



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

Judgment No. 2018-UNAT-853

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

JUDGMENT

Before: Judge John Murphy, Presiding
Judge Dimitrios Raikos
Judge Martha Halfeld

Case No.: 2018-1141

Date: 29 June 2018

Registrar: Weicheng Lin

Counsel for Mr. Madi: Self-represented

Counsel for Commissioner-General: Rachel Evers

JUDGE JOHN MURPHY, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2017/036, 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 November 2017, in the case of *Madi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Ibrahim Mohammed Madi filed the appeal on 16 January 2018, and the Commissioner-General filed an answer on 20 March 2018.

Facts and Procedure

2. On 21 February 1989, Mr. Madi entered the service of the Agency as a Procurement Quantity Surveying Assistant, in the Relief Services Department, Grade 10, in the Gaza Field Office (GFO). At the time material to the application before the UNRWA DT, he was employed as a Construction Engineer, Grade 14, Step 4, in the GFO.

3. On 14 June 2012, the Commissioner-General acceded to a request for release of Mr. Madi to the African Union - United Nations Mission in Darfur (UNAMID), to take up the position of Engineering Technician for a period of six months. He was accordingly placed on Special Leave Without Pay (SLWOP) from 1 July to 31 December 2012. Mr. Madi's SLWOP was extended by a number of subsequent decisions until the end of June 2016. By e-mail dated 23 June 2016 to the Director of UNRWA Operations, Gaza (DUO/G), Mr. Madi requested another extension of his SLWOP for a period of one year up to 30 June 2017, explaining that he had been offered the international post of Contracts Management Officer at the P-3 level with UNAMID. By e-mail dated 27 June 2016 to Mr. Madi, the Human Resources Services Officer (HRSO) in Gaza informed Mr. Madi that he had exceeded the leave duration limit and that his request for an extension of SLWOP was refused.

4. Mr. Madi, in an e-mail dated 28 June 2016 to the HRSO, then requested Early Voluntary Retirement (EVR). By e-mail dated 19 July 2016, the HRSO informed Mr. Madi that his request for EVR had been denied by Headquarters. Mr. Madi then requested SLWOP for three more months so as to submit another EVR request to be included in the next of the quarterly rounds of EVR approvals in accordance with UNRWA Area Staff Personnel Directive No. A/9/Rev.10 (Separation from Service) (ASPD No. A/9) ending on 30 September 2016. By e-mail dated

2 August 2016, the HRSO informed Mr. Madi that his request for three more months of SLWOP, i.e. up to 30 September 2016, had been approved in order to enable him to apply for the next EVR round. On 3 August 2016, Mr. Madi applied for the EVR round of the third quarter.

5. On 20 August 2016, the Director of Human Resources (DHR) advised the Field Office Directors and other managers and officers concerned that no EVR applications were to be processed until further notice. On 21 September 2016, the Administrative Officer in the Infrastructure & Camp Improvement Programme (ICIP) in Gaza sent an e-mail to Mr. Madi informing him that his EVR application had been denied and directing his attention to the DHR's e-mail of 20 August 2016 in that respect.

6. By a further e-mail dated 23 September 2016, the DHR informed Mr. Madi that his request for EVR could not be supported at that time due to the lack of funding and that the DHR was waiting for a recommendation from the GFO on Mr. Madi's request for a further year of SLWOP. The DHR also informed Mr. Madi that he would be happy to support and advocate on his behalf for a possible transfer to the United Nations recognizing how well regarded he was by them.

7. The DHR denied Mr. Madi's request for a further year of SLWOP and informed him of the decision by e-mail dated 24 September 2016. He encouraged Mr. Madi to contact the Officer-in-Charge (OiC) Human Resources (HR), GFO to discuss his options.

8. By e-mail dated 25 September 2016, Mr. Madi submitted a request for review of the decision rejecting his EVR request. In an e-mail to Mr. Madi dated 25 September 2016, the DHR stressed that the consideration of his EVR applications had been undertaken within the Agency's current policy, which has been consistently applied across the Agency. He again encouraged Mr. Madi to contact the OiC, HR, GFO urgently to discuss options in regard to his situation.

9. By letter dated 26 September 2016, the OiC, HR, GFO informed Mr. Madi that, as his SLWOP was due to expire on 30 September 2016, he was expected to report to his duty station by 1 October 2016. Mr. Madi did not report for duty. By letter dated 10 October 2016, the Head Field Human Resources Officer (H/FHRO) informed Mr. Madi that he was considered to be on unauthorized absence without pay as of 1 October 2016, and that unless he returned to his duty station in Gaza by 1 November 2016 or tendered his resignation, he could be separated from

service for abandonment of post. By letter dated 18 October 2016 to the H/FHRO, Mr. Madi explained that he was abroad and could not report to Gaza, due to travel restrictions.

10. Mr. Madi was informed by letter dated 20 October 2016 that his request for EVR based on humanitarian grounds could not be approved.

11. Mr. Madi tendered his resignation by e-mail dated 30 October 2016, effective the same day. On 1 November 2016, he filed an application with the UNRWA DT challenging the Agency's decisions to deny his request for SLWOP and his request for EVR. It was transmitted to the Commissioner-General on 6 November 2016. The Commissioner-General filed his reply on 6 December 2016.

12. The UNRWA DT issued its Judgment on 19 November 2017, dismissing the application on the merits.

13. Regarding the first contested decision to deny Mr. Madi's request for SLWOP for a fifth year, the UNRWA DT found that, in accordance with UNRWA Personnel Directive No. A/5 (Annual, Special and Exceptional Leave) (PD No. A/5), the maximum duration of SLWOP was one year with a possibility of extension for a second year and that Mr. Madi had already been granted a total of four years and three months. The UNRWA DT held that the Agency had acted responsibly and transparently when dealing with his request and that Mr. Madi had failed to provide any evidence that the Agency's decision was biased or made with the intent to cause him prejudice, force him to resign, separate him for abandonment of post or deprive him of his service benefits.

14. As regards the second contested decision to deny Mr. Madi's request for EVR, the UNRWA DT held that the reasons for the decision were legitimate as his eligibility for EVR was not guaranteed and his EVR request was subject to a financial limit established in the form of an annual cap set by the Commissioner-General, as prescribed in ASPD No. A/9, which also allowed the Agency to deviate from its practice of approving EVR requests on a quarterly basis due to financial constraints in this case. The UNRWA DT concluded that the denial was a proper exercise of the Agency's broad discretion as UNRWA had duly considered and evaluated Mr. Madi's eligibility against the criteria set out in the applicable provisions and Mr. Madi had failed to adduce any evidence of improper motives or discrimination, including evidence in support of his allegation that younger staff members with fewer years of experience had been

allowed EVR. The UNRWA DT held further that there was no evidence of prejudice or improper motive, arbitrariness or capriciousness, procedural irregularity or error of law on the part of the Agency when it decided to reject Mr. Madi's request for EVR. The decision was based on a lack of funds which concerned all staff members and there was no indication that staff members stationed in Gaza were disadvantaged.

15. Finally, the UNRWA DT noted that there were serious doubts about Mr. Madi's intention to return to UNRWA and opined that his true intent was to string UNRWA along by using SLWOP until he reached his mandatory retirement age or until he was able to obtain EVR. It was absurd to expect the Agency to grant unlimited SLWOP to its staff members who leave UNRWA's employment prior to their mandatory retirement age to seek opportunities elsewhere. Based on the foregoing, the UNRWA DT declined to rescind the contested decisions.

Submissions

Mr. Madi's Appeal

16. In his appeal, Mr. Madi recounts the facts from his perspective and asks for a review of the rejection of his application for EVR and the consequences of depriving him of his retirement benefits following 21 years working with UNRWA by forcing him to resign from UNRWA. He claims the Agency forced him to resign leading to a loss of his retirement benefits and that no lawful grounds have been provided for denying his request for EVR.

17. In Part IV of the appeals form, asking appellants to identify the relief sought from the Appeals Tribunal, Mr. Madi indicated "NA".

The Commissioner-General's Answer

18. The Commissioner-General submits that the appeal is not founded on any of the grounds of appeal provided for under the Appeals Tribunal Statute and that Mr. Madi has failed to identify any remedies claimed. As such, the appeal is defective as the Appeals Tribunal jurisprudence has consistently held that it is not sufficient for an appellant to simply state his or her disagreement with the outcome of his or her case or repeat the arguments submitted before the UNRWA Dispute Tribunal. By restating the underlying facts from his perspective, Mr. Madi is in effect simply rearguing his case before the Appeals Tribunal.

19. The Commissioner-General further asserts that the UNRWA DT did not err as a matter of fact, law or procedure when it dismissed Mr. Madi's application. The UNRWA DT correctly identified and separately considered the two elements of the application, namely the challenge of the Agency's denial of his requests for SLWOP and EVR, and was cognizant of the respective applicable legal framework and, in a reasoned Judgment, correctly upheld the contested decisions.

20. In light of the foregoing, the Commissioner-General requests that the Appeals Tribunal dismiss the appeal in its entirety.

Considerations

21. In terms of Article 2(1) of its Statute, the Appeals Tribunal shall be competent to hear and pass judgment on an appeal filed against a judgment rendered by the UNRWA DT in which it is asserted that the UNRWA DT has (a) exceeded its jurisdiction or competence; (b) failed to exercise jurisdiction vested in it; (c) erred on a question of law; (d) committed an error in procedure, such as to affect the decision of the case; or (e) erred on a question of fact, resulting in a manifestly unreasonable decision. An appellant is thus obliged to bring his appeal within the parameters of that framework by identifying specific grounds of appeal. The appeals procedure is of a corrective nature and is therefore not an opportunity for a party to simply reargue his or her case. A party cannot merely repeat on appeal arguments that did not succeed before the UNRWA DT. More is required. The appellant must demonstrate that the UNRWA DT has committed an error of fact or law warranting intervention by this Tribunal.¹ Mr. Madi has failed even to allege that and his appeal is defective for that reason. Be that as it may, Mr. Madi is not legally represented and some latitude may be allowed in the interests of justice. Although Mr. Madi has not clearly formulated his grounds of appeal or the relief he seeks, the evident question for consideration is whether the UNRWA DT erred in finding that the Agency properly exercised its discretion when it denied Mr. Madi's requests for additional SLWOP and EVR.

¹ *Abdel Rahman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-610, para. 20; *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540, para. 28; and *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035, para. 30.

22. With regard to Mr. Madi's request for additional SLWOP, the matter is governed by paragraph 1.4.10 of Part II of PD No. A/5, the relevant part of which reads:

(A) Special leave without pay may be approved to allow staff members to work with other UN, non-UN organizations, taking into consideration the following factors:

(i) The work experience will likely enhance the staff member's performance with the Agency;

(ii) The work experience will likely contribute to the staff member's career development;

(iii) The operational needs of the Department/Field concerned will not be unduly affected by the staff member's absence.

...

(D) The period of release under the provisions of this Directive is limited to a maximum of one year. A second year of (...) [SLWOP] [] if requested by the staff member may be considered by the Agency. There is no right to SLWOP, and where SLWOP is granted for an initial year, there is no automatic entitlement to an extension of SLWOP for a second year. (...)

23. In reaching its conclusion that the Agency had acted properly (lawfully and reasonably), the UNRWA DT considered the following: i) Mr. Madi had no contractual right to additional SLWOP; ii) the two-year limitation on SLWOP in PD No. A/5; iii) the operational requirements of the Agency; iv) the Agency had acted in a transparent manner and had flexibly accommodated his requests in the past; v) Mr. Madi was aware of the consequences of exercising his choices and did not intend to return to the Agency; and vi) the absence of any evidence indicating bias or ulterior motive. The UNRWA DT did not err in any of its factual findings and did not err in its legal conclusion that the administrative decision of the Agency denying Mr. Madi a fifth year of SLWOP was both lawful and reasonable. Mr. Madi has not established any grounds of appeal in this regard.

24. It is common cause that Mr. Madi was eligible to be considered for EVR in terms of paragraph 8(A) of UNRWA Area Staff Rule 109.2 which provides that a staff member may leave the Agency's service by EVR on or after his or her 50th birthday, if he or she has at least 10 years of qualifying service.²

² Paragraph 6 of UNRWA Area Staff Rule 109.2 defines "qualifying service" as the total period of continuous employment by the Agency as an area staff member, provided that it may also include other periods of continuous service as an area staff member, or as an employee in the "A", "X", or "P"

25. Paragraph 12 of ASPD No. A/9 deals *inter alia* with the implementation of paragraph 8(A) of UNRWA Area Staff Rule 109.2 and provides that EVR applications under paragraph 8(A), as well as those under paragraph 8(B), being staff members over 60 with more than 10 years of qualifying service, will enjoy the highest priority among EVR applications. These applications are considered in descending order from the highest combination of years of age and years of service. It records further that EVR applications will normally be reviewed and approved on a quarterly basis. In addition, paragraph 15 of ASPD No. A/9 provides that applications for EVR may be exceptionally approved for humanitarian reasons, in cases of redundancy and in the interest of the Agency, subject to applicants meeting the EVR requirements under paragraph 8 of UNRWA Area Staff Rule 109.2. Most importantly, paragraph 16 of ASPD No. A/9 provides that the approval of EVR applications is subject to a financial limit established in the form of an annual cap by the Commissioner-General. This limitation is reinforced by UNRWA Area Staff Circular No. A/05/2015 (Early Voluntary Retirement Budget Allocation Strategy, 2015) dated 25 February 2015 which includes under the criteria for approving EVR requests for all categories of staff members: the availability of funds, humanitarian grounds and the interest of the Agency.

26. The UNRWA DT limited its consideration of Mr. Madi's request for EVR to his second request made on 3 August 2016 (he had not requested decision review of the rejection of his earlier request in accordance with UNRWA Area Staff Rule 111.2). The reason given by the Agency for declining the request for EVR was the lack of funding. In August 2016, the Agency, faced with financial and budgetary constraints, took a decision not to process any EVR applications until further notice. The DHR's e-mail of 23 September 2016 to Mr. Madi stated clearly the legitimate reason for the refusal as being "your application for an EVR cannot be supported at this time. Funding for all EVR applications has been suspended and advice is that there will be no further EVR funding available for the rest of the year." There is no countervailing evidence suggesting that this reason was invalid or not true. There was no other evidence indicating that the Agency in other respects had acted unreasonably or unfairly in rejecting the request.

category, which immediately preceded such qualifying service, and provided further that qualifying service shall not include any period of special leave with partial pay or without pay of one month's duration or more.

27. The UNRWA DT held correctly that while Mr. Madi was eligible to be considered for EVR in terms of UNRWA Area Staff Rule 109.2, he did not enjoy an unconditional right to EVR. It held further that the Agency had duly considered and evaluated Mr. Madi's request against the criteria set out in the UNRWA Area Staff Rules and other relevant administrative issuances. Its conclusion that the Agency acted lawfully, reasonably and fairly in rejecting the request for EVR on grounds of its budgetary constraints is unassailable. It deferred appropriately to the discretionary authority of the Commissioner-General in fiscal and budgetary matters and made no appealable error. It also rightly rejected Mr. Madi's claims of being discriminated against in the handling of his EVR request on the grounds that the allegations made were speculative and wholly unsupported by any evidence. If anything, Mr. Madi received sympathetic consideration as evident in the fact that he received SLWOP beyond the statutory entitlement.

28. For those reasons, the appeal falls to be dismissed in its entirety.

Judgment

29. The appeal is dismissed and Judgment No. UNRWA/DT/2017/036 is hereby affirmed.

Original and Authoritative Version: English

Dated this 29th day of June 2018 in New York, United States.

(Signed)

Judge Murphy, Presiding

(Signed)

Judge Raikos

(Signed)

Judge Halfeld

Entered in the Register on this 10th day of August 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar