



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

Judgment No. 2018-UNAT-894

B. Kosbeh *et al.*
(Appellants)

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 John Murphy
Judge Martha Halfeld

Case No.: 2018-1187

Date: 26 October 2018

Registrar: Weicheng Lin

Counsel for Appellants: Khaled Ahmad Abu-Nugira

Counsel for Respondent: Rachel Evers

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2018/029, 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 25 April 2018, in the case of *B. Kosbeh et al. v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. *B. Kosbeh et al.*¹ filed their consolidated appeal on 2 July 2018, and the Commissioner-General filed his answer on 10 September 2018.

Facts and Procedure

2. The following facts are uncontested:²

... As a result of the limited vocational, technical and academic university education and training offered to Palestine refugee students at UNRWA Educational Institutions, UNRWA introduced the Parallel Education Programme (“PEP”) at the technical level at Vocational Training Centres, and at the University level at the Faculty of Educational Sciences and Arts (“FESA”). The PEP is offered on a fee basis. The purpose of the PEP is to, *inter alia*, provide a greater opportunity to Palestine refugee youth in accessing UNRWA Educational Institutions.

... On 2 August 2012, the Agency promulgated Area Staff Personnel Directive A/3 Rev.1/Part XI/Amend. 4, introducing a new allowance. This new allowance concerns the “Additional Assignment Allowance – Parallel Education & Development Programmes”, which is payable to eligible Area staff members. Area Staff Personnel Directive A/3 Rev.1/Part XI/Amend. 4 was amended with the issuance of Area Staff Personnel Directive A/3 Rev.1/Part XI/Amend. 5, dated 1 October 2012 (“PD A/3”). Annex E attached to PD A/3 defines the categories of staff entitled to the allowance and includes Appendix A, which lists the posts of eligible UNRWA Area staff members.

... On 3 November 2013, by requests submitted through the “Staff gateway – Have your say” on the Agency’s intranet website, Applicants Najeh Musleh and Alia Ali requested to be paid the parallel education allowance similar to the teaching staff at FESA. In response to these requests, the Head, Field Human Resources Office

¹ The *B. Kosbeh et al.* group appealing before the Appeals Tribunal consists of 36 current or former staff members of UNRWA, 30 of which previously appealed to the UNRWA DT and six of which joined the appeal without having appealed to the UNRWA DT. Basem Kosbeh after whom the case is named is not appealing the UNRWA DT Judgment. Before the UNRWA DT, the *B. Kosbeh et al.* group consisted of 87 current or former staff members.

² Impugned Judgment, paras. 2-6, 8-10 and 13.

informed the Applicants, by separate letters on 29 June 2014, that the parallel education allowance “was not applicable” to their cases.

... By Area Staff Circular No. 03/2012, dated 2 August 2012, the Agency published the remuneration rates for teaching and non-teaching senior management staff at the FESA who were involved in the PEP.

... Between 6 August 2017 and 15 August 2017, 87 staff members filed applications with the Tribunal.

... ..

... By Order No. 168 (UNRWA/DT/2017/Corr. 001) dated 23 November 2017 (“Order No. 168”), the 87 applications were consolidated.

... By Order No. 180 (UNRWA/DT/2017) dated 13 December 2017 (“Order No. 180”), the Respondent was ordered to confirm to the Tribunal that the Agency had sent each individual Applicant a letter informing him or her that the parallel education allowance was not applicable in his or her case, and on which date each Applicant had been so informed. On 10 January 2018, [t]he Respondent submitted his response to Order No. 180.

... By Order No. 004 (UNRWA/DT/2018) dated 11 January 2018 (“Order No. 004”), the Tribunal transmitted the Respondent’s response to Order No. 180 to the Applicants and ordered the Respondent to provide further information.

... ..

... On 16 February 2018, the Respondent submitted his response to Order No. 004. The response was transmitted to the Applicants on 18 February 2018.

3. On 25 April 2018, the UNRWA DT issued Judgment No. UNRWA/DT/2018/029. The UNRWA DT found the applications of Najeh Musleh and Alia Ali not receivable on the ground that they had failed to submit a timely request for decision review. As to the other applications, the UNRWA DT considered the Appellants’ posts and the provisions covering the parallel education allowance and concluded that the Appellants were not eligible to receive a parallel education allowance. Some of the Appellants were in categories and positions which were not listed in Annex E to Part XI of PD A/3 and the other Appellants fell under the category of “non-teaching administrative staff” for which Annex E provided that their additional workload would be compensated by following UNRWA overtime rules. Additionally, the UNRWA DT dismissed the contention that UNRWA staff should receive the same income as their counterparts in governmental universities and colleges, noting that the Agency is governed by its internal rules and regulations and not the national laws of its members states. The UNRWA DT therefore dismissed the applications in their entirety.

Submissions

B. Kosbeh *et al.*'s Appeal

4. In response to the Commissioner-General's contention that the Appellants cannot receive the parallel education allowance because they are not eligible under PD A/3 and its annex on eligibility, B. Kosbeh *et al.* contend that this document, "like any law anywhere in the world, can be discussed and amended". The Appellants are entitled to the allowance under the United Nations legal framework which provides for the equality of rights and responsibilities. It should cover all those who work for the interests of the students, particularly the students enrolled in the parallel education programme.

5. Administrative staff and workers should receive the parallel education allowance just like the deans and vice-deans who are also administrative staff and who are not part of the teaching faculty and therefore cannot be credited with teaching hours. The Appellants bear an additional burden as a result of the steady increase in the number of students following the implementation of the parallel education programme at the three colleges. They serve in this for-profit programme in addition to their regular jobs and take on additional responsibilities similar to what is expected of administrative assistants, directors, registration and other departments. The Appellants request that the parallel education allowance be applied to them retroactively from the time it was granted to teaching staff, deans and vice-deans.

6. The three colleges have fee-based summer programmes for students with scholarships and students in the parallel education programme. The Appellants continue to work during this period and provide their services for free, without any compensation, while the instructors receive two allowances. As is the case with the Agency's other educational institutions during the summer holiday, when there are no students, the Appellants have the right to be treated like the rest of their colleagues who work in the Agency's other departments.

7. As to UNRWA Area Staff Rule 111.2 requiring a request for decision review as precondition for filing an application with the UNRWA DT, the Appellants contend that they "did not appeal an administrative decision that is not in line with the provisions that concern hiring, because the parallel [education] programme is extraordinary and recent. This programme was instituted many years after [they] were employed."

8. B. Kosbeh *et al.* challenge the UNRWA DT's finding that some of the Appellants fell under the category mentioned in paragraph 3.2.3 of Annex E to Part XI of PD A/3 and that considering the difficulty in assessing the impact that the programmes will have on them, they will be compensated for the additional workload in accordance with UNRWA overtime rules. The Appellants ask that UNRWA conduct a proper assessment as it did with respect to the teaching staff and the deans and vice-deans before responding to the Appellants' case.

9. While UNRWA is governed by its internal rules and regulations and not the national laws of its Member States, UNRWA staff at the university and college level derive all their regulations from, and follow, the instructions of the Ministry of Higher Education and Scientific Research of Jordan, including the curriculum and administrative working hours, the standards regarding the minimum number of teachers and number of students accepted in each specialization and all aspects of the educational process. The Appellants claim that all three colleges follow the instructions of Balqa' Applied University except for those that concern the parallel education allowance which should be followed as well. They attach memoranda from the University of Balqa' and the Ministry of Higher Education and Scientific Research of Jordan, to which the colleges adhere in all aspects of the educational process.

10. B. Kosbeh *et al.* ask that the Appeals Tribunal hold an oral hearing.

The Commissioner-General's Answer

11. As a preliminary matter, the Commissioner-General notes that B. Kosbeh *et al.* present evidence in the form of Annexes 9 and 10 (Balqa University PEP Program and correspondence from the Ministry of Education) which were not part of the case record before the UNRWA DT and for which B. Kosbeh *et al.* have not requested leave to have the documents admitted. Absent a showing of exceptional circumstances and a motion seeking leave to present such evidence on appeal, the Appeals Tribunal should not consider it.

12. The appeal is defective in that it fails to set out, by citation to any provision in Article 2(1) of the Appeals Tribunal Statute, the grounds of their appeal. The appeal fails to demonstrate that the UNRWA DT erred in law, procedure or fact or exceeded or failed to exercise the jurisdiction vested in it. The appeal does not challenge the UNRWA DT's reasons for dismissing the applications. It mainly advocates for a regulatory reform and reargues their case before the Appeals Tribunal.

13. The UNRWA DT did not err in dismissing Najeh Musleh's and Alia Ali's applications as not receivable. Both Appellants failed to submit a timely request for decision review pursuant to Area Staff Rule 111.2, and accordingly, the UNRWA DT correctly held that their applications were not receivable.

14. On the merits of the other applications, the UNRWA DT reviewed PD A/3 and its annex on eligibility of Agency staff members to receive an Additional Assignment Allowance and found that in light of the posts the Appellants occupied, they were not eligible to receive a parallel allowance. On the question of adhering to the instructions and rules of the Ministry of Higher Education, Jordan, the UNRWA DT considered the applicable jurisprudence and correctly concluded that the Agency is governed by its internal rules and regulations and not the national laws of its Member States.

15. The appeal is not well founded on any of the grounds of the Appeals Tribunal Statute and the UNRWA DT did not err in fact, law or procedure when it dismissed B. Kosbeh *et al.*'s applications. The Commissioner-General therefore requests that the Appeals Tribunal dismiss the appeal in its entirety.

Considerations

Preliminary Issues

Oral hearing

16. Firstly, Kosbeh *et al.* filed a request for an oral hearing. 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). 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. In addition, 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. Accordingly, the request for an oral hearing is denied.

Additional evidence

17. Pursuant to Article 2(5) of the Statute and Article 10(1) of its Rules, the Appeals Tribunal may receive additional evidence from a party "[i]n exceptional circumstances" "if that is in the interest of justice and the efficient and expeditious resolution of the proceedings" and if "the

Appeals Tribunal determines that the facts are likely to be established with such additional documentary evidence” unless such evidence “was known to either party and should have been presented at the level of the Dispute Tribunal”.

18. In the present case, Kosbeh *et al.* seek to introduce additional evidence in the form of Annexes 9 and 10 (Balqa University PEP Program and correspondence from the Ministry of Education) which were not presented to the UNRWA DT. No application has been filed requesting leave to adduce such evidence on appeal. Consequently, we rule that the documentation is not admissible.

Receivability Issues

19. Article 2(1) of the Statute provides that:³

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal 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.

20. As the Appeals Tribunal noted in *Saffir and Ginivan* “[a]n appeal is ‘a proceeding undertaken to have a decision reconsidered by a higher authority: especially the submission of a lower court’s or agency’s decision to a higher court for review and possible reversal’”.⁴

21. In particular, under the current procedural legislative framework, the appeal is an independent legal recourse granted to a litigant who asserts having suffered some grievance or damage from a judgment of the first instance Tribunal in order to obtain its annulment or variation by the higher tribunal judges. Therefore, the right to appeal arises when someone was

³ On 11 December 2009, an agreement was entered into between the Secretary-General of the United Nations and the UNRWA Commissioner-General by which UNRWA accepted the terms of the jurisdiction of the Appeals Tribunal to hear appeals against judgments of the UNRWA DT, pursuant to Article 2(10) of the Appeals Tribunal Statute.

⁴ *Saffir and Ginivan v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-466, para. 24 quoting Black’s Law Dictionary (Ninth Edition, 2009).

a party in the first instance proceedings and the decision has a negative impact on his/her situation. In this case, the appeal is a mechanism that allows the affected party to appeal a judgment or the portion of a judgment unfavourable to it, seeking to enlarge his or her own rights or to decrease the rights of his or her opponent under the judgment.

22. Consequently, in the two-tiered United Nations internal system of administration of justice - with the exceptions expressly provided for by law (i.e., appeals from decisions taken by the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board and by those organizations, agencies and entities that have accepted the Appeals Tribunal's jurisdiction, but have no first instance tribunals) - bypassing the jurisdiction of the first instance Judge, by directly lodging an appeal with the Appeals Tribunal against an impugned administrative decision, or by participating in an appeal filed by others who have litigated their cases before the first instance Tribunal, is not admissible.

23. In the case at hand, six of the Appellants (Ghassan Abu Rukbeh, Hiba Al Mashharawi, Mohammad Mousa, Ghaleb Al Khmour, Khaled Salem, and Ihab Abu Lafi) joined in the present appeal, without having previously been parties to the proceedings before the UNRWA DT. Consequently, their appeal is not receivable.

Merits

24. The issue before the Appeals Tribunal is whether the UNRWA DT erred in finding that the Agency's decision not to pay B. Kosbeh *et al.*⁵ a parallel education allowance, which is paid to teaching and non-teaching senior management staff at FESA and UNRWA Vocational Training Centres and their counterparts in governmental educational institutions, was lawful.

⁵ For ease of reference, the Appeals Tribunal will refer to the remaining 30 appellants also as "Appellants" or "B. Kosbeh *et al.*". It is understood that this group now excludes the six current or former staff members whose appeals have been found not receivable.

Legal framework

Annex 'E' to Part XI of PD A/3

ALLOWANCE AND PAY RATES FOR AGENCY AUTHORISED PARALLEL EDUCATION AND DEVELOPMENT PROGRAMMES

1. Purpose

1.1 To establish eligibility for an Additional Assignment Allowance and rates payable to Agency staff members who supervise, lecture or otherwise perform duties under Agency authorised parallel education or development programmes and who are eligible to receive an Additional Assignment Allowance for such duty.

...

3. Establishment of Additional Assignment Allowance Rates

...

3.2. For staff in Jordan Field vocational training centres:

3.2.1. Teaching staff: ...

3.2.2. Non-teaching senior management: ...

3.2.3. Non-teaching administrative staff: Given the difficulty in assessing the impact that the programme(s) will have on administrative staff, additional workload for non-management staff in:

3.2.3.1. posts up to grade 12 will be compensated by following UNRWA overtime rules (i.e. an extra payment per hour of overtime worked);

25. Annex E to PD A/3 sets out, *inter alia*, entitlements for those staff members involved in additional duties created by the PEP. Relevant to the case at hand is PD A/3 Annex E, paragraph 4 on "Eligibility of Agency staff members to receive Additional Assignment Allowance" which provides that:

4.1 Most Agency staff members are expected to assist as necessary with parallel education and development programmes as part of their normal duties and are not eligible to receive an Additional Assignment Allowance. Only those staff for whom the parallel education and development programmes require approved work beyond normal working hours are eligible. These staff are listed at Appendix A.

4.2 Parallel education programmes are only held in Agency facilities. The following classifications of staff members normally working in such Agency facilities are expected to work in their normal capacities without compensation, except where over-time is approved:

4.2.1. School Attendants;

4.2.2. Guards;

4.2.3. Cleaners;

4.2.4. Storekeepers.

26. Appendix A to Annex E provides a list of “UNRWA staff members eligible for additional remuneration for work in Parallel Education and Development Programmes”. Section 1 relates to authorised staff for Jordan Field Office in the following categories:

- Teaching Staff;
- Non-Teaching Administrative Staff and
- Non-Teaching Management Staff.

27. The UNRWA DT held that B. Kosbeh *et al.* were not entitled to any parallel education allowance, upon the following reasoning:⁶

... The Tribunal has examined the Applicants’ posts and the provisions covering the parallel education allowance and concludes that it is clear from Annex E to Part XI of PD A/3 that none of the Applicants are eligible to receive the parallel education allowance. Most of the Applicants are in categories and positions that are not listed in Annex E and/or the Appendix A. Therefore, they are not eligible to receive the allowance. A few of the Applicants fall under the category of ‘non-teaching administrative staff’, which is a category mentioned in paragraph 3.2.3 of Annex E. For this category of staff, the provision states that, considering the difficulty in assessing the impact that the programmes will have on administrative staff, the additional workload will be compensated by following UNRWA overtime rules. Therefore, these staff members are also not entitled to any parallel education allowance, apart from compensation according to UNRWA overtime rules in case of additional workload.

28. We find no error in, and uphold, this finding of the UNRWA DT. A reading of the plain text of the above cited provisions of Annex E to PD A/3 and Appendix A to Annex E satisfies us that the parallel education allowance is limited to Agency staff members who supervise, lecture or otherwise perform duties under Agency authorized parallel education programmes and who are eligible to receive an Additional Assignment Allowance for such duties. This is not the case of B. Kosbeh *et al.*

⁶ Impugned Judgment, para. 33.

29. The remainder of the Appellants' contentions that they should enjoy the same income as their counterparts in governmental universities and colleges and receive, on an equality basis, the parallel education allowance just like the deans and vice-deans who are also administrative staff, is also without merit. As correctly found by the UNRWA DT, the Agency is governed by its internal rules and regulations and not the national laws of its Member States. Besides, any different treatment of the deans and vice-deans is justified on account of the different functions performed by them under Agency authorized parallel education or development programmes. Therefore, in the present case, the principle "equal pay for work of equal value" does not apply. In other words, this is not a case of unequal treatment of equals.⁷

30. Accordingly, the appeal fails.

⁷ Comp. *Elmi v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-704, paras. 32-36, with references.

Judgment

31. The appeal is rejected and Judgment No. UNRWA/DT/2018/029 is affirmed.

Original and Authoritative Version: English

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

(Signed)

Judge Raikos, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Halfeld

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

(Signed)

Weicheng Lin, Registrar