



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

Judgment No. 2019-UNAT-974

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

JUDGMENT

Before: Judge Dimitrios Raikos, Presiding
Judge Martha Halfeld
Judge Graeme Colgan

Case No.: 2019-1275

Date: 25 October 2019

Registrar: Weicheng Lin

Counsel for Mr. Abu Salah: Self-represented

Counsel for Commissioner-General: Michael Schoiswohl

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. Mr. Ayman Mohammad Abu Salah, an Emergency Social Worker with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) requested that he be transferred to an office job in the interest of his health and family. A medical board was convened to assess his fitness for his duty within the Agency. After four evaluations, the Medical Board concluded that Mr. Abu Salah was unfit for continued service with the Agency. Mr. Abu Salah's service was accordingly terminated on medical grounds. Mr. Abu Salah contested the termination decision. The UNRWA Dispute Tribunal (or UNRWA DT) dismissed his application, finding that no reasons had been advanced to show that the termination decision was the product of substantive or procedural irregularity. For reasons set forth herein, we affirm the UNRWA Dispute Tribunal's Judgment.

Facts and Procedure

2. Effective 11 February 2009, Mr. Abu Salah began to work for the Agency under a fixed-term appointment as an Emergency Social Worker, Grade 10, with the Emergency Programme in the Gaza Field Office (GFO). He still held this position in 2016.

3. In the present appeal, Mr. Abu Salah states that, on 9 October 2016, he submitted a request for "a break from the field [] work for a limited period of time" due to family and health reasons. In his UNRWA DT application, Mr. Abu Salah stated that he was exhausted by the continuous field work and requested a transfer to an office position.

4. On 20 October 2016, the Head, Field Human Resources Office, GFO (H/FHRO/G) requested that a medical board be convened to evaluate Mr. Abu Salah's physical fitness for continued service with the Agency in his current post or in any other post.

5. A Medical Board composed of three doctors (Dr. Taysier El-Amassie as Chairperson, Dr. Khalil Hamad and Dr. Moh'd Yazji as Members) was convened to examine Mr. Abu Salah. The Medical Board's findings dated 5 December 2016 were that Mr. Abu Salah was unfit for the time being for duties, that he should be re-evaluated after three months, and that he should continue with medications regularly.

6. After a mental state examination on 1 April 2017, the Medical Board concluded that Mr. Abu Salah was still unfit for duties, that he should be re-evaluated after two months, and that he should continue with medications regularly. He was placed on an advanced sick leave with pay for 90 days from 23 March to 20 June 2017.

7. On 18 July 2017, Mr. Abu Salah was re-evaluated by Dr. Khalil Hamad. Dr. Hamad concluded that Mr. Abu Salah was still unfit for duty, that he should continue on the prescribed medication, and that he should be re-evaluated after two months.

8. On 20 September 2017, the Medical Board re-evaluated Mr. Abu Salah and found him unfit for continued service with the Agency. On 2 October 2017, the Chief, Field Health Programme, GFO (C/FHP/G) concurred with the Medical Board's conclusion.

9. By letter dated 5 October 2017, the Director of UNRWA Operations, Gaza (DUO/G) informed Mr. Abu Salah that, following the findings of the Medical Board, his appointment would be terminated on medical grounds, effective 4 November 2017.

10. On 19 October 2017, Mr. Abu Salah submitted a request for review of the decision to terminate his services on medical grounds. He claimed that he was fit for work as a Social Worker or on any other post assigned to him. Mr. Abu Salah's claim was forwarded to the C/FHP/G for an informal review. But the Officer-in-Charge, FHP, confirmed, on 24 October 2017, that Mr. Abu Salah was unfit for continued service.

11. During a meeting with the H/FHRO/G on 6 November 2017, Mr. Abu Salah discussed his termination and the payment of his separation benefits. He asked the Agency for whatever assistance it could give him to help him manage his financial affairs.

12. In view of Mr. Abu Salah's personal circumstances and so as to help him deal with his financial difficulties, the H/FHRO/G requested the Agency to exceptionally approve a retroactive conversion of Mr. Abu Salah's special leave without pay (SLWOP) to a special leave with pay (SLWP) for a period of 90 days, at a cost of USD 4,875.06. But the H/FHRO/G's request was subsequently rejected.

13. On 3 January 2018, in response to Mr. Abu Salah's request for decision review, the DUO/G affirmed the decision to terminate his appointment on medical grounds. He stated that he had considered all of the information available but was unable to identify any reason to change the termination decision.

14. On 15 February 2018, Mr. Abu Salah filed an application with the UNRWA Dispute Tribunal against the decision to terminate his appointment on medical grounds.

15. In Judgment No. UNRWA/DT/2019/020, the UNRWA Dispute Tribunal dismissed Mr. Abu Salah's application. The UNRWA DT noted that after Mr. Abu Salah had requested a transfer based on a medical report indicating his incapacity to continue performing his duties as an Emergency Social Worker, his case was submitted to a Medical Board, and that the Medical Board re-evaluated Mr. Abu Salah on four occasions (4 December 2016, 1 April 2017, 18 July 2017 and 20 September 2017) and concluded that he was unfit for continued service. The UNRWA Dispute Tribunal consequently rejected as without merit Mr. Abu Salah's contention that the Medical Board did not examine him at all. The UNRWA Dispute Tribunal also rejected the medical reports that Mr. Abu Salah had obtained after the Medical Board had completed its work. The UNRWA Dispute Tribunal concluded that no reasons had been put forward to indicate that the contested decision was the outcome of an arbitrary or capricious exercise, prejudice or other extraneous factors, procedural irregularity or error of law.

16. Mr. Abu Salah appealed the UNRWA DT Judgment to the United Nations Appeals Tribunal (Appeals Tribunal) on 23 June 2019, and the Commissioner-General filed his answer on 2 September 2019.

Submissions

Mr. Abu Salah's Appeal

17. The UNRWA Dispute Tribunal committed errors of fact. He did not request a transfer to a clerical post. Rather, he told his manager that he was in a bad family and health situation and needed a break from the field work for a limited period of time.

18. None of the Medical Board Members were specialized in psychology. Mr. Abu Salah poses the question: How could they evaluate him as a mental patient and prescribe medications for him? Moreover, on one occasion, he was examined for only 12 minutes by Dr. El-Amassie. Dr. Yazji

never attended any evaluation session with him, yet he signed off on all the medical examination reports. It should be noted that Dr. El-Amassie is ready to testify before the Appeals Tribunal to the effect that the procedure followed by the Medical Board was incomplete and inadequate.

19. After he was evaluated by the Medical Board on 20 September 2017, Mr. Abu Salah saw two qualified psychiatrists at the “Governmental Psychiatric Hospital” for psychological evaluation. Contrary to the conclusions reached by the Medical Board, the two psychiatrists found Mr. Abu Salah “possess[ed] a psychological integrity ... and [was] able to practice [his] work normally”. The Chairperson of the Medical Board refused to keep this report in Mr. Abu Salah’s file.

20. The reports issued by the Medical Board were “unfair” and the outcome of a “personal bias”. If he had indeed had the medical condition since he was 17 years old as diagnosed by the Chairperson of the Medical Board, how was it possible for Mr. Abu Salah to have worked for the Agency for more than 13 years with a satisfactory and successful performance and without any hospital or clinical record of such a disorder? In this connection, Mr. Abu Salah submits two certificates of training that he attended in 2013 and 2015 and a letter of appreciation and gratitude for his extraordinary service during the July-August 2014 conflict in Gaza.

21. Mr. Abu Salah requests that the Appeals Tribunal call Dr. El-Amassie as a witness, establish a “transparent” Medical Board with a psychiatric specialty to assess his psychological health, and return him to work for the Agency.

The Commissioner-General’s Answer

22. Mr. Abu Salah has failed to anchor his appeal on any of the grounds set forth in Article 2 of the Statute of the Appeals Tribunal with specific submissions. His “clarifications” are either a repetition of facts asserted before the UNRWA Dispute Tribunal or new facts aimed at disputing, for the first time, facts that were not in dispute before the UNRWA DT. As these claims are a mere repetition of previous arguments, Mr. Abu Salah’s pleas should be dismissed as not receivable.

23. Mr. Abu Salah’s objection to the facts as summarized by the UNRWA Dispute Tribunal in relation to his alleged request for a transfer to a clerical post, the Medical Board’s taking the decision without seeing him, and his psychiatrists’ report, is not credible.

24. Mr. Abu Salah's appeal should be dismissed insofar as it seeks to dispute, for the first time on appeal, the facts that remained undisputed before the UNRWA Dispute Tribunal. For instance, Mr. Abu Salah now alleges that he insisted on returning to work after the first evaluation by the Medical Board. He also alleges that none of the Medical Board Members are psychologists and were therefore not qualified to diagnose him. He further alleges that after the Medical Board's 20 September 2017 assessment, he went to the Governmental Psychiatric Hospital for evaluation, and the Chairperson of the Medical Board refused to keep the psychiatrists' report on file. These alleged events constitute new facts before the Appeals Tribunal.

25. Mr. Abu Salah failed to provide the UNRWA Dispute Tribunal, or for that matter, the Appeals Tribunal, with copies of the medical reports that support his allegation of medical fitness. He also failed to challenge or rebut certain facts as presented in the Respondent's reply before the UNRWA Dispute Tribunal, if he had indeed had reasons to contest them.

26. The UNRWA Dispute Tribunal did not err as a matter of fact or law that would require a reversal of its Judgment in the present case. There is no legal basis to consider the reliefs that Mr. Abu Salah is seeking on appeal.

27. The Commissioner-General requests that the Appeals Tribunal dismiss Mr. Abu Salah's appeal in its entirety.

Considerations

Preliminary issue: oral hearing before the Appeals Tribunal

28. Mr. Abu Salah requests an oral hearing, which he believes will be of assistance to the Appeals Tribunal. Oral hearings are governed by Article 8(3) of the Appeals Tribunal Statute (Statute) and Article 18(1) of the Appeals Tribunal Rules of Procedure (Rules). Under Article 18(1) of the Rules, a request for an oral hearing may be granted when it would "assist in the expeditious and fair disposal of the case". As the Appeals Tribunal does not find that an oral hearing would assist it any further in resolving the issues on appeal, the request for an oral hearing is denied.

Appeal on the merits

29. The issue before this Tribunal is whether the UNRWA DT erred in law or fact, resulting in a manifestly unreasonable decision, in finding that the administrative decision to terminate Mr. Abu Salah's service on medical grounds was lawful. For the reasons set out below, this Tribunal determines that the UNRWA DT's conclusion is correct.

30. The applicable law on these matters is as follows:

UNRWA STAFF RULE 104.4

MEDICAL EXAMINATIONS

Staff members may be required to undergo medical examinations at such time or times as the Commissioner-General may consider necessary.

UNRWA STAFF RULE 106.2

SICK LEAVE

(9) A staff member may be required at any time to submit a medical certificate as to his/her condition or to undergo an examination by a medical practitioner nominated by the Director of Health.

UNRWA STAFF RULE 109.7

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.

Lawfulness of the decision to terminate

31. Before embarking on a consideration of the specific arguments made on appeal in this case, it is apposite to reprise the jurisprudence of the Appeals Tribunal as to how we handle the appellate proceedings.

32. The 2009 Special Agreement between the United Nations and the Agency provides, in Article 2(1), that the Appeals Tribunal is competent to hear and pass judgment on an appeal filed against a judgment rendered by the UNRWA Dispute Tribunal in which it is asserted that the UNRWA Dispute Tribunal has: (a) exceeded its jurisdiction or competence; (b) failed to

exercise the jurisdiction vested in it; (c) erred on a question of law; (d) committed an error of procedure, such as to affect the decision of the case; or (e) erred on a question of fact, resulting in a manifestly unreasonable decision.

33. The Appeals Tribunal emphasizes that the appeals procedure is of a corrective nature and, thus, is not an opportunity for a dissatisfied party to reargue his or her case. A party cannot merely repeat on appeal arguments that did not succeed before the lower court. The function of the Appeals Tribunal is to determine if the Dispute Tribunal made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as prescribed in Article 2(1) of the Appeals Tribunal's Statute. An appellant has the burden of satisfying the Appeals Tribunal that the judgment he or she seeks to challenge is defective. It follows that an appellant must identify the alleged defects in the impugned judgment and state the grounds relied upon in asserting that the judgment is defective.¹

34. On appeal, Mr. Abu Salah appears to be restating the claims which he made before the UNRWA DT. He has not identified any of the above grounds in his appeal and has failed to demonstrate that the UNRWA DT committed any error of fact or law in arriving at its decision.

35. Moreover, we have reviewed the UNRWA DT Judgment and find that Mr. Abu Salah's case was fully and fairly considered; we can find no error of law or fact in its decision. Indeed, in the circumstances, we find that Mr. Abu Salah has not presented any evidence to support the contention that his case was not given full and fair consideration and the decision of the Commissioner-General should therefore be rescinded.

36. Mr. Abu Salah attacks the legality of the Medical Board's conclusion by submitting that only Dr. Taysier El-Amassie was present for the 20 September 2017 evaluation, which only lasted 12 minutes, and during another evaluation, Dr. Khalil Hamad was only present for a

¹ *Harris v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-896, para. 51, citing *Cherneva v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-870, para. 30, which in turn cited *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, para. 19; *El Saleh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-594, para. 30; *Achkar v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-579, para. 15; and *Ruyooka v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-487, para. 24.

short period and did not speak with him or conduct a medical evaluation. He also claims that Dr. Mohammed Al Yasiji did not attend any evaluation session.

37. In his answer, the Commissioner-General recalls that Mr. Abu Salah represented to the UNRWA Dispute Tribunal that he “did not see any medical board”, that “the committee signed the decision without seeing [him] or following up with [him]”, that the medical evaluations were mostly with one doctor with “some other provocative visits by another doctor”, and that one doctor attended one evaluation only.

38. The UNRWA DT rejected Mr. Abu Salah’s arguments as without merit on the ground that the relevant medical report had been prepared and duly signed by all three members of the Medical Board.² The Appeals Tribunal, having regard to the formal regularity of the medical report, whose authenticity was not challenged by Mr. Abu Salah, shares the view of the first instance Tribunal.

39. We also find that Mr. Abu Salah has not established any error in the UNRWA DT’s determination, with respect to his argument that he had brought a medical report from a psychiatrist stating that Mr. Abu Salah “[could] work now”.

40. In this regard, the UNRWA DT found that:³

The Applicant supports his claim with medical reports obtained after the Medical Board had concluded that he was unfit for continued service with the Agency. In this respect, first of all, prior to being examined by a medical board, it was the Applicant who had indicated his incapacity in performing his duties. Second of all, after having regularly re-evaluated the Applicant’s fitness during a 10-month period, the Medical Board reached its conclusion and determined that the Applicant was unfit for continued service with the Agency.

41. We agree with, and uphold, the UNRWA DT’s reasoning. The UNRWA DT correctly based its conclusion about the legality of the administrative decision to terminate Mr. Abu Salah’s service with the Agency on the medical assessment by the competent Medical

² Impugned Judgment, para. 32.

³ *Ibid.*, para. 33.

Board about his fitness, drawing on the persuasive technical value of the latter, without making medical findings of its own, which it was not competent to make anyway.⁴

42. Further, we recall the holding of the former United Nations Administrative Tribunal in *Ali*:⁵

... The Applicant also claims that the first Medical Board, convened in 1991, erred in its decision finding her fit for service. The Tribunal notes that the findings of a medical board, as an expert advisory body, are subject to a more limited review, since such findings are based on the technical medical knowledge of the Board's members. [...] Furthermore, the decision by the Commissioner-General to accept the recommendation of the Medical Board was an administrative decision of a discretionary nature. The Tribunal can only review such a decision if it is tainted by abuse of discretion, and can only review a medical board's recommendation if there is evidence of improper motive or some substantive or procedural irregularity. Substantive irregularities include errors of law, errors of fact, failure to take account of relevant facts, taking into account irrelevant facts, clearly mistaken conclusions (*erreur manifeste d'appréciation*) or general arbitrariness. Procedural irregularities include undue delay or lack of due process. [...]

43. Hence, the decision to terminate Mr. Abu Salah's appointment on medical grounds is reasonable and a valid exercise of the Agency's discretion, given the specific factual circumstances of the case at hand, as correctly found by the UNRWA DT.

44. Additionally, the findings of fact made by the UNRWA DT can only be disturbed under Article 2(1)(e) of the Appeals Tribunal Statute when there is an error of fact resulting in a manifestly unreasonable decision, which is not the case here. This Tribunal is mindful that the Judge hearing the case has an appreciation of all the issues for determination and the evidence before it.⁶ We are satisfied that the UNRWA DT conclusions are consistent with the evidence. Mr. Abu Salah has not put forward any persuasive grounds to warrant an interference by this Tribunal. Therefore, we reject the arguments advanced by Mr. Abu Salah to the contrary.

⁴ See in this regard, *Karseboom v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-601, paras. 40-47.

⁵ Former United Nations Administrative Tribunal Judgment No. 917 *Ali V* (1999) (Internal citations omitted.)

⁶ *He v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-825, para. 59, citing *Kacan v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-582, para. 25, which in turn cited *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-546, para. 35.

45. It is obvious that Mr. Abu Salah was not satisfied with the UNRWA DT's decision. He has failed, however, to demonstrate any error in the UNRWA DT's finding that the Administration's decision to terminate his appointment on medical grounds was lawful, by proffering evidence that this decision was unreasonable, it resulted from an invalid exercise of the discretionary power of the Administration and/or it was tainted by improper motives or otherwise unlawful. He merely voices his disagreement with the UNRWA DT's findings and resubmits his contentions to this Tribunal. He has not met the burden of proof of demonstrating an error in the impugned Judgment such as to warrant its reversal.⁷

46. Finally, in his appeal, Mr. Abu Salah submits, *inter alia*, that: (i) none of the Medical Board members are psychologists, in the sense that they are not qualified to diagnose his medical situation; and (ii) the Chair of the Medical Board refused to keep on file the report from the Governmental Psychiatric Hospital.

47. However, these issues were not raised before the UNRWA DT, and thus cannot be introduced for the first time on appeal for consideration by the Appeals Tribunal.⁸ It is quite unreasonable for Mr. Abu Salah to assert that the UNRWA DT erred on questions of fact and law with respect to the allegations which were not raised before the UNRWA DT for its consideration and hence were not part of his case before the lower court.⁹ Therefore, we find that Mr. Abu Salah's appeal in this regard is not receivable.

48. We considered all other grounds of appeal but could not find any that would warrant the reversal of the impugned Judgment.

⁷ *Harris v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-896, para. 56, citing *Ruyooka v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-487, para. 24; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-236, para. 37. See also *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110, para. 27; *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035, para. 30.

⁸ *Ho v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-791, para. 37, citing *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; and *Simmons v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-221, para. 61.

⁹ *Munyan v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-880, para. 30.

Judgment

49. The appeal is dismissed and Judgment No. UNRWA/DT/2019/020 is hereby affirmed.

Original and Authoritative Version: English

Dated this 25th day of October 2019 in New York, United States.

(Signed)

Judge Raikos, Presiding

(Signed)

Judge Halfeld

(Signed)

Judge Colgan

Entered in the Register on this 20th day of December 2019 in New York, United States.

(Signed)

Weicheng Lin, Registrar