



Judgment No. 2017-UNAT-790



Counsel for Mr. Anshasi:

Self-represented

Counsel for Commissioner-General:

Rachel Evers

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2017/004, 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 19 February 2017, in the case of *Anshasi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Khalil Mohammad Abdulfattah Anshasi filed the appeal on 20 April 2017, and the Commissioner-General filed his answer on 20 June 2017.

Facts and Procedure

2. The following facts are uncontested:¹

... Effective 28 August 2007, the Applicant was employed by UNRWA as a Teacher, at Wadi Rayyan Preparatory Boys Sc

... By letter dated 22 May 2016, the Applicant was informed that, since he had been on continuous sick leave since 3 December 2015, and will have exhausted all his sick leave credits on 29 May 2016, he was to be placed on Special Leave Without Pay (“SLWOP”) after 29 May 2016. The Applicant received this letter on 1 June 2016.

... On 14 June 2016, the Director of UNRWA Operations, Jordan confirmed the decision not to convene a medical board.

... On 26 June 2016, the Applicant was informed that the payment of his separation benefits would be deferred due to his refusal to sign the form waiving the medical examination.

... On 30 July 2016, the Applicant submitted a request for decision review with respect to the decision to put him on SLWOP. On 10 August 2016, the Applicant submitted a request for decision review of the decision to defer the payment of his separation benefits.

... On 21 September 2016, the Applicant filed his application with the UNRWA Dispute Tribunal ...

...

... On 13 December 2016, the Applicant filed a “Motion for Leave to Submit Observations on the Respondent’s Reply and for Leave to File a Motion for Expedited Consideration”. The motion was transmitted to the Respondent on the same day.

... By Order No. 106 (UNRWA/DT/2016) dated 27 December 2016, the Applicant’s motion for leave to submit observations and to file a motion for expedited consideration was granted.

... On 9 January 2017, the Applicant filed his observations, which were transmitted to the Respondent on 10 January 2017.

... On 10 January 2017, the Applicant filed a “Motion to Request Expedited Consideration” (“Motion”). The motion was transmitted to the Respondent on the same day. The Respondent did not file any objections to the motion.

... By Order No. 16 (UNRWA/DT/2017) dated 19 January 2017, the Applicant’s

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not eligible for a disability benefit;² (ii) the Commissioner-General reasonably exercised his discretion when he decided to place Mr. Anshas

7. Mr. Anshasi further challenges the UNRWA DT's finding that any delay with respect to the payment of his separation benefit was only due to his own refusal to sign the medical waiver or to be referred to an "exit medical examination". Signing the waiver would only serve the interests of the Agency and release it from any responsibility towards him and the medical examination was offered to him after three months of dispute on the waiver, during which time his funds were withheld. In addition, the UNRWA DT erred by "failing to find that the proposed exit medical examination was tainted by a real and/or perceived conflict of interest, as the doctor who would have carried it out was the same one who had conducted the preliminary assessment on 27 April 2016".

8. Based on the foregoing, Mr. Anshasi asks the Appeals Tribunal to find that the UNRWA DT "erred by failing to order the rescission of the three contested decisions, and by failing to identify a causal link between the three contested decisions and the medical damages that he suffered, which were substantiated by a medical report". He requests the Appeals Tribunal to vacate the UNRWA DT Judgment and "grant him the means of redress that he seeks".

The Commissioner-General's Answer

9. The Commissioner-General submits that the UNRWA DT correctly exercised its discretionary power in the management of cases and did not commit an error of procedure such as to affect the decision of the case when it declined to hold an oral hearing and hear witnesses.

10. He further asserts that the UNRWA DT did not err in fact or law in concluding that the Agency's decision to refuse Mr. Anshasi's request for a referral to a medical board based on a preliminary medical examination was reasonable. The UNRWA DT was cognizant of the applicable instruments (namely PD A/6/Part VI, paragraph 1.2 of UNRWA Area Personnel Directive No. A/9 (Separation from Service) (PD/A/9) and UNRWA Area Staff Rule 109.7) and applied the correct standard of judicial review. Even assuming *arguendo* that the UNRWA regulatory framework does not provide for a preliminary medical assessment prior to convening a medical board, it was a reasonable exercise of the Agency's discretion not to refer Mr. Anshasi to a medical board on this basis.

11. Moreover, the Commissioner-General argues that the UNRWA DT did not err in fact or law by upholding the Agency's decision to place Mr. Anshasi on SLWOP in the interests of the Agency in accordance with Area Staff Rule 105.2 and UNRWA Area Staff Personnel Directive No. A/5/Part II (Special leave). Considering that Mr. Anshasi had exhausted his sick leave credit by 29 May 2016 and his contract was ending as of 24 June 2016 due to his age, it was reasonable to place him on SLWOP to enable him to end his contract as anticipated. Given that Mr. Anshasi was not entitled to annual leave during the school year as a teacher, that he had exhausted his sick leave credits and that he was about to retire, and therefore not entitled to advance sick leave, the Agency had no other choice than to place him on special leave. Mr. Anshasi has failed to substantiate why such special leave should have been with pay as he seems to suggest.

12. Finally, the Commissioner-General contends that the UNRWA DT did not err in fact or law by acknowledging Mr. Anshasi's responsibility in the Agency's decision to withhold his separation benefit pending completion of the separation clearance procedure. This well-established procedure has to be followed by all staff members before separation benefits can be paid. Since Mr. Anshasi had refused to sign the medical waiver or to present himself to a medical examination as requested by the Agency, he did not complete this step of the separation procedure and was thus not entitled to separation benefits. As to the alleged conflict of interest of the medical officer who would carry out the examination, Mr. Anshasi could have raised the issue when he submitted his observations on 9 January 2017 and thus over two months after the medical examination was set to have taken place. The issue as contended in his appeal brief constitutes a new element which is not part of the impugned Judgment and thus inadmissible.

13. With respect to the relief sought by Mr. Anshasi, the Commissioner-General submits that there is no basis for the consideration of the remedies sought as the Agency's decisions were properly effected and reasonable.

14. The Commissioner-General, therefore, requests that the Appeals Tribunal dismiss the appeal in its entirety.

Considerations

Preliminary issues

15. As a preliminary matter, Mr. Anshasi filed a request for an oral hearing which he believes will aid the Appeals Tribunal in its deliberations. Oral hearings are governed by Article 8(3) of the Appeals Tribunal Statute (Statute) and Article 18(1) of the Appeals Tribunal's Rules of Procedure (Rules). The factual and legal issues arising from this appeal have already been clearly defined by the parties and there is no need for further clarification. In addition, we do not find that an oral hearing would "assist in the expeditious and fair disposal of the case", as required by Article 18(1) of the Rules. Thus, the request for an oral hearing is denied.

Merits

16. Having reviewed each of the grounds of appeal raised by Mr. Anshasi we are not persuaded that the UNRWA Dispute Tribunal erred in procedure or otherwise exceeded its jurisdiction in the exercise of its powers, such as to warrant reversal of the Judgment.

i) UNRWA DT's decision not to hold an oral hearing

17. Mr. Anshasi first contends that the UNRWA DT erred in not holding an oral hearing and by refusing to hear witnesses.

18. At the outset, we note that large discretion is afforded to the United Nations Dispute Tribunal (UNDT)⁴ and the UNRWA Dispute Tribunal⁵ in relation to case management matters and rightly so since the first instance judge is in the best position to decide what is appropriate for the fair and expeditious disposal of a case and to do justice to the parties. Our

21. UNRWA Area Staff Rule 106.4 provides as follows:⁸

COMPENSATION FOR DEATH, INJURY OR ILLNESS ATTRIBUTABLE TO SERVICE

PRINCIPLES OF AWARD AND ELIGIBILITY

1. Compensation shall be awarded, in the event of death, injury or illness of a staff member which the Agency determines to be attributable to the performance of official duties on behalf of the Agency, except that no compensation shall be awarded when such death, injury or illness has been occasioned by:

- (A) The willful misconduct of any such staff member, including drunkenness;
- (B) any such staff member's willful intent to bring about the death, injury or illness of himself/herself or another.

2. Without restricting the generality of paragraph 1 of this rule, the death, injury or illness of a staff member shall be deemed to be attributable to the performance of official duties on behalf of the Agency in the absence of any willful misconduct or willful intent when:

- (A) The death, injury or illness occurred as a direct result of travel by means of transportation furnished by, or at the expense of the Agency, in connection with the performance of official duties; provided that the provisions of this sub-paragraph shall not extend to private motor vehicle transportation sanctioned or authorised by the Agency solely on the request and for the convenience of the staff member;
- (B) the death, injury or illness directly resulted from strikes, riots, or civil disturbances; provided that at the time of such death or injury the staff member was acting in his/her official capacity at his/her usual post of duty, or at another post consequent to an order given by a superior Agency official;
- (C) the death, injury or illness directly resu

22. UNRWA Area Staff Rule 109.7 stipulates:⁹

DISABILITY BENEFIT

1. A staff member whose appointment has been terminated on the stated ground that he/she is for reasons of health incapacitated for further service with the Agency shall be eligible to receive a disability benefit as defined in paragraph 2 of this rule provided that he/she is less than 60 years of age and does not receive a termination indemnity under rule 109.9.

...

5. Where the incapacity of the staff member which gives rise to the termination of his/her appointment is partially or wholly attributable to the performance of his/her Agency duties and entitles him/her at any time to compensation under rule 106.4, then the following adjustments shall be made between entitlements under rule 106.4 and entitlements under this rule:

- (A) Compensation payments made under rule 106.4 representing medical, hospital or directly related costs, or salary payments during sick leave or otherwise authorized absence prior to the date of termination, shall not affect, or be affected by, the payment of a benefit under this rule;
- (B) Where the total amount of compensation payable under rule 106.4, other than the payments referred to in sub-paragraph (A) above, exceeds the amount of the disability benefit which would be payable under this rule, then the staff member's entitlement under this rule shall thereby be extinguished and nothing shall be payable thereunder[;]
- (C) Where the total amount of compensation payable under rule 106.4, other than the payments referred to in sub-paragraph (A) above, is less than the amount of the disability benefit which would be payable under this rule, then the amount of the disability benefit shall be reduced by the amount of the said compensation payments, and the staff member's entitlement hereunder shall consist only of such part of the disability benefit as remains after this reduction.

23. Mr. Anshasi submits that the UNRWA DT erred in fact and in law when it found that he had failed to provide reasons for his request for a referral to a medical board and the Agency could reasonably decide to refuse his request.

24. With respect to the decision not to convene a medical board, the UNRWA DT fl.9sm

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iii) The issue of placement on SLWOP

31. UNRWA Area Staff Rule 105.2 provides in paragraph 1:

... Special leave with full or partial pay or without pay may be granted in the interests of the Agency in cases of extended illness, or for other exceptional reasons, for such period as the Commissioner-General may prescribe.

32. Area Staff Personnel Directive PD A/5/Part II provides in paragraph 1.4:

... Special leave may be approved for the following reasons:

1.4.1 **Illness.** Provided that sick leave, advanced sick leave and annual leave accruals have been exhausted, and provided the Agency considers that a limited extension of absence will give the staff member a reasonable opportunity of returning to duty at a foreseeable date. Such leave may be approved with full, partial, or without pay up to 90 days subject to a written recommendation of the Director of Health In Headquarters (Amman) and Chief, Field Health Programme in Field Offices; any extension beyond 90 days will require the authorization of the Director of Human Resources.

33. With respect to the Agency's decision to place Mr. Anshasi on SLWOP, the UNRWA DT held that the Commissioner-General had the discretionary authority to place a staff member on SLWOP, and came to the conclusion that:¹⁵

... As the Applicant had been on sick leave since 3 December 2015, his sick leave credits allowed coverage until 29 May 2016, and his contract was to expire on 24 June 2016, the [UNRWA Dispute] Tribunal finds that it was not unreasonable to place him on SLWOP for a period less than a month.

34. We agree with both heads of the UNRWA DT's findings. Contrary to Mr. Anshasi's arguments, under the aforementioned legal and factual circumstances, his consent for SLWOP was not required, as it is up to the discretion of the Agency and the Commissioner-General may, at his own initiative, place a staff member on special leave with full or partial pay or without pay if he or she considers that to be in the interest of the Agency.¹⁶ Moreover, the contested administrative decision was reasonable and therefore lawful, as correctly determined by the UNRWA DT. The UNRWA DT gave careful and fair consideration to Mr. Anshasi's arguments regarding his placement on SLWOP, while he has not successfully discharged the burden of

¹⁵ Impugned Judgment, para. 38.

¹⁶ *Cf. Adewusi v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-382, para. 16; *Cabrera v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-215, para. 46.

proving improper action on the part of the Administration. Indeed, he has not convinced the UNRWA DT, nor the Appeals Tribunal, that the Administration violated his rights in any way whatsoever in that respect.

iv) The decision to defer payment of separation benefits

35. Insofar as the Administration's decision to withhold the payment of the separation benefits owed to Mr. Anshasi upon his separation is concerned, the UNRWA Dispute Tribunal Judge decided that this was lawful in that any delay with respect to the payment of Mr. Anshasi's benefits was solely due to his own choice to refuse to sign the medical waiver or to be referred to an "exit medical examination".

36. Indeed, as found by the UNRWA DT and not disputed by Mr. Anshasi, the Agency has established a separation clearance procedure for the separation of staff members in order to ensure that both parties have fulfilled their obligations towards each other. Part of this clearance procedure is signing a form waiving medical examination. Mr. Anshasi refused to sign this waiver. As a result, he was informed that the payment of his separation benefits would be deferred. In an attempt to resolve this situation, the Agency, by letter dated 21 September 2016, offered to refer the Applicant to an "exit medical examination", indicating that once the medical examination was concluded, his separation benefits would be disbursed.

37. Mr. Anshasi's reluctance to sign a form waiving medical examination was apparently due to his belief that he was waiving any outstanding claims against the Agency contrary to his own interests, i.e. that it would release the Agency from any responsibility towards him.

38. First, the Appeals Tribunal recalls its jurisprudence in *Ahmed*¹⁷ in which it referred to the language of the former United Nations Administrative Tribunal in its Judgment *Stouffs*:

... The [Former Administrative] Tribunal observes, on the one hand, that the

staff member's signing of the P.35 form is not considered as the signing of a general release from the Organization's obligations towards the staff. ...

39. Additionally, we agree with the first instance Judge that the established separation clearance procedure for the separation of staff members benefits both the staff member and the

of the Administration, as correctly found by the UNRWA DT. The delay in the payment of the separation benefits to Mr. Anshasi was entirely attributable to his refusal to accept the aforesaid offer.

44. Lastly, Mr. Anshasi submits that there is a conflict of interest with respect to the medical officer who was tasked with carrying out the offered “exit medical examination”, in that he was the same doctor who had conducted the preliminary assessment on 27 April 2016. However, this issue was not raised before the UNRWA DT. Although Mr. Anshasi had been granted the right to submit his observations on 27 December 2016 by the first instance Judge Jand thus cannot be introduced for the first time on appeal for consideration by the Appeals Tribunal.²¹ We find that Mr. Anshasi’s appeal in this regard is not receivable.

45. Our conclusion that the UNRWA DT did not make any errors of law or fact in denying Mr. Anshasi’s challenge of the impugned administrative decisions precludes him from seeking compensation. Since no illegality was found, there is no justification for the award of any compensation. As this Tribunal stated before, “compensation cannot be awarded when no illegality has been established; it cannot be granted when there is no breach of the staff member’s rights or administrative wrongdoing in need of repair”.²²

46. Accordingly, the appeal fails.

²¹ *Haimour and Al Mohammad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-688, para. 38; *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-547, para. 25; *Simmons v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-221, para. 61.

²² *Kucherov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-669, para. 33. See also *Nwuke v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-508, para. 27, citing *Oummih v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-420 and *Antaki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-095.

Judgment

47. The appeal is dismissed and Judgment No. UNRWA/DT/2017/004 is hereby affirmed.

Original and Authoritative Version: English

Dated this 27th day of October 2017 in New York, United States.

(Signed)

Judge Raikos, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Murphy

Entered in the Register on this 8th day of December 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar