HAMDAN

v.

COMMISSIONER GENERAL OF THE
UNITED NATIONS RELIEF AND WORKS
AGENCY FOR PALESTINE REFUGEES

JUDGMENT

Counsel for Applicant:
Amer Abu-Khalaf (LOSA)

Counsel for Respondent:
Lance Bartholomeusz (DLA)
Introduction

1. This is an application by Jihad Hamdan (the “Applicant”) against the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (the “Respondent”), to include in a contract, which he signed on 31 July 2014, a clause relieving the Agency from any further financial responsibility or obligation to the University of Jordan with regard to the Applicant’s secondment.

Facts

2. Prior to his appointment as Chief, Field Education Programme, Jordan Field Office (“CFEP”), the Applicant was a faculty member of the University of Jordan (“UJ”). On 26 November 2012, the Deputy Director of UNRWA Programme, Jordan Field Office (“D/DP/JFO”) wrote to the President of the UJ informing him that the Applicant had been selected for the post of CFEP and requested that the UJ approve his secondment to UNRWA.

3. Effective 20 January 2013, the Applicant was appointed as CFEP on a limited duration contract (“LDC”) for twelve months.

4. On 24 January 2013, the UJ informed UNRWA of its approval of the Applicant’s secondment and advised that, as a consequence of the secondment, UNRWA would be responsible for the following costs:

   - End of service remuneration for Dr. Hamdan to be based on the last total salary paid by the University of Jordan noting that according to his category he is eligible for three months remuneration for each year (emphasis in original).

   - The participation of the United Nations in the Provident Fund.

   - 1/6 One Sixth of his salaries and allowances for every year he spends with the United Nations in addition to [ ] 1/6 of the end of service remuneration in case the same is granted a sabbatical leave.

   - The United Nations contribution to Health Insurance Fund/University of Jordan.

   The commencement of his work with yourself will be considered an approval of the above provided.

5. On 6 March 2013, the Field Human Resources Officer (“FHRO”) and the HR/Finance representative of the UJ met to discuss the UJ’s request that the Agency cover certain
employment entitlements for the Applicant during his secondment. As reflected in a record of the meeting, dated that same day, the UJ representative advised that the conditions laid out in the 24 January 2013 letter to the Agency were standard conditions applicable to all teaching staff on secondment. Moreover, the UJ representative noted that through continuous payment of the contributions, the Applicant would retain his “staff” status at the UJ.

6. By letter dated 1 May 2013, the FHRO responded to the UJ’s 24 January 2013 letter. In order to better understand the financial implications, the FHRO requested that the UJ provide the Agency with the exact amount and payment schedule of both payment requests for the current as well as future years. The FHRO noted that such payments were not part of UNRWA’s regular employment package and that the JFO was in the process of verifying the feasibility and legality of such payments.

7. On 30 May 2013, the Applicant met with the D/DP/JFO and the FHRO. According to the FHRO’s email, dated 19 June 2013, the following items were discussed and agreed upon:

1. JFO to pay the end of service gratuity of up to [Jordanian Dinar (“JD”)] 750 per month served with a total of up to JD 9,000 annually. If the end of service gratuity amounts to a smaller sum, JFO only pays the requested sum to the Jordan University. If the end of service gratuity amounts to a higher sum exceeding JD 750 for each month served, the [staff member “s/m”] has to cover the remaining amount;

2. JFO to pay one-sixth of the s/m salary for every year spent at UNRWA in addition to the one-sixth of [End of Service Gratuity] if he was granted a sabbatical on the understanding that Dr. Jihad continues to serve during the sabbatical in his post of Chief, Field Education and that the end of service gratuity payment in point 1 above would stop at the point that this second payment request is raised. Payment will be made directly to the University upon receipt of an invoice.

3. S/[M] to pay the full contribution (employee’s and employer’s share) to the University’s pension scheme.

4. S/[M] to pay the full contribution (employee’s and employer’s share) to the University’s health insurance scheme and to waive his entitlement to enroll himself or his dependents to the UNRWA GMIP scheme.
8. By letter dated 2 June 2013, the acting President of the UJ responded to the FHRO’s 1 May 2013 letter, specifying the following amounts and payment schedule for the current year:

1. An end of service gratuity is (5,952,900 J.D.) five thousand nine hundred fifty two dinars and nine hundred fills.

2. One sixth of Dr. Hamdan’s salary for one sabbatical year (4[.]118,600 J.D) four thousand one hundred eighteen dinars and six hundred fills.

3. One sixth of Dr. Hamdan’s salary for an end of service gratuity for the sabbatical year (992,150 J.D) nine hundred ninety two dinars and one hundred and fifty fills.

Note that the calculations were based on Dr. Hamdan’s last gross salary from the University of Jordan which is (2095,300 J.D) two thousand fifty nine dinars and three hundred fills (emphasis in original).

9. By letter dated 26 June 2013, the Applicant was informed that his LDC would expire on 30 June 2013 and that he would be appointed to a one-year fixed term contract effective 1 July 2013. As his period of service under the LDC would be considered as part of his six-month probationary period, his probationary period would end on 19 July 2013.

10. On 26 June 2013, the Applicant signed a Letter of Appointment for a fixed-term appointment effective 1 July 2013 and expiring on 30 June 2014.

11. By letter dated 21 July 2013, the Human Resources Career Management Officer, Jordan informed the Applicant that he had satisfactorily completed his probationary period and confirmed him in his post.

12. By letter dated 3 November 2013, the Acting Director of UNRWA Operations, Jordan (“Acting DUO/J”) requested from the UJ an extension of the Applicant’s secondment to UNRWA for a second semester of the academic year 2013-2014.

13. By letter dated 31 December 2013, the Acting DUO/J requested the UJ to confirm the exact amount of the end of service gratuity and to provide a detailed breakdown of the calculation associated with that figure. She also raised the issue of a hypothetical extension of the Applicant’s appointment.
14. By letters dated 1 January and 16 January 2014, the UJ set out the amounts due and the method of calculation with respect to the Applicant’s secondment.

15. By letter dated 25 March 2014, the Human Resources Services Officer, Jordan (“HRSO/J”) notified the Applicant that he would reach the age of 60 on 30 July 2014 and noted his option to request an extension of his appointment beyond the age of 60.

16. On 28 May 2014, the Applicant submitted a request to extend his service for two years beyond the age of retirement.

17. By letter dated 5 June 2014, the Applicant was advised that his fixed-term appointment would be extended for one month to 30 July 2014.

18. On 6 July 2014, the Applicant met with the DUO/J. The discussion was memorialised in an email dated 7 July 2014. The Applicant noted in his email the DUO/J’s legal concerns with regard to the Agency’s previous agreement to pay the UJ costs for the Applicant’s secondment.

19. From 8 to 27 July 2014, the Applicant was on certified sick leave after undergoing surgery.

20. By letter dated 20 July 2014, the Head Field Human Resources Office, Jordan (“HFHRO”) presented the Applicant with a two-year extension of his appointment (“the offer”) beginning 1 August 2014 through 31 July 2016. The offer contained a provision in clause 5 which stated that:

   The Agency does not have any responsibility or obligation to make any payments to you or the University of Jordan in relation to your secondment from the University of Jordan relation to your secondment from the University of Jordan during the Term, including without limitation, payments in respect of your end of service gratuity and amounts owing due to sabbatical leave. By accepting this extension of your service, you acknowledge and release UNRWA from any demands, claims, costs, or expenses arising from or in any way related to your secondment from the University of Jordan during the Term.

21. By email dated 22 July 2014, the Applicant wrote to the DUO/J, reminding him of the agreement between the Agency and the UJ to co-share the costs of his secondment. He expressed concern with regard to clause 5, noting that it explicitly cancelled the previous
cost-sharing agreement. The Applicant concluded the letter noting that, while he appreciated the two year extension, he was appealing the inclusion of clause 5 and requesting that it be removed from the offer.

22. By email dated 31 July 2014, the DUO/J responded to the Applicant’s 22 July 2014 email noting that the 20 July 2014 offer had been drafted in consultation with Headquarters and that, under the circumstances he was not in a position to change the offer’s terms.

23. On 31 July 2014, the Applicant signed the extension of his contract.

24. On 17 September 2014, the Applicant submitted a request for decision review. The Applicant did not receive a response.

25. On 9 December 2014, the Applicant filed his application with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on that same day.

26. On 7 January 2015, the Respondent filed his reply to the application.

**Applicant’s contentions**

27. The Applicant contends:

   i. The inclusion of clause 5 in the 20 July 2014 offer was a violation of the agreement between the Agency, the UJ and himself;

   ii. One of the reasons he accepted UNRWA’s offer in 2012 was because of the cost-sharing agreement between the UJ and UNRWA;

   iii. Clause 5 was unilaterally imposed upon him and because he was on sick leave he did not have ample time to consider other options;

   iv. The correspondence between UNRWA and the UJ clearly shows that the Agency intended to continue the cost-sharing agreement in the event that he went on sabbatical leave;

   v. In April 2014, neither the DUO/J or the HFHRO mentioned that the extension of his service as of 1 August 2014 would include a condition revoking the secondment agreement; and
vi. His sabbatical leave from the UJ was approved on 2 July 2014, and on 6 July 2014, he was informed by the DUO/J that there was a possibility that UNRWA would not abide by the previous cost-sharing agreement. If he had known about UNRWA’s decision to discontinue the cost-sharing agreement he probably would not have requested sabbatical leave.

28. The Applicant requests:
   i. The Tribunal to order the removal of clause 5 from the 20 July 2014 offer;
   ii. UNRWA to pay the UJ the sums determined by the secondment agreement, including the “retroactive sabbatical year dues” until 1 August 2014; and
   iii. UNRWA to confirm that the secondment agreement covers the period from 20 January 2013 until his last day of his work.

Respondent’s Contentions

29. The Respondent contends:
   i. The condition attached to the Applicant’s 20 July 2014 offer was properly effected;
   ii. It was not until mid-June 2014 that the Jordan Field Office began to make inquiries about UNRWA’s obligation to make payments to the UJ. Following these inquiries, several meetings occurred between the DUO/J and the Applicant, and on 8 July 2014, the Applicant was informed of the Agency’s position;
   iii. It was not in the Agency’s financial interests to make additional payments to a third party for the Applicant’s benefit;
   iv. There was no tripartite contract;
   v. The Agency’s obligation to make payments was limited in time “until the end of his contract or, if renewed until he is eligible for Sabbatical in September 2014 whichever is earlier”;
   vi. The Applicant did not have a legitimate expectation that the Agency would continue making payments to the UJ if he were granted an extension beyond retirement age;
   vii. The Applicant has failed to meet the burden of proof that the Agency created a legal expectancy;
viii. The UJ’s deadline for applying for sabbatical and unpaid leaves for the academic year 2014-2015 was on 8 May 2014, which was prior to the date on which the Applicant could request an extension of service beyond retirement age;

ix. The Applicant has not provided evidence that he was under duress to sign the 20 July 2014 extension; and

x. The Applicant signed the contract and therefore has accepted all the terms therein. He cannot now request that the Tribunal revoke the contract as he continues to work for UNRWA.

30. The Respondent requests that the Tribunal deny each and all of the Applicant’s pleas and to dismiss the application in its entirety based on the grounds specified above.

Considerations

31. The Applicant contests the Agency’s decision to include in the contract signed by the Applicant on 31 July 2014 a clause that relieves the Agency from any responsibility or obligation to make any payments to the UJ with regard to his secondment for the period of the extension.

32. The Tribunal must first consider the Applicant’s request that the Tribunal rescind clause 5 of the contract. The uncontested facts are: that on 22 July 2014, the Applicant refused to sign the offer because of the inclusion of clause 5; however, on 31 July 2014, he first signed the proposed offer of extension with an annotation where he took exception to clause 5 (annex 14). Later that day, the Applicant signed the offer without any reservation (annex 15). Despite his initial reservation, the Applicant nevertheless signed the contract, and therefore, on that date, the entire contract – including clause 5 – became binding on the parties and cannot now be contested.

33. The Applicant contends that the reason he signed the contract on 31 July 2014 was because he was under duress. He claims that because he was given the contract while he was on sick leave, he lacked the adequate time to consider his options. Therefore, the Tribunal will review the facts as set out by the Applicant in his application.

34. The Tribunal recalls that on 6 July 2014, the DUO/J informed the Applicant of his legal concerns with regard to the cost-sharing agreement between the Agency and the UJ.
21 July 2014, the Applicant received the offer to extend his employment beyond the age of retirement with the inclusion of clause 5, via email. On 30 July 2014, the Applicant returned to the office from sick leave and received a hard copy of the offer of extension. He claims that on 31 July 2014, he was pressured by Deputy Director of UNRWA Operations, Jordan ("D/DUO/J") to sign the offer before the close of business; otherwise, he would have been left without a contract as of the following Sunday, when his previous contract was set to expire. Based on the above facts, the Tribunal does not find that the Applicant was placed under duress. Effective 6 July 2014, the Applicant knew that the DUO/J had legal concerns with regard to the cost-sharing agreement between the Agency and the UJ. Therefore, the Applicant should not have been surprised when he received the offer on 20 July 2014 with the inclusion of clause 5. Moreover, based on the above facts, the Applicant cannot claim that he was unaware that his contract would expire at the close of business on 31 July 2014 if he did not sign the extension.

35. The Applicant claims that he had a legitimate expectation that his fixed-term appointment would be extended under same conditions as set out in the FHRO’s 19 June 2013 email. To this contention, the Tribunal first notes that the agreement between the Agency and the UJ with regard to the cost-sharing of the Applicant’s secondment was between the UJ and the Agency. The Applicant was not a party to that agreement, rather, he was the beneficiary of the agreement. Moreover, the fixed-term appointment signed on 26 June 2013 contained a clause that explicitly stated that “this appointment does not carry an expectation of renewal”. Therefore, the Tribunal does not see any basis for the Applicant to reasonably have expected that: 1) his contract would be renewed; and 2) it would be under the same conditions as the previous contract.

36. The Tribunal must also consider whether the Applicant received an express promise from the Agency which could have led him to believe that if his contract was renewed, it would be under the same conditions.

37. The United Nations Appeals Tribunal ("UNAT") in Igbinedion 2014-UNAT-411 held that only an express promise by the Administration to the staff member in writing can create an expectation of renewal. The Tribunal notes that the file is devoid of any express promise to the Applicant in writing that his contract would be renewed under the previous conditions. In fact, the only document in the file that could possibly be considered as any type of
“commitment” by the Agency to the Applicant is dated 31 December 2013. In that letter, the Acting DUO/J wrote to the President of the University of Jordan seeking clarification with regard to the Agency’s obligation to the UJ, in the event that the Applicant was to continue his service with UNRWA. In relevant part, the letter states:

If Dr. Hamdan’s service continues with UNRWA after he is eligible for sabbatical, we could arrange to cover one-sixth of Dr. Hamdan’s salary for one sabbatical year, four thousand one hundred eighteen Jordanian dinars and six hundred fills (4118.600 JD), plus on sixth of Dr. Hamdan’s salary for an end of service gratuity for the sabbatical year, nine hundred ninety-two Jordanian dinars and one hundred fifty fills (992.150 JD). We would appreciate if you could kindly confirm this arrangement and again provide a detailed breakdown of the calculation associated with these values.

38. Based on the above, it is clear that the Agency was merely trying to ascertain any conceivable financial obligations that it might incur if the Applicant continued his service with UNRWA under the previous conditions. While the Applicant was copied on the letter, he was not the intended recipient. As previously stated, even if the Applicant was directly affected by the agreement between the Agency and the UJ, he was not a party to the actual agreement. Therefore, the Tribunal finds that the Applicant did not have any legitimate expectation that he would be granted the same cost-sharing agreement of 2013 if his service was extended.

39. Lastly, the Applicant complains that the Agency breached its duty when it failed to treat him fairly and incorporated clause 5 into the offer. In Asaad 2010-UNAT-021, the UNAT held that “the Administration must act in good faith and respect procedural rules. Its decisions must not be arbitrary or motivated by factors inconsistent with proper administration”. The Tribunal recalls that on 25 March 2014, the HRSO/J wrote to the Applicant informing him that he had the option to request an extension of his appointment beyond the age of sixty. However, it is only several months later and after the Applicant had already requested sabbatical leave from the UJ and an extension of his contract from the Agency, that JFO actually began to review the unique financial implications related to the Applicant’s contract. While it is regrettable that the Agency was so delayed in revisiting the financial obligations associated with the Applicant’s previous contractual conditions, the Tribunal does not find that this delay amounts to unfair treatment. The Agency acted within its discretion and in its interest when deciding not to include the cost-sharing agreement in
the new contract. It is true that the omission of the cost-sharing agreement was unfavourable with regard to the Applicant; however the Tribunal does not find that the omission was arbitrary or motivated by factors inconsistent with proper administration. Rather, the omission was done in an attempt to save the Agency money. The Tribunal does not find any bad faith in the Agency’s actions. In the end, it was the Applicant who chose to sign the contract and, in doing so, he accepted all the terms and conditions set out in the offer.

40. Based on the above, the Tribunal denies each of the Applicant’s requested remedies.

Conclusion

41. In view of the foregoing, the Tribunal hereby DECIDES:

The application is dismissed.

(Signed) ________
Judge Jean-François Cousin
Dated this 11th day of October 2015

Entered in the Register on this 11th day of October 2015

(Signed) ___________________
Laurie McNabb, Registrar, UNRWA DT, Amman