



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

Judgment No. 2018-UNAT-888

**Al Saleh
(Appellant)**
v.
**Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East
(Respondent)**

JUDGMENT

Before: Judge Deborah Thomas-Felix, Presiding
Judge Dimitrios Raikos
Judge Richard Lussick

Case No.: 2018-1181

Date: 26 October 2018

Registrar: Weicheng Lin

Counsel for Mr. Al Saleh: Diab El-Tabari

Counsel for Commissioner-General: Rachel Evers

JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2018/020, 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 21 March 2018, in the case of *Al Saleh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Fadi Ahmad Al Saleh filed the appeal on 25 April 2018, and the Commissioner-General has not filed an answer.¹

Facts and Procedure

2. The following facts are uncontested:²

... Effective 17 March 2008, the Applicant was employed by the Agency as Camp Service Officer (“CSO”) at Ddayeh Camp, Central Lebanon Area, Lebanon Field Office (“LFO”). At the material time relevant to the events in the (...) application [before the UNRWA DT], the Applicant was employed as CSO at Ein El Hilweh Camp (“EEHC”), Saida Area, LFO.

... On 23 May 2012, the Applicant submitted a request for engagement in outside activities within the “Al Maqdissi Group” (“AMG”) for social, sportive and educational activities. His request was approved on 2 July 2012. On 20 February 2013, the Applicant requested to continue his outside activities within the same group. This second request was also approved on 16 April 2013. Lastly, on 11 April 2014, the Applicant submitted another request for outside activities with the same group for scout and student activities. This was also approved on 10 June 2014. This last permission was valid until 9 June 2015.

... On 18 June 2015, armed clashes occurred inside the EEHC which caused loss of lives, injuries and destruction of materials. External media sources reported that the AMG and the Applicant had been actively involved in the armed clashes.

... On 23 June 2015, the Director of UNRWA Affairs in Lebanon (“DUA/L”) decided to launch an investigation into these allegations against the Applicant.

.... On 2 July 2015, the Deputy Director of UNRWA Affairs in Lebanon (“D/DUA/L”) reassigned the Applicant to another position in the LFO for administrative purposes pending the ongoing investigation. The Applicant informed the Agency that, for personal reason[s], he would not be able to take up this assignment.

¹ By Order No. 331 (2018) dated 29 August 2018, the Appeals Tribunal denied a motion submitted by the Commissioner-General for a waiver of the time limit to file an answer to the appeal.

² Impugned Judgment, paras. 2-13, 15 and 20.

... On 2 September 2015, the Applicant was placed on administrative leave without pay until the end of the investigation.

... On 15 December 2015, the investigation report was submitted to the DUA/L.

... On 21 April 2016, the Applicant was offered the opportunity to comment on the findings of the investigation report. On 4 May 2016, the Applicant submitted his comments.

... By letter dated 22 September 2016, the Applicant's appointment was terminated for misconduct effective 30 September 2016. [The letter reads in relevant part as follows:³

Having considered all available information, including the investigation report and your responses to the Agency, I find that there is clear and convincing evidence that:

- you misled the Agency in your application for "Request for engagement in outside activities and interest" in 2011, 2012, 2013 and 2014 regarding your role as a volunteer "to practice athletic", "scout" and "student activity" for five to eight hours a week at the Al Maqdissi group, Ein El Hilweh Camp, Lebanon;
- your participation and activities in the Al Maqdissi Group was not authorized by the Agency beyond June 9, 2015; and
- you were involved in a leadership role with a group named "Al Maqdissi", which contained an armed extremist element and/or was connected through its membership with armed persons who were closely affiliated with political and/or extremist armed groups that operated in the Ein El Hilweh Camp and that members of the Al Maqdissi group were involved in armed clashes against another armed group which sustained loss of lives and injuries to beneficiaries and destruction of material inside the Ein El Hilweh Camp on the first day of Ramadan, 18 June 2015.]

... On 20 October 2016, the Applicant requested review of the decision to terminate his appointment for misconduct.

... On 4 November 2016, the Deputy Commissioner-General ("DCG") affirmed the decision of 22 September 2016.

... On 6 January 2017, [Mr. Al Saleh filed an application] with the UNRWA Dispute Tribunal (...) [contesting the decision to terminate his appointment for misconduct].

(...)

³ *Ibid.*, para. 30.

... By Order No. 162 (UNRWA/DT/2017) dated 15 November 2017, the [UNRWA Dispute] Tribunal disclosed to the Applicant a redacted copy of the investigation report.

(...)

... On 22 January 2018, the Applicant submitted his comments on the investigation report. (...)

3. The UNRWA DT rendered its Judgment on 21 March 2018, dismissing the application in its entirety. It considered that the facts as contained in the letter dated 22 September 2016 on which the sanction was based were established by clear and convincing evidence, namely that Mr. Saleh (i) misled the Agency about the importance of his role within the AMG when requesting permission for outside activities; (ii) had not been given authorisation for his activities within the AMG beyond 9 June 2015; and (iii) was involved in a leadership role within the AMG and members of this group were involved in the consequential armed clashes of 18 June 2015.

4. Regarding his involvement with the AMG, the UNRWA DT found that while many of the testimonies and Mr. Al Saleh's own contradictory statements were not fully reliable, Lebanese government sources as well as the fact that several victims of the armed clashes submitted complaints against Mr. Al Saleh to the Lebanese authorities together with the comments he provided on the investigation report made it "highly probable" that he was indeed involved with this group which conducted the armed clashes.⁴ The UNRWA DT further considered that these established facts constituted misconduct under the applicable UNRWA Area Staff Regulations and Rules, in particular that Mr. Al Saleh had engaged in activities incompatible with the proper discharge of his duties with the Agency and his leadership role within the AMG reflected poorly on his integrity, independence and impartiality. Finally, the UNRWA DT considered that the disciplinary measure of termination with full termination indemnity was proportionate to the gravity of the misconduct as the sanction was neither absurd nor arbitrary especially in light of the severe damage caused to UNRWA's operations in the camps.

5. On 29 August 2018, the Appeals Tribunal issued Order No. 331 (2018), denying the Commissioner-General's motion for a waiver of the time limit to file an answer to the appeal, finding that a mere administrative oversight due to a high work load did not justify such a waiver.

⁴ *Ibid.*, para. 40.

Submissions

Mr. Al Saleh's Appeal

6. Mr. Al Saleh submits that the investigation into allegations of misconduct against him was “extremely biased” and seriously flawed. For instance, he claims that the list of witnesses was not comprehensive and several of the witnesses had themselves been involved in the armed clashes. He claims that in the course of the investigation, no evidence was provided of his involvement in any act of terror or breach of neutrality and that the AMG was registered as an official non-governmental organization in Lebanon and has no illegal track record.

7. Mr. Al Saleh further argues that the investigation has failed to take into consideration the exonerating evidence he had provided. Moreover, he claims that the fact that he had moved out of the camp to live a normal life outside shows that he was not involved in terrorist activities.

8. Mr. Al Saleh requests that the investigation carried out by UNRWA be declared void and that the Appeals Tribunal conduct an oral hearing to hear witnesses. He further asks for reinstatement and moral damages in the amount of USD 50,000 “for the harm [his] family and [he] suffered emotionally and psychologically as well as harm done to [his] reputation” as he was without employment for months.

Considerations

9. As a preliminary matter, Mr. Al Saleh filed a request for an oral hearing. Oral hearings are governed by Article 8(3) of the Appeals Tribunal's 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. Moreover, 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.

10. The Appeals Tribunal recalls that under Article 2(1) of its Statute, it is competent to hear and pass judgment on an appeal in which it is asserted that the first instance tribunal has “(a) [e]xceeded its jurisdiction or competence; (b) [f]ailed to exercise jurisdiction vested in it; (c) [e]rred on a question of law; (d) [c]ommitted an error in procedure, such as to affect the decision of the case; or (e) [e]rred on a question of fact, resulting in a manifestly unreasonable

decision". The Appeals Tribunal emphasises that the appeals procedure is corrective in nature and is thus not an opportunity for a party to reargue his or her case.⁵ The appellant has the burden on appeal to establish that the impugned judgment is defective. He or she may not repeat on appeal arguments that did not succeed before the first instance tribunal. Rather, the appellant must demonstrate that the first instance tribunal has committed an error of fact or law warranting the intervention by the Appeals Tribunal.⁶ The Appeals Tribunal notes that Mr. Al Saleh has failed to identify, by citation to any provision in Article 2(1) of the Statute, the grounds for his appeal. For this reason alone, his appeal is defective and must fail, irrespective of the fact that the Commissioner-General has failed to submit a timely answer to his appeal.

11. Moreover, Mr. Al Saleh has failed to demonstrate any discernible error within the meaning of Article 2(1) of the Statute warranting a reversal of the impugned Judgment. The UNRWA DT correctly held that (i) the facts on which the sanction imposed on Mr. Al Saleh was based were highly probable and were thus established to the required level of clear and convincing evidence; (ii) the established facts qualified as misconduct under UNRWA Area Staff Regulations 1.4 and 1.7 and UNRWA Area Staff Rule 101.4; and (iii) the sanction of termination with full termination indemnity was proportionate to the offence.⁷

12. This case raises the serious issue of how the outside activities of staff members can impact on the integrity and reputation of UNRWA and how important it is for staff not to engage in any activity that is incompatible with the proper discharge of their duties with the Agency.

13. When Mr. Al Saleh was initially granted permission to engage in social, sportive and educational activities with the AMG, it was implicit in that approval that he would represent the Agency in a positive manner and that he would uphold the governing principles and integrity of the Agency when pursuing these outside activities. UNRWA Area Staff Regulation 1.4 states as follows:

Staff members shall conduct themselves at all times in a manner befitting their status as employees of the Agency. They shall not engage in any activity that is incompatible with the proper discharge of their duties with the Agency. They shall avoid any action and in particular any kind of public pronouncement which may adversely reflect on their status, or on the integrity, independence and impartiality which are required by that status. While

⁵ *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035, para. 30.

⁶ *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540, para. 28, citing *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29.

⁷ See *Applicant v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-302, para. 29.

they are not expected to give up their national sentiments or their political and religious convictions, they shall at all times bear in mind the reserve and tact incumbent upon them by reason of their employment with the Agency.

14. UNRWA Area Staff Regulation 1.7 provides that “[s]taff members (...) shall not engage in any political activity which is inconsistent with or might reflect upon the independence and impartiality required by their status” and UNRWA Area Staff Rule 101(4) stipulates that “[s]taff members shall not engage in any continuous or recurring outside occupation or employment (including self-employment) without the prior approval of the Commissioner-General”.

15. Mr. Al Saleh has alleged, on appeal, that the investigation into allegations of misconduct against him was “extremely biased” and seriously flawed. He claims that the list of witnesses was not comprehensive and several of the witnesses had themselves been involved in the armed clashes.

16. The UNRWA DT explained its approach in reviewing the evidence when it stated the following in its Judgment:⁸

... The [UNRWA Dispute] Tribunal notes that the political situation in UNRWA camps in Lebanon is volatile. Fractions and religious groups struggle to take control of the camps. The persons living in these camps, including in the EEHC, are under considerable pressure. Accordingly, the [UNRWA Dispute] Tribunal agrees with [Mr. Al Saleh] that most of the testimonies are not reliable, as witnesses or even some UNRWA staff members in the EEHC can potentially be supporters of opposing Palestinian political movements. Therefore, in the present case, the [UNRWA Dispute] Tribunal will consider as established only those facts [that are] supported by material evidence and [Mr. Al Saleh’s] own statements. In the same vein, the [UNRWA Dispute] Tribunal has decided not to hold a hearing and hear witnesses, as those who might have been heard would not be more credible than the ones who had already been heard during the investigation.

17. The UNRWA DT further stated: “It is clear that [Mr. Al Saleh] presented his role with the AMG as a volunteer for the group’s social sportive and educational activities.”⁹

⁸ Impugned Judgment, para. 26.

⁹ *Ibid.*, para. 33.

18. From the evidence and from his own admission, Mr. Al Saleh sent an e-mail wherein he represented himself to be the Honorary President of the AMG. This representation as Honorary President of the group, as the UNRWA DT opined “cannot be considered as part of volunteering for social, sportive and educational activities”.¹⁰

19. The UNRWA DT therefore concluded, from all the evidence, that it was highly probable that Mr. Al Saleh had a leadership role within the AMG and the members of this group were involved in the consequential armed clashes of 18 June 2015. We find no fault with that conclusion.

20. The UNRWA Dispute Tribunal found that Mr. Al Saleh had misled UNRWA in his request for engagement in outside activities and that his activities beyond 9 June 2015 had not been authorized by UNRWA. The UNRWA Dispute Tribunal concluded that there was clear and convincing evidence in that regard.

21. The UNRWA DT also considered the disciplinary measure which was imposed by the Agency and found it to be within the discretionary authority of the Commissioner-General and further found that there was no evidence to suggest that the Commissioner-General’s decision was absurd, arbitrary or tainted by extraneous reasons or bias. We uphold that reasoning.

22. We pause to emphasize that UNRWA Area Staff Regulation 1.4, which states that “[s]taff members shall conduct themselves at all times in a manner befitting their status as employees of the Agency”, ought to be seriously considered by staff members at all times, more so when they are engaged in outside activities. We agree with the UNRWA DT’s findings that Mr. Al Saleh’s conduct in outside activities caused serious reputational damage to the Agency, particularly when media sources reported armed clashes in the EEHC and mention was made of Mr. Al Saleh’s name and his employment as CSO at the Agency.

23. In the circumstances, the Appeals Tribunal upholds the Judgment of the UNRWA DT. Mr. Al Saleh’s claims for moral damages and reinstatement are without merit and they are therefore dismissed.

¹⁰ *Ibid.*, para. 35.

Judgment

24. The appeal is dismissed and Judgment No. UNRWA/DT/2018/020 is hereby affirmed.

Original and Authoritative Version: English

Dated this 26th day of October 2018 in New York, United States.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Raikos

(Signed)

Judge Lussick

Entered in the Register on this 20th day of December 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar