mr. Jibara's case. The Agency's Detained staff policy was upheld by the former Administrative Tribunal. It was reasonable for the UNRWA Administration to accept the jurisdictional competence of the Israeli Military Court. The UNRWA Administration was bound to apply the Detained staff policy.

9. The UNRWA DT erred in fact by finding that the guns were legally in Mr. Jibara's possession. As Mr. Jibara admitted to the Israeli Military Court during his detention and the UNRWA Administration after his release that he possessed weapons without evidence of holding any permit to do so, the determination of his fault should have been made with reference to the UNRWA Area Staff Regulations and Rules and administrative issuances, rather than to local laws.

10. The jurisprudence of the Appeals Tribunal and the former Administrative Tribunal is clear that it is for the General Assembly or the executive head of the employing entity, the UNRWA Commissioner-General in the present case, and not the tribunals, to legislate on personnel matters. Similarly, it is not the role of the United Nations tribunals to take a political position on personnel matters.

### **Mr. Jibara's Answer**

11. The UNRWA DT correctly found that the Detained staff policy did not apply to Mr. Jibara. Even if it was applicable, the Detained staff policy was arbitrarily implemented, which invalidates the "at fault" finding.

12. The UNRWA DT did not err in fact when it found that the guns were legally in Mr. Jibara's possession.

### **Mr. Jibara's Cross-Appeal**

13. The UNRWA DT erred in law when it failed to recognize the exceptional circumstances of his case (his illegal arrest by Israel and illegal termination by UNRWA) and to compensate him for the loss of his base pay. Mr. Jibara seeks compensation equivalent to a total of two years and

six months' net base salary for loss of salary, earnings and entitlements between the date of his termination and the date of the UNWRA DT Judgment.

**UNRWA's Answer to Cross-Appeal**

14. The UNRWA DT did not fail to exercise its jurisdiction or err in law in its decision not to award compensation for loss of income or enhanced compensation.

15. The Commissioner-General requests that the Appeals Tribunal reject the cross-appeal in its entirety.

**Considerations**

16. When reviewing a sanction imposed by the Administration, the Tribunal will examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offence.<sup>1</sup>

17. In the present case, both parties agreed on the facts on which Mr. Jibara's separation from service was based.

18. The UNRWA Commissioner-General terminated Mr. Jibara's appointment after he had been sentenced to four months imprisonment and a fine for weapons possession.

19. This sentence was the result of a confession and a plea agreement.

20. Mr. Jibara contested the decision to terminate his appointment after serving his sentence, arguing that the weapons were his brother's, and that he had never engaged in any unsuitable activity which would have violated the standards expected of an UNRWA staff member as the guns were legally in his possession.

21. The UNRWA DT agreed with Mr. Jibara and ordered his re-instatement, finding that the impugned decision was not properly made, that the established facts did not legally support the disciplinary measure taken, and that the sanction was disproportionate.

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<sup>1</sup> *Maslamani v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-028; *Haniya v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-024.

22. The UNRWA Commissioner-General appealed the Judgment, maintaining that the

28. Mr. Jibara understood and admitted to the contents of the amended charge sheet.

29. The Agency's Detained staff policy reads that "[i]f a staff member is brought to trial and convicted and a prison sentence of three months or more is imposed, his appointment will normally then be terminated in the interests [of] the Agency unless the facts of the case are such that the Agency considers that the staff member has not been at fault".

30. In the instant case, the Agency decided to terminate Mr. Jibara's appointment.

31. "When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decrets5eal dete

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Done in New York, United States.

*(Signed)*

Judge Weinberg de Roca,  
Presiding

21 June 2013

*(Signed)*

Judge Faherty

28 June 2013

*(Signed)*

Judge Adinyira

21 June 2013

Entered in the Register on this 26<sup>th</sup> day of August 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar