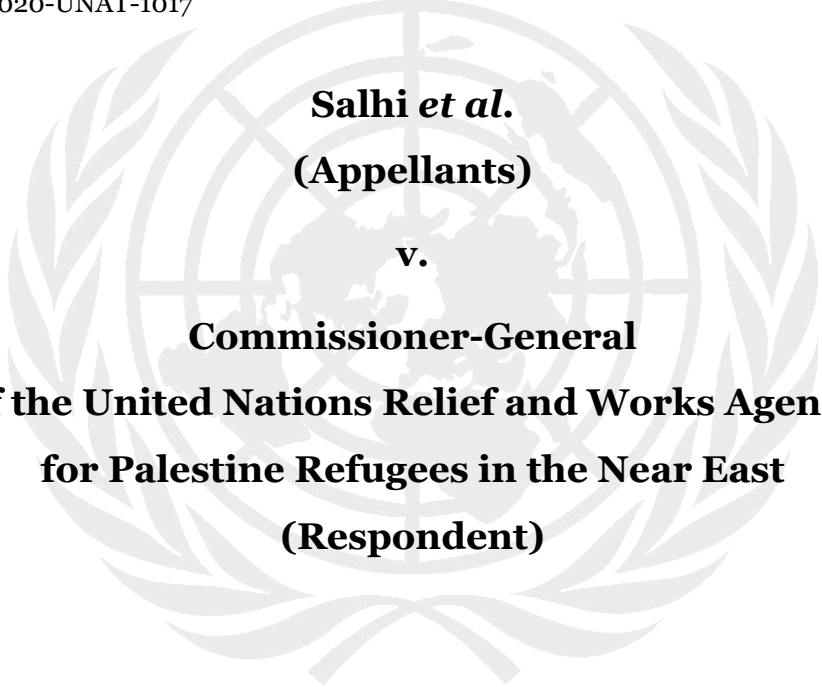




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2020-UNAT-1017



**Salhi *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 Sabine Knierim, Presiding Judge John Raymond Murphy Judge Dimitrios Raikos
Case No.:	2019-1339
Date:	26 June 2020
Registrar:	Weicheng Lin

Counsel for Appellants:	Amer Abu Khalaf, LOSA
Counsel for Respondent:	Rachel Evers

JUDGE SABINE KNIERIM, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by 70 Appellants (Salhi *et al.*) against Judgment No. UNRWA/DT/2019/045 rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT) on 9 September 2019 in the case of *Salhi et al. v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. The Appellants filed their joint appeal on 12 December 2019, and the Commissioner-General of UNRWA (CG) filed his answer on 17 February 2020. For the reasons set out below, we reject the appeal and uphold the decision of the UNRWA DT.

Facts and Procedure

2. Salhi *et al.*, at the time of filing their applications with the UNRWA DT, were employed by the Agency under fixed-term appointments (“FTAs”) in the Gaza Field Office (“GFO”).

3. In a statement to staff members on 17 January 2018, the CG announced that the Government of the United States was limiting its contribution to the Agency to 60 million USD in 2018, compared to its contribution of more than 350 million USD in 2017.

4. In a letter to all staff members in the GFO dated 6 March 2018, the Director of UNRWA Operations, Gaza (“DUO/G”) highlighted the financial difficulties the Agency was facing due to the sudden decrease in contributions to the Agency, specifically noting that “[t]he huge reduction in funding [...] that was expected in 2018 for both our Programme Budget and Emergency Appeals by UNRWA’s largest donor, the [United States of America], plunged the Agency into a dramatic and sudden existential crisis”.

5. Due to the Agency’s financial crisis, in an interoffice memorandum dated 4 July 2018, the Deputy Commissioner-General (“D/CG”) recommended to the CG that the CG authorise an increase of 548 part-time posts for the GFO, the redeployment of 280 staff members, and the separation of 113 staff members. The CG approved the D/CG’s recommendation on 5 July 2018.

6. In an update to staff members on 7 July 2018 about the impact of the financial crisis, the CG described the aforementioned measures that the Agency was taking to better address the challenges of the funding cut as follows:

We are engaging donors very actively but we need to be crystal clear about the necessity for some internal measures in order to limit the threats to our core services to Palestine refugees. The US funding cut is directly impacting our emergency interventions and we ran out of EA funding for the occupied Palestinian territory at the end of June. [...] You can be certain that we will continue to fundraise for these activities but currently, we need to take some difficult measures that prioritize refugees with the most critical needs. This is our humanitarian responsibility.

Emergency interventions in the West Bank are, proportionately, the most heavily impacted because they have been supported almost entirely by the US for years, and those resources are no longer available in 2018. ...

In Gaza, poverty and unemployment rates are at very high levels, and almost a million refugees – more than 50 percent of the population – depend on food aid from UNRWA. Food assistance is an absolute humanitarian necessity and a priority. We are therefore taking all measures possible to protect this vital assistance, including advancing program budget funds. To successfully do so, we have to adjust some other interventions.

One of them is our community mental health program. We are determined to alleviate the impact on refugees who rely on our mental health services. We are looking at ways to preserve at least a part of that intervention. Our job creation – cash for work – intervention in Gaza will also need to be scaled down further, as funds are no longer available to continue it at the current level.

Transitional shelter cash assistance is also being reviewed. The scheduled payment at the end of July 2018 will proceed. Further payments would require additional, dedicated resources.

7. On 25 July 2018, the Appellants individually received a letter signed by the DUO/G, informing them that their appointments would not be extended and that they would be offered new part-time fixed-term appointments. The letter read, in relevant parts, as follows:

[Your] fixed-term appointment is hereby extended until 31 August 2018. I regret to inform you, however, that, your fixed-term appointment on a full-time basis will not be renewed or extended beyond 31 August 2018 due to lack of funding.

However, you are hereby offered a new post on a fixed-term appointment at a part-time basis of 50%. Your grade will remain unchanged.

[...]

If you accept this offer, you will be transferred effective 1 September 2018.

8. The majority of the Appellants submitted requests for decision review in either August or September 2018.

9. Following an agreement reached on 1 September 2018 between the DUO/G and the Local Staff Union (“LSU”) in Gaza, the Appellants’ FTAs were extended on a full-time basis until the end of September 2018. The memorandum of the agreement indicated that: “[i]t must be understood that failure to mobilise additional resources on a significant scale would[,] on October 1[,] lead to implementation of the individual letters shared on July 25, i.e. moving 510 full time to part time contracts and 68 separations”.

10. As a result of the failure to mobilise additional resources for the period after September 2018, the Appellants were individually notified, by letters dated 21 October 2018, that their FTAs were reclassified from full-time to part-time and extended until 31 December 2018, effective 1 October 2018. These letters read, in relevant part, as follows:

With reference to [the] Director’s letter dated 25 July 2018 and because of the continuing financial crisis and shortfall in funding for the Emergency Appeal, you are hereby notified of an extension of your Fixed-Term Appointment effective 01 October 2018 until 31 December 2018 and reclassification of your category from full-time to part-time effective 01 October 2018 without any break in service.

This reclassification is temporary due to the financial crisis as mentioned above, and, is subject to the provisions of the Agency’s Staff Regulations, Rules, Personnel Directives and related issuances applicable to Area staff members on part-time service, including Area Staff Rule 103.8 paragraph 3 and the same may be amended from time to time.

11. By letters from the Head, Field Human Resources Office (H/FHRO) dated 5 November 2018, the Appellants were provided with further clarifications with respect to the reclassification of their appointments from full-time to part-time.

12. Between 28 November 2018 and 4 December 2018, Salhi *et al.* filed their applications with the UNRWA Dispute Tribunal.

13. By letters from the Officer-in-Charge, H/FHRO, dated 31 December 2018, the Appellants’ part-time FTAs were extended until 30 June 2019.

14. In a statement on 1 May 2019, the CG announced a decision to reinstate 500 part-time staff members in the GFO to full-time employment from 1 May to 31 December 2019. Although not entirely clear from the record, the Appellants appear to have benefited from this decision. Their challenge was thus limited to the contested decision of 25 July 2018 not to renew their

FTAs on a full-time basis beyond 31 August 2018 (later extended to 30 September 2018) due to lack of funding and to offer them new appointments on a part-time basis of 50%.

15. In its judgment dated 9 November 2019, the UNRWA DT consolidated the applications of Salhi et al. It held that the applications of Mariyam Al Ashal (No. 39 of the Applicants) and Tahani Abu Ghali (No. 43 of the Applicants) were not receivable either because they had failed to establish that they had submitted a timely decision review request or because their requests for decision review were not dated. The other 68 applications were receivable, but they were dismissed on the merits. The UNRWA DT held that the contested decision was lawful, reasonable and did not violate the acquired rights of the Appellants. The Appellants received the Arabic translation of the Judgment on 28 November 2019, and filed their joint appeal on 12 December 2019.

Parties' Submissions

Salhi et al.'s appeal

16. The Appellants submit that the UNRWA DT erred in fact and in law when assessing the evidence before it and coming to the conclusion that they had failed to establish that the contested decision was arbitrary, capricious or procedurally unfair.

17. They claim that the UNRWA DT erred in failing to address the contractual relationship and circumstances between each individual Appellant and the Agency by consolidating the cases and not dealing with each application individually.

18. The Appellants maintain that the UNRWA DT disregarded Area Staff Regulation 12.1, which allows amendment of the regulations without prejudice to the acquired rights of staff members. The CG, they contend, entirely ignored their acquired rights when making the contested decision.

19. They also claim that the UNRWA DT erred in fact and in law by not translating most of the documents (request for decision review) filed and tendered by them.

20. Finally, the Appellants maintain that the UNRWA DT erred in fact and in law by not being fair, just and transparent.

21. The Appellants ask the Appeals Tribunal to reverse the Judgment of the UNRWA DT, to order their reinstatement to their former posts and to award them compensation for financial loss.

The Commissioner-General's answer

22. The CG contends that the Judgment of the UNRWA DT was free of error and correct in its conclusion that Salhi *et al.* failed to establish that the non-extension of their FTAs was unlawful and unreasonable. The FTAs and the Appellants' letters of appointment do not carry any expectation of renewal or conversion. The CG acted reasonably, fairly and justly in the context of the financial crisis. Salhi *et al.*'s reliance on the Area Staff Regulation to assert acquired rights is patently misplaced. No amendment to the staff regulations was relevant or in contention.

23. The CG submits that the UNRWA DT did not err in consolidating the applications on the grounds of convenience and on the basis that the applications required the determination of common questions of law and fact.

24. The CG asks the Appeals Tribunal to dismiss the appeal.

Considerations

Appeals filed by Ms. Al Ashal and Abu Ghali

25. The UNRWA DT held that the applications filed by Ms. Al Ashal and Abu Ghali were not receivable, and this finding was not challenged on appeal.

Preliminary issues

26. We deal first with the challenge to the consolidation of the applications. The UNRWA DT, having reviewed the applications and having noted the common questions of law and fact, considered it appropriate to consolidate the applications and issue only one judgment. Its decision in that regard was within its discretion and justifiable. Where separate applications have been filed and it appears to the UNRWA DT convenient to do so, it may consolidate the applications whereupon the applications shall proceed as one application. The overriding consideration is convenience, expedience and judicial economy. The UNRWA DT may order consolidation if it is satisfied that such a course of action is favoured by the balance of

convenience and that there is no possibility of substantial prejudice to any party. The convenience of consolidating the applications in this case is self-evident. All the Appellants were in exactly the same position and the contested decision affected them all equally. The facts and applicable law were the same for each application. Moreover, the Appellants have not made out any cogent case that anyone of them was substantially prejudiced in any respect. The UNRWA DT accordingly exercised its discretion lawfully and appropriately and Salhi *et al.* are entitled to no relief on this score.

27. It may be noted at the outset that the Appellants accepted the renewal of their appointments on 1 October 2018 on different terms. They thus acquiesced in the contested decision but challenged it simultaneously. It is an established principle of international administrative law that an applicant's right to review of a contested administrative decision can be preempted should s/he, by unequivocal conduct inconsistent with an intention to seek review, acquiesce in the decision. In the present case, the evidence is not clear on whether in acquiescing in the decision Salhi *et al.* reserved their rights of review. Furthermore, the CG has not pleaded preemption. Accordingly, we will assume there was no preemption in this case.

Lawfulness of the reclassification of the FTAs

28. Area Staff Rule 109.5 provides that an FTA shall expire without prior notice on the expiration date specified in the letter of appointment. Area Staff Circular No. 4/95, dated 5 April 1995, on Area staff posts and appointments, provides, in paragraph 6, that the extension of appointments will depend on the Agency's continuing need for the post, the availability of funding and the staff member's performance. The Appellants' letters of appointment provided clearly that their appointments did not carry an expectation of renewal or conversion to any other type of appointment. It is also a well-established principle in our jurisprudence that fixed-term appointments carry no expectation of renewal or conversion to another type of appointment. It is thus indisputable that the Appellants' FTAs did not carry an expectation of renewal or conversion to any other type of appointment. Nevertheless, an administrative decision not to renew an FTA can be challenged on the grounds of legality, reasonableness and procedural fairness.¹

¹ See, for example, *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-311, paragraph 32.

29. The evidence shows indisputably that the decision not to renew the full-time FTAs but to reclassify them to part-time FTAs was related to the financial crisis that the Agency was facing as set out fully in the CG's messages to staff members in July and August 2018. It was common knowledge that the Agency had experienced a significant decrease in funding from certain donors, most notably the Government of the United States. The resultant situation compelled the Agency to restructure some of its departments or units, including abolishing posts, creating new posts, letting FTAs lapse and redeploying staff. The CG was constrained to make certain unenviable operational choices. He decided to take measures to prioritize and secure the Agency's community mental health programme and cash for work programme in Gaza in order to protect vital food assistance to a million refugees. To do that, he was obliged to re-structure and to make job cuts. The decision was taken in good faith and on a reasonable basis.

30. There was a *bona fide* reason to restructure and it was operationally rational not to renew certain FTAs on a full-time basis but to reclassify them to part-time appointments. If an exercise of discretion by the CG is legal, rational, procedurally correct and proportional, there will be no basis for interference. The Appellants have not identified any relevant matters that were ignored or any irrelevant matters that were considered in the decision not to renew their full-time FTAs. They received proper notice of the decision, which was later delayed by one month, and were offered and accepted reasonable alternatives intended to avoid their dismissal, which in the end turned out to be temporary measures. Absent any evidence of any improper motive or irrational consideration, and given the *bona fide* and operational necessity to restructure, there is no basis to conclude that the CG acted unreasonably in relation to the Appellants.

31. With regard to the Appellants' contention that their acquired rights have been violated, it must be kept in mind that employment contracts with the Agency are signed subject to the provisions of the Staff Regulations and the issuances which in this instance make it clear that FTAs carry no expectation of renewal. In so far as an offer of future employment on a different basis might be construed substantively as an amendment of contractual rights (which formally it is not), in the circumstances of this case such "amendment" was reasonable and did not involve the confiscation or spoliation of any right or benefit that subsisted beyond the expiry of the FTA. The decision of the CG to offer the Appellants part-time positions was based on a precise assessment of the situation in

issue. The proposed change was necessary and reasonably related to the objective of prioritizing and securing the core activities of the Agency. The decision, moreover, in keeping with the principle of proportionality, sought to minimize harm to the Appellants. Therefore, their claim about their acquired rights is without merit.

32. The Appellants' complaint that the UNRWA DT erred by not translating documents filed by them with the UNRWA DT is vague, unsubstantiated and probably inconsequential.

33. In the premises, the appeal must be dismissed.

Judgment

34. The appeal is dismissed and Judgment No. UNRWA/DT/2019/045 is affirmed.

Original and Authoritative Version: English

Dated this 26th day of June 2020.

(Signed)

Judge Knierim, Presiding
Hamburg, Germany

(Signed)

Judge Murphy
Cape Town, South Africa

(Signed)

Judge Raikos
Athens, Greece

Entered in the Register on this 16th day of July 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar