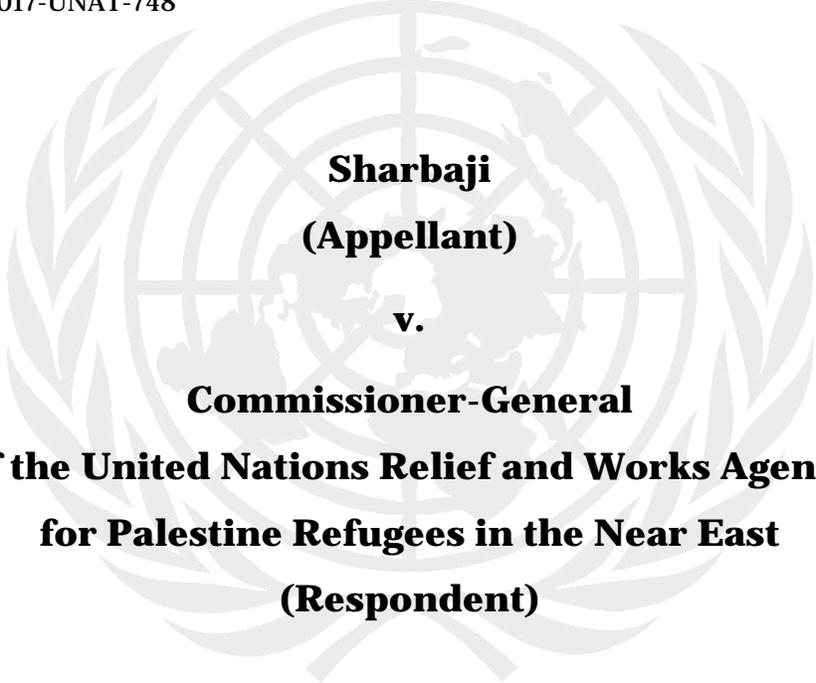




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2017-UNAT-748



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

**JUDGMENT**

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Before:	Judge Deborah Thomas-Felix, Presiding Judge Rosalyn Chapman Judge John Murphy
Case No.:	2016-984
Date:	14 July 2017
Registrar:	Weicheng Lin

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Counsel for Mr. Sharbaji:	Amer Abu-Khalaf, LOSA
Counsel for Commissioner-General:	Rachel Evers

**JUDGE DEBORAH THOMAS-FELIX, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2016/027, 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 26 September 2016, in the case of *Sharbaji v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Mohammad Khalil Sharbaji filed the appeal on 10 November 2016, and the Commissioner-General filed an answer on 22 December 2016, which was considered filed on 9 January 2017.<sup>1</sup>

**Facts and Procedure**

2. The following facts are uncontested:<sup>2</sup>

... Effective 7 April 2010, the Applicant entered the service of the Agency as a Loan Officer on a fixed-term appointment, at Grade 7, in the Yarmouk Branch of the Microfinance Department (“MD”) of the Syria Field Office (“SFO”). On 3 November 2013, the Applicant’s fixed-term appointment was extended for a new period expiring on 31 December 2014.

... Due to the ongoing violence affecting Syria, the Applicant was transferred in July 2012 to the Al-Ameen Branch where he worked as a Loan Officer until 7 August 2013. Effective 7 August 2013, he was transferred to work as an MD [Information Technology (IT)] focal point.

... In September 2014, the MD/SFO developed a redundancy plan abolishing 17 posts effective 31 December 2014, noting, *inter alia*:

At the current level, there is overstaffing in loan officers’ post, which cannot be financed from the current level of outreach due to capital limitations. Reductions will also include administrative staff, while maintaining a skeletal administrative staffing to maintain core administration required to support its operations.

It is planned to maintain six loan officers (LO) at each branch (except Damascus area, where an additional two LOs will be maintained to work on the collections of the bad portfolio), one branch manager, area loan supervisor, cashier, clerk, data operator, and cleaner. In addition, a skeletal administrative staff at the national offices for management,

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<sup>1</sup> Order No. 273 (2016).

<sup>2</sup> Impugned Judgment, paras. 2-10.

[human resources (HR)] and finances will be maintained. Currently, MD employs 82 staff members (47 fixed term and 35 [Special Service Agreement (SSA)] allocated in Damascus area, Tartous, Latakia, and Suwaida. The proposed list of needed versus redundant staff, as at 1 January 2015, [...] indicates that the total number of staff required to maintain the current level of operations is 56 staff (30 fixed and 26 SSA), while the redundant staff will be 27 (17 fixed and 10 SSA).

... On 15 September 2014, the Agency organized a meeting with the MD/SFO staff members to explain the financial situation of the department, the redundancy process and the evaluation criteria for the different posts.

... By letter dated 30 September 2014, the Head, Field Human Resources Office (H/FHRO) informed the Applicant that his post would be abolished effective 31 December 2014 and that he was declared provisionally redundant effective 1 October 2014. The letter provided in relevant part:

I have to inform you that based on the evaluation of MD staff members conducted during this month; your post is one of the abolished posts. Consequently you are hereby, [sic] declared provisionally redundant effective 1 October 2014. Your provisional redundancy is regulated by the Area Personnel Directive A/9 [on Separation from Service], Sec[ti]on 15.

In accordance with the above directive we provide you a list of currently available vacant posts. We kindly request that you review the attached list of vacancies, express your interest in three of them in a priority order, and provide Staff Relations Officer (SRO) [...] with your choices in writing on the attached form by close of business 10 October 2014.

... On 9 October 2014, the Agency held a meeting with all provisionally redundant MD/SFO staff in order to provide them with information about applications for vacancies, and employment on a daily paid or casual basis. In the following days, the Agency held individual meetings with staff members to discuss and determine their compatibility with vacant posts.

... Effective 2 November 2014, the Applicant replaced a computer maintenance technician and after the expiry of his fixed-term contract on 31 December 2014, he worked on a daily paid basis.

... On 26 November 2014, the Applicant filed a request for review of the decision "terminating my fixed-term contract, and transferring me to a temporary post".

... By letter dated 20 December 2014, the Deputy Commissioner-General upheld the contested decision, considering that the contested decision was the decision to abolish the Applicant's post.

3. On 3 March 2015, Mr. Sharbaji filed an application with the UNRWA Dispute Tribunal against the decision to abolish his post and declare him provisionally redundant.

4. In the Judgment now under appeal, the UNRWA Dispute Tribunal dismissed Mr. Sharbaji's application. It reviewed the case within the framework of the Area Staff Personnel Directive No. 9 and in the context of a decrease in lending and devaluation of the Syrian Pound as a result of the Syrian crisis. The UNRWA Dispute Tribunal concluded that there was a "genuine redundancy situation".<sup>3</sup> In the case of Mr. Sharbaji, the UNRWA DT noted that the Agency had used his service until the expiry of his contract and thereafter continued to use his service on the basis of a daily paid contract. The UNRWA Dispute Tribunal rejected Mr. Sharbaji's procedural challenge that he had not been evaluated before being declared provisionally redundant, finding that considering that Mr. Sharbaji's appointment was to expire at the end of 2014, evaluating him would have "indirectly given him an expectation of renewal of his appointment".<sup>4</sup> In that regard, the UNRWA Dispute Tribunal noted that the Agency had explained, in response to the UNRWA DT's query, why Mr. Sharbaji had not been evaluated, but Mr. Sharbaji had failed to provide any comments on the Agency's explanation.

### **Submissions**

#### **Mr. Sharbaji's Appeal**

5. The UNRWA Dispute Tribunal erred in law by failing to base its Judgment on the governing law and the spirit of the governing law.

6. The UNRWA Dispute Tribunal erred in finding that it was appropriate for the Agency not to evaluate Mr. Sharbaji before declaring him provisionally redundant. That was evidence of unfair competition, bias, prejudice, improper motives and abuse of power. Moreover, by not evaluating him before declaring him provisionally redundant, the Agency violated the proper procedure. It was an easy option to choose Mr. Sharbaji's post for abolition just because his contract was due to expire in the near future.

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<sup>3</sup> *Ibid.*, para. 30.

<sup>4</sup> *Ibid.*, para. 29.

7. Mr. Sharbaji requests that the Appeals Tribunal rescind the decision of the UNRWA Dispute Tribunal, and reinstate him to his post, or a post of a similar grade and level, or any other suitable post at UNRWA. Mr. Sharbaji is seeking compensation for the loss of his entitlements from 31 December 2014 to the present, and for moral damages. Alternatively, Mr. Sharbaji is seeking a return to a post at a lower grade but with salary protection, until the end of the Syrian crisis, or an appropriate training so as to qualify him for an alternative post.

### **The Commissioner-General's Answer**

8. Mr. Sharbaji fails to adduce any convincing argument in support of his claims and does not raise any grounds for appeal. He merely disagrees with the Judgment and seeks to reargue his case.

9. Mr. Sharbaji did not raise the argument of irregularities or abuse of power in connection with the lack of evaluation before the UNRWA Dispute Tribunal. The Agency explained to the UNRWA DT that the decision not to carry out any evaluation was based on the fact that Mr. Sharbaji's post was no longer necessary and he was the sole incumbent. In any event, even if he had been formally evaluated, Mr. Sharbaji would still have been declared redundant.

10. The Commissioner-General draws the attention of the Appeals Tribunal to its decision in *Haimour and Al Mohammad*,<sup>5</sup> in which the Appeals Tribunal dismissed very similar appeals against the abolishment of posts in Syria. He requests that the Appeals Tribunal reject Mr. Sharbaji's pleas and dismiss his appeal in its entirety.

### **Considerations**

11. The Revised Personnel Directive A/9 on Separation from Service (6 February 2012) outlines the instances where redundancy may arise and states, in Sections 15.1 and 15.2, as follows:

... Redundancy arises when a post is ... eliminated; or ... reclassified and the incumbent either no longer meets the qualifications specified in the Occupation Classification Manual to encumber the post, or would suffer a reduction of entitlements by remaining in the post; or ... reclassified from part-time to full-time or full-time to part-time when the incumbent is not prepared to work the required hours.

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<sup>5</sup> *Haimour and Al Mohammad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-688.

... In such circumstances, a staff member is declared provisionally redundant and will be so notified in writing. The affected staff member will be the incumbent in the case of a unique post, i.e., one which requires unique qualifications and which is not replicated elsewhere in the relevant section of the staffing table. Where there are two or more posts of similar category, title and post description in that section of the staffing table, the least efficient incumbent will be redundant or, if the incumbents are of equal efficiency, the incumbent with the shortest period of service.

12. In the instant case, as outlined by the Revised Personnel Directive A/9, Mr. Sharbaji's post was eliminated. Simply put, this meant that the post of which he was the sole incumbent ceased to exist. Mr. Sharbaji has argued on appeal that the UNRWA Dispute Tribunal erred in its finding that it was appropriate for the Agency not to evaluate him "before declaring him provisionally redundant".

13. We agree with the UNRWA Dispute Tribunal's finding. In our view, no useful purpose would have been served by the conduct of an evaluation exercise for a post which is about to be or has been abolished. In fact, the decision to abolish the post would not have been influenced in any way by the conduct of such an exercise. Moreover, the UNRWA Dispute Tribunal found that there was a "genuine redundancy situation",<sup>6</sup> and we accept that finding.

14. We have examined the evidence and there is no evidence before the Appeals Tribunal to support Mr. Sharbaji's contention that the UNRWA Dispute Tribunal erred in law. We therefore reject this submission.

15. We have examined all of the grounds of this appeal and we find them to be of no merit. As a consequence, we find no fault with the Judgment of the UNRWA Dispute Tribunal.

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<sup>6</sup> Impugned Judgment, para. 30.

**Judgment**

16. The appeal is dismissed and Judgment No. UNRWA/DT/2016/027 is hereby affirmed.

Original and Authoritative Version: English

Dated this 14<sup>th</sup> day of July 2017 in Vienna, Austria.

*(Signed)*

Judge Thomas-Felix,  
Presiding

*(Signed)*

Judge Chapman

*(Signed)*

Judge Murphy

Entered in the Register on this 5<sup>th</sup> day of September 2017 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar