ABU MALLUH et al.

v.

COMMISSIONER-GENERAL OF THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST

JUDGMENT

Counsel for Applicants:
Amer Abu-Khalaf (LOSA)

Counsel for Respondent:
Rachel Evers (DLA)
Introduction

1. Ra’ed Abu Malluh, Ra’fat Shlash, Khaled Zamzam and Ra’ad Hussein (the “Applicants”) filed applications contesting the decisions of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (the “Respondent”), to qualify their respective posts as Messenger Porter instead of Messenger A.

Facts

Applicant Abu Malluh

2. Applicant Ra’ed Abu Malluh began working for the Agency in 2000 as a daily paid on an intermittent basis. On 5 December 2007, the Chief, Compensation & Management Services Division, Headquarters Amman (“CCMSD”) sent to the Head, Area Staff Personnel Section, a Post Description (“PD”) for the post of Messenger A, Grade 2. The Director of Human Resources (“DHR”) signed the PD on 5 December 2007.

3. On 2 June 2009, the Applicant signed the PD for Messenger A, Grade 2. In a letter dated 1 June 2009, to the Applicant, a Human Resources Officer (“HRO”) states, in relevant part,

In reference to your application for the post of Messenger Porter, Grade 02, I am pleased to inform you that you have been selected for the post [. . .]. The effective date of your appointment will be 01 June 2009.

4. The Applicant signed this letter on 2 June 2009, and at the bottom of the letter appear the typed name of the Applicant and post title Messenger Porter underneath his name.

5. A Letter of Appointment (“LoA”) states that the duration of the fixed-term appointment was 1 June 2009 to 31 May 2012, for the post title Messenger Porter
at Grade 2, Step 1. The LoA was signed by the HRO on 1 June 2009 and by the Applicant on 2 June 2009.

6. On 20 May 2012, the Applicant was sent a letter by the HRO informing him that his fixed-term appointment was extended for another three years ending on 31 May 2015. The letter states: “Please note that this extension will be with no change to the terms and conditions stipulated in your letter of appointment, which was signed by you on 2 June 2009”. At the bottom of the letter appear the typed name of the Applicant and post title Messenger Porter underneath his name.

7. In a letter dated 24 March 2015, the Applicant’s contract was extended for another three years – to 31 May 2018. The letter refers to the LoA which he had signed on 2 June 2009. Abu Malluh signed this letter on 2 April 2015, adding a handwritten notation on the letter:

I commenced my employment with UNRWA in 2009 as a Messenger A. In 2014 I discovered that my title was changed Messenger/Porter without my knowledge or even notifying me by HR. This is a clear and explicit violation of the employment contract I signed in 2009.

Taking into consideration that the tasks assigned to me by Head Administrative and General Services in May 2014 are inconsistent with the post description (Attached) (Messenger/Porter). I am committed to the tasks assigned to me by the Head of the Division provided that the post description shall be reviewed as part of the Department restructuring as she promised and confirmed. This review should reflect the actual tasks I perform and shall be consistent with similar posts in other UN agencies.

Applicant Hussein

8. In a letter dated 1 February 2001, Applicant Ra’ad Hussein was appointed to the post of Messenger on a fixed-term appointment of two years. The Applicant signed the letter in 2001, although the specific date is unclear. In the LoA, which the Applicant signed on 4 February 2001, the post title is Messenger, Level 1A, Step 1.
9. By letter dated 9 January 2003, a Personnel Officer informed the Applicant that his appointment was extended for a two-year fixed-term ending on 31 January 2005. The Applicant signed the letter on the same date, and at the bottom of the letter appear the typed name of the Applicant and post title Messenger Porter underneath his name. The letter references the terms and conditions stipulated in the LoA which he had signed on 4 February 2001.

10. A LoA shows that, effective 1 August 2004, the Applicant was offered a fixed-term appointment as Messenger Porter, Grade 2, until 31 January 2005. The LoA, which the Applicant signed on 2 August 2004, further informed the Applicant that his appointment was changing from category Z to X.

11. By letter dated 13 February 2005, a Personnel Officer informed the Applicant of the following:

With reference to Travel & Transport Officer, HQ (A) letter TTO/128/2005 dated 9 January 2005, I am pleased to inform you that it has been decided to extend your fixed term appointment with the Agency for three years ending on 31.01.2008.

Please note that this extension will be with no change to the terms and conditions stipulated in the letter of appointment, which was signed by you on 01.08.2004.

[...]

12. The Applicant signed the letter on 16 February 2005, and at the bottom of the letter appear the typed name of the Applicant and post title Messenger Porter underneath his name.

13. The PD for the post of Messenger A, Grade 2, referred to in paragraph 2 above, was signed by the Applicant on 9 December 2007.

14. By letter dated 11 January 2011, a HRO informed the Applicant that his fixed-term appointment with the Agency was extended for another three years ending on 31 January 2014. The letter, which the Applicant signed on 17 January
2011, refers to the LoA which he had signed on 1 February 2001. At the bottom of the letter appear the typed name of the Applicant and post title Messenger Porter underneath his name.

15. By letter dated 27 December 2011, a HRO informed the Applicant that, due to his ten years of qualifying service, as of 1 January 2012, his appointment was converted from category X to A – a Temporary Indefinite Appointment. At the bottom of the letter appear the typed name of the Applicant and post title Messenger Porter underneath his name.

16. The LoA converting the Applicant’s appointment from category X to A indicates that the effective date of the appointment is 1 January 2012 and the post title is Messenger Porter, Grade 2. The Applicant signed the LoA on an unknown date in January 2012.

Applicant Zamzam

17. In a letter dated 13 April 2000, Applicant Khaled Zamzam was offered a fixed-term two year appointment to the post of Messenger Porter, Level 1A, effective 1 May 2000. The Applicant signed the letter on 7 May 2000, and at the bottom of the letter appear the typed name of the Applicant and post title Messenger Porter underneath his name. The LoA, which the Applicant also signed on 7 May 2000, indicates the post title Messenger Porter, Level 1A, Step 2. In addition, on 7 May 2000, the Applicant signed an Area Staff PD for Messenger, Grade 2.

18. By letter dated 17 March 2002, a Personnel Officer informed the Applicant that his appointment was extended for two years ending on 30 April 2004. This letter refers to the 13 April 2000 letter, and at the bottom of the letter appear the typed name of the Applicant and post title Messenger Porter underneath his name.

19. By letter dated 11 May 2004, a Personnel Officer informed the Applicant:

With reference to Travel & Transport Officer, HQ (A) letter TTO/128/2004 dated 11 May 2004, I am pleased to inform you that
it has been decided to extend your fixed term appointment with the Agency for two years ending on 30 April 2006.

Please note that this extension will be with no change to the terms and conditions stipulated in the letter of appointment, which was signed by you on 07.05.2000.

[...].

The Applicant signed this letter on 12 May 2004, and at the bottom of the letter appear the typed name of the Applicant and post title Messenger Porter underneath his name.

20. A LoA converting the Applicant’s appointment from category Z to X indicates that the Applicant’s post title is Messenger Porter. The duration of the appointment was 1 August 2004 to 30 April 2006. The Applicant signed this LoA on 8 August 2004.

21. By letter dated 4 May 2006, a Personnel Officer informed the Applicant that his fixed-term appointment was extended for another three years until 30 April 2009. The letter, which the Applicant signed on 7 May 2006, refers to the LoA that the Applicant had signed on 7 May 2000, and at the bottom of the letter appear the typed name of the Applicant and post title Messenger Porter underneath his name.

22. On 9 December 2007, the Applicant signed the PD for Messenger A, Grade 2 referred to in paragraph 2 above.

23. By letter dated 25 February 2009, a HRO informed the Applicant that his contract was extended again until the end of 30 April 2012. This letter, which the Applicant signed on 3 March 2009, refers to the terms and conditions outlined in the letter signed by the Applicant on 7 May 2000, and at the bottom of the letter appear the typed name of the Applicant and post title Messenger Porter underneath his name.
24. By letter dated 27 December 2011, the Applicant was informed that his fixed-term appointment was converted from category X category to A – a Temporary Indefinite Appointment. At the bottom of the letter appear the typed name of the Applicant and post title Messenger Porter underneath his name.

Applicant Shlash

25. By letter dated 2 April 2008 from an Acting Personnel Officer, Applicant Ra’fat Shlash was informed that his application for the post of Messenger A, Grade 2 was successful and he was appointed to this post effective 1 April 2008. The Applicant signed this letter on 6 April 2008, and at the bottom of the letter appear the typed name of the Applicant and post title Messenger A underneath his name.

26. In his LoA, which he signed, the duration of the contract was from 1 April 2008 to 31 March 2011. The post title indicated in the LoA was Messenger, Grade 2.

27. By letter dated 3 March 2011, a HRO informed the Applicant that his appointment was extended until 31 March 2014. The letter, which the Applicant signed on 13 March 2011, refers to the LoA which he signed on 1 April 2008, and at the bottom of the letter appear the typed name of the Applicant and post title Messenger Porter underneath his name.

28. By letter dated 3 March 2014, an Acting/HRO informed the Applicant that his contract was extended for another three-year period until 31 March 2017. The letter, which was signed by the Applicant on 10 March 2014, refers to the LoA signed by the Applicant on 1 April 2008, and at the bottom of the letter appear the typed name of the Applicant and post title Messenger Porter underneath his name.

Situation of the Applicants

29. At some point during the employment of the Applicants, additional duties that were not stated in the PD of Messenger A were assigned to them by their direct supervisor. They were threatened with suspension by their supervisor unless they...
performed these duties. The Applicants were frustrated with this situation, which went on for several years.

30. In 2014, the Applicants discussed the situation with the Director of Administrative Support (“DAS”). He referred them to the Head, Administration and General Services Section (“HAGSS”).

31. On 11 June 2014, the HAGSS met with the Applicants. By email addressed to the DAS and dated the same day, she memorialised her meeting with the Applicants. The email indicates that, during this meeting, the Applicants’ concerns were discussed, and they were provided with a copy of the PD for Messenger Porter. They were also informed that a request would be sent to Human Resources for the revision of their PD.

32. By email to Area Staff Union (“ASU”) members dated 23 September 2014, the HAGSS memorialised a second meeting, which had taken place on 3 August 2014 with the Applicants, as well as with the ASU members. The email provides a table outlining in detail the issues raised by the Applicants, the actions taken, and the results obtained, inter alia, the extra duties of the Applicants were removed. The HAGSS informed the participants to the meeting that the HRD had provided confirmation that all 4 posts were Messenger Porter as per the PD issued in 1979, adding that this PD required modification so as to reflect the current responsibilities of mail room staff.

33. The Applicants, together with the ASU members, consulted several officials in the HRD and checked their personnel files. The HRD officials gave them conflicting explanations.

34. Finally, by separate emails dated 4 March 2015, the HRO, Entitlements confirmed to the Applicants that their respective post title was Messenger Porter and regretted “any misunderstandings that previous conflicting communications may have caused.”
35. On 14 April 2015, the Applicants separately requested review of the decision dated 4 March 2015.

36. On 23 July 2015, the Applicants filed separate applications with the UNRWA Dispute Tribunal (the “Tribunal”). The Tribunal transmitted the applications to the Respondent on 26 July 2015.

37. On 20 August 2015, the Respondent filed a joint motion in relation to the Applicants’ cases requesting an extension of time to file his replies. The Tribunal transmitted the motion to the Applicants on 23 August 2015.

38. By Order No. 101 (UNRWA/DT/2015) dated 13 September 2015, the Tribunal granted the Respondent’s request for an extension of time to file his replies.

39. On 13 October 2015, the Respondent filed separate replies to the applications addressing only the issue of receivability. The Tribunal transmitted the replies to Applicants Abu Malluh and Shlash on the same day and to Applicants Zamzam and Hussein on 14 October 2015.


41. On 19 November 2015, the Respondent complied with Order Nos. 116, 117 and 119 and submitted the requested Arabic translations of the replies, copying each of the Applicants on the respective transmittal email, except for Applicant Zamzam. The Tribunal then transmitted the Arabic translation of the reply to Applicant Zamzam on the same day.
42. On 27 November 2015, the Respondent complied with Order No. 122 and submitted the requested Arabic translation of the reply copying the Applicant and the Legal Officer (Staff Assistance) (“LOSA”).

43. On 15 December 2015, the Applicants filed separate motions requesting the Tribunal to order the Respondent to submit his replies on the substantive merits. The motions were transmitted to the Respondent on 16 December 2015.

44. On 18 December 2015, the Respondent filed separate responses to the motions filed by Applicants Abu Malluh and Zamzam requesting the Tribunal to consider the receivability arguments first. The responses were transmitted to the respective Applicants on 20 December 2015.

45. On 21 December 2015, the Respondent filed separate responses to the motions filed by Applicants Shlash and Hussein requesting the Tribunal to consider the receivability arguments first. The responses were transmitted to the respective Applicants on the same day.

46. By Order Nos. 004 (UNRWA/DT/2016) (“Order No. 004”), 005 (UNRWA/DT/2016) (“Order No. 005”), 006 (UNRWA/DT/2016) (“Order No. 006”) and 007 (UNRWA/DT/2016) (“Order No. 007”), all dated 28 January 2016, the Applicants’ motions requesting the Respondent to submit his replies on the merits were denied. The Tribunal ordered the parties to provide comments on the receivability issues raised by the Tribunal in its Orders.

47. On 11 February 2016, the Applicants provided separate comments in relation to the Tribunal’s Order Nos. 004, 005, 006 and 007. The Applicants also filed separate motions to submit supplementary evidence. Their submissions were transmitted to the Respondent.

48. On 11 February 2016, the Respondent provided separate comments in relation to the Tribunal’s Order Nos. 004, 005, 006 and 007. His submissions were transmitted to the respective Applicants.
49. On 29 February 2016, the Tribunal issued its consolidated Judgment No. UNRWA/DT/2016/008. Given the similarity of the four applications, the Tribunal considered that consolidating the applications would serve judicial economy and consistency without changing or affecting the rights of each party. The Tribunal thus decided to join the cases. The Tribunal then held that the applications were not receivable and dismissed them.

50. On 20 April 2016, the Applicants filed an appeal to the United Nations Appeals Tribunal (the “UNAT”) on the receivability issue.

51. On 28 October 2016, the UNAT issued Abu Malluh et al. 2016-UNAT-690, vacating the Tribunal’s Judgment No. UNRWA/DT/2016/008 and remanding the case “for adjudication on the merits, after receiving a reply on the merits from the Commissioner-General”.

52. By Order No. 021 (UNRWA/DT/2017) dated 24 January 2017, the Tribunal ordered the Respondent to submit his consolidated reply on the merits of the four applications on or before the close of business 1 March 2017. The Order was transmitted to the Applicants on the same day.

53. On 1 March 2017, the Respondent submitted his consolidated reply to the Tribunal. It was transmitted to the Applicants on 5 March 2017.

54. On 13 March 2017, the Applicants filed a motion to request leave to submit observations and supplementary evidence on the Respondent’s consolidated reply. The motion was transmitted to the Respondent on the same day.

55. On 13 March 2017, the Respondent filed a motion for extension of time to translate his reply. The motion was transmitted to the Applicants on 14 March 2017.

56. By Order No. 045 (UNRWA/DT/2017) dated 23 March 2017, the Tribunal granted the Respondent’s motion for extension of time to file the translation of the consolidated reply, and granted the Applicants’ motion to submit their observations and supplementary evidence on the Respondent’s reply by 21 April 2017.
57. On 30 March 2017, the Respondent filed the Arabic translation of the consolidated reply on the merits. It was transmitted to the Applicants on the same day.

58. On 20 April 2017, the Applicants submitted their observations and supplementary evidence. They were transmitted to the Respondent on the same day.

59. By Order No. 072 (UNRWA/DT/2017) (“Order No. 072”) dated 11 June 2017, the Tribunal requested the Respondent to answer several questions and to produce several documents, as well as it requested the Applicants to answer several questions.

60. The Tribunal ordered that all of the above be submitted on or before the close of business 4 August 2017.

61. On 13 July 2017, the Applicants submitted their response to Order No. 072. It was transmitted to the Respondent on the same day.

62. On 4 August 2017, the Respondent submitted his response to Order No. 072. It was transmitted to the Applicants on 6 August 2017.

Applicants’ contentions

63. The Applicants contend:

i) The Respondent changed their post title without their knowledge, thereby changing their employment contract and the terms of their appointment;

ii) This change is a violation of their rights and a breach of their terms of employment;

iii) The Respondent’s action contravenes the Agency’s Regulations and Rules and is arbitrary and unfair;
iv) The Respondent’s action subjected the Applicants to pressure, tension and an increase of their daily workload; and

v) The Respondent’s action violated item 8 of the Applicants’ terms of employment.

64. The Applicants request:

i) Their respective post title to be changed from Messenger Porter to Messenger A; and

ii) To be granted financial compensation for the total time they worked as Messenger Porters and for the psychological damage they sustained due to the change of their respective employment contracts without their knowledge.

Respondent’s contentions

65. The Respondent contends:

i) The qualification of the Applicants’ posts as Messenger Porter was correct; and

ii) The remedies sought by the Applicants have no legal basis.

66. The Respondent requests the Tribunal to dismiss the applications.
Considerations

67. The Applicants are contesting the decision to qualify their respective posts as Messenger Porter instead of Messenger A.

Main Issues

Messenger Porter and Messenger A Post Descriptions

68. The Applicants claim that the PDs for Messenger A and Messenger Porter are not similar, and that they were hired as Messenger A. However, they performed the duties of Messenger Porter. The Respondent submits that, except for the loading and offloading activities, the two PDs are similar. For clarification purposes, it is worth outlining the relevant sections of both PDs.

Messenger Porter PD

<table>
<thead>
<tr>
<th>AREA STAFF POST DESCRIPTION</th>
<th>OCC: 86</th>
</tr>
</thead>
<tbody>
<tr>
<td>POST TITLE: Messenger/Porter</td>
<td>DEPARTMENT:</td>
</tr>
<tr>
<td>Administration and Finance Unit</td>
<td></td>
</tr>
<tr>
<td>GRADE: 02</td>
<td>DIVISION:</td>
</tr>
<tr>
<td>LOCATION: HQ (Amman)</td>
<td></td>
</tr>
</tbody>
</table>

1. FUNCTIONS AND RESPONSIBILITIES
   In accordance with Agency policy and procedures, the incumbent:

   (A) Collects, delivers and distributes documents and parcels;
   (B) Load [sic] and offloads parcels, mail pouches to and from Jordan Field Office shuttle service and other supplies, etc.,
   (C) Distributes and recollects electric fans and heaters seasonally;
   (D) Carries office machines for servicing and inter-office use;
   (E) Performs such other duties as may be assigned.

2. PLACE IN THE ORGANISATION
   Is supervised by the Mail Room Supervisor and by General Services Officer as required by duties being performed;

3. MINIMUM QUALIFICATIONS
Completion of elementary education with a working knowledge of English;

4. **DESI RABLE QUALIFICATIONS**

(A) Some working experience in an office

(B) Completion of preparatory education

*Messenger A PD*

**AREA STAFF POST DESCRIPTION**

1. **IDENTIFICATION**

   **POST TITLE**: Messenger A

   **DEPARTMENT**: Administrative Support

   **GRADE**: 02

   **DIVISION**: General Services

   **LOCATION**: HQ (Amman)

2. **PLACE IN THE ORGANISATION**

   The incumbent of this post is responsible to the Chief Clerk (Mail Room).

3. **FUNCTIONS AND RESPONSIBILITIES**

   In accordance with Agency policy and procedures, the incumbent:

   (A) Delivers, collects and distributes mail and parcels among all departments at HQ Amman;

   (B) Delivers and collects all incoming and outgoing mail and parcels from Post Office;

   (C) Assembles and packs material produced as required;

   (D) Operates photocopy and paper shredding machines and other office equipment as and when required;

   (E) Assists with preparation of UNRWA diplomatic pouch;

   (F) Performs such other duties as may be assigned.

4. **MINIMUM QUALIFICATIONS**

   (A) Successful completion of full preparatory education;

   (B) At least one year working experience in a similar post;

   (C) Working knowledge of written and spoken English and Arabic.

   (D) Competencies

      (i) Ability to maintain cordial relationship with all concerned;

      (ii) Ability to follow up on mails;

      (iii) Priority and confidentiality of mails.
5. **DESIirable QUALIFICATIONS**
   Not applicable.

6. **Equivalency**
   Not applicable.

7. **ADDITIONAL INFORMATION**
   Physically fit.

8. **APPROVAL OF POST DESCRIPTION**
   Approved: Cornelia Moussa (signed)  
   Date: 5/12/07  
   Director of Human Resources

9. **ACKNOWLEDGEMENT OF RECEIPT OF COPY OF POST DESCRIPTION**
   I have been informed about the duties and responsibilities attached to the post which I occupy and have been given a copy of this post description (emphasis in original).

**Applicants’ contracts and actual duties**

**Contracts**

69. Upon analysing the contracts which the Applicants have signed, it becomes clear that they were Messenger Porters. For Applicants Hussein and Zamzam, in their LoAs dated 22 December 2011, they were given a Temporary Indefinite Appointment effective 1 January 2012. These LoAs were in force at the time of their complaint to the HAGSS and clearly identified their post title as Messenger Porter. For Applicant Abu Malluh, the operative contract was the LoA which he signed on 1 June 2009, as this LoA is specifically referred to in each of his contract extension letters thereafter. His 1 June 2009 LoA clearly identifies his post title as Messenger Porter. Therefore, the assertions of Applicants Hussein, Zamzam and Abu Malluh that they thought they were Messengers A are without merit.

70. For Applicant Shlash, although it is unfortunate that his operative contract referred to him as a “Messenger”, his pay slips state Messenger Porter as do the letters sent to him informing him of his contract extensions. His duties were the same as those for Hussein, Zamzam and Abu Malluh, and the four Applicants were the only persons employed by the Agency in the capacity of Messenger Porters.
Therefore, Applicant Shlash has failed to persuade the Tribunal that he thought he was a Messenger A.

71. Moreover, the duties they performed, their pay slips, and a Performance Evaluation Report ("PER") make it clear that they were Messenger Porters. The Tribunal acknowledges that it is true that some of the correspondence which had been sent to the Applicants by the HRD was confusing because of references made to Messenger A rather than Messenger Porter. The Respondent does not contest this fact. However, both Messenger A and Messenger Porter PDs bear the same Grade 2 and salary. Contractually, the Applicants were Messenger Porters and they worked as Messenger Porters, even if they thought that they were Messengers A.

72. The Tribunal does not find the Respondent credible when he submits that the only difference between the Messenger A and the Messenger Porter duties consisted of loading and offloading activities. The record indicates quite a few differences, inter alia, educational qualifications; Porters carrying office machines for servicing and inter-office use and Porters distributing and collecting fans and heaters seasonally. It is clear that the duties of Messenger A as described in the PD were lighter in nature than those of Messenger Porter.

73. The evidence in the record makes it clear that no Messenger A was ever hired by the Agency. Therefore, the question arises as to why the Applicants are challenging the fact that their PD is that of Messenger Porter and not of Messenger A. It could not be for the sake of salary, given the fact that Messenger Porter and Messenger A PDs have the same grade level and thus the same salary. Is it then because the Messenger A PD involves fewer duties?

*Actual duties*

74. The Applicants claim that they had to do 19 additional duties that were not included in their Messenger A PD and that their supervisor forced them to perform, under the threat of suspension and instructions that they were part of their required duties. Furthermore, their supervisor “ridiculed” them by saying “if you do not
perform these duties, then we will replace you by female messengers to perform them”. This caused “frustration and psychological and moral suffering”, as stated by the Applicants in the applications. They also claim that, four or five years prior to their complaint to the HAGSS, the Agency had hired an employee to particularly perform these duties for JOD20 per day for almost three years; however, in reality, the employee was performing some tasks and the Applicants were helping him in his duties until his contract expired. Then another employee had been hired but quit, and the duties fell back onto the Applicants until they were relieved of the additional duties in 2014.

75. As mentioned above in paragraphs 30-32, the Applicants complained about their situation to the DAS at the beginning of June 2014. The DAS referred them to the HAGSS, and by 11 June 2014, the Applicants had met with the HAGSS. By the end of September 2014, the extra duties were removed from the Applicants’ duties. Indeed, the case file shows that once this situation was brought to the attention of the HAGSS, she acted diligently by removing the extra duties. The HAGSS also requested that the PDs be changed in order to reflect accurately the Applicants’ current situation.

76. The Tribunal finds that the Applicants are partly to blame for their situation dragging on for several years. They could have complained much sooner to rectify their situation, notwithstanding the statement by their supervisor. The Applicants had other avenues in which to raise their issues, inter alia, the Ethics Office and the Staff Union, or simply the Director of their own department, the DAS. Indeed, when they complained to him in 2014, the situation was quickly rectified by the HAGSS. In explaining why they delayed until 2014, the Applicants state, inter alia, that “[t]he presence of the fair Tribunal encouraged us to file the complaint after we became familiar with the procedures to file complaints to the Tribunal” and because of “[t]he Tribunal’s neutrality, justice and impartiality in adjudicating the cases submitted to it.”
77. The Tribunal does not find their explanation convincing because the Tribunal was established in 2010, and a Judge was appointed in 2011. Moreover, if, as alleged, the Applicants were afraid of their supervisor who threatened them with suspension, what happened all of a sudden in 2014 for them not to be afraid anymore? Three years earlier the Applicants could have consulted the LOSA, who is currently representing them in this case, or a Staff Union member, both of whom could have explained the Area Staff Regulations and Rules and assisted with their applications to the Tribunal. The Applicants did just that but they did it only in 2014, not earlier. Again the question arises: since the anomaly was rectified, what are the Applicants challenging and why? Is it that the Applicants feel that they had performed extra duties for a number of years and had not been paid accordingly?

78. The Tribunal notes that neither PD includes such duties as loading and unloading luggage of passengers into the vans for international staff; assisting the driver at the King Hussein Bridge (at the border with the West Bank) with the loading and unloading of mail, in addition to the bags and boxes of passengers, alcohol or any other articles bought by passengers; accompanying drivers using UN vehicles to hotels in order to load and unload luggage, computers, stationery, printers and the staff members’ personal luggage; and regularly cleaning the storehouse. Clearly the item “performs such other duties as may be assigned” does not include regular loading and unloading of luggage and other packages for international staff members at the Agency.

79. As noted above, the Tribunal acknowledges the fact that the Applicants’ contracts indicate that other duties may be assigned to them. Arguably, some of the extra duties performed by the Applicants would fall into this category. However, the fact that many tasks were immediately taken away from the Applicants and given to daily paid workers and/or cleaners is a clear admission on the part of the Agency that these duties were not appropriate for Messenger Porters. Therefore, the Tribunal finds that the Applicants were in the post of Messenger Porter and their situation was rectified when they raised a complaint. The Tribunal also finds that
the Applicants were taken advantage of and asked to do duties outside the realm of their regular duties.

Other Contentions

80. The Applicants claim that the Respondent breached the Area Staff Regulations and Rules. However, the Applicants do not point to any Regulation or Rule in particular, and the Tribunal has not found any such Regulation or Rule.

81. The Applicants also claim that the Respondent breached item 8 of the terms of employment. Item 8 provides the following:

**SPECIAL CONDITIONS**

This appointment does not carry an expectation of renewal or conversion to any other type of appointment. Any changes, additions, deletions or conditions that you make to this Letter of Appointment will render such letter void and constitutes non-acceptance on your part.

82. Upon reading the provisions of item 8, the Tribunal fails to understand the relevance of this item to the Applicants’ cases, and the Applicants have not provided any explanation. Indeed, if the Applicants’ belief is that their contracts should have been rendered void by the extra duties, then they would not have had a contract of employment with the Agency. Therefore, their contention is without merit.

Financial compensation for extra duties

83. The Applicants request that their PD be changed from Messenger Porter to Messenger A, and that they be paid for the total time they worked as Messenger Porters. As explained earlier, there has never been, nor is there currently, a person hired as a Messenger A post in the Agency. If the reason for the Applicants’ request is to have fewer duties under a Messenger A post, their request was granted in 2014, when the extra duties were removed. Moreover, the Applicants wrote in their response to Order No. 072 that they are performing exactly the duties of Messenger A. If the reason for the Applicants’ request is to have a higher salary, the Tribunal
recalls that Messenger Porter and Messenger A have the same grade and thus the same salary. Therefore, there is no basis under the Agency’s regulatory framework to award damages.

84. Area Staff Personnel Directive No. A/3 Rev. 1/Part XI/Amend.5, Letter of Transmittal No. 358 (“PD No. A/3 Rev. 1”), dated 1 October 2012 provides the following under Part XI, Special Allowances:

4. ADDITIONAL ASSIGNMENT ALLOWANCE (SPECIAL DUTIES)

4.1. Area Staff members may be required to carry out assignments clearly unrelated to their normal post duties and outside of normal hours of duty. **In such cases an allowance for these assignments may be paid for specified periods** (emphasis added).

4.2. The amount of such allowance shall be determined by the Director of Human Resources in coordination with the Director of Finance.

85. Equally relevant is Area Staff Rule 103.5 providing under Retroactivity of Payments:

A staff member who has not received an allowance, grant or other payment to which he/she is entitled shall not receive retroactively such allowance, grant or payment unless he/she has made a written claim therefor:

(A) In the case of the cancellation or modification of the rule governing eligibility, within three months following the date of such cancellation or modification; or

(B) **In every other case, within one year following the date on which he/she would have been entitled to the initial payment** (emphasis added).

86. As per the above Area Staff Directive and Rule, the Applicants needed to make a claim for compensation within one year of the date they started doing extra duties outside the realm of their PD. The Applicants did not bring the issue to light with the DAS until June 2014, and their first **written** claim was made on 14 April
2015, when they requested review of the confirmation by the HRO, Entitlements of their post title as Messenger Porter.

87. The Tribunal appreciates the Applicants’ frustration over the several years during which they performed extra duties; however, the Tribunal is bound by the Area Staff Regulations and Rules, and other administrative issuances referred to above. Although the Tribunal will grant the Applicants an allowance for the extra duties they performed, the compensation can only be in accordance with the provisions of Area Staff Rule 103.5. In other words, the allowance is limited to a period of one year prior to the date on which they made their first written claim.

88. The Tribunal will not leave the calculation of the allowance owed to the Applicants to the Director of Human Resources with the coordination of the Director of Finance, as stipulated by PD No. A/3 Rev. 1. The Tribunal will determine the allowance as follows: the rate of JOD20\(^1\) per working day (i.e. the amount given to the daily paid employee) for the period starting 14 April 2014 – i.e. one year prior to the Applicants’ written claim on 14 April 2015 – up to the end of September 2014 when the extra duties were removed from the Applicants. This amount is to be divided by four as there are four Applicants.

89. As a final word on this issue, the Tribunal would like to add that it can only hope that staff members are aware of the Regulations and Rules that govern their employment and that the Agency is doing its part in monitoring what extra duties fall beyond the reasonable realm of “[p]erforming such other duties as may be assigned”.

Moral Damages

90. The Applicants claim moral damages for the psychological distress that they suffered due to the change of their respective employment contracts without their knowledge.

\(^1\)As of the date of this Judgment JOD20 equal USD28.
91. The Tribunal has consistently held and reminded Applicants that mere unsubstantiated statements do not suffice to prove psychological pressure or stress; material evidence has to be adduced in support of such allegations. The Tribunal would like to remind the Applicants that they have provided no material evidence of their distress, for example, a medical report, and therefore will not grant any compensation in this regard.

92. The UNAT held in its Judgment *Eissa* 2014-UNAT-469, at paragraph 30, as follows:

> Under our jurisprudence, “damages for a moral injury may arise: … [f]rom a breach of the employee’s substantive entitlements arising from his or her contract of employment. … Where the breach is of a fundamental nature, the breach may of itself give rise to an award of moral damages, not in any punitive sense for the fact of the breach having occurred, but rather by virtue of the harm to the employee.” An award of moral damages for a breach of a staff member’s rights, especially when the breach is of a fundamental nature as found by the UNDT, does not require evidence of harm or a finding of harm. As we held in similar circumstances in *Hersh*, “the breach of [the staff member’s] rights was so fundamental that she was entitled to both pecuniary and moral damages” (emphasis in original).

93. The Respondent acknowledges the inconsistencies in the descriptions of the post titles of the Applicants, as indicated in detail in paragraphs 2 to 28 above. The anomaly was corrected, and the Applicants were provided with relevant PDs. It is worth noting that the Applicants did not complain to their supervisor that they were not Messengers A, but only that they were doing extra duties.

94. Having said this, however, the Tribunal is appalled by the manner in which the Applicants were shuffled from one HR official to another (A.T., S. Al Q.) between September 2014 and March 2015, and were provided with confusing – if not conflicting – statements by these officials. It was only on 4 March 2015 that the HRO, Entitlements confirmed to the Applicants that their respective post title was
Messenger Porter and regretted “any misunderstandings that previous conflicting communications may have caused.”

95. The Tribunal notes with dismay that the Respondent provided just one Performance Evaluation Report for one of the Applicants as Messenger Porter and that page 2 of the PD for Messenger Porter was missing in the record, and the Respondent was unable to provide it to the Tribunal.

96. For all of the mishandling, including confusion in the post titles, contracts and renewal letters of the Applicants, and conflicting information from the Agency as evidenced in the case file, the Tribunal shall award moral damages to the Applicants in the amount of USD1,000 each.

Conclusion

97. For the reasons provided above, the applications are allowed in part.

98. The Agency shall pay the Applicants an allowance for the extra duties that they performed as per paragraph 88 above. The Agency shall also pay each of the Applicants the amount of USD1,000 as moral damages. The two amounts are to be paid within 60 days of the date this Judgment becomes executable during which period the US Prime Rate, applicable as of that date, shall apply. If the sums are not paid within the 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of the payment.

(Signed)

Judge Bana Barazi

Dated this 29th day of November 2017

Entered in the Register on this 29th day of November 2017

(Signed)

Laurie McNabb, Registrar, UNRWA DT, Amman