ZAQQOUT

v.

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

JUDGMENT

Counsel for Applicant: Self-represented

Counsel for Respondent: Rachel Evers (DLA)
Introduction

1. Four applications have been filed by Ashraf Zaqqout, (“Applicant”) contesting the decisions of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (“Respondent”), with respect to the extensions of his Limited Duration Contract.

Facts

2. At the time material to the present applications, the Applicant was a staff member employed by the Agency as Social Worker under a Limited Duration Contract (“LDC”) 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. By letter from the Head, Field Human Resources Office (“H/FHRO”) dated 27 June 2018, the Applicant’s LDC was extended for one month, until 31 July 2018 (“First Contested Decision”).

7. 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.

8. On 25 July 2018, the Applicant received a letter, signed by the DUO/G, informing him that his LDC was extended for one month, until 31 August 2018, and would not be further extended beyond that date (“Second Contested Decision”).

9. Following an agreement reached on 1 September 2018, between the DUO/G and Local Staff Union (“LSU”) in Gaza, the Applicant’s LDC was extended on a full-time basis until the end of September 2018.


12. By letter dated 22 November 2018, the DUO/G responded to the Applicant’s request for review of the First Contested Decision and informed him that his request had been approved. Accordingly, DUO/G informed the Applicant that he would be reinstated to his LDC post as of 1 October 2018 with a revised contract expiry date of 31 December 2018 (“Third Contested Decision”).

13. On 23 November 2018, the Applicant filed his application with the UNRWA Dispute Tribunal (“Tribunal”) with respect to the First Contested Decision. This application was registered as Case No. UNRWA/DT/GFO/2018/204 (“Case No. 2018/204”). This first application was transmitted to the Respondent on 2 December 2018.

14. On 23 November 2018, the Applicant filed another application with the Tribunal with respect to the Second Contested Decision. This application was
registered as Case No. UNRWA/DT/GFO/2018/599 (“Case No. 2018/599”). This second application was transmitted to the Respondent on 6 May 2019.

15. On 31 December 2018, the Respondent filed a motion for extension of time to file his reply to the application in Case No. 2018/204 outside the 30-calendar day time limit set out in Article 6(1) of the Rules of Procedure of the Tribunal. This was transmitted to the Applicant on the same day.


17. On 24 January 2019, the Applicant requested review of the Third Contested Decision.

18. On 22 February 2019, the Respondent filed his reply to the application in Case No. 2018/204 (“Reply No. 1”). Reply No. 1 was transmitted to the Applicant on 24 February 2019.

19. On 23 February 2019, the Applicant filed a third application with the Tribunal with respect to the Third Contested Decision. This application was registered as Case No. UNRWA/DT/GFO/2019/014 (“Case No. 2019/014”). This third application was transmitted to the Respondent on 26 February 2019.

20. On 8 March 2019, the Respondent filed a motion for extension of time to translate his Reply No. 1. The motion was transmitted to the Applicant on 10 March 2019.


22. On 28 March 2019, the Respondent filed a motion for extension of time to file his reply to the application in Case No. 2019/014 (“Reply No. 3”) outside the 30-calendar day time limit set out in Article 6(1) of the Rules of Procedure of the Tribunal. This was transmitted to the Applicant on 31 March 2019.
23. On 5 April 2019, the Respondent filed a motion for consolidation in three cases, including Case No. 2018/204 (“Motion for Consolidation”). The motion was transmitted to the Applicant on 7 April 2019.

24. By Order No. 076 (UNRWA/DT/2019) dated 10 April 2019 in Case No. 2019/014, the Tribunal granted the Respondent’s motion for extension of time to file his Reply 3.

25. By Order No. 078 (UNRWA/DT/2019) dated 10 April 2019, in three cases, including Case No. 2018/204, the Tribunal granted the Respondent’s motion for consolidation.

26. On 7 May 2019, the Respondent filed a motion for extension of time to submit his consolidated reply in three cases, including Case No. 2018/204, with respect to the Motion for Consolidation (“Consolidated Reply”). The motion was transmitted to Applicant on 7 May 2019.

27. By Order No. 105 (UNRWA/DT/2019) dated 19 May 2019, the Tribunal granted the Respondent’s motion for extension of time to file his Consolidated Reply.

28. On 25 May 2019, the Applicant filed a fourth application with the Tribunal, again, with respect to the Third Contested Decision. This application was registered as Case No. UNRWA/DT/GFO/2019/043 (“Case No. 2019/043”). This fourth application was transmitted to the Respondent on 29 May 2019.

29. On 31 May 2019, the Respondent filed his Consolidated Reply. This was transmitted to the Applicant on 2 June 2019.

30. On 9 June 2019, the Respondent filed a motion for a further extension of time to file his Reply No. 3. The Respondent’s motion was transmitted to the Applicant on the same day.

31. On 17 June 2019, the Respondent filed a motion for extension of time to translate his Consolidated Reply. The motion was transmitted to the Applicant on the same day.
32. By Order No. 122 (UNRWA/DT/2019) dated 19 June 2019 in Case No. 2019/014, the Tribunal granted the Respondent’s motion for a further extension of time to file his Reply No. 3.

33. By Order No. 130 (UNRWA/DT/2019) dated 27 June 2019, the Tribunal granted the Respondent’s motion for extension of time to translate his Consolidated Reply.

34. On 28 June 2019, the Respondent filed his reply to the application in case No. 2019/043 (“Reply No. 4”). Reply No. 4 was transmitted to the Applicant on 30 June 2019.

35. On 5 July 2019, the Respondent filed his Reply No. 3. This was transmitted to the Applicant on 7 July 2019.

36. On 10 July 2019, the Respondent filed a motion for extension of time to file his reply to the application 2018/599 (“Reply No. 2”) outside the 30-calendar day time limit set out in Article 6(1) of the Rules of Procedure of the Tribunal. This was transmitted to the Applicant on 11 July 2019.


38. On 22 July 2019, the Respondent filed a motion for extension of time to translate his Reply No. 3. The motion was transmitted to the Applicant on the same day.

39. On 22 July 2019, the Respondent filed a motion for extension of time to translate his Reply No. 4. The motion was transmitted to the Applicant on the same day.

40. By Order No. 153 (UNRWA/DT/2019) dated 6 August 2019, the Tribunal granted the Respondent’s motion for extension of time to translate his Reply No. 3.

41. By Order No. 154 (UNRWA/DT/2019) dated 6 August 2019, the Tribunal granted the Respondent’s motion for extension of time to translate his Reply No. 4.
42. On 21 August 2019, the Respondent filed a motion for a further extension of time to file his Reply No. 2. The Respondent’s motion was transmitted to the Applicant on the same day.

43. On 2 September 2019, the Respondent filed the Arabic translation of his Consolidated Reply. The translation was transmitted to the Applicant on the same day.

44. By Order No. 177 (UNRWA/DT/2019) dated 3 September 2019, the Tribunal granted the Respondent’s motion for extension of time to submit his Reply No. 2.

45. On 24 September 2019, the Respondent filed his Reply No. 2. This was transmitted to the Applicant on 25 September 2019.

46. On 10 October 2019, the Respondent filed a motion for extension of time to translate his Reply No. 2. The Respondent’s motion was transmitted to the Applicant on the same day.

47. By Order No. 207 (UNRWA/DT/2019) dated 20 October 2019, the Tribunal granted the Respondent’s motion for extension of time to translate his Reply No. 2.

48. On 22 December 2019, the Respondent filed the Arabic translation of his Reply No. 2. This was transmitted to the Applicant on 23 December 2019.

Applicant’s contentions

49. The Applicant contends:

i) Despite the fact that his LDC was renewed several times, his grade and step were not upgraded; and

ii) The renewals of his LDC were made in clear violation of the Agency’s regulatory framework.

50. The Applicant requests:

i) Rescission of the contested decisions;
ii) To be reinstated to full-time employment; and

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

**Respondent’s contentions**

51. The Respondent contends:

   i) The decisions that are the subject of the first and second applications were superseded by a subsequent administrative action, which renders these applications not maintainable before the Tribunal; and

   ii) The third and fourth applications are not receivable as they contested the same decision, which was the Agency’s response to the Applicant’s request for decision review.

52. The Respondent requests the Tribunal to dismiss the applications in their entireties.

**Considerations**

**Consolidation**

53. Having considered the applications, the Tribunal finds that it would be appropriate to consolidate the present applications and issue only one Judgment. The present consolidation supersedes previous consolidation ordered by this Tribunal with respect to the Case No. 2018/204.

**Case No. 2018/204**

54. Area Staff Regulation 11.1 provides:

   There shall be a two-tier formal system of administration of justice:

   (A) The UNRWA Dispute Tribunal shall, under conditions prescribed in its Statute and Rules of Procedure, which are set
out in Staff Regulations 11.4 and 11.5, hear and render judgement on an application from a staff member:

(i) to appeal an administrative decision that is alleged to be in non-compliance with his or her terms of appointment or contract of employment, including all pertinent regulations and rules and all relevant administrative issuances;

(ii) to appeal an administrative decision imposing a disciplinary measure.

55. It follows from the above that an application is receivable only if it contests an administrative decision. This Tribunal is generally very indulgent with respect to the way an application is presented, especially where the applicant is self-represented. Even where an application is not fully clear, the Tribunal always attempts to understand what decision the applicant is actually contesting. To this end, the Tribunal also considers the applicant’s request for decision review and the annexes he or she has submitted. In the present case, in the first application, the Applicant refers to different decisions of the Agency with respect to the extension of his LDC. Despite the fact that the Respondent raised in his reply the issue of receivability of the application for its failure to identify the contested decision, the Applicant did not attempt to proffer any clarification on the issue. For this reason alone, the Tribunal could hold that the application is not receivable *ratione materiae*, for its failure to identify the contested decision.

56. Nevertheless, it seems to the Tribunal that the Applicant is contesting the Agency’s decision dated 27 June 2018, to extend his LDC for one month from 1 to 31 July 2018. As previously held by this Tribunal, this is a positive decision, which may not be contested, as it is a decision taken in the Applicant’s favour (*Abu Ata UNRWA/DT/2019/014*, paragraph 24).

57. Moreover, as pointed out by the Respondent, the Applicant’s LDC was further extended three times: (1) by the DUO/G’s letter dated 25 July 2018, until 31 August 2018; (2) following an agreement reached between the DUO/G and LSU in Gaza, until 30 September 2018; and (3) by the DUO/G’s letter dated 22 November 2018, until 31 December 2018.
58. Accordingly, the Tribunal finds that, prior to the filing of the first application, the First Contested Decision dated 27 June 2018 had been superseded by the above-mentioned decisions to further extend the Applicant’s LDC. Therefore, the first application is not receivable.

Case No. 2018/599

59. In his second application, the Applicant is contesting the Agency’s decision dated 25 July 2018 to extend his LDC for one month from 1 to 31 August 2018. The above considerations of the Tribunal apply mutatis mutandis with respect to this second application.

60. Accordingly, the Tribunal concludes that, prior to the filing of the second application, the Second Contested Decision dated 25 July 2018 had been superseded by the above-mentioned decisions to further extend the Applicant’s LDC. Therefore, the second application is also not receivable.

Cases Nos. 2019/014 and 2019/043

61. As noted above at paragraphs 19 and 28, the Applicant submitted two separate applications contesting the Agency’s decision dated 22 November 2018, which extended his LDC until 31 December 2018.

62. This Third Contested Decision was a response to the Applicant’s request for decision review dated 23 August 2018. The Respondent asserts that, for this reason, in accordance with the United Nations Appeals Tribunal’s (“UNAT”) jurisprudence in Kalashnik 2016-UNAT-661, paragraph 29, the Agency’s response to the Applicant’s request for decision review is a non-reviewable decision, and thus these two application are not receivable.

63. In Kalashnik 2016-UNAT-661, paragraphs 29 and 30, the UNAT held as follows:

29. Accordingly, it is fair to say that the General Assembly when enacting the provisions of the UNDT Statute did not consider the Administration’s response to a request for management evaluation to be
a decision that “produced direct legal consequences” affecting a staff member’s terms and conditions of appointment. To the contrary, as discussed above, “the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision” all support the conclusion that the Administration’s response to a request for management evaluation is not a reviewable decision. The response is an opportunity for the Administration to resolve a staff member’s grievance without litigation – not a fresh decision.

30. If the decision itself cannot be subject to judicial review, then the procedures utilized by the Administration in reaching the decision also cannot be subject to judicial review. Mr. Kalashnik cannot create a right to challenge the Administration’s procedures for responding to requests for management evaluation when that right does not exist in the Staff Rules or elsewhere. Management has discretion in how to consider and respond to staff members’ requests for evaluation; the discretion is not subject to micro-managing by the staff members. In fact, as discussed, management may choose not to respond at all.

64. The Tribunal distinguishes the present cases from Kalashnik for the following reasons. To begin with, the Tribunal notes that the mechanism of the Agency for responding to requests for decision review is different than what is provided for in the UN Staff Rules. The Agency does not have a Management Evaluation Unit to examine the requests for decision review. Instead, Area Staff Rule 111.2 provides as follows:

1. A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her terms of appointment or the contract of employment, including all pertinent regulations and rules and all relevant administrative issuances pursuant to Staff Regulation 11.1 (A), shall, as a first step, submit a written request for a decision review:

(A) in the case of staff members of Field Offices, to the UNRWA Field Office Director in charge of the Field Office; and

(B) in the case of staff members of Headquarters, to the Director of Human Resources.

[...]

4. The decision review shall be carried out by:
(A) in the case of staff members of Headquarters, or staff members of Field Offices where the contested administrative decision has been made by the Field Office Director, the Deputy Commissioner-General;

(B) in the case of staff members of Field Offices where the contested administrative decision has not been made by the Field Office Director, the relevant Field Office Director, after consultation as appropriate with the Department of Human Resources.

5. The outcome of the decision review shall be communicated in writing to the staff member within 30 calendar days of receipt of the request for decision review. Unless the outcome is a reversal of the contested administration decision, the staff member should be informed of the provisions under the Staff Regulations and Rules for appealing a contested administrative decision to the UNRWA Dispute Tribunal.

65. Accordingly, in the present case, the Field Director not only has the authority to review the Applicant’s requests for decision review, but he also has the authority to decide about the extension of the Applicant’s LDC. In this regard, the DUO/G’s response to the Applicant’s request for decision review reads as follows:

Dear Mr. Zaqqout,

Subject: Renewal of Limited Duration Contract

Further to your request of 23 August 2018 to review the decision taken not to renew your limited duration contract (LDC) which expired on 30 September 2018, I am writing to inform you that your request has been approved.

As a result, you will be reinstated to your LDC post as a Social Worker with effect from 1 October 2018, with a revised contract expiry date of 31 December 2018 and the restoration of your previous entitlements (emphasis in original). […]

66. It is clear from the DUO/G’s response to the Applicant that he not only approved the Applicant’s request for decision review as part of his authority in this regard, but he also decided to exercise his discretion to approve an extension of the Applicant’s LDC in accordance with his authority to do so. These two actions of the DUO/G are separate and distinct decisions, and the Tribunal has no doubt that the DUO/G’s decision to extend the Applicant’s LDC is an administrative decision
that produced direct legal consequences affecting the Applicant’s terms and conditions of appointment. Therefore, the Respondent’s argument with respect to the grounds of non-receivability of the Applicant’s third and fourth applications is without merit.

67. Nevertheless, the third and fourth applications are not receivable because the Applicant is contesting the Agency’s decision to extend his LDC until 31 December 2018. As explained before, this is a positive decision, which may not be contested, as it is a decision taken in the Applicant’s favour.

68. Lastly, assuming *arguendo* that the Applicant is also contesting the decision to extend his LDC only to 31 December 2018 and not for a longer period of time, as consistently held by this Tribunal and recently in *Abu Ouda et al.* UNRWA/DT/2019/046, paragraphs 43-46, LDCs do not carry an expectation of renewal or conversion to any other type of appointment. In addition, paragraphs 47-53 of *Abu Ouda et al.* would also be applicable *mutatis mutandis* to the present case, and, therefore, the Applicant’s claim against the Agency’s decision to extend the Applicant’s LDC only to 31 December 2018 must also be dismissed.
Conclusion

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

The applications are dismissed.

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Judge Jean-François Cousin
Dated this 12th day of February 2020

Entered in the Register on this 12th day of February 2020

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Laurie McNabb, Registrar, UNRWA DT, Amman