



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

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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)**

**JUDGMENT**

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Before:	Judge Faherty, Presiding Judge Inés Weinberg de Roca Judge Sophia Adinyira
Case No.:	2013-496
Date:	27 June 2014
Registrar:	Weicheng Lin

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Counsel for Appellant:	Self-represented
Counsel for Respondent:	Lance Bartholomeusz

**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*. Mr. Beqai submitted his appeal on 7 June 2013, and the Commissioner-General filed his answer on 6 August 2013.

**Facts and Procedure**

2. The UNRWA DT made the following findings of fact:<sup>1</sup>

... The Applicant appealed the decision ... not to extend his fixed-term appointment.

...

... On 1 February 2007 the Applicant commenced employment with [UNRWA] on a fixed-term appointment (half-post) as a Dental Surgeon, grade 14.

... Following a series of extensions, the Applicant was notified by letter from the Field Personnel Officer, Lebanon ("FPO/L") dated 2 March 2010 that the half-time post of Dental Surgeon that he was currently occupying had been extended until 31 May 2010 and that:

**If the post is not extended beyond this date**, the incumbent of the post will return to his original post at B/Hammoud Health Centre and your services with the Agency will terminate [emphasis added by the UNRWA DT].

... This letter is not regarded by the [UNRWA DT] as constituting notification of the non-extension of the Applicant's fixed-term appointment because it was contingent upon the question whether the incumbent's post would be extended. However, the following letter dated 21 April 2010 does constitute notification.

... By letter to the Applicant dated 21 April 2010 the Deputy Director of UNRWA Affairs, Lebanon ("DDUA/L") confirmed that the Applicant's appointment would expire on 31 May 2010. Reference was made to three letters to the Applicant from the FPO/L, dated 20 July 2007, 2 September 2009, and 2 March 2010. The letters indicated that the original occupier of the Applicant's post had been temporarily transferred to another post at a Mobile Dental Clinic. The continuation of the Mobile Dental Clinic project was contingent on the availability of project funding. Of

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<sup>1</sup> The following text is taken from Judgment No. UNRWA/DT/2013/012, paras. 1 – 18.

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 occupy[ing] at B/Hammond Health Centre and your duty is at NLA is subject to the extension of the post of [another doctor] at Mobile Dental Clinic (EU Education Project Post), which is limited to fund availability. The funds are available until December 2009. In case the post at Mobile Dental Clinic (EU Education Project) was not extended, [the other doctor] will return to his original post at B/Hammoud Health Centre and your services will be ended at the Agency. Accordingly, your contract was extended until 31 December 2009.

You are encouraged to apply for UNRWA vacancy advertised on 31 August 2009.”

You did not apply for the advertisement.

... The DDUA/L also confirmed to the Applicant that:

Your appointment was extended a number of times, most recently until 31 May 2010 at which time the incumbent in the post (currently working on the EU project) will need to return to the post you currently occupy.

... By email to the DDUA/L dated 26 April 2010, the wife of the Applicant wrote:

Thank you, for your letter but Dr Biqae did not informed that he is on a project, also how could be two DS got fixed term appointment in Baddawiand Mina Health centers althought [sic] they are after him in the Rooster [sic].

Thank you for your effort, realy [sic] thank you but we are not satisfied.

...

... Although the email to the DDUA/L dated 26 April 2010 written on behalf of the Applicant does not explicitly refer to it being a request for administrative review it is clearly a request that was intended to serve the underlying purpose of former Area Staff Rule 111.3 and is reasonably construed as a request for administrative

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 that it was in the interests of justice for UNRWA to be permitted to participate in the case, the UNRWA DT then reviewed its merits.

5. The UNRWA Dispute Tribunal concluded that the case stemmed from a misunderstanding on the part of Mr. Beqai:

... the Applicant was appointed on a series of fixed-term contracts while the incumbent was working on a project... The Applicant is mistaken in his belief that the Respondent was asserting for the first time when his contract was not renewed, that his fixed-term appointment was project funded. It was the incumbent’s placement in the project that was the issue.

... The Respondent has given a cogent explanation and reason for the non-extension of the Applicant’s fixed-term appointment.<sup>2</sup>

In respect of the Appellant’s allegations that he had been solicited to pay a bribe in exchange for securing a full-time position, the UNRWA DT found that he had “not provided a shred of evidence to support this very serious allegation”<sup>3</sup> and recalled that “[t]he making of a bold

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<sup>2</sup> *Ibid.*, paras. 41-42.

<sup>3</sup> *Ibid.*, para. 43.

assertion and/or allegation unsupported by any direct or even circumstantial evidence is unacceptable".<sup>4</sup> 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.

7. He requests that he be reinstated with UNRWA, on a full-time fixed-term appointment, as well as an award of material damages.

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

8. The Commissioner-General contends that the Appellant has failed to substantiate his submission, to identify any alleged error by the UNRWA DT or to explain how such error resulted in a manifestly unreasonable decision.

9. He further submits that the Appellant has simply restated the arguments set out in his application before the UNRWA Dispute Tribunal.

10. The Commissioner-General requests the Appeals Tribunal to dismiss the appeal in its entirety.

### **Considerations**

11. Mr. Beqai requested an oral hearing but the Appeals Tribunal denied the request being satisfied that the issue to be determined was clear from the papers filed in the appeal.

12. Mr. Beqai challenges the UNRWA DT's dismissal of his application on the basis that the Tribunal committed errors of fact, resulting in a manifestly unreasonable decision, a ground of appeal provided for in Article 2(1) of the Special Agreement between the United Nations and UNRWA. Mr. Beqai requests that he be reinstated with UNRWA on a full-time fixed-term appointment and that he be compensated with an award of material

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<sup>4</sup> *Ibid.*, para. 44.

damages commensurate with the monies he lost over the past few years, following the non-extension of his fixed-term appointment.

13. In support of his appeal, Mr. Beqai effectively re-submits the application and supporting documentation he furnished to the UNRWA DT and, in addition, advises the Appeals Tribunal that “[a] judgment rendered by the UNDT and the Dispute Tribunal of UNRWA may be appealed by either party”.

14. In *Kovacevic*, the Appeals Tribunal has stated that “a party appealing a judgment of the United Nations Dispute Tribunal is unlikely to succeed in having the judgment reversed, modified or the case remanded to the Dispute Tribunal unless the appeal challenges the impugned judgment on one or more of the grounds referred to in article 2, paragraph 1 (a) to (e), of the statute of this Tribunal”.<sup>5</sup>

15. We have further held:

It is not sufficient for [an appellant] to state that he disagrees with the UNRWA Dispute Tribunal’s findings of fact and to repeat the arguments submitted before that Tribunal, as the UNRWA Dispute Tribunal has a broad discretion to determine the weight to be attached to the evidence before it. The Appeals Tribunal has previously emphasized that the appeals procedure is of a corrective nature and is thus not an opportunity for a party to reargue his or her case. A party cannot merely repeat on appeal arguments that did not succeed in the lower court. Rather, he or she must demonstrate that the court below has committed an error of fact or law warranting intervention by the Appeals Tribunal.<sup>6</sup>

16. Other than repeating his arguments before the UNRWA DT, Mr. Beqai has not detailed the alleged instances which, according to him, have resulted in a manifestly unreasonable decision.

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<sup>5</sup> *Kovacevic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-071, para. 19.

<sup>6</sup> *Dannan v. Commissioner-General of UNRWA*, Judgment No. 2013-UNAT-340, para. 14 (footnotes omitted). See also *Al-Mulla v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-226; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-236 and *Larkin v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-263.

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.<sup>7</sup>

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

[U]nless the Administration has made an "express promise ... that gives a staff member an expectancy that his or her appointment will be extended", or unless it abused its discretion, or was motivated by discriminatory or improper grounds in not extending the appointment, the non-renewal of a staff member's fixed-term appointment is not unlawful.<sup>8</sup>

19. In the present case, the UNRWA DT found that at all relevant times Mr. Beqai's employment as a staff member was on foot of a series of fixed-term contracts which commenced in 2007 and which were renewed successively until 21 April 2010 when it was confirmed to him that his fixed-term appointment would expire on 31 May 2010.

20. Thus, contrary to his claim that the Administration sought to treat him as a contractor, the UNRWA DT (as does the Appeals Tribunal) fully accepted that at all relevant times Mr. Beqai was a staff member and not a contractor, albeit that Mr. Beqai's employment was of a fixed-term nature and that he occupied a half post in the Dental Clinic at B/Hammoud Health Centre.

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<sup>7</sup> Judgment No. UNRWA/DT/2013/012, para. 39.

<sup>8</sup> *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153, para. 47.



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. While Mr. Beqai, in the reply sent on his behalf to the DDUA/L on 26 April 2010, may have misconstrued the communication to him of 21 April 2010, this misconception does not vitiate the UNRWA DT's proper determination of the relevant fact, namely that it was the post at the Mobile Dental Clinic project (occupied by the incumbent of Mr. Beqai's post) that was subject to the availability of project funding and not Mr. Beqai's post. As the UNRWA DT correctly observed, the continuation or otherwise of the Mobile Dental Clinic was the determinant of whether or not Mr. Beqai would receive an extension to his fixed-term contract. There is thus no merit in his urging the Appeals Tribunal to accept that, unbeknownst to him, his employment became dependant on the availability of funds.

23. While reiterating, in its Judgment, that in cases where an allegation of unlawfulness is made regarding the failure to renew a fixed-term contract the burden of proof is on the staff member making the allegation, the UNRWA DT quite properly put itself on enquiry with regard to Mr. Beqai's claim of being asked for money in return for securing a full-time Dental Surgeon post.

24. However, the UNRWA DT found no basis for the allegation in circumstances where, apart from the bare allegation, Mr. Beqai did not provide "a shred of evidence to support this very serious allegation".

25. In the absence of any direct or even circumstantial evidence there was nothing the UNRWA DT could do except to reject Mr. Beqai's claims as not proven, as he had not satisfied the legal or evidential burden on him to substantiate his claim of unlawful termination of a fixed-term appointment on the ground of improper motive or conduct.

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 persuade him to update his roster prospects, to no avail. We cannot see therefore how Mr. Beqai can complain about the progress of others on the roster in the absence of his having put himself forward for assessment when requested to do so.

27. In all the circumstances of this case, we find no error of law or error of fact, manifest or otherwise, on the part of the UNRWA DT and the appeal is dismissed.

### **Judgment**

28. The appeal is dismissed and the UNRWA DT Judgment is upheld.

Original and Authoritative Version: English

Dated this 27<sup>th</sup> day of June 2014 in Vienna, Austria.

*(Signed)*

Judge Faherty, Presiding

*(Signed)*

Judge Weinberg de Roca

*(Signed)*

Judge Adinyira

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

*(Signed)*

Weicheng Lin, Registrar