



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

**Darwish
(Appellant)**

v.

Commissioner-General

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Awad Flaieh Darwish against Judgment No. UNRWA/DT/2012/029, issued by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees ip8T8J of 9 b (D)

8. On 28 June 2012, the UNRWA DT issued Judgment No. UNRWA/DT/2012/029 in which it dismissed Mr. Darwish's claims. The UNRWA DT found that Mr. Darwish's application was not receivable because he had failed to ask for review of the decision to suspend him with full pay and the decision to commence a disciplinary investigation. It further held that it could not consider Mr. Darwish's allegation "that he was put under considerable pressure by threats and intimidation" and acted under duress when applying for EVR as he had failed to identify any appealable administrative decision.

9. Mr. Darwish appeals the UNRWA DT Judgment.

14.

had requested review of the decision to appoint an Investigation Board instead. The UNRWA DT said:

It should be noted that whilst the Applicant asked for a decision review of the decision to appoint an Investigation Board to enquire into the allegations against him he did not ask for a review of the decision to suspend him. In the circumstances, the claim relating to the decision to suspend with full pay is not receivable. Accordingly, the Tribunal has no jurisdiction to consider this aspect of the claim.¹

24. The Appeals Tribunal has consistently held that the Dispute Tribunal does not have

28. The Commissioner-General in his submissions refers to the former Administrative Tribunal Judgment No. 991, Shamsi (2001). We find it to be of persuasive authority and therefore adopt it. In paragraph IV of the Shamsi case, the former Administrative Tribunal stated:

... The Tribunal is satisfied that the Applicant's appointment by the Agency ended because the Applicant had applied for early voluntary retirement and because that application had been accepted, and not because of the Respondent's decision to terminate the Applicant's appointment in the interest of the Agency. ... Since the Applicant's appointment was terminated by his voluntary action rather than as the result of any wrongful act of the Respondent, there is no basis for the Applicant's claims and all relief sought is refused.

29. A similar reasoning applies in the present case. The jurisprudence is clear that when a staff member claims that he or she has been coerced into resigning, the burden is on the staff member to prove the wrongful acts of the Agency.

30. The UNRWA DT found that prior to tendering his request for EVR, Mr. Darwish did not report to the Agency that he had been threatened or that he was under any pressure to go on voluntary retirement. The UNRWA DT said:

... Had the Respondent been put on notice that the Applicant was alleging that he was being subjected to intimidation and undue pressure which caused him to apply for EVR, the Respondent would have been under a duty to take account of such allegations before making the decision to grant the application. Arguably, this decision would have been capable of review before the Tribunal. In such an eventuality, the

Judgment

32. The appeal is dismissed. The Judgment of the UNRWA DT is affirmed.

