



JUDGE JOHN RAYMOND MURPHY , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2019/002, 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 21 January 2019, in the case of *El Shaer v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Tamer Yaser El Shaer filed the appeal on 5 March 2019, and the Commissioner-General filed an answer on 9 May 2019.

Facts and Procedure

2.

8. By letter dated 2 October 2017, the DUO/G formally informed Mr. El Shaer that he was exonerated of any wrongdoing, that his reassignment pending the investigation had come to an end and that he was now expected to return to his post at the Rafah Distribution Centre as per standard procedure. By letter dated 9 October 2017, the DUO/G informed Mr. El Shaer that the letter dated 21 December 2015, by which he had been temporarily transferred to the post at the Rafah Fuel Section during the investigation, had been removed

14. On 14 March 2018, the DUO/G addressed the following letter to Mr. El Shaer:

Subject: Abandonment of Post

You are hereby informed that serious complaints have been received concerning your attendance. In particular:

You were informed by Mr. Jonathan Porter , Head Field Human Resources Office, in his letter of 1 March 2018 that you should present yourself to the Logistics Office for assignment for distribution duties. Nonetheless you consistently refused to carry out your duties as a Distribution Supervisor.

16. The rule must be read together with Area Personnel Directive A/9 which provides:

25. The Director of Human Resources in case of Headquarters staff and Field Office Director in case of Field Staff, are authorised to act on behalf of the Commissioner-General

the decision to separate him from service for abandonment of post was exercised arbitrarily or capriciously, was motivated by prejudice or other extraneous factors or was flawed by procedural irregularity or error of law.

Submissions

Mr. El Shaer's Appeal

21. Mr. El Shaer is not legally represented in these proceedings and his submissions are not clearly articulated. However, he notes that on 1 October 2017, while on sick leave (from 1 to 9 October 2017), he was requested to resume his duties. However, after the meeting of 10 October 2017 he could not continue reporting to the Rafah Fuel Section. He was on authorized leave during the early part of March 2018 and returned to the Rafah Fuel Section on 12 March 2018.

22. Mr. El Shaer contends that considering the foregoing, Area Staff Rule 109.4 does not apply. He was not absent from duty.

23. Mr. El Shaer requests that the Appeals Tribunal rescind the Agency's decision to terminate his appointment and award compensation for "physical, moral and psychological harm" he suffered.

The Commissioner-General's Answer

24. The Commissioner-General submits that Mr. El Shaer has failed to identify the grounds for his appeal, and as such, his appeal is defective. The appeal is not well founded on any of the grounds set out in Article 2(1) of the Appeals Tribunal Statute. It appears that Mr. El Shaer resorts to merely repeating the same arguments submitted before the UNRWA DT. Mr. El Shaer's failure to explain how the UNRWA DT erred in deciding his claims is sufficient for the Appeals Tribunal to dismiss the appeal.

25. Additionally, the UNRWA DT did not commit errors of fact or law that would require a reversal of its Judgment. The UNRWA DT was cognizant of the established facts and the legal framework regarding Mr. El Shaer's abandonment of post.

26. Considering the foregoing, the relief sought by Mr. El Shaer has no legal basis. With specific reference to Mr. El Shaer's plea for moral damages, the Commissioner-General contends that Mr. El Shaer has not proffered any evidence in support of such plea.

27. Finally, the Commissioner-General avers that Mr. El Shaer's appeal is frivolous and vexatious and constitutes a manifest abuse of the appeal process. The Agency which is facing an "unprecedented and existential financial crisis" cannot be asked to pay for Mr. El Shaer's "misguided attempt to re-litigate a case that was properly considered by the UNRWA DT". The Commissioner-General requests an award of costs in the amount of USD 250 for abuse of the appeal process.

Considerations

28. Mr. El Shaer's appeal is poorly formulated. However, given the fact that he is unrepresented and clearly has difficulty in commu

35. Mr. El Shaer's separation from service was therefore unlawful and his appeal succeeds. In terms of Article 9 of the Appeals Tribunal Statute, the decision must be rescinded, Mr. El Shaer must be reinstated and an amount of in-lieu compensation be set.

Judgment

36. The appeal is upheld and Judgment No. UNRWA/DT/2019/002 is set aside.
37. The decision of the Agency of 19 March 2018 separating Mr. El Shaer from service is rescinded.
- 38.