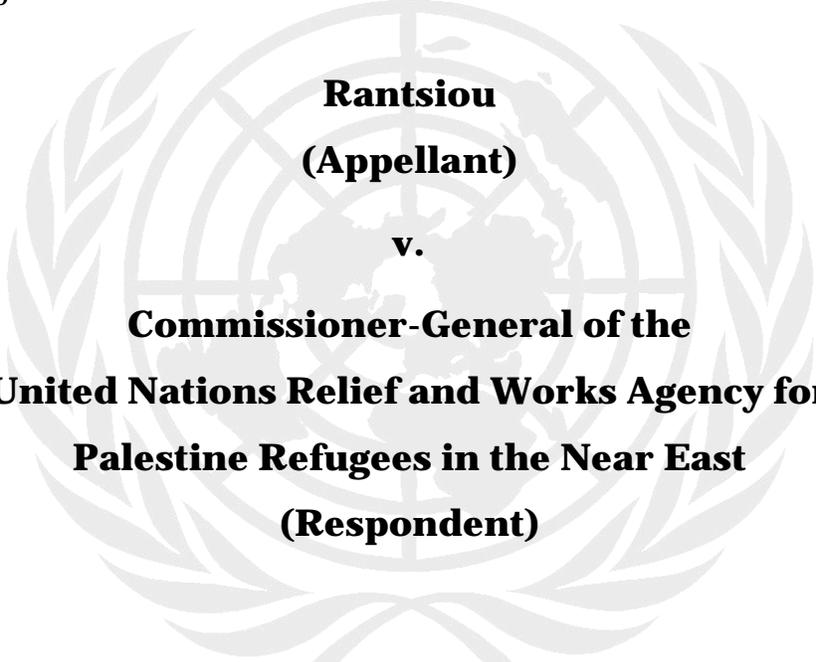




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2011-270



**Rantsiou
(Appellant)**
v.
**Commissioner-General of the
United Nations Relief and Works Agency for
Palestine Refugees in the Near East
(Respondent)**

JUDGMENT

Before: Judge Luis María Simón, Presiding
Judge Kamaljit Singh Garewal
Judge Inés Weinberg de Roca

Judgment No.: 2012-UNAT-250

Date: 29 June 2012

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: W. Thomas Markushewski

JUDGE LUIS MARÍA SIMÓN, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal filed by Ms. Fotini Rantsiou against Judgment No. UNRWA DT/2011/006 issued by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT and UNRWA, respectively) on 3 October 2011 in Amman, Jordan. Ms. Rantsiou appealed on 16 November 2011. The Commissioner-General of UNRWA answered on 13 January 2012.

Synopsis

2. This Tribunal did not grant Ms. Rantsiou's request to have all appeal-related documents removed from her UNRWA official service file as she exercised her right to appeal and the Court does not see any reason why that information should be excluded from that file.

3. Turning to the merits of the case, this Tribunal found that the Appellant failed to demonstrate that there were flaws in the contested administrative decision not to renew her fixed-term appointment, the proceedings that led to it, or the first instance Judgment, which would warrant vacating.

4. As repeatedly stated in the jurisprudence of this Court, fixed-term appointments carry no expectancy of renewal and there are no circumstances that would take Ms. Rantsiou's situation out of the general rule.¹

5. Thus, this Tribunal held that there were no grounds to reinstate the Appellant or to award her any kind of compensation, as the applicable law does not entitle her to such remedies. Therefore, the appeal is dismissed and the UNRWA DT's Judgment is affirmed.

Facts and Procedure

6. On 28 November 2002, Ms. Rantsiou joined UNRWA as Operations Support Officer (OSO) at the P-3 level in the West Bank Field Office (WBFO) for a period of six months. Her appointment was extended four times, until 31 August 2005.

¹ *Syed v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-061, para. 13.

7. By late 2004, the working relation between Ms. Rantsiou and the Deputy Operations Officer had deteriorated. From mid-December 2004 to 31 January 2005, Ms. Rantsiou was on annual or sick leave.

8. In February 2005, Ms. Rantsiou submitted her resignation, which UNRWA accepted. Shortly thereafter, Ms. Rantsiou notified UNRWA that she wished to withdraw her resignation and to take four months' special leave without pay (SLWOP) instead. UNRWA granted her request and Ms. Rantsiou commenced her SLWOP on 21 March 2005.

9. On 1 August 2005, Ms. Rantsiou returned from SLWOP and, shortly thereafter, signed her performance evaluation report (PER). By email dated 10 August 2005, the Operations Officer informed Ms. Rantsiou that she was being withdrawn from field work effective 11 August 2005.

10. On 12 August 2005, at a meeting between the Operations Officer, the Field Legal Officer/West Bank and Ms. Rantsiou, the Operations Officer informed Ms. Rantsiou that the reasons for withdrawing her from the field were that the Operations Officer had lost confidence in Ms. Rantsiou's ability to operate effectively and safely in the field and that the level of trust between Ms. Rantsiou and the Operations Officer and the Deputy Operations Officer did not allow safe and secure field operations. The Operations Officer also informed Ms. Rantsiou that her continued employment was not in UNRWA's best interest and that he would not recommend her extension beyond 31 August 2005.

11. On 16 August 2005, the Director of UNRWA Operations (DUO), West Bank, met with Ms. Rantsiou and informed her that he would not recommend the renewal of her appointment.

12. By e-mail dated 17 August 2005 and memorandum dated 19 August 2005, Ms. Rantsiou informed the Head, International Personnel Service (HIPS) that she did not want to have her contract extended beyond 31 August 2005.

13. On 19 August 2005, Ms. Rantsiou submitted a rebuttal of her PER. On 25 August 2005, she sent her completed separation form to HIPS.

14. By memorandum dated 30 August 2005 to the Director of Administration and Human Resources and the Secretary of the Human Resources Committee, Ms. Rantsiou requested documentation in order to launch an appeal. She proposed alternative arrangements, including

contract extension and transfer to another section, for the purpose of keeping her on board pending the review of her PER rebuttal and possibly her appeal. She also sought monetary compensation for the professional and personal damages suffered due to unfair treatment.

15. By letter dated 1 September 2005, the DUO in Gaza offered Ms. Rantsiou for two months only an extension of her appointment and her assignment to the Gaza Field OSO Programme for the purpose of completing the latter's PER rebuttal despite her expressed wish not to continue with UNRWA beyond 31 August 2005. Ms. Rantsiou accepted the offer.

16. On 2 September 2005, the Gaza Strip was declared Security Phase IV. As a result, Ms. Rantsiou did not take up duty with the Gaza Field OSO Programme, nor did she return to WBFO. Instead, she was placed on Special Leave with Pay during the period of the two-month contract extension until 3 November 2005.

17. On 18 October 2005, the HIPS advised Ms. Rantsiou of the decision by the Commissioner-General not to extend her appointment beyond 3 November 2005.

18. By memorandum dated 19 October 2005, Ms. Rantsiou was informed that the Commissioner-General had found that there was sufficient basis to accept her rebuttal of her PER for the period of 1 April 2004 to 31 May 2005. She was also informed that while her PER would not be revised following the rebuttal process, the UNRWA Administration would issue a letter to confirm the acceptance of her rebuttal and to comment on the acceptable standard of her work during the PER period.

19. On 27 October 2005, the Chief, Personnel Services Division, informed Ms. Rantsiou as follows:

You were recruited to UNRWA as an OSO and the OSO posts are funded by the donor specifically for OSO programme activities. There are again at this point in time no other vacant posts available matching your skills and experience. With only 110 international posts, the availability and breadth of international posts are minimal and the Agency does not have the financial capacity to create and fund an additional post to accommodate you, nor to keep you on extended special leave with pay.

I am therefore confirming that 3 November 2005 will be your final date with the Agency. Should the OSO programme return to Gaza in the future and posts are advertised (or, for that matter, should other posts for which you are qualified be advertised), I encourage you to submit your application.

20. Ms. Rantsiou's appeal to the former UNRWA Area Staff Joint Appeals Board of the decision not to extend her appointment beyond 3 November 2005 was subsequently transferred to the UNRWA DT.

21. In Judgment No. UNRWA DT/2011/006 rendered on 3 October 2011, the UNRWA DT recalled that fixed-term appointments carried no expectancy of renewal and that the Agency had a broad discretionary authority in the application of its Staff Regulations, Rules and other issuances, including the renewal of appointments. It further recalled that this authority "will not be disturbed unless the decision was arbitrary or was motivated by prejudice or extraneous factors, or flawed by procedural irregularity or error of law".

22. The UNRWA DT found that the Agency had not created any legal expectancy of renewal, but to the contrary, repeatedly emphasized that her extension was for two months only. Ms. Rantsiou should have therefore reasonably known that the renewal of her fixed-term appointment beyond 3 November 2005 would not automatically follow, even if her PER rebuttal was successful.

23. In response to Ms. Rantsiou's contention that her non-renewal was based on her performance, the UNRWA DT noted that the PER that Ms. Rantsiou successfully rebutted covered a period ending five months before the decision under review. It concluded that, in any event, even if her PER had received a better rating, it would not give rise to an entitlement of renewal of Ms. Rantsiou's fixed-term appointment.

24. The UNRWA DT found that Ms. Rantsiou had failed to show that her non-renewal was unlawful, that it was influenced by improper motives, or that it was flawed by procedural irregularities. Similarly, she failed to demonstrate that she was a victim of discrimination, harassment, mobbing and bullying. Ms. Rantsiou's failed relationship with her supervisors "hardly constitute[d]" bullying, mobbing, discrimination, prejudice or harassment. She failed to show, in support of her allegations of discrimination, any correlation between her nationality and the non-renewal of her appointment.

25. With respect to Ms. Rantsiou's contention that she was entitled to a termination indemnity, the UNRWA DT noted that her appointment had not been terminated; she had a temporary appointment for a fixed term which, upon completion, was not renewed.

26. The UNRWA DT rejected Ms. Rantsiou's application in its entirety.

Submissions

Ms. Rantsiou's Appeal

27. Ms. Rantsiou submits that while a fixed-term appointment carries no expectancy of renewal, extension depends on performance, the need for a post and the availability of funds, conditions which, Ms. Rantsiou submits, were met in her case.

28. Ms. Rantsiou alleges that the reasons given for the non-extension of her appointment were false. UNRWA stated that she could not be extended because, due to the relocation, there was no need for the Gaza OSOs. However, the OSO posts were vacant and were later advertised to be filled. Ms. Rantsiou applied, but was not considered. Ms. Rantsiou submits that the Agency discriminated against her and that the UNRWA DT failed to correct this.

29. Ms. Rantsiou submits that the UNRWA DT ignored several facts. Her direct supervisor, Operations Officer, gave her an overall rating of "very good performance" covering the period from November 2002 to March 2004.

30. Following the Operations Officer's departure in spring 2004, the Officer-in-Charge (OiC) entrusted Ms. Rantsiou with more responsibilities. But the relation between her and the OiC became difficult in November 2004 when the national staff went on strike. Subsequently the OiC marginalized her.

31. While Ms. Rantsiou was on SLWOP in June 2004, the Operations Officer, without Ms. Rantsiou's knowledge, recommended non-extension of her appointment. The DUO did not endorse the recommendation and the General Counsel presented "doubts and questions".

32. A week after her return from SLWOP on 1 August 2005, the Operations Officer withdrew Ms. Rantsiou from the field citing security concerns. Ms. Rantsiou submits that the Operations Officer failed to develop his concerns; that they were not based on any specific incident; and that the Agency failed to justify these concerns at any stage of the proceedings. She submits that the same Operations Officer had given her high ratings for

her field work and the decision to withdraw her from the field was unreasonable and discriminatory.

33. Ms. Rantsiou submits that, with the security phase IV, all OSOs were relocated from Gaza to the West Bank. Because the DUO and Operations Officer refused to have her in the WBFO, she was placed on special leave with pay.

34. Ms. Rantsiou submits that a statement from the team leader of the OSO Programme in Gaza during the time of the events reveals “the level of discrimination, undermining and slander that [the Operations Officer, her direct supervisor] had embarked on against [Ms. Rantsiou], blocking any employment with UNRWA for [Ms. Rantsiou]”. But the UNRWA DT did not accept the statement.

35. Ms. Rantsiou submits that the UNRWA DT failed to consider that the refusal of the Operations Officer and subsequently the DUO West Bank and their interference influenced the process which was prejudiced against her. The refusal followed “one year of harassment” and the Agency failed to protect her against harassment and abuse of power.

36. Ms. Rantsiou seeks reinstatement; compensation for lost salaries in the amount of USD 90,000; and moral damages in the amount of USD 100,000. She also seeks the removal of all appeal-related documents from her UNRWA official service file.

Commissioner-General’s Answer

37. The Commissioner-General submits that Ms. Rantsiou has failed to allege any actionable basis for a review by the Appeals Tribunal under Article 2(1) of its Statute. He contends that Ms. Rantsiou merely disagrees with the UNRWA DT’s findings of fact and reargues her case.

38. The Commissioner-General rejects Ms. Rantsiou’s claim that the UNRWA DT failed to consider her allegations of “sexual harassment, mobbing, discrimination and prejudice”, which Ms. Rantsiou introduced for the first time in her rejoinder. The Commissioner-General submits that the administrative decision under review was the non-renewal of Ms. Rantsiou’s fixed-term appointment “versus unsubstantiated allegations regarding the Appellant’s workplace environment and relations with her supervisors, colleagues and staff during her tenure with the Agency”. The UNRWA DT, noting that “it will not as a general

rule review additional claims that are not relevant to the discretionary administrative decision under review”, in fact did address each element “in the interest of fairness and comprehensibility”. The Commissioner-General submits that, contrary to Ms. Rantsiou’s assertion, the UNRWA DT reviewed the facts and applicable law related to each element, but concluded that Ms. Rantsiou was “not the victim of work and sexual harassment, mobbing, bullying, discrimination and prejudice”.

39. In response to Ms. Rantsiou’s request to introduce new evidence, the Commissioner-General submits that any additional evidence, even if it were admissible, would not in any event have changed the outcome of the case.

40. The Commissioner-General submits that as the non-renewal decision was properly effected, the relief sought by Ms. Rantsiou should be denied.

41. Additionally, the Commissioner-General submits that Ms. Rantsiou’s request for reinstatement and an indefinite appointment is based on a misapprehension of the contractual modality of all UNRWA international staff, which is limited to fixed-term appointments.

42. The Commissioner-General submits that Ms. Rantsiou is estopped from requesting compensation for lost salaries as she had previously advised that she could not return to her post and that she did not wish to have her contract extended beyond its expiry date of 31 August 2005.

43. With respect to Ms. Rantsiou’s request for moral damages, the Commissioner-General submits that Ms. Rantsiou failed to substantiate her allegations or proof of injury and that in line with the jurisprudence of the Appeals Tribunal no compensation should be awarded if no harm has been suffered.

44. Finally, the Commissioner-General objects to Ms. Rantsiou’s request to have all appeal-related documents removed from her UNRWA official service file. Ms. Rantsiou, having exercised her staff right to appeal cannot now seek the removal of all references to her appeal from her file. He also submits that the relief sought is new and outside the scope of remedies set forth in the Appeals Tribunal’s Statute.

45. The Commissioner-General requests that the Appeals Tribunal reject the appeal in its entirety.

Considerations

46. As a preliminary matter, this Tribunal will not grant Ms. Rantsiou's request to have all appeal-related documents removed from her UNRWA official service file. Ms. Rantsiou exercised her right to appeal and we do not see any reason why that information should be excluded from that file.

47. Turning to the merits of the case, this Tribunal holds that the UNRWA DT did not err in finding no irregularity in the decision-making process under judicial review and consequently dismissing Ms. Rantsiou's application.

48. The Appellant has failed to persuade this Court that there were flaws in the contested administrative decision not to renew her fixed-term appointment, the proceedings that led to it, or in the UNRWA DT's Judgment, which would warrant vacating. An appeal is not an opportunity for the parties to reargue their cases. Before this Tribunal, Ms. Rantsiou has raised no new arguments, but has only repeated her contentions thoroughly considered and rejected by the UNRWA DT.

49. The records of the case show no evidence of irregularity, harassment, unlawful treatment or discrimination against Ms. Rantsiou. The lack of such evidence, which forms part of the burden of proof of the claimant,² determines the dismissal of the requested compensation.

50. As repeatedly stated in the jurisprudence of this Court, which was already quoted in the Judgment under appeal, fixed-term appointments carry no expectancy of renewal and there are no circumstances that would take Ms. Rantsiou's situation out of this general rule.³

51. Thus, there are no grounds to reinstate Ms. Rantsiou or to award her any kind of compensation, as the applicable law does not entitle her to such remedies.

² See *Hepworth v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-178, para. 29.

³ Cf. *Syed v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-061, para. 13.

Judgment

52. The appeal is dismissed in its entirety and the UNRWA DT's Judgment is affirmed

Original and Authoritative Version: English

Dated this 29th day of June 2012 in Geneva, Switzerland.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Garewal

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 12th day of September 2012 in New York, United States.

(Signed)

Weicheng Lin, Registrar