



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2016-UNAT-653



AIRifai
(Appellant)

v.

Commissioner-General

Date: 30 June 2016

Registrar: Weicheng Lin

Counsel for Ms. AIRifai: Self-represented

Counsel for Commissioner-General: Lance Bartholomeusz

JUDGE LUIS MARÍA SIMÓN , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2015/045, 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 10 August 2015, in the case of *AIRifai v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*.¹ Ms. Ayesha AIRifai Abu Hweij filed an appeal on 8 October 2015, and the Commissioner-General filed an answer on 4 December 2015.

Facts and Procedure

2. The following facts are uncontested:²

... Effective 1 October 2006, the Applicant was employed by the Agency as Deputy Dean, Education Science Faculty, Grade 15, at the Ramallah Women's Training Centre ("RWTC").

... By letter dated 26 December 2007, the Applicant was informed of her selection for the post of "Dean, Principal [RWTC] and Education Science Faculty ("ESF")" at Grade 16.

... Effective 1 June 2010, the Applicant's post grade was upgraded to Grade 17.

... By memorandum dated 27 July 2011, the Chief, Compensation and Management Services Division ("CCMSD") transmitted to the Field[] Human Resources Officers Agency-wide, copies of the Area post descriptions for the Training Centres in all Fields. The post of "Principal/Dean, Training Centre" was at Grade 17. The Applicant acknowledged receipt of a copy of the post description on 6 September 2011.

... By memorandum to the Director of Human Resources ("DHR") dated 24 November 2011, the CCMSD recommended upgrading the post of Dean, ESF and Principal, Training Centre from Grade 17 to Grade 18 in line with a proposed reclassification of the equivalent post of Dean, Faculty of Educational Sciences and Arts ("DFESA") in Jordan to Grade 18.

... On 30 November 2011, the DHR approved the post description for the post of Dean, ESF and Principal, Training Centre at Grade 18, for the Ramallah Men's Training Centre ("RMTC")/ESF and the RWTC/ESF. The DHR also formally approved the post description of DFESA in Jordan at Grade 18.

¹ We adopt the spelling of "AIRifai" that the Appellant uses on her appeal form and appeal brief.

² Impugned Judgment, paras. 2-10.

UNRWA Dispute Tribunal rejected Ms. AIRifai's allegations of discrimination and failure to conform to other higher education systems and practices.

Submissions

Ms. AIRifai's Appeal

5. The UNRWA Dispute Tribunal erred in fact by failing to take into consideration the evidence of facts that affected Ms. AIRifai's rights. The UNRWA DT did not specify what evidence was used to support its assertion. It based its findings on institutional and structural considerations rather than qualifications, expertise and technical competence. It was arbitrary to conclude, as the UNRWA DT did, that the technical and vocational education and training (TVET) implied less responsibility than ESF and therefore justified a lower post grade. Ms. AIRifai always recognised the difference between her responsibilities as Dean of TVET and those of the Dean of ESF. However, the difference did not imply less responsibilities, skills or competencies in the services offered at the RMTC and RWTC.

6. The UNRWA Dispute Tribunal committed an error in procedure such as to affect the decision of the case by failing to take into account a number of procedural irregularities committed by the Agency, including the failure to inform Ms. AIRifai of the intended post classification exercise; the Agency's focus only on certain parameters to the exclusion of all other parameters set forth in UNRWA's Post Classification Questionnaire, which is a "binding reference human resources management tool[]"; and the change of her functional title from Dean/Principal to Principal without notifying or consulting her.

7. Ms. AIRifai requests that the Appeals Tribunal order that her post be upgraded from Grade 17 to Grade 18.

The Commissioner-General's Answer

8. Ms. AIRifai includes the Post Classification Questionnaire as annex 4 to her appeal in support of her allegations of irregularities. The Commissioner-General notes that this document was not part of the case record before the UNRWA Dispute Tribunal, and Ms. AIRifai did not request leave to have it admitted. The Commissioner-General contests its admission and requests that her arguments based on that document be rejected.

9. Ms. AIRifai's contentions about alleged procedural irregularities preceding the non-upgrading of her post are new elements that were not presented to the UNRWA DT. Consequently, they cannot be introduced for the first time on appeal. The Appeals Tribunal should find these elements of her contentions inadmissible.

10. Finally on procedural issues, Ms. AIRifai brings up the issue of the change of her post title from Dean/Principal to Principal. This should not be allowed, as the issue was not canvassed before the UNRWA Dispute Tribunal. In this connection, the Commissioner-General notes that, contrary to Ms. AIRifai's assertion, she was aware of her new post title at the time of filing her application with the UNRWA Dispute Tribunal.

11. The UNRWA Dispute Tribunal did not make any error of fact. Ms. AIRifai's contention that certain findings of fact made by the UNRWA Dispute Tribunal about the non-implementation of the reclassification of her post due to ongoing reforms and the different responsibilities between her post and that of her counterpart at RMTC remains a mere -8.15'9ddl-8(6(i)-Mo15'9ddsupport r)-5.6(port ()-10.9(a)-4.3()a)-4.DmTD .0001Tc .8 ao.5(RM(d Ind(16

Considerations

15. An appeal is not the appropriate occasion to introduce new elements for consideration that were not put forward at the trial level. Annex 4 (Post Classification Questionnaire Form) to Ms. AlRifai's appeal was not offered as evidence before the UNRWA DT and the contentions about the alleged procedural irregularities preceding the non-upgrading of the

19. Hence, the difference of grade between Ms. ARifai's post and that of her counterpart at the RMTTC was justified, and it explained the Agency's decision not to upgrade Ms. AIRifai's post to Grade 18.

20. This conclusion is supported by the evidence and there is no reason to depart from the inferences that the UNRWA Dispute Tribunal drew from the established facts, which led to the dismissal of Ms. AIRifai's application.

21. Ms. AIRifai attempts to convert the judicial review into an administrative exercise of post classification by means of different technical or educational grounds. However, this endeavor is outside the scope of the judicial review.

22. Ms. AIRifai's arguments of wrongdoing with respect to the Agency's classification of her post or in relation to the UNRWA Dispute Tribunal's review of that activity become irrelevant in the face of the uncontested fact, namely, that the change in her tasks and respective duties formed the basis for the decision not to upgrade her post.

Original and Authoritative Version: English

Dated this 30th day of June 2016 in New York, United States.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Faherty

Entered in the Register on this 24th day of August 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar