



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES



Mahfouz
(Appellant)

v.

Commissioner-General

of the United Nations Re relief an0.16 Tm .000602 170.6.7274 TD -.g00.f18

postdoctoral degree ... my Fulbright post doctorate scholarship is not a kind of training, but is rather a study leave scholarship leading to obtaining a postdoctoral degree.

...

... [M]y study leave is essential for meeting the requirements of the Accreditation Commission of the Ministry of Higher Education and Scientific Research which stipulate that there has to be in the English Department a professor who has graduated from an English speaking country. In addition, this study leave will also reflect positively on my students' learning in the English Department at FESA.

The Applicant noted that he had been advised by the Dean, FESA to resubmit his request as a request for leave without pay. However, the Applicant stated: 'Financially, I cannot manage to take a leave of absence from my job at FESA without pay since the Fulbright postdoctoral scholarship grant will only cover university tuition fees, and accommodation and there are no financial liabilities on the part of the City University of New York.'

... By memorandum to the DUO/J dated 8 March 2012, the Applicant noted that he had not yet received a response to his request for leave and repeated the content of his previous memoranda. The Applicant concluded by requesting 'sabbatical leave with full pay during the research period or if not possible ... special leave with partial pay'.

... By letter dated 10 April 2012, the Acting Director of UNRWA Operations, Jordan (ADUO/J) rejected the Applicant's request for [special leave with pay (SLWP) or special leave with partial pay (SLWPP)] noting that:

The principle of approving the Special Leave whether with full pay or partial pay as per the PD A/5 is the same, and it was responded to your letter dated 17 October 2011 by the Acting Field Human Resources Officer through the Dean, FESA on 8 November 2011, copy of which is attached [for] easy reference.

Your request has been thoroughly reviewed by all concerned and concluded that your request can not be accommodated as there are no available fund[s] to cover this request pursuant to PD A/17 paragraph 3.3 ...

The Applicant states in his application that he was verbally informed of this decision by the Dean, FESA on 25 April 2012 and that, upon his request to Jordan Field Office staff, he received a copy of the ADUO/J's letter on 6 June 2012.

... By memorandum to the Deputy Commissioner General (DCG) dated 22 May 2012 and resent on 11 June 2012 and 2 August 2012, the Applicant requested review of the decision rejecting his request for SLWP or SLWPP. The Applicant

reiterated the information and arguments that he had set out in previous memoranda and added:

The other Fulbrighters from public universities, who have been awarded the scholarship, were given leave with full pay on account that they have the academic rank of Associate Professor ... It is stated in Article 14 of the Legislations at the University of Jordan, which are applicable to all Jordanian universities, that 'any Associate Professor is eligible for a one year sabbatical leave with full pay for study, conducting research or working as a visiting scholar at any university in any country in the world'. ... I find it so strange why UNRWA ... does not recognize my eligibility to such a right given to my colleagues at other Jordanian public universities.

... By memorandum to the FHRO/J dated 7 August 2012, the Applicant requested [s]pecial [l]eave [w]ithout [p]ay (SLWOP) during the research period from 10 September 2012 until 10 May 2013. The Applicant formally requested SLWOP on the same date using the appropriate form. The Applicant's request was approved on 8 August 2012.

... On 15 August 2012, the [UNRWA DT] received an application from the Applicant contesting the decision to deny his request for SLWP or SLWPP. ...

3. The UNRWA DT dismissed the application, concluding that the impugned decision was "well within [UNRWA's] discretion which was properly and lawfully exercised".

4. The UNRWA DT found that the Appellant had erred in attempting to rely on the benefits accorded to the faculty of the University of Jordan under Article 14 of its Legislation as he was, rather, subject to the internal legislation of the Agency. A review of that legislation made clear that, notwithstanding the potential benefit of the Appellant's scholarship, UNRWA was not obliged to grant his request for paid, or partially paid, leave. Indeed, the UNRWA DT found: "Were the Agency to disregard the requirements of Article 3.3 of PD A/17 [(which requires available funds prior to approval of Agency expenditure on staff training),] it would have been not only unlawful but arguably an act of gross irresponsibility." The UNRWA DT noted that there had been no allegation that the reason proffered by the Agency was not valid.

Submissions

Mr. Mahfouz' Appeal

5. The Appellant submits that he is “eligible to receive a sabbatical leave with full pay”, under “Article 14 of the Legislations of the University of Jordan, which are applicable to all Jordanian universities and even to all universities in the world”. He contends UNRWA erred in not recognizing this right.

6. The Appellant also submits he is entitled to paid study leave pursuant to the terms of PD A/5 and PD A/17.

7. He argues that his post-doctoral study was essential for the ongoing national accreditation of FESA.

8. Finally, the Appellant claims he has been treated in a discriminatory fashion, as other staff members of the Agency were granted leave with full pay to pursue their studies.

9. He requests sabbatical leave with full pay, retroactive reimbursement of his salary and entitlements, and compensation for all damages resulting from the impugned decision.

The Commissioner-General's Answer

10. The Commissioner-General submits that the appeal should be dismissed in its entirety, as it is not founded on the grounds for appeal as provided for in the Statute of the Appeals Tribunal.

11. He further submits that the Appellant “has merely reiterated the facts set out in his application before [the] UNRWA DT and ... has not set out any errors of fact or law that would require a reversal of the UNRWA DT's decision to dismiss his application”.

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Judgment No. 2014-UNAT-414

Original and Authoritative Version: English

Dated this 2nd day of April 2014 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Faherty

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 13th day of May 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar