

2016-UNAT-688, Haimour and Al Mohammad

UNAT Held or UNDT Pronouncements

UNAT considered the Appellant's appeals. UNAT did not find merit in the Appellant's claims that UNRWA DT erred on questions of law and procedure by finding that the security situation and safety of staff was considered by the Administration based on the United Nations regulations concerning the safety of its staff members. UNAT held that the Appellants failed to demonstrate any errors in UNRWA DT's finding that the Administration's decision to assess and terminate their service resulted from a valid exercise of the discretionary power of the Administration and was not tainted by improper motives. UNAT rather found that they merely voiced their disagreements with UNRWA DT's findings and resubmitted their submissions to UNAT. In sum, the Appellants did not meet the burden of proof of demonstrating an error in UNRWA DT's judgment such as to warrant its reversal. Moreover, one of the Appellants raised the claim that there was a connection between the termination of his service and his suspension from duty for possible misconduct, but UNAT held that this ground was not receivable as it was not raised before UNRWA DT. UNAT dismissed the appeal and affirmed UNRWA DT's judgment.

Decision Contested or Judgment/Order Appealed

UNRWA DT judgment: The Applicants contested the decisions to separate them from service, as they had not been appointed to alternative posts. UNRWA DT consolidated the applications, given their similar natures. UNRWA DT noted that the Agency had made reasonable efforts to find the Applicants suitable placements, that their appointments with the Agency were properly terminated on 31 March 2014, and that the relief sought by the Applicants had no basis in fact or in law. UNDT dismissed the applications.

Legal Principle(s)

The appeals procedure is of a corrective nature and, thus, is not an opportunity for a dissatisfied party to argue his or her case anew. An appellant cannot merely repeat arguments that did not succeed before the lower court. The function of the Appeals Tribunal is to determine if the first instance 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 UNAT Statute. The appellant has the burden of demonstrating to UNAT that the judgment they seek to challenge is defective. It follows that the appellant must identify the alleged defects in the judgment and state the grounds relied upon in asserting said deficiency. An appellant may not bring issues before UNAT that were not previously raised before the first instance tribunal.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Haimour and Al Mohammad

Entity

UNRWA

Case Number(s)

2016-918

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Oct 2016

President Judge

Judge Raikos

Language of Judgment

Arabic

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNAT)

Appeal

Applicable Law

UNRWA Area Staff Regulations

- Regulation 9.1
- Regulation 9.3

UNRWA Area Staff Rules

- Rule 109.1

Related Judgments and Orders

2015-UNAT-594

2015-UNAT-579

2014-UNAT-487

2012-UNAT-236

2011-UNAT-110

2010-UNAT-035

2015-UNAT-547

2012-UNAT-221