



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2017-UNAT-798



**Dibs
(Appellant)**

v.

Commissioner-General

Date: 27 October 2017

Registrar: Weicheng Lin

Counsel for Mr. Dibs: Amer Abu-Khalaf, LOSA

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/2017/018, 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 14 May 2017, in the case of *Dibs v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Khader Hamed Dibs filed the appeal on 11 June 2017, and the Commissioner-General filed his answer on 10 October 2017.

Facts and Procedure

2. The following facts are uncontested:¹

... Effective 1 August 2004, the Applicant was appointed on a fixed-term appointment as a Sanitation Foreman B, Grade 3, in Shufat Camp Environmental Sanitation (“Shufat Camp”) in the Jerusalem Area.

... Following several extensions, effective 1 January 2012, the Applicant’s appointment was converted to an “A” category temporary indefinite appointment.

... On 24 September 2014, the Applicant was shot while in his office at Shufat Camp. He suffered multiple bullet injuries on the lower limbs and subsequently was placed on sick leave from 24 September 2014 until 3 June 2015.

... Between November 2014 and October 2015, the Department of Internal Oversight Services (“DIOS”) conducted an investigation into allegations that the Applicant was engaged in unauthorised outside activities in breach of his neutrality obligations. The Applicant’s statement was taken by the investigators in June 2015 and in August 2015.

... On 12 March 2015, the Applicant requested to be referred to a medical board, as he was incapable of carrying out his duties. The Applicant reiterated this request on 25 June 2015.

... On 14 August 2015, by memorandum to the Director of UNRWA Operations, West Bank (“DUO/WB”), the Applicant submitted a request for Special Leave With Pay (“SLWP”), as he had exhausted his leave credits. On 18 August 2015, the Applicant submitted a similar request to the Chief Area Office, Jerusalem.

... On 29 September 2015, the medical board issued its report and concluded that the Applicant was unfit to perform his duties as a Sanitation Foreman. The Chief, Field Health Programme (“C/FHP”) concurred with this conclusion on 6 October 2015.

¹ Impugned Judgment, paras. 2-21.

... By letter dated 2 November 2015, the DUO/WB informed the Applicant of the findings of the investigation conducted by DIOS. The Applicant was invited to respond to the said findings.

Submissions

Mr. Dibs' Appeal

5. Mr. Dibs submits that the UNRWA DT erred on a question of law by “not making a judgment based on the governing law and the aspirations of the law governing employees and employers of UNRWA”. In case of doubt, a staff member should be granted a right that he or she is entitled to rather than being denied it.

6. He further contends that the UNRWA DT erred on matters of law and fact by “failing to assess the correct facts and the rules and regulations governing the case when coming to the conclusion that the Agency acted correctly when terminating [Mr. Dibs] on [] grounds of misconduct”. TIBT10.02 .5([ip.1037Tj9.6)-36[

8. Mr. Dibs further submits that the UNRWA DT erred on questions of law and procedure by holding that the “decisions to delay [his] (...) separation (...) on medical grounds and restricting him from receiving his rights [were] appropriately affected by the Agency and [by] not considering that it may have constituted abuse of power” within the meaning of paragraph 6 d) of UNRWA General Staff Circular 06/2010. Such abuse of power led to an investigation “which was affected by bias and prejudice through the knowledge that if they do not find evidence of misconduct they [would] have to pay disability benefit[s] (...) for 24 months and thus, it was in their interest to come to the conclusion that [Mr. Dibs] had committed misconduct”. The Agency thus violated the principle of good faith as established by the Appeals Tribunal jurisprudence.

9. Based on the foregoing, Mr. Dibs asks the Appeals Tribunal to vacate the UNRWA DT Judgment and “to request that the Agency remove the misconduct from his file and (...) separate him on medical grounds and [grant him] the required disability benefit to be dated back to when he was found unfit for work due to a service incurred injury”. He further requests “moral damages and compensation for the abuse of power he has suffered”.

The Commissioner-General’s Answer

10.

12. In addition, it is misleading for Mr. Dibs to suggest that this was a service incurred injury case. In fact, Mr. Dibs did not submit a claim for compensation as contemplated by UNRWA Area Staff Rule 106.4(1) or UNRWA Area Staff Personnel Directive A/6/Part. III, paragraph 5(b) to bring the matter within the service incurred injury provisions. As such, these provisions are inapplicable and the issue of placing Mr. Dibs on SLWP and crediting his annual and sick leave on this basis do not arise and the contention that the UNRWA DT ignored the “process” under these rules is patently misconceived. Any references to service incurred injury are misleading and amount to an introduction of new elements that have not been put forward before the UNRWA DT.

13. Moreover, it is disingenuous for Mr. Dibs to suggest that there was delay in the decision to terminate him on medical grounds with a view to terminating him for misconduct in the absence of *prima facie* evidence for misconduct at the time he was found unfit for work. The decision to postpone the separation decision accords with the Commissioner-General’s discretionary authority for all staffing matters and the interest of the Agency to discipline staff members when misconduct is established, as correctly noted by the UNRWA DT.

14. The Commissioner-General further asserts that the UNRWA DT did not err on the question of a *prima facie* case. No evidence was produced before the UNRWA DT to show that the determination of a *prima facie* case was not proper and the issue of postponing the separation on medical grounds was adequately addressed in the UNRWA DT Judgment.

15. The question of abuse of power was patently misconceived and, at any rate, no evidence was adduced before the UNRWA DT to demonstrate such abuse of power.

16. Finally, the Commissioner-General claims that the remedies sought by Mr. Dibs have no legal basis. In addition, the plea for moral damages was not before the UNRWA DT and is therefore a new matter being raised for the first time.

17. Therefore, he requests the Appeals Tribunal to dismiss the appeal in its entirety.

Considerations

The decision to postpone the separation on medical grounds

18. UNRWA Area Staff Rule 106.4, under the heading “COMPENSATION FOR DEATH, INJURY OR ILLNESS ATTRIBUTABLE TO SERVICE” provides:

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

MEDICAL EXAMINATION

8. Every person claiming under this rule or in receipt of compensation thereunder shall undergo such medical examination or examinations as the Commissioner-General may require, at such time or times as he may consider necessary.

SOLE COMPENSATION

9. The compensation payable under this rule shall be the sole compensation to which any staff member or his/her dependants shall be entitled from the Agency in respect of any claim falling within the provisions of this rule.

19. UNRWA Area Personnel Directive A/6/Amend. 12/Part. III (Compensation for Death, Injury or Illness) stipulates as follows:

...

(B) As applicable to all area staff members and manual workers, the provisions which enable these categories of Agency employee to continue in full pay status for a period of disability up to six months if necessary, following the injury or d o l (t) 19 1 d C 7 t 9 7 . 7 () 1 9

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24. Further, the Appeals Tribunal recalls its jurisprudence that the discretionary power of the Administration is not unfettered.⁵ The Commissioner-General has an obligation to act in good faith and comply with applicable laws. Mutual trust and confidence between the employer and the employee is implied in every contract of employment. And both parties must act reasonably and in good faith.⁶

25. In the present case, the Appellant, prior to being separated from service on grounds of misconduct (on 26 July 2016), was found on 29 September 2015 by the Medical Board to be unfit to perform his duties as a Sanitation Foreman. His injuries (on his lower limbs) occasioned on 24 September 2014 when he was shot while in his office at Shufat Camp. Subsequently, between November 2014 and October 2015, an investigation was conducted by the Administration into allegations that Mr. Dibs was engaged in unauthorized outside activities in breach of his neutrality obligations during his employment as a Sanitation Foreman at the Shufat Refugee Camp. However, neither the subject of this investigation nor the subsequent termination of Mr. Dibs on grounds of misconduct (on 26 July 2016) were linked by the Administration, in any way whatsoever, to his service incurred injuries.

26. Therefore, under the specific factual circumstances of the case, and in light of the aforementioned legal provisions expressly providing for the staff member's right to be compensated for a service incurred injury, it was neither fair nor reasonable for the UNRWA Administration to delay its decision whether the injuries were work-related or not and to complete the relevant procedure and terminate Mr. Dibs on medical grounds until the pending investigation process concerning his alleged misconduct was over.

27. Having regard to all of the foregoing, the Appeals Tribunal finds that the UNRWA DT erred in law in determining that the Administration's decision to postpone Mr. Dibs' separation on medical grounds until the end of the disciplinary process was lawful.

⁵ *Hamayel v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-459, para. 17, citing *Pérez-Soto v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-329; *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-121 and *Asaad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the*

36. UNRWA Area Staff Personnel Directive PD A/5/Rev. 7/Part II (Special Leave) 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 gi

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