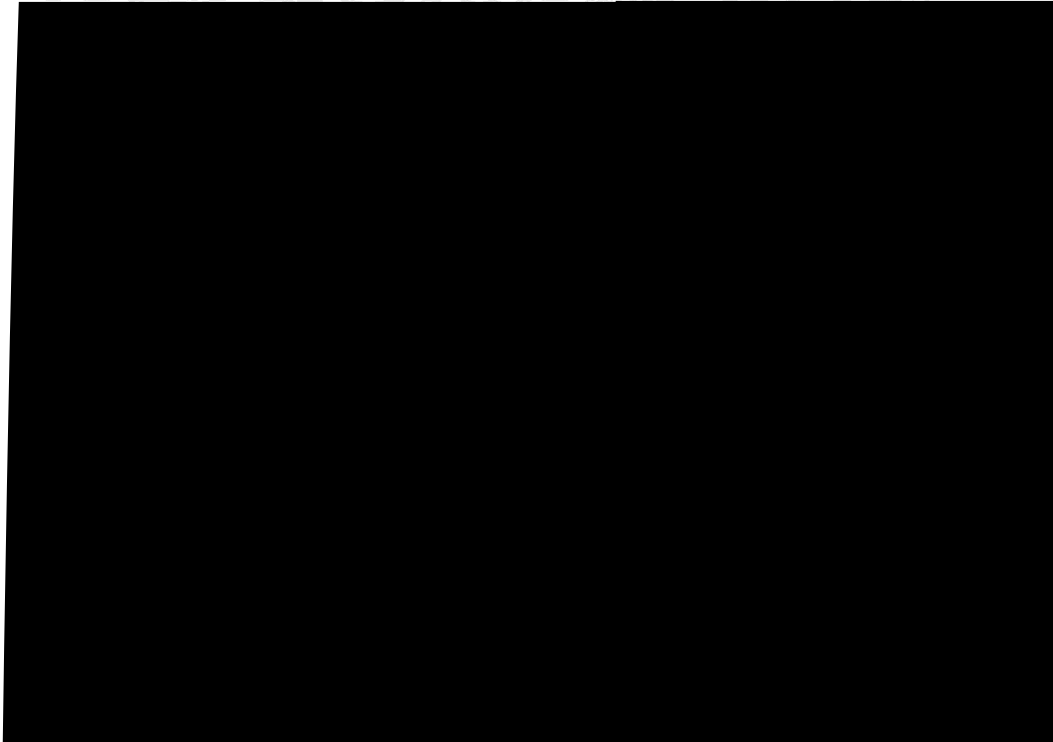
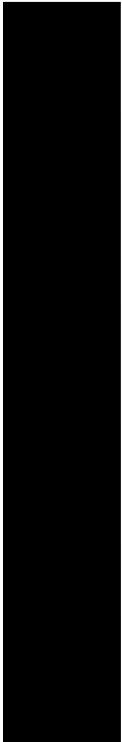




Judgment

017-UNAT-748



Counsel for Mr. Sharbaji:

Amer Abu-Khalaf, LOSA

Counsel for Commissioner-General:

Rachel Evers

JUDGE DEBORAH THOMAS -FELIX , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2016/027, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or UNRWA Dispute Tribunal and UNRWA or Agency, respectively) on 26 September 2016, in the case of *Sharbaji v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Mohammad Khalil Sharbaji filed the appeal on 10 November 2016, and the Commissioner-General filed an answer on 22 December 2016, which was considered filed on 9 January 2017¹.

Facts and Procedure

2. The following facts are uncontested:²

... Effective 7 April 2010, the Applicant entered the service of the Agency as a Loan Officer on a fixed-term appointment, at Grade 7, in the Yarmouk Branch of the Microfinance Department (“MD”) of the Syria Field Office (“SFO”). On 3 November 2013, the Applicant’s fixed-term appointment was extended for a new period expiring on 31 December 2014.

... Due to the ongoing violence affecting Syria, the Applicant was transferred in July 2012 to the Al-Ameen Branch where he worked as a Loan Officer until 7 August 2013. Effective 7 August 2013, he was transferred to work as an MD [Information Technology (IT)] focal point.

... In September 2014, the MD/SFO developed a redundancy plan abolishing 17 posts effective 31 December 2014, noting, *inter alia*:

At the current level, there is overstaffing in loan officers’ post, which cannot be financed from the current level of outreach due to capital limitations. Reductions will also include administrative staff, while maintaining a skeletal administrative staffing to maintain core administration required to support its operations.

It is planned to maintain six loan officers (LO) at each branch (except Damascus area, where an additional two LOs will be maintained to work on the collections of the bad portfolio), one branch manager, area loan supervisor, cashier, clerk, data operator, and cleaner. In addition, a skeletal administrative staff at the national offices for management,

¹ Order No. 273 (2016).

² Impugned Judgment, paras. 2-10.

[human resources (HR)] and finances will be maintained. Currently, MD employs 82 staff members (47 fixed term and 35 [Special Service Agreement (SSA)] allocated in Damascus area, Tartous, Latakia, and Suwaida. The proposed list of needed versus redundant staff, as at 1 January 2015, [...] indicates that the total number of staff required to maintain the current level of operations is 56 staff (30 fixed and 26 SSA),

3. On 3 March 2015, Mr. Sharbaji filed an application with the UNRWA Dispute Tribunal against the decision to abolish his post and declare him provisionally redundant.

4. In the Judgment now under appeal, the UNRWA Dispute Tribunal dismissed Mr. Sharbaji's application. It reviewed the case within the framework of the Area Staff Personnel Directive No. 9 and in the context of a decrease in lending and devaluation of the Syrian Pound as a result of the Syrian crisis

... In such circumstances, a staff member is declared provisionally redundant and will be so notified in writing. The affected staff member will be the incumbent in the case of a unique post, i.e., one which requires unique qualifications and which is not replicated elsewhere in the relevant section of the staffing table. Where there are two or more posts of similar category, title and post description in that section of the staffing table, the least efficient incumbent will be redundant or, if the incumbents are of equal efficiency, the incumbent with the shortest period of service.

12. In the instant case, as outlined by the Revised Personnel Directive A/9, Mr. Sharbaji's post was eliminated. Simply put, this meant that the post of which he was the sole incumbent ceased to exist. Mr. Sharbaji has argued on appeal that the UNRWA Dispute Tribunal erred in its finding that it was appropriate for the Agency not to evaluate him "before declaring him provisionally redundant".

13. We agree with the UNRWA Dispute Tribunal's finding. In our view, no useful

Judgment

16.

Original and Authoritative Version: English

Dated this 14th day of July 2017 in Vienna, Austria.

(Signed)

Judge Thomas-Felix,
Presiding
(Signed)