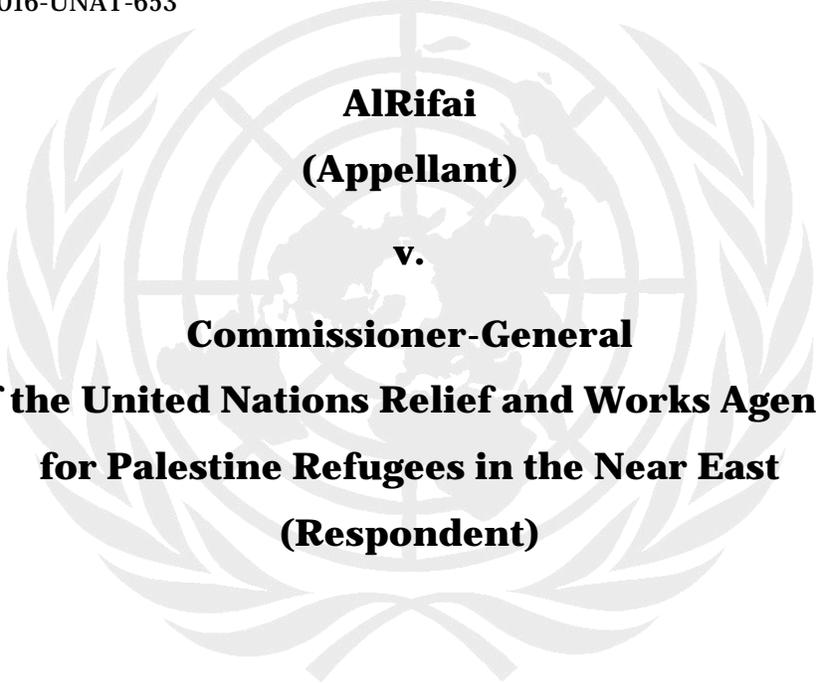




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2016-UNAT-653



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

JUDGMENT

Before:	Judge Luis María Simón, Presiding Judge Sophia Adinyira Judge Mary Faherty
Case No.:	2015-860
Date:	30 June 2016
Registrar:	Weicheng Lin

Counsel for Ms. AlRifai: Self-represented

Counsel for Commissioner-General: Lance Bartholomeusz

JUDGE LUIS MARÍA SIMÓN, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2015/045, 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 10 August 2015, in the case of *AlRifai v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*.¹ Ms. Ayesha AlRifai Abu Hweij filed an appeal on 8 October 2015, and the Commissioner-General filed an answer on 4 December 2015.

Facts and Procedure

2. The following facts are uncontested:²

... Effective 1 October 2006, the Applicant was employed by the Agency as Deputy Dean, Education Science Faculty, Grade 15, at the Ramallah Women's Training Centre ("RWTC").

... By letter dated 26 December 2007, the Applicant was informed of her selection for the post of "Dean, Principal [RWTC] and Education Science Faculty ('ESF') at Grade 16.

... Effective 1 June 2010, the Applicant's post grade was upgraded to Grade 17.

... By memorandum dated 27 July 2011, the Chief, Compensation and Management Services Division ("CCMSD") transmitted to the Field[] Human Resources Officers Agency-wide, copies of the Area post descriptions for the Training Centres in all Fields. The post of "Principal/Dean, Training Centre" was at Grade 17. The Applicant acknowledged receipt of a copy of the post description on 6 September 2011.

... By memorandum to the Director of Human Resources ("DHR") dated 24 November 2011, the CCMSD recommended upgrading the post of Dean, ESF and Principal, Training Centre from Grade 17 to Grade 18 in line with a proposed reclassification of the equivalent post of Dean, Faculty of Educational Sciences and Arts ("DFESA") in Jordan to Grade 18.

... On 30 November 2011, the DHR approved the post description for the post of Dean, ESF and Principal, Training Centre at Grade 18, for the Ramallah Men's Training Centre ("RMTC")/ESF and the RWTC/ESF. The DHR also formally approved the post description of DFESA in Jordan at Grade 18.

¹ We adopt the spelling of "AlRifai" that the Appellant uses on her appeal form and appeal brief.

² Impugned Judgment, paras. 2-10.

... By email dated 1 May 2014, the Applicant and the Principal, Kalandia Training Centre made a joint request for the upgrade of their respective posts from Grade 17 to Grade 18.

... By email dated 26 May 2014, the Head, Field Human Resources Office (“HFHRO”) rejected the joint request.

... On 21 July 2014, the Applicant requested review of the decision not to upgrade her post from Grade 17 to Grade 18.

3. In a letter dated 19 August 2014, the Director of the UNRWA Operations, West Bank (“DUO/WB”) replied to Ms. AlRifai’s request for decision review. He stated that the decision had been taken in accordance with the Agency’s Staff Regulations and Rules, free of substantive or procedural irregularity, improper motive or abuse of discretion, and that it would be maintained. He explained to Ms. AlRifai that:

[T]he basis for the decision was that you currently do not have all of the duties and responsibilities of the [G]rade 18 position of “Dean, Education Science Faculty/Principal Training Centre”. The [G]rade 18 position includes the duty of supervising the Education Science Faculty (ESF), which is a higher level of academic instruction than the other forms of vocational education and training offered by the Agency. However, your post functions and level of responsibilities are not the same as the [G]rade 18 position, in particular because supervising an ESF program is not a part of your duties since the Ramallah Women’s Training Centre (RWTC) does not have an ESF program. While I acknowledge your title may at the moment be “Dean ESF/Principal RWTC”, the reference to “Dean ESF” is no longer current. Although you did at some point supervise an ESF program at RWTC, this [is] no longer the case. As you are aware, beginning in the 2010-11 academic year, the Agency began phasing out the ESF program at RWTC in implementation of its decision to merge all ESF programs into one location. As you also know, since the start of the 2013-14 academic year, the ESF program is no longer taught at RWTC. Your title no longer reflects your duties and, while it may not yet [have] been updated, this does not, on its own, justify an upgrade to the position of [G]rade 18.

4. Ms. AlRifai appealed the decision not to upgrade her post from Grade 17 to Grade 18 to the UNRWA Dispute Tribunal. In Judgment No. UNRWA/DT/2015/045, the UNRWA DT dismissed Ms. AlRifai’s application. Noting the explanation given by the DUO/WB, the UNRWA DT considered that Ms. AlRifai’s responsibilities, as of the 2013-2014 academic year, did not include the supervision of the professor and associate professor positions, unlike her counterpart at the RMTTC, whose post was upgraded to Grade 18. The

UNRWA Dispute Tribunal rejected Ms. AlRifai's allegations of discrimination and failure to conform to other higher education systems and practices.

Submissions

Ms. AlRifai's Appeal

5. The UNRWA Dispute Tribunal erred in fact by failing to take into consideration the evidence of facts that affected Ms. AlRifai's rights. The UNRWA DT did not specify what evidence was used to support its assertion. It based its findings on institutional and structural considerations rather than qualifications, expertise and technical competence. It was arbitrary to conclude, as the UNRWA DT did, that the technical and vocational education and training (TVET) implied less responsibility than ESF and therefore justified a lower post grade. Ms. AlRifai always recognised the difference between her responsibilities as Dean of TVET and those of the Dean of ESF. However, the difference did not imply less responsibilities, skills or competencies in the services offered at the RMTC and RWTC.

6. The UNRWA Dispute Tribunal committed an error in procedure such as to affect the decision of the case by failing to take into account a number of procedural irregularities committed by the Agency, including the failure to inform Ms. AlRifai of the intended post classification exercise; the Agency's focus only on certain parameters to the exclusion of all other parameters set forth in UNRWA's Post Classification Questionnaire, which is a "binding reference human resources management tool[]"; and the change of her functional title from Dean/Principal to Principal without notifying or consulting her.

7. Ms. AlRifai requests that the Appeals Tribunal order that her post be upgraded from Grade 17 to Grade 18.

The Commissioner-General's Answer

8. Ms. AlRifai includes the Post Classification Questionnaire as annex 4 to her appeal in support of her allegations of irregularities. The Commissioner-General notes that this document was not part of the case record before the UNRWA Dispute Tribunal, and Ms. AlRifai did not request leave to have it admitted. The Commissioner-General contests its admission and requests that her arguments based on that document be rejected.

9. Ms. AlRifai's contentions about alleged procedural irregularities preceding the non-upgrading of her post are new elements that were not presented to the UNRWA DT. Consequently, they cannot be introduced for the first time on appeal. The Appeals Tribunal should find these elements of her contentions inadmissible.

10. Finally on procedural issues, Ms. AlRifai brings up the issue of the change of her post title from Dean/Principal to Principal. This should not be allowed, as the issue was not canvassed before the UNRWA Dispute Tribunal. In this connection, the Commissioner-General notes that, contrary to Ms. AlRifai's assertion, she was aware of her new post title at the time of filing her application with the UNRWA Dispute Tribunal.

11. The UNRWA Dispute Tribunal did not make any error of fact. Ms. AlRifai's contention that certain findings of fact made by the UNRWA Dispute Tribunal about the non-implementation of the reclassification of her post due to ongoing reforms and the different responsibilities between her post and that of her counterpart at RMTTC remains a mere allegation without the support of any evidence. On the other hand, the UNRWA DT's conclusion was based on evidence that was part of the record and was reasonable.

12. The UNRWA Dispute Tribunal did not commit any error in procedure such as to affect the decision in the case. Ms. AlRifai asserts that the UNRWA DT did not address the Agency's failure to inform her of the intended post reclassification exercise. To the extent that this constituted a procedural error, the Commissioner-General submits that Ms. AlRifai has not demonstrated that the non-consideration of the alleged issue would have led to a different finding of fact and changed the outcome of the case. In this connection, Ms. AlRifai's reliance on Area Staff Personnel Directive No. A/2/Rev. 4, Part II, is misplaced, as the non-upgrade did not entail a change of her "employee category".

13. Ms. AlRifai's plea that the Appeals Tribunal upgrade her post from Grade 17 to Grade 18 is misconceived, as the Appeals Tribunal has made it clear that it will not undertake an exercise to classify or reclassify a post.

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

Considerations

15. An appeal is not the appropriate occasion to introduce new elements for consideration that were not put forward at the trial level. Annex 4 (Post Classification Questionnaire Form) to Ms. AlRifai's appeal was not offered as evidence before the UNRWA DT and the contentions about the alleged procedural irregularities preceding the non-upgrading of the Appellant's post were not argued at first instance. Therefore, the document and arguments put forward by Ms. AlRifai are inadmissible and they were not considered by this Tribunal.

16. As stated in *Fuentes*,³

On the standard of judicial review of classification decisions, we note and endorse, in principle, the jurisprudence of the Administrative Tribunal of the International Labour Organization (ILOAT) which repeatedly held that[:]

[it] will not undertake an exercise to classify or reclassify posts in an organisation's structure ..., since decisions in this sphere lie within the discretion of the organisation and may be set aside only on limited grounds. Such is the case, for example, if the competent bodies breached procedural rules, or if they acted on some wrong principle, overlooked some material fact or reached a clearly wrong conclusion[.] ... In the absence of such grounds, the Tribunal will not remit the case to the organisation, nor will it substitute its own post evaluation for that of the competent bodies.

17. Ms. AlRifai has not persuaded this Tribunal that the impugned decision contains any error of fact or law that could warrant its reversal. The appeal fails because she has not established, as required by the Appeals Tribunal Statute, that the Dispute Tribunal reached a manifestly unreasonable decision caused by an error of fact or law.

18. On the contrary, we share the view of the UNRWA Dispute Tribunal when it concluded that the reclassification of Ms. AlRifai's post at the RWTC to Grade 18 was not implemented due to the ongoing reforms which resulted in the transfer of the RWTC's ESF program to the RMTC, which in turn led to the elimination of the duties previously ascribed to Ms. AlRifai. As a consequence, no ESF program was taught at the RWTC as of the start of the 2013-2014 academic year.

³ *Fuentes v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-105, para. 26.

19. Hence, the difference of grade between Ms. AlRifai's post and that of her counterpart at the RMTC was justified, and it explained the Agency's decision not to upgrade Ms. AlRifai's post to Grade 18.

20. This conclusion is supported by the evidence and there is no reason to depart from the inferences that the UNRWA Dispute Tribunal drew from the established facts, which led to the dismissal of Ms. AlRifai's application.

21. Ms. AlRifai attempts to convert the judicial review into an administrative exercise of post classification by means of different technical or educational grounds. However, this endeavor is outside the scope of the judicial review.

22. Ms. AlRifai's arguments of wrongdoing with respect to the Agency's classification of her post or in relation to the UNRWA Dispute Tribunal's review of that activity become irrelevant in the face of the uncontested fact, namely, that the change in her tasks and respective duties formed the basis for the decision not to upgrade her post.

23. The Judgment of the UNRWA Dispute Tribunal is affirmed and the appeal thus fails.

Judgment

24. The appeal is dismissed and the Judgment of the UNRWA Dispute Tribunal is affirmed.

Original and Authoritative Version: English

Dated this 30th day of June 2016 in New York, United States.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Faherty

Entered in the Register on this 24th day of August 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar