Before: Judge Jean-François Cousin
Registry: Amman
Registrar: Laurie McNabb

BASHIR, ABU AMSHA and ZUMLUT

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:
Michael Schoiswohl (A/DLA)
Introduction

1. Three individual applications have been filed by Asma Bashir, Majed Abu Amsha and Amal Zumlut (“Applicants”) against the decisions of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (“Respondent”), to separate them from the Agency following the abolition of their posts.

Facts

2. The Applicants are staff members employed by the Agency under temporary indefinite appointments (“TIAs”) in the Gaza Field Office (“GFO”).

3. In a statement to staff members on 17 January 2018, the Commissioner-General (“CG”) announced that the Government of the United States was limiting its contribution to the Agency to 60 million USD in 2018, compared to its contribution of more than 350 million USD in 2017.

4. In a letter to all staff members in the GFO dated 6 March 2018, the Director of UNRWA Operations, Gaza (“DUO/G”) highlighted the financial difficulties the Agency was facing due to the sudden decrease in contributions to the Agency, specifically noting that “[t]he huge reduction in funding […] that was expected in 2018 for both our Programme Budget and Emergency Appeals by UNRWA’s largest donor, the [United States of America], plunged the Agency into a dramatic and sudden existential crisis”.

5. Due to the Agency’s financial crisis, in an interoffice memorandum dated 4 July 2018, the Deputy Commissioner-General (“D/CG”) recommended to the CG that the CG authorise an increase of 548 part-time posts for the GFO, the redeployment of 280 staff members, and the separation of 113 staff members. The CG approved the D/CG’s recommendation on 5 July 2018.
6. In an update to staff members on 7 July 2018 about the impact of the financial crisis, the CG described the aforementioned measures that the Agency was taking to better address the challenges of the funding cut.

7. The Applicants submitted requests for decision review in either August or September 2018.

8. On 25 July 2018, all the Applicants received a letter, signed by the DUO/G, informing them that their posts would be abolished and they would be separated from the Agency effective 31 August 2018.

9. On 10 September 2018, Applicant Majed Abu Amsha signed a settlement agreement with the Agency, in which he agreed to his separation from the Agency effective 31 August 2018 in exchange for an *ex gratia* payment that would be calculated in accordance with Area Staff Rule 109.2, paragraph 5.

10. On 13 September 2018, Applicant Asma Bashir signed a settlement agreement with the Agency, in which she agreed to her separation from the Agency effective 31 August 2018 in exchange for an *ex gratia* payment that would be calculated in accordance with Area Staff Rule 109.2, paragraph 5.

11. On 8 November 2018, Applicant Amal Zumlut signed a settlement agreement with the Agency, in which she agreed to her separation from the Agency effective 30 September 2018 in exchange for an *ex gratia* payment that would be calculated in accordance with Area Staff Rule 109.2, paragraph 5.

12. On 4 December 2018, the applications were filed with the UNRWA Dispute Tribunal (“Tribunal”).

13. Between 11 and 17 December 2018, the applications were transmitted to the Respondent.

14. On 8 January 2019, the Respondent filed a motion for suspension of proceedings in several cases, including the present applications. In the motion, the Respondent requested that the cases be suspended in order to give him additional
time to review the applications and file a motion to consolidate common applications. The motion was transmitted to the Applicants on 9 January 2019.

15. On 9 January 2019, Counsel for the Applicants filed an objection to the Respondent’s motion for suspension of proceedings. This was transmitted to the Respondent on the same day.

16. By Order No. 013 (UNRWA/DT/2019) dated 13 January 2019, the Tribunal denied the Respondent’s motion for suspension of the proceedings and granted the Respondent a 30-day extension of time to submit a motion for consolidation.

17. On 12 February 2019, the Respondent filed a motion for further extension of time to submit his motion for consolidation. This was transmitted to the Applicants on 13 February 2019.


19. On 5 April 2019, the Respondent filed his motion for consolidation of several cases, including the present applications (“motion for consolidation”). The motion for consolidation was transmitted to the Applicants on 7 April 2019.

20. On 8 April 2019, the Respondent filed an amended motion for consolidation. This was transmitted to the Applicants on the same day.


22. On 7 May 2019, the Respondent filed his consolidated reply in five cases, including the present applications (“consolidated reply”). The consolidated reply was transmitted to the Applicants on 9 May 2019.

23. On 21 May 2019, the Respondent filed a motion for an extension of time to translate his consolidated reply. The motion was transmitted to the Applicants on 22 May 2019.
24. By Order No. 113 (UNRWA/DT/2019) dated 2 June 2019, the Tribunal granted the Respondent’s motion for an extension of time to translate his consolidated reply.

25. On 30 July 2019, the Respondent filed a motion for extension of time to translate his consolidated reply. The motion was transmitted to the Applicants on the same day.

26. By Order No. 158 (UNRWA/DT/2019) dated 7 August 2019, the Tribunal granted the Respondent’s motion for extension of time to translate his consolidated reply.

27. On 2 September 2019, the Respondent filed the Arabic translation of his consolidated reply. The translation was transmitted to the Applicants on the same day.

Applicants’ contentions

28. The Applicants contend:
   
i) The abolition of their posts was effected in violation of the Agency’s Rules and Regulations, especially, Area Staff Regulation 4.1 and paragraphs 3.1 and 3.2 of Area Staff Personnel Directive No. A/4/Rev.7/PartI effective 1 February 1993;
   
ii) The Agency’s regulatory framework was not observed with respect to the rules and regulations on redundancy, articulated in paragraphs 33-44 of Area Staff Personnel Directive No. A/9/Rev.10, effective 23 June 2015;
   
iii) The Applicants were not notified of the period of provisional redundancy; and
   
iv) The Agency may not unilaterally change the Applicants’ terms or conditions of appointment.

29. The Applicants request:
i) Rescission of the contested decisions; and

ii) Compensation for all financial losses such as salaries and entitlements resulting from the contested decisions.

**Respondent's contentions**

30. The Respondent contends:

i) The Applicants signed individual settlement agreements and agreed to receive *ex gratia* payments and not to contest the decisions to end their services with the Agency. Accordingly, the applications are not receivable.

31. The Respondent requests the Tribunal to dismiss the application in its entirety.

**Considerations**

*Consolidation*

32. Having considered the applications and having noted the common questions of law and fact, the Tribunal considers that it would be appropriate to consolidate the present applications and issue only one Judgment. The present consolidation supersedes previous consolidations ordered by this Tribunal.

*Receivability*

33. The Applicants contest the Agency’s decisions to separate them from the Agency following the abolition of their posts. The Respondent contends that the Applicants signed individual settlement agreements and agreed to receive *ex gratia* payments and not to contest the decisions to end their services with the Agency. Accordingly, the Respondent argues that the applications are not receivable.

34. The United Nations Appeals Tribunal (the “UNAT”) is clear about settlement agreements. When a staff member signs a memorandum of understanding, it will normally be enforced (*Jemiai* 2011-UNAT-137, para. 13; *Faust* 2017-UNAT-777,
para. 29). As the Applicants signed individual settlement agreements before submitting their applications to the Tribunal, the applications are not receivable.

**Conclusion**

35. In view of the foregoing, the Tribunal DECIDES:

The applications are dismissed.

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Judge Jean-François Cousin
Dated this 9th day of September 2019

Entered in the Register on this this 9th day of September 2019

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Laurie McNabb, Registrar, UNRWA DT, Amman