United Nations AT/DEC/1328

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1328

Case No. 1404 Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Ms. Jacqueline R. Scott, Vice-President, presiding; Mr. Julio Barboza; Mr. Goh Joon Seng;

Whereas at the request of the Applicant, widow of a former staff member (hereinafter referred to as the deceased), of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), the President of the Tribunal extended to 30 April 2005 the time limit for the filing of an application with the Tribunal;

Whereas, on 8 March 2005, the Applicant filed an Application requesting the Tribunal to order:

"a. Payment of the amount of US$ 12837.20 X 5 (…) with an overall total of US$ 64186 plus interest since August 1998.

b. Payment of litigation fees and secretarial expenses, in terms of compensation to [her] minor children … estimated at US$ 8000.

c. Payment of compensation for the injury material and moral sustained by the Applicant and [her] minor children."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 August 2005 and once thereafter until 30 November;

Whereas the Respondent filed his Answer on 30 November 2005;

Whereas the Applicant filed Written Observations on 16 February 2006;

Whereas the Respondent submitted additional documentation on 28 March 2006, and commented on the Applicant's Written Observations on 20 June;

Whereas, on 21 November 2006, the Tribunal decided to postpone consideration of this case until its next session;

Whereas the statement of facts contained in the report of the Area Staff Joint Appeals Board (JAB) reads, in part, as follows:

> "… The [Applicant] is the second wife of [the deceased], who was separated from the Agency by early voluntary retirement in 1992. On 24 September 1996, [the deceased] revoked previous designations of beneficiaries concerning his Provident Fund entitlements. He designated as beneficiaries [the Applicant, to receive] US$ 10,000; his minor daughter[, to receive] $3,000; and, his five minor sons[, who were to receive] the remaining part of his entitlements in equal shares. In January 1997[, he] died.
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> … On 19 August 1997, a Judge of the First Instance Sharia Court [in Syria] decided that the [Applicant] was the legal custodian in respect of her six minor children, permitting her to administer their affairs provided that she could not sell, divide or receive any of their real estate or receive any of their monies before obtaining the Court's approval.
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> … On 27 October 1997, the [Applicant] requested that the entitlements of her minor children be transferred to a Lebanese bank account which she had opened in her name and in the names of her six minor children.
>
> … On 6 November 1997, a Judge of the First Instance Sharia Court decided that Mr. [B.M.H.], the eldest son from [the deceased's] first marriage, should be a provisional custodian who was permitted to write to UNRWA in order to prevent it from paying monies out to the minor children.
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> … On 8 December 1997, the [Applicant] requested the Agency either to hold the entitlements of her minor children within the Agency until a final court decision was taken on the issue of custodianship in respect of the minor children or to pay the amounts to the Lebanese bank account. On the same date, she reiterated her [earlier] request that the Provident Fund entitlements should not be transferred to a local bank account in Syria.
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> … On 22 December 1997, the Field Administration Officer, Syria …, [(FAO)] responded that the minors' entitlements would be retained by the Agency without any interest until a final court decision was taken concerning the legal custody of the minor children.
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> … By letter dated 29 December 1997, the Head of the First Sharia Court of Damascus directed the Agency to deposit the monies due to the minor children at [a Syrian bank].
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> …
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> … By Note Verbale dated 25 February 1998, the Agency informed the Ministry of Foreign Affairs, Syria, that the [Syrian bank] could not establish [the necessary United States] dollar accounts.
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> … By letter dated 14 April 1998, the Ministry of Foreign Affairs, Syria, requested UNRWA, pursuant to a 19 March … First Instance Sharia Court Judge's Order, to deposit the Provident Fund entitlements due to the minor children at [another Syrian bank].
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> … On 7 July 1998, the Agency deposited US$ 28,807.77 in respect of each minor son and US$ 3,000 in respect of the minor daughter into six personal saving accounts in the names of the minors at the [bank designated by the Ministry of Foreign Affairs]. …

… [Also on] 7 July 1998, the [FAO] informed the [Applicant] of these deposits.

… On 8 July 1998, the [Applicant] purported to object to the transfers under Area staff rule 111.3.1.

… On 30 September 1998, … Court Verdict No. 908 cancelled the previous decision dated 6 November 1997 [by which Mr. B.M.H. was appointed provisional custodian of the minors].

… On 11 January 1999, [the] FAO … [advised] the [Applicant's counsel] … that UNRWA rules do not contain provisions governing the inheritance rights of former staff members and that it must respect their national law. Accordingly, if UNRWA received an order by a Sharia Court to deposit an amount in the bank account of heirs of a deceased staff member, it would abide by such an order.

[On 28 February 1999, UNRWA wrote to the Syrian Ministry of Foreign Affairs, in response to questions the Ministry had posed, explaining:

> 'Our Agency shall apply the provisions of the Syrian law in force on wills in respect of the money left by the deceased who is a Syrian national or any one [who] falls under this category.
>
> As to the amounts due to persons designated under a specific agreement (such as the Provident Fund administered by the Agency), they are not included in the inheritance, and therefore, such amounts are not subject to the will's terms but rather to the regulations applicable to the said Provident Fund account.']

… On 8 May 1999, the First Instance Sharia Court Judge decided that [the deceased's] entire estate should be distributed in accordance with Sharia law, thus disregarding his designation in respect of Provident Fund entitlements.

… On 24 October 1999, the Court of Cassation quashed the First Instance Court's decision on the grounds that it had not taken into account UNRWA's rules, and remanded the case back to the First Instance Court.

… On 27 May 2000, the First Instance Court reviewed its decision and decided that the Provident Fund entitlements fell outside the [deceased's] estate.

… Upon an appeal of this decision, the Court of Cassation held on 25 June 2001 that the Provident Fund entitlements fell into the [deceased's] estate.

… Subsequently, the entire estate including the sequestered monies at the [Syrian bank] was distributed amongst the heirs pursuant to the [deceased's] will (which left the five minor sons with US$ 15, 939.80 each)."

On 22 October 2001, in response to the Applicant's enquiry, the FAO indicated that, having paid the money into the accounts designated by the Court, UNRWA was no longer concerned in her claims. Thereafter, on 1 December, the Applicant wrote to UNRWA, objecting to the way in which the Agency had handled the matter and stating that the Commissioner-General "in his capacity as the Custodian of the Provident Fund", was liable for the injury incurred.

On 14 February 2002, the Applicant lodged an appeal with the JAB in Amman. In its undated report, the evaluation, judgement and recommendation of the JAB reads as follows:

"**III. EVALUATION AND JUDGEMENT**

25. …

a) The Board has established that the Agency did not delay the payments of the [deceased's] Provident Fund benefits to his nominated beneficiaries according to UNRWA Assignment Beneficiaries Form. The time frame of about 10 days between the date of 27 October 1997 when instructions were given by the Appellant (as being the Custodian of the minor children) and the date of 6 November …, when the second and contradicting trusteeship was presented to the Agency, was not sufficient to execute the necessary procedure to transfer the fund to the Lebanese Bank accounts.

b) The Board believes that the Agency's position to hold the transfer of the fund until clarifying the two contradicting custodianship letters is prudent and does not breach UNRWA's [Regulations and Rules].

c) The Boards believes that the subsequent actions undertaken by the Agency to transfer the amounts to the beneficiaries' accounts in a Syrian bank was sensible, consistent with the Agency's Rules, and in accordance with the [deceased's] designated beneficiaries.

d) Therefore the Board believes that the Administration has acted within the framework of [Regulations and Rules] without any prejudice or bias to the Appellant.

IV. RECOMMENDATION

26. In view of the foregoing …, the Board unanimously makes its recommendations to uphold the Administration's decision appealed against and that the Appeal be dismissed."

On 8 March 2005, the Applicant, having not received any decision from the Commissioner-General regarding her appeal to the JAB, filed the above-referenced Application with the Tribunal. No decision of the Commissioner-General was communicated to her.

Whereas the Applicant's principal contentions are:

1. The Agency jeopardised the interests of the minor children, and is responsible for the financial harm suffered by them.

2. The Agency was under no legal obligation to respect the local court ruling. By transferring the entitlements to a local bank, it disadvantaged the minor children and is thus responsible for the resulting loss.

3. UNRWA failed to adhere to the Applicant's October 1997 instructions regarding payment of the Provident Fund entitlements, nor did it comply with its commitment to retain the entitlements until a decision had been taken regarding legal custody.

4. Pursuant to the provisions of Area staff rule 112.2.3, as the deceased had designated beneficiaries, the Provident Fund entitlements did not form part of his estate.

5. The Agency failed to intervene in domestic court proceedings, further disadvantaging the minor children and the Applicant.

6. The deceased's eldest son was able to obtain confidential information from UNRWA through personal connections.

Whereas the Respondent's principal contentions are:

1. The deposits of 7 July 1998 were made in accordance with the Agency's Regulations and Rules.

2. The Applicant's assertion that the Agency should have intervened in court proceedings is not receivable.

3. The Respondent has no liability for unfavourable rulings from the Sharia Courts on matters of local law.

The Tribunal, having deliberated from 1 to 21 November 2006, in New York, and from 29 June to 27 July 2007, in Geneva, now pronounces the following Judgement:

I. The present case revolves around the following two issues: (a) whether or not the amounts provided by the Provident Fund are part of the deceased's estate; and, (b) the legal custody of minors who are beneficiaries of such funds. As a background to both issues is the question of the applicable law.

II. With respect to the first issue, the applicable legal norms are those of the internal law of UNRWA, according to which the amounts in question are not part of the estate, but belong to the beneficiaries in their entirety and should be disposed of by the Fund as agreed with the deceased staff member. The form in question requires the staff member to certify the following:

> "revoking any and all previous designations of beneficiary, if any, made by me concerning funds in any [Provident Fund] account that are or may be owed to me by … UNRWA, [I] do now designate the beneficiary or beneficiaries named below, to whom I authorize and direct … UNRWA to pay at my death any money, or monies, from my account in the Provident Fund only, owing me or standing to my credit".

Such nomination may be amended by the staff member in his or her lifetime, but their final nomination is binding on the Agency following death. As the form specifically states that "[i]f none [of the beneficiaries] survives me, then the entire amount shall go to my estate", it is, thus, apparent that amounts designated to surviving beneficiaries are not considered part of the staff member's estate. The jurisprudence of the Tribunal is clear that the internal laws of the United Nations prevail and are the relevant legal basis upon which the Tribunal operates. (See, for example, Judgements No. 932, *Al Arid* (1999) and No. 1256 (2005).)

Accordingly, UNRWA is under an obligation to ensure that such sums as are granted by the Fund are delivered to the beneficiaries. Area staff rule 112.2 states, in relevant part:

> "2. In the event of the death of a staff member, all amounts standing to his/her credit with the Agency, including his/her Provident Fund benefits, may be paid to his/her nominated beneficiary or beneficiaries. Such payment shall afford the Agency a complete release from all further liability in respect of any sum paid."

In other words, once the Agency has ensured that the amounts in question are safely in the hands of the beneficiaries, for instance, in an account in their names at a bank of their choosing, the Agency may rest in the

certainty that its obligations have been correctly complied with. If, later on, any beneficiary must comply with local law and bring such monies to the estate, it is a personal obligation on his or her part and does not involve UNRWA.

III. In the present case, the Applicant, as legal custodian of the minor children, requested the Agency to either retain the amounts or deposit them in a Lebanese bank, at least while the question of legal custody was being determined in the Syrian judicial system. The Agency acceded to that petition, promising to retain the monies pending a final decision, but then did not honour its commitment. Had it done so, UNRWA would now be entirely free from any other obligation even if, in the long run, the local authorities would have persuaded the legal custodian of the minor children to bring those monies into the deceased's estate as, at that point, any issues between the family and the local authorities would not have concerned UNRWA.

In the opinion of the Tribunal, the Agency's responsibility in this case was not satisfied by the mere formality of transferring the sums to the Syrian bank; paying the benefits in such a manner, contrary to the specific instructions of the custodian, and so that the beneficiaries, in reality, were unlikely to receive the amounts to which they were entitled, did not provide an automatic release to the Agency from its obligations. Accordingly, the Tribunal cannot support the position of the FAO, as set out in his letter to the Applicant of 22 October 2001, that "the Agency is not concerned any more in your claim since it deposited all the amounts due to your children in their respective saving accounts …, in implementation of the order issued by the First Islamic Court Judge in Damascus".

Acting as it did, the Agency did not comply with its internal law and did not honour the assurances made to the deceased staff member and to the Applicant, who relied upon the promises made. The argument that, in so doing, UNRWA would have assisted her in evading Syrian law is totally unconvincing, as in this case it is the internal law of the Organization which prevails and, in fact, the Agency itself had agreed to conduct different than that indicated by the Syrian law.

IV. The question of custody of the minors is also of primary importance for the Tribunal's decision in this case. The Agency could not possibly render monies which were the property of the children unless and until a legal custodian had been appointed. The Applicant, as mother of the minor children, was first named as their legal custodian. Her appointment was subsequently disputed and the Agency was confronted with the decision of a Judge of the First Instance Sharia Court appointing the eldest son of the deceased as provisional custodian, notwithstanding an earlier decision of the same Court naming the Applicant. The Applicant then asked the Agency to either retain the entitlements of her minor children until a final decree could be obtained on the issue of custodianship *or* to pay the amounts to a Lebanese bank account, but not to transfer the sums to a Syrian bank. The Applicant's petition was totally justified and the Agency agreed thereto when, on 22 December 1997, the FAO assured her that the minors' entitlements would be retained by the Agency until a final court decision was taken on custody. This agreement amounted to a unilateral commitment on the part of the Agency, superimposed upon – and in conformity with – the underlying obligation it had to conform with its internal rules and the designations of the deceased. The Agency subsequently breached this commitment without cause. The Agency should have answered the Ministry of Foreign Affairs, Syria, to the effect that the internal law of UNRWA prevailed and should have honoured the commitment it

had made to the Applicant. Moreover, in this regard, the Tribunal notes the language of Area staff regulation 1.3, "[i]n the performance of their duties staff members shall neither seek nor accept instructions from any government or from any other authority external to the Agency", which provision is founded upon the terms of the Charter of the United Nations.

Had the Agency proceeded in accordance with its commitment, it would have avoided any responsibility and Area staff rule 112.2 would have been entirely satisfied. That, however, was not the case, and the children found themselves in the unfortunate situation of seeing the amounts that their father left to them considerably diminished.

V. The Tribunal is satisfied that the Agency owes the children compensation for the damage they experienced due to its actions. The Tribunal fixes the amount of such compensation at the actual amount of loss incurred by the five male minor children, which loss is quantified in the JAB report as US$ 12,867.97 each, with interest.

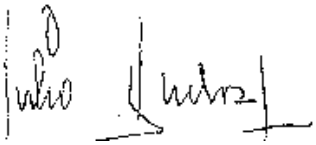
VI. In view of the foregoing, the Tribunal:

1. Orders the Respondent to pay the Applicant, in her capacity as legal custodian of the minor children, compensation in the amount of US$ 64,339.85 with interest payable at five per cent per annum from 25 June 2001 until payment is effected; and,

2. Rejects all other pleas.

(*Signatures*)

Jacqueline R. **Scott**
Vice-President



Julio **Barboza**
Member

Geneva, 27 July 2007

Maritza **Struyvenberg**
Executive Secretary

Separate opinion by Mr. Goh Joon Seng

I. Whilst I accord with the majority on the legal errors committed by UNRWA in this case, I regret that I am unable to agree as to the consequences of same. Thus, I am concurring in part and dissenting in part from the majority opinion.

II. As I see it, there are 2 issues, namely:

(i) Did the Agency discharge its duty under Area staff rule 112.2 when it remitted the entitlements on 7 July 1998 to the personal accounts of the minor children with the Syrian bank (Issue I); and,

(ii) If the Agency was in breach of its duty, what is the measure of loss (Issue II).

III. With respect to Issue I, I note that the remittance by the Agency to the bank was specific in its instructions, requesting the bank to "open saving accounts in US$ and deposit attached checks for the … minors", in the amount of US$ 28,807.77 for each male minor and US$ 3,000 for the female. Thereafter, the Agency stipulated that "[w]ithdrawal from such accounts shall be only through the guardian [the Applicant] *upon the approval of the first Judge*". (Emphasis added.)

The Agency's duty is governed by Area staff rule 112.2, paragraphs 2 and 3 of which read as follows:

> "2. In the event of the death of a staff member, all amounts standing to his/her credit with the Agency, including his/her Provident Fund benefits, *may be paid* to his/her nominated beneficiary or beneficiaries. Such payment shall afford the Agency a complete release from all further liability in respect any sum paid.
>
> 3. If a nominated beneficiary does not survive, or if a designation of beneficiary has not been made or has been revoked, the amount standing to credit of a staff member shall upon his/her death be paid to his/her estate." (Emphasis added.)

Quite clearly the Agency is not concerned with who is ultimately entitled to the Provident Fund benefits; however, its duty is discharged if payment is made to the "nominated beneficiaries".

Although the payment herein was made in favour of the nominated beneficiaries, it was not in accordance with the instructions of the Applicant to pay same to the account she had opened at the Lebanese bank. Further, it was also in negation of the Agency's undertaking, as given to the Applicant on 22 December 1997, to defer payment pending the final court decision on the issue of legal custody of the children.

It is my view that by subjecting the withdrawal of the entitlements only upon the approval of the first Judge, the payment was not in accordance with the Agency's rules. Moreover, it was also in breach of its undertaking to hold the entitlements until the issue of legal custody had been resolved. I am, thus, in agreement with the majority on Issue I.

IV. With respect to Issue 2, however, I dissent from the majority opinion. There is no dispute that the deceased and all claimants to the entitlements are Syrian nationals, domiciled in Syria. The law relating to inheritance is the

Sharia law as applied in Syria. Following an exhaustive process through the Syrian judicial system, the Court of Cassation held that the entitlements were part of the deceased's estate and, thus, were subject to division according to Sharia. The application of Sharia is not displaced by Area staff rule 112.2. The rule does give a complete release to the Agency from all further liability in respect of any sum paid over to the nominated beneficiary. It is then left to the nominated beneficiary to account to whomever is entitled to the same.

Accordingly, even had the entitlements been paid over to the Applicant, in conformity with her request and the Agency's duty, she would still have had to account for them in accordance with Sharia. This is so because the nomination of beneficiaries subject to the deceased's right to "revoke or change" any nominated beneficiary did not constitute a gift *inter vivos* to the nominated beneficiaries. If it did, no revocation of the earlier nominations would have been possible and the re-nominations would have been ineffective. It follows, therefore, that on death, the entitlements constituted part of the assets of his estate to be distributed in accordance with the law applicable thereto. Additionally, the underlying basis of the claim appears to be that the Agency should have remitted the entitlements as per the Applicant's instructions to take them out of the reach of Sharia as applicable in Syria. Such a basis is misconceived. The Applicant and the minor children therefore suffered no financial loss as a result of the Agency's breach of its rules and its undertaking of 22 December 1997, except moral damages. For that, I would have awarded a sum of US$ 5,000.00 as compensation.

(*Signatures*)

Goh Joon Seng
Member

Geneva, 27 July 2007

Maritza **Struyvenberg**
Executive Secretary