UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2022-UNAT-1283

Ahlam Saleem Allari, Khalil Mohammad Khalaf and Rawan Hussein
(Appellants)

v.

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

JUDGMENT

Before:	Judge Kanwaldeep Sandhu, Presiding Judge Graeme Colgan Judge Martha Halfeld
Case Nos.:	2021-1616, 2021-1617 & 2021-1618
Date of Decision:	28 October 2022
Date of Publication:	9 December 2022
Registrar:	Juliet Johnson

Counsel for Appellants:	Self-represented
Counsel for Respondent:	Hannah Tonkin

JUDGE KANWALDEEP SANDHU, PRESIDING.

1. Ahlam Allari, Khalil Khalaf, and Rawan Hussein (the Appellants) are staff members with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or the Agency). They contested the decisions of UNRWA to convert their limited duration contracts (LDCs) to fixed-term appointments (FTAs) (the contested decisions). In Judgment UNRWA/DT/2021/027 (the impugned Judgment), the UNRWA Dispute Tribunal (UNRWA DT) consolidated their applications, denied their request for oral hearings, and dismissed their applications as moot and not receivable, as the Applicants subsequently signed the FTAs.

2. The Appellants each filed individual appeals of the Judgment to the United Nations Appeals Tribunal (Appeals Tribunal or UNAT), which were consolidated[1] for the purposes of this decision. They are essentially not satisfied with the terms and conditions of their FTAs, as they want higher salaries and to have their service computation dates start from the beginning of their initial LDCs.

3. For the reasons set out below, we dismiss the appeals.

Facts and Procedure[2]

4. Starting from 3 July 2014, Ms. Ahlam Allari was employed by the UNRWA for several months under daily-paid modality, and subsequently, effective 3 May 2015, under LDC modality. Ms. Allari's LDC was renewed several times, lastly effective 1 May 2019. At the time of her application to the UNRWA DT, Ms. Allari was employed as Administrative Officer A, Band F, Step 3, at the Finance Department, Headquarters, Amman (HQA).

5. Starting from 20 October 2014, Ms. Rawan Hussein was employed by the UNRWA for two months under daily-paid modality, and effective 23 December 2014, under LDC modality. Ms. Hussein's LDC was renewed several times, lastly effective 24 February 2019. At the time of her application to the UNRWA DT, Ms. Hussein was employed as Accounts Officer (Receivables), Band F, Step 3, at the Finance Department, HQA.

[1] *Khalil Muhammad Khalaf, Ahlam Saleem Allari & Rawan Hussein v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Order No. 466 (2022).
[2] These facts are drawn from paragraphs 2-15 of the impugned Judgment.

6. Effective 23 July 2019, Mr. Khalil Khalaf was employed by the Agency on a LDC, as Provident Fund Accounts and Reporting Officer, Band G, Step 5, at the Finance Department, HQA.

7. Effective 1 January 2019, UNRWA decided to only offer any future Area staff a LDC rather than a fixed-term contract.

8. In September 2019, the Inter Staff Union Conference (ISUC) and the UNRWA agreed that all LDCs hired against fixed-term posts would be converted to FTAs.

9. On 8 October 2019, the UNRWA informed the Appellants that their LDCs would be converted to FTAs effective 1 October 2019, and that they would be placed on Grade 14, Step 1 (Ms. Allari and Ms. Hussein), and Grade 16, Step 1 (Mr. Khalaf). They were also informed that should they choose to decline the offer of conversion they would remain on LDC status until the expiry of their then-current contracts. They were told that they should inform UNRWA of their decisions by 10 October 2019.

10. The Appellants had serious concerns, including the amount of salary they would lose as a result of such conversion. The UNRWA informed them that the decision was the result of an agreement between the ISUC and the UNRWA that the staff on LDCs would be placed on Step 1 of their respective post grades and that their entry on duty date would be the effective date of the FTAs. The UNRWA also reiterated that they had the option to decline the offer and remain on their then-current LDCs until the expiry of those contracts.

11. On 14 October 2019, the UNRWA urged them to make their decisions by the close of business on 15 October 2019.

12. Later in October 2019, the Appellants individually met with the Director of Human Resources (DHR) to discuss their concerns.

13. By separate emails dated 29 and 30 October 2019, the DHR informed them that if their FTAs and the conditions thereof did not meet their expectations, the UNRWA would consider their decisions as “non-acceptance” of the offers. The DHR also informed them that UNRWA would honour their then-current LDCs until their expiry dates. He also added that, in that case, the UNRWA would proceed with the recruitment processes to fill the subject

fixed-term posts in order to ensure that these functions were filled through an appropriate contractual modality.

14. The Appellants declined the offers, and in December 2019, they each submitted a request for decision review of the UNRWA's decisions to convert their LDCs to FTAs.

15. By General Staff Circular No. 05/2019 dated 8 December 2019, in the absence of a Deputy Commissioner-General, the authority to carry out decision review with respect to staff members at HQA was delegated to the Director of Health.

16. On 15 January 2020, the Director of Health rescinded the contested decisions in the cases of Ms. Allari and Ms. Hussein and informed them that they would remain on their then-current LDCs until the expiry thereof. Even though there was no official response to Mr. Khalaf's request for decision review, he was also allowed to remain in his then-current LDC until the expiry thereof.

17. Following the intervention of their superiors, in February 2020, the Appellants agreed to the termination of their LDCs, and accepted the offer of the FTAs.

The UNRWA DT

18. On 29 March 2020, Mr. Khalaf, and on 12 April 2020, Ms. Allari and Ms. Hussein, filed their applications against the contested decisions with the UNRWA DT. They all contended that they were losing a substantial part of their salaries with their FTAs. They requested to be offered FTAs with higher salaries and to have their service computation dates start from the beginning of their initial LDCs.

19. Having considered the applications and noted the common questions of law and fact, the UNRWA DT held that it was appropriate to consolidate the three applications.

20. On 13 June 2021, by the impugned Judgment, the UNRWA DT rejected the applications as moot because not only did the Agency rescind the contested conversion decisions and the Appellants remained in their current LDCs until expiry, but also because they accepted the offer of the FTAs and therefore voluntarily agreed to the termination of the LDCs. The UNRWA DT held the applications were not receivable.

Submissions

Appellants' Appeal

21. The Appellants request the Appeals Tribunal to reverse the impugned Judgment and grant them all the forms of relief that were sought in the course of the proceedings. In the alternative, they request the Appeals Tribunal to find that their applications were receivable and to remand them to the UNRWA DT for consideration by a different judge for the sake of objectivity.

22. The Appellants submit that since the UNRWA DT had chosen to combine the three cases, it should, as a matter of fairness and reason, have convened an oral hearing for the three applications, if at least one of the three applicants had provided a sufficient and convincing reason for doing so. In particular, Ms. Hussein had brought to the attention of the UNRWA DT that as a result of the contested decision, she was subjected to discrimination as compared with her colleagues at HQA, and specifically at the Finance Department. She had evidence which, owing to ethical and legal considerations, could not be submitted to the UNRWA DT without prior permission. Nevertheless, that Tribunal failed to exercise its procedural authority and jurisdiction under paragraph 13(2) of its Rules of Procedure (Evidence) requesting her to submit her evidence, which she was "compelled to omit" from her application.

23. Appellants claim the UNRWA DT erred in fact and law when it found that there was no longer an actual live controversy between them and management.[3] It further erred when it found that a settlement had been reached between the applicants and management.[4] According to the Appellants, a reliable settlement or memorandum of understanding would have been one signed by the employee and the employer, each acting of their own free will. No legitimacy or reliability would attach to a memorandum of understanding or settlement signed by a weaker party that had been "coerced" by the employer.

24. In addition, they submit the UNRWA DT failed to properly identify the scope of the application. The Appellants argue that one of the duties of the judge is to examine the case thoroughly and identify the components of the contested decision, irrespective of the wording and terms used by the applicant in their request for a review of the decision and in their application. In

[3] Impugned Judgment, para. 75.
[4] *Ibid.*, para. 76.

their request for review of the decisions and in their applications, they referred clearly and unambiguously to their years of satisfactory service with the UNRWA and asked for those years and steps to be taken into account, including benefits and entitlements such as pension entitlements.

The Commissioner-General's Answer

25. In response, the Commissioner-General submits that the UNRWA DT did not err when it dismissed the Appellants' applications.

26. Regarding the UNRWA DT's denial of the Appellants' request for an oral hearing, the Commissioner-General submits that such denial falls within the UNRWA DT's discretion in the management of its cases pursuant to Article 11 of the UNRWA DT Rules of Procedure and the Appeals Tribunal does not lightly interfere with such discretion.

27. Further, the Commissioner-General contends that the UNRWA DT did not err in law in its conclusion that the matter before it was moot. The Appeals Tribunal has consistently found that the Tribunals do not have jurisdiction to examine the merits of an administrative decision that has been rescinded or superseded by subsequent actions of the Administration, thus rendering the matter moot.

28. As regards the suggestion that a hearing would have resolved the issue of mootness, the Commissioner-General says that the intended evidence and contentions relating to discriminatory treatment against another staff member similarly-situated has no nexus with the issue of mootness.

Considerations

29. The issues under appeal are whether the UNRWA DT erred in law, procedure, or fact resulting in a manifestly unreasonable decision when it denied the Appellants' request for an oral hearing and when it found that the applications were not receivable as the matter was moot due to the Agency rescinding the contested decisions.

UNRWA DT's Denial of an Oral Hearing

30. Under Article 2(1)(d) of the Statute of the UNAT, the Appeals Tribunal is competent to hear and pass judgment on an appeal filed against a judgment rendered by the Dispute Tribunal in which it is asserted that the Tribunal has committed an error in procedure, such as to affect the decision of the case. It follows that a party, to be successful on appeal, not only has to assert and show that the Dispute Tribunal committed an error in procedure but also that this error affected the decision on the case.[5]

31. We do not find that the UNRWA DT committed an error of procedure by denying the Appellants' request for an oral hearing.

32. Pursuant to Article 11 of the Rules of Procedure of the UNRWA Dispute Tribunal, it is within the discretion of the Tribunal to decide to hold an oral hearing.

33. Article 14 provides that "The Tribunal may, at any time, either on an application of a party or of its own initiative make any order or give any direction which appears to the judge to be appropriate for a fair and expeditious disposal of the case and to do justice to the parties."

34. In the impugned Judgment, the UNRWA DT lawfully exercised this discretion and gave a reasonable explanation for not holding an oral hearing. It considered the Appellants' request that they wanted an oral hearing before the UNRWA DT "in order to hear their testimonies and to have the opportunity to call witnesses". The Tribunal correctly determined that the comprehensive documentary evidence before it was sufficient to render a decision without the need for an oral hearing, especially as the issue was one of receivability.

35. Further, the Appellants have not shown how the denial of the request to hold an oral hearing affected the Judgment.

36. The Appellants argue that Ms. Hussein had provided a reason for an oral hearing in her application, namely that as a result of the contested decision, she was subjected to "discrimination" while her colleagues at HQA and specifically at the Finance Department, were converted from LDC to FTA without being subjected to the same "coercive provisions that were applied to her". As a result, all the Appellants have a "good reason" for an oral hearing.

[5] *Nadeau v Secretary-General of the United Nations*, Judgment No. 2017-UNAT-733/Corr.1, para. 31.

37. We disagree. The Appellants have not provided evidence to support the allegation of discrimination or coercion. The Appellants say that the UNRWA DT should have ordered Ms. Hussein to submit this evidence as she was "compelled" to omit it from her application. The onus is on an applicant to present evidence in support of their case. From the time the applications were filed, there were multiple interim applications and orders during the UNRWA DT's proceedings, including the Tribunal granting Ms. Hussein's motion to file observations on the Respondent's reply and to submit additional evidence if she wished to. There is no evidence to support her allegation that she was "compelled" to omit any evidence during the process.

38. The Appeals Tribunal has consistently held that the Dispute Tribunal is in the best position to decide what is appropriate for the fair and expeditious disposal of a case and to do justice to the parties and therefore enjoys a wide margin of discretion in all matters relating to case management. Further the Appeals Tribunal "must not interfere lightly in the exercise of the jurisdictional powers conferred on the tribunal of first instance to enable cases to be judged fairly and expeditiously and for dispensation of justice".[6]

39. Therefore, we find that the UNRWA DT did not commit an error of procedure such as to affect the decision of these cases in denying an oral hearing.

Decision on Receivability

40. This issue is whether the UNRWA DT erred in law or fact resulting in a manifestly unreasonable decision when it found that the applications were not receivable as the contested decisions were rescinded rendering the matter moot.

41. The Appeals Tribunal in *Kallon*[7] set out the doctrine of mootness as follows:

> A judicial decision will be moot if any remedy issued would have no concrete effect because it would be purely academic or events subsequent to joining issue have deprived the proposed resolution of the dispute of practical significance; thus placing the matter beyond the law, there no longer being an actual controversy between the parties or the possibility of any ruling having an actual, real effect..... Just as a person may not bring a case about an already resolved controversy (res judicata) so too he

[6] *Ibid*., para 32.
[7] *Kallon v Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742, para. 44.

> should not be able to continue a case when the controversy is resolved during its pendency.

42. In the impugned Judgment, the UNRWA DT found that the contested decisions, namely the Agency's decisions to convert the Appellants' LDCs to FTAs, were rescinded, or not implemented, as the Appellants were allowed to remain in their LDCs until expiry. As a result, the Tribunal considered there was no longer an actual or live controversy between the parties.

43. We note that there is no factual dispute that on 15 January 2020, the Director of Health rescinded the contested decisions and informed Ms. Allari and Ms. Hussein that they would remain on their LDCs until expiry. Although there was no formal communication with Mr. Khalaf, he was also allowed to remain on his LDC until expiry.

44. Therefore, we agree with the UNRWA DT and uphold its findings that since the contested decisions to convert the Appellants' LDCs to FTAs effective 1 October 2019 was rescinded on 15 January 2020 and the Appellants continued on their LDCs, this rendered the contested decisions moot, as there was no longer an actual controversy between the parties. The decisions the Appellants contested were the 1 October 2019 conversions of their LDCs to FTAs; but these decisions were rescinded and did not occur, which resulted in Appellants continuing on their LDCs. Therefore, the controversy regarding the conversion was resolved during its pendency.

45. Further, there is no dispute that in February 2020, all the Appellants subsequently agreed to the termination of their LDCs and accepted the offer of FTAs. The Appellants argue that they were "coerced" into this agreement. There are no specifics or corroborating evidence provided of coercion or the Appellants being "browbeaten" into signing the settlement. By agreeing to their FTAs, the UNRWA DT correctly found that this also rendered the applications on the contested decisions moot, as the LDCs were terminated as part of that agreement.

46. The Appellants are essentially not satisfied with the terms and conditions of their FTAs; however, the contested decision before us and the UNRWA Dispute Tribunal was the Agency's 2019 decision to convert their LDCs to FTAs (which was subsequently rescinded by the Agency, and still later, overridden by the Appellants' agreement in 2020 to terminate the LDCs and accept the FTAs).

47. The subsequent agreement and the resulting FTAs are not before us as they are different administrative decisions than the 1 October 2019 conversion decision. The Appellants contested the 1 October 2019 conversion of their LDCs to FTAs, not their subsequent agreement in 2020 to accept the FTAs which is a different administrative decision with different circumstances and consequences that affected the terms and conditions of their employment. If the Appellants wished to contest the agreement, they would have had to file a separate challenge which is not before us in this appeal.

48. Accordingly, the appeals must fail and are dismissed.

Judgment

49. The appeals are dismissed, and Judgment No. UNRWA/DT/2021/027 is affirmed.

Original and Authoritative Version: English

Decision dated this 28th day of October 2022 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Sandhu, Presiding	Judge Colgan	Judge Halfeld

Judgment published and entered into the Register on this 9th day of December 2022 in New York, United States.

(Signed)

Juliet Johnson, Registrar