



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

Judgment No. 2014-UNAT-434

**Beqai
(Appellant)**

v.

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



Date: 27 June 2014

Registrar: Weicheng Lin

JUDGE MARY FAHERTY, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Toufiq Nayef Beqai against Judgment No. UNRWA/DT/2013/012, rendered by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or the Agency) Dispute Tribunal (Dispute Tribunal or UNRWA DT) on 25 April 2013 in the case of Beqai v. Commissioner-General of UNRWA

particular relevance to the Applicant's contention that he was unaware of the fact that the renewal of his fixed-term appointment was contingent upon continued project funding for the Mobile Dental Unit is the following paragraph:

The issue at hand is your contractual status. In a letter dated 2 September 2009, the Field Personnel Officer wrote the following to you:

“Please note that the half-time post you are currently

review. It was treated as such as is evident by emails dated 29 and 30 April from the DDUA/L.

... By email to the Applicant's wife dated 29 April 2010 the DDUA/L stated that the Applicant had been informed that his post was not a "GF" post and that he had been given two opportunities to apply for new rosters but chose not to do so. The DDUA/L concluded by stating: "... I will, however, go through his file once again to confirm the above understanding ... I will get back to you shortly."

... By email to the Applicant's wife dated 30 April 2010, the DDUA/L set out the following explanation:

When [the incumbent of the post] was offered a position to work in a full-time post funded by a project, his half time post became vacant. Your husband was offered the position. [The incumbent] retained the right to return to his post when the project funding ended.

In March 2007, a new Dental Surgeon roster recruitment exercise was carried out. Your husband was invited to the technical test because he was on a temporary post and because his roster would soon expire. Your husband declined the offer to sit the technical test. He was, accordingly, not placed on the March 2007 roster and the May 2006 roster expired.

... On 1 June 2010 a Human Resources Officer (Appeals and Grievances) date stamped an appeal to the [former Joint Appeals Board (JAB)] dated 24 May 2010.

... The Applicant separated from the Agency on 31 May 2010. By letter from the Field Human Resources Officer dated the same day the Applicant was advised:

As you are aware, your fixed term appointment is due to expire today. This is a consequence of the suspension of the Mobile Dental Unit project, for Beirut and the North, which will result in the return of those regular staff who were assigned to the project effective 1 June 2010.

... The Applicant responded to the Field Human Resources Officer with a written annotation at the bottom of the letter in Arabic, which included the following statements:

I received your correspondence dated 5 June 2010, and I completely reject what is mentioned in it because it violates the rules and regulations.

I am a confirmed employee according to the rules (half post).

During the previous years, several attempts to terminate me unfairly and aggressively from my job were made but all these attempts came to failure.

Now, and by using a new method, a new malicious heresy was used to legalize and justify the termination, which is [the Mobile Dental Unit Project].

I was not informed and I did not receive any document during the previous years, show that I work in project.

I have the right of getting a confirmed full time post in Al Baddawi Clinic starting from 8 May 2007.

I sent all the necessary documents that prove my right in this post to the [Field Director] and I insist on this right.

I ask you to reconsider your decision for the sake of justice.

... By letter to the Applicant dated 2 June 2010, the Officer-in-Charge (“OIC”) of the JAB Secretariat acknowledged receipt of the Applicant’s appeal, stating that it was received on 2 June 2010. ...

3. The case was subsequently transferred from the JAB to the newly-created UNRWA Dispute Tribunal. On 27 September 2012, UNRWA filed its answer before the UNRWA DT.

4. In its Judgment No. UNRWA/DT/2013/012, the UNRWA DT considered first the receivability of the case before it. Finding the case receivable, and-3.B1.4(ss7(c2-5.4(n)4.9(d-s7(c2-.5792 0.1

assertion and/or allegation unsupported by any direct or even circumstantial evidence is unacceptable".⁴ Accordingly, the application was dismissed in its entirety.

Submissions

Mr. Beqai's Appeal

6. The Appellant submits that the UNRWA DT erred on the facts, resulting in a manifestly unreasonable decision.

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17. Having considered the content of the UNRWA DT Judgment, viewed against the documentary information available to that Tribunal for the purpose of its deliberations, the Appeals Tribunal is satisfied that Mr. Beqai's claim of errors of fact on the part of the UNRWA DT resulting in a manifestly unreasonable decision is unsustainable.

18. We are so satisfied for the following reasons. In the first instance, the UNRWA DT correctly opined:

The United Nations Appeals Tribunal has ... recognised that separation as a result of a fixed-term appointment takes place automatically, without prior notice, on the expiration date specified in the letter of appointment, Koumoin, 2011-UNAT-119, and that a fixed-term appointment does not carry any expectancy of renewal or conversion to any other type of appointment, Jennings, 2011-UNAT-184.⁷

Moreover, the UNRWA Dispute Tribunal referred to the Appeals Tribunal's jurisprudence in Ahmed where we stated:

21. We are further satisfied that the UNRWA DT did not err manifestly or at all when it found, from the contents of the 2 September 2009 communication to Mr. Beqai (if not indeed from the earlier letter of 20 July 2007) that he was aware that any extension of his fixed-term appointment as a dental surgeon was contingent upon the post of another doctor (whose half post Mr. Beqai was occupying) being extended. It was made clear to Mr. Beqai that any extension of the other doctor's post at the Mobile Dental Clinic was subject to the availability of funds for that particular project. Thus, the UNRWA DT did not err when it rejected Mr. Beqai's contention that he was unaware that the half post he held was the post of another. From at least 2 September 2009 Mr. Beqai cannot but have appreciated that at some point the regular staff member, whose half post he occupied, would return to that post.

22.

26. Further to Mr. Beqai's general allegations of discrimination and having been unfairly treated, we do not find any merit in such complaints, particularly having regard to the contents of the 21 April 2010 letter to Mr. Beqai which details the Administration's efforts to

Original and Authoritative Version: English

Dated this 27th day of June 2014 in Vienna, Austria.

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Adinyira

Entered in the Register on 29th day of August 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar