



**JUDGE DIMITRIOS RAIKOS, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2016/003, 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 24 January 2016, in the cases of *Haimour and Al Mohammad v. Commissioner-General of*

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... On 9 February 2014, the H/FHRO held another meeting with two MD, SFO staff members who represented the redundant staff. The H/FHRO provided the staff members with a list of vacancies as of the end of January 2014. It was agreed that the two MD representatives would prepare an overview of the qualifications of the redundant staff and would visit all department heads to discuss employment opportunities.

... Out of the 18 staff members whose posts were declared provisionally redundant, eight staff members – including the Applicants – had not been appointed to an alternative post by 12 April 2014.

... By separate letters dated 29 April 2014, the H/FHRO informed the Applicants that they were separated from service effective 31 March 2014 as they had not been appointed to alternative posts.

3. In Judgment No. UNRWA/DT/2016/003 now under appeal, the UNRWA DT stated that it had decided to join Mr. Al Mohammad's and Ms. Haimour's cases in the interests of judicial economy and consistency, as the two applications were "very similar" contesting the same decisions and "asserting essentially the same claims and seeking similar relief".<sup>4</sup> The UNRWA DT noted that on 22 December 2013, Mr. Al Mohammad and Ms. Haimour were informed of their provisional redundancy and were invited to express their interest in the 23 alternative posts. However, Mr. Al Mohammad did not apply to any of them, and Ms. Haimour applied only for vacant posts in Damascus and participated in the recruitment exercises for two of them but was not successful. The UNRWA Dispute Tribunal found that the Agency had made reasonable efforts to find Mr. Al Mohammad and Ms. Haimour suitable placements, that their appointments with the Agency were properly terminated on 31 March 2014, and that the relief sought by Mr. Al Mohammad and Ms. Haimour had no basis in fact or in law.

### **Submissions**

#### **Ms. Haimour and Mr. Al Mohammad's Appeal**

4. The UNRWA Dispute Tribunal erred in law and procedure by failing to find that the Appellants were not given reasonable notice periods in respect of the termination of their contracts and their separation from the Agency. Contrary to the finding of the UNRWA DT, the 22 December 2013 letters to the Appellants were not notice letters; they were generic

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<sup>4</sup> Impugned Judgment, para. 2.

letters notifying them that they were provisionally redundant and would be offered alternative placements and that their contracts would be terminated if they were not successful in finding alternative positions by 31 April 2014. No termination notice was

9. The Appellants request that the Appeals Tribunal rescind the termination decisions, reinstate them to their positions or any other suitable positions within UNRWA, and award them compensation for the loss of salaries and entitlements as from 31 March 2014 to date.

13. The Appellants repeat their arguments made before the UNRWA Dispute Tribunal in an attempt to reargue their cases. The Commissioner-General therefore requests that the Appeals Tribunal dismiss the present appeal in its entirety.

**Considerations**

14. The Appellants allege that the UNRWA DT committed errors of fact, law and procedure in arriving at its decision.

15. First, the Appellants argue that the UNRWA DT erred on questions of law and procedure by failing to establish that they were not given reasonable notice periods to terminate their service and separate them from the Agency.

16. Area Staff Regulation 9.1 provides that:

The Commissioner-General may at any time terminate the appointment of any staff member if, in his opinion, such action would be in the interest of the Agency.

17. Area Staff Regulation 9.3 states that:

(A) A staff member whose temporary appointment is to be terminated shall be given not less than 14 days' written notice of such termination or such notice as may otherwise be stipulated in his/her letter of appointment.

(B) In lieu of the notice period, the Commissioner-General may authorise compensation calculated on the basis of salary and allowances which the staff member would have received had the date of termination been at the end of the notice period.

18. Area Staff Rule 109.1 provides that:

Termination is a separation initiated by the Agency under staff regulation 9.1, by giving to a staff member a written notice of termination as required under staff regulation 9.3.

19. Area Staff PD No. A/9/Rev.9, at paragraph 15.1, provides that:

15.1. Redundancy arises when a post is

15.1.1. eliminated; or

15.1.2. reclassified and the incumbent either no longer meets the qualifications specified in the Occupation Classification Manual to encumber the post, or would suffer a reduction of entitlements by remaining in the post; or

15.1.3. reclassified from part-time to full-time or full-time to part-time when the incumbent is not prepared to work the required hours.

20. The UNRWA DT correctly concluded that, though only on 29 April 2014 the Appellants were informed of the decisions to separate them from service effective 31 March 2014 as they had not been appointed to alternative posts, this procedural irregularity did not impact their due process rights, since the Agency agreed to pay compensation to the concerned staff members, including the Appellants, in lieu of the notice period. Thus, we reject the aforementioned ground of appeal.

21. The Tribunal now turns to the question as to whether diligent efforts were made by the Agency to find suitable alternative posts for the Appellants, in conformity with PD No. A/9/Rev.9, paragraphs 15.1 ff. This Tribunal finds that such efforts were made for the reasons outlined below. The mere fact that they were not successful is not evidence to the contrary, nor will this Tribunal retroactively impose its own view concerning the suitability of the appellants for a vacancy upon the Administration in the exercise of its duty and authority to do so, provided this Tribunal finds no improper motive or bias in that exercise.

22. PD No. A/9/Rev. 9, at paragraph 15, states that:

15.2. In such circumstances, a staff member is declared provisionally redundant and will be so notified in writing. ...

...

15.4. The purpose of the period of provisional redundancy is to use the time (usually three months)[ ... ] between the decision to abolish an occupied post and its actual abolition to find a suitable placement for the displaced official or, failing that, to give the appropriate termination notice required by the staff member's letter of appointment.

15.5. It is imperative that redundancy cases be well documented. During the period of provisional redundancy, reasonable effort must be made to find the redundant staff member a suitable placement. It is useful in this regard to maintain a list of all posts that became vacant during the period of provisional redundancy and to show why the staff member was not assigned to any of them. The possibility of providing training to qualify redundant staff members for alternative employment should be considered seriously.





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new branches in Tartous, As-Suwayda and Latakia in June 2013, locations that were considered safer than the Damascus area for the continuation of the MD, SFO's operations.

31. The UNRWA DT's conclusion that the Administration took into consideration the serious and dangerous situation in Syria at the relevant time was based on its examination of the documentary evidence supplied by the Agency. It then found from the evidence on record that the Agency had complied with PD No. A/9/Rev. 9 in making genuine attempts to locate suitable alternative posts for the Appellants.

32. In view of the above, we do not find merit in the Appellants' claim that the UNRWA DT erred on questions of law and procedure by finding that the security situation and safety of staff was considered by the Administration based on the United Nations regulations concerning the safety of its staff members.

33. Further, Ms. Haimour submits that "[t]he UNRWA DT erred on questions of law by deciding that it was correct for the Agency not to take into consider[ation] in particular [her] personal circumstances which prevent her from seeing her son regularly".

34. Ms. Haimour has misunderstood the findings of the UNRWA DT on this matter. Other than stating that it was correct for the Administration not to take into consideration her personal circumstances which prevented her from seeing her son regularly, the UNRWA DT considered the issue further and opined that: "while the personal circumstances of a staff member may be relevant in deciding whether an alternative placement is suitable, this is not the only factor to be considered. Rather, other factors such as the availability of posts and the qualifications of the staff member take priority. Indeed, Applicant Haimour did not express interest in any of the vacant posts outside of [the] Damascus area, and while she applied for vacant posts in Damascus, she was not selected for any of them."<sup>8</sup>

35. Upon reviewing this finding, the Appeals Tribunal holds that the UNRWA DT gave careful and fair consideration to Ms. Haimour's arguments regarding her personal circumstances and weighed them against the facts of the case. The first instance Judge came to the conclusion that the personal circumstances of a staff member were not the sole factor to be considered in deciding whether an alternative placement was suitable for him or her.

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<sup>8</sup> *Ibid.*, para. 41.



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