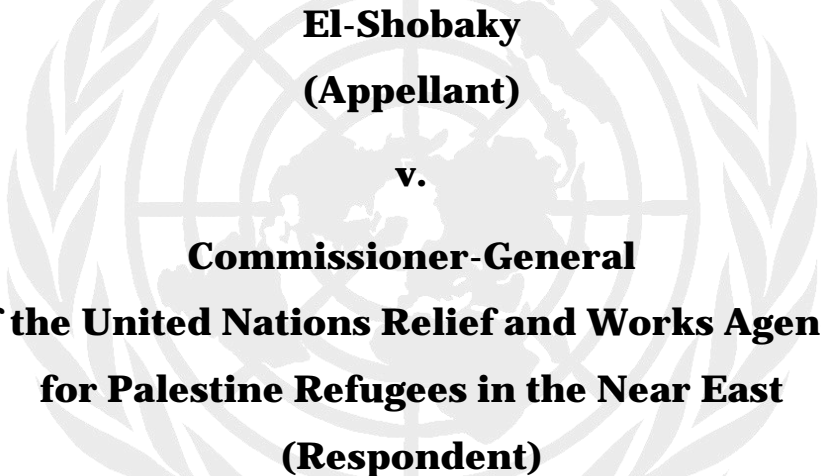




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2015-UNAT-564



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

JUDGMENT

Before:	Judge Deborah Thomas-Felix, Presiding Judge Sophia Adinyira Judge Luis María Simón
Case No.:	2014-656
Date:	2 July 2015
Registrar:	Weicheng Lin

Counsel for Ms. El-Shobaky:	Anaïs Paré-Chouinard
Counsel for Commissioner-General:	Lance Bartholomeusz

JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2014/022, 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) on 28 July 2014 in the case of *El-Shobaki v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East* (UNRWA). Ms. Wafaa Mohamed El-Shobaky¹ filed her appeal on 14 September 2014 and the Commissioner-General of UNRWA answered on 5 November 2014.

Facts and Procedure

2. In 1996, the Appellant entered the service of UNRWA at Headquarters in Gaza (HQ/G) and in December 2005 she joined the Human Resources Planning Development Division. Due to the deterioration of the security situation in Gaza, her Division was relocated to Amman and Jerusalem and the Appellant was thus authorized to travel to, and work from, the Amman office for four months in 2007, between 1 July and 31 October 2007. She received JOD 6,000 to cover her four-month stay in Amman.

3. On 29 October 2007, just prior to the end of the four-month assignment, the Appellant was advised that she could continue to work in Amman rather than return to Gaza. However, if she chose to remain in Amman, she would be based there of her own voluntary choice and consequently, she would not be entitled to payment of any further subsistence allowance beyond 31 October 2007. She was also advised that notwithstanding the change in her duty station she would continue to be considered local staff, and not expatriate staff.

4. In view of the security situation in Gaza and in the interest of her two daughters, the Appellant chose to remain in Amman after 31 October 2007. Effective 1 January 2008, the Appellant's duty station was officially changed to Headquarters in Amman (HQ/A). In January 2008, she was again notified by a Personnel Officer from HQ/A that she would be considered local staff, and not expatriate staff recruited in Amman. As such, she was subjected to the local terms and conditions of Area staff based at HQ/A.

¹ The Appeals Tribunal relies on the spelling of the Appellant's name as per her filings.

5. On 31 March 2013, after discovering that other UNRWA staff members who had transferred to Amman at the same time or after her were retroactively being paid entitlements associated with their moves to Amman, the Appellant requested payment of removal expenses associated with her move from Gaza to Amman in 2008.

6. On 26 May 2013, the Director of Human Resources (HR Director) advised the Appellant that she was not entitled to receive any compensation in connection with the change of her official duty station pursuant to the terms of Area Staff Rule 107.9, since the transfer was effected at her request and for her “personal convenience”. In such circumstances, travel subsistence allowance (TSA) was not payable for January 2008.

7. On 11 July 2013, the Appellant requested review of the HR Director’s decision of 26 May 2013 that she was not eligible to receive TSA under Area Staff Rule 107.9. She claimed that her post was transferred from Gaza to Amman “without prior consultation” with her, such that Area Staff Rule 107.9(4) did not apply to her situation. She also requested payment of an installation grant and “the expatriates allowance” in order to cover the bank loan she took out to cover her living expenses in Amman.

8. On 2 August 2013, the Deputy Commissioner-General advised the Appellant that as per Area Staff Rule 107.9(4), she was not entitled to TSA as she had voluntarily changed her duty station. She was, however, entitled to other allowances under Area Staff Rule 107.12 (Removal Expenses). Pursuant to the direction of the Deputy Commissioner-General, on 3 September 2013, the Appellant received USD 9,000 (JOD 6,372) per Area Staff Rule 107.12 (Removal Expenses).

9. On 3 and 5 September 2013, the Appellant responded to HR requesting review of the decision of the Deputy Commissioner-General as to her eligibility for TSA for January 2008 as she had never asked for a post in Amman. She again requested payment of outstanding TSA for the months of November and December 2007, as well as expenses related to her change in duty station, namely TSA for January 2008 and transportation, claiming the latter were being paid out to other staff members.

10. On 5 September 2013, HR advised the Appellant that the decision of the Deputy Commissioner-General was final and advised her of her right to appeal to the UNRWA DT.

11. On 28 October 2013, the Appellant filed an application with the UNRWA DT, in which she contested, inter alia, the decision of the Deputy Commissioner-General refusing to pay her entitlements upon her change of duty station. She also challenged her exclusion from the short-list for three posts and the alleged abuse of power by HR. She requested the UNRWA DT to consider her status as an expatriate staff and to order payment of TSA for November and December 2007 and January 2008, as well as other removal-related entitlements, and compensation for moral damage.

12. On 28 July 2014, the UNRWA DT issued its Judgment in the matter and dismissed the application. The UNRWA DT found that the only issues before it were those that fell within the scope of the 26 May 2013 decision of the HR Director concerning her entitlements in connection with her change in duty station under Area Staff Rule 107. Consequently, the additional matters which the Appellant raised in her UNRWA DT application, namely claims as to her status as an expatriate staff, her exclusion from the short-list for three posts and the alleged abuse of power by HR, were not receivable.

13. In connection with her change in duty station in January 2008, the UNRWA DT held that she was not entitled to transportation expenses pursuant to Area Staff Rule 107.4(5), or to TSA for January 2008 pursuant to Area Staff Rule 107.9. While rightly entitled to removal expenses and terminal expenses, she had previously received payment for both. The UNRWA DT also found that her claims for payment of outstanding TSA for the months of November and December 2007 were not receivable as she had not requested review of the 29 October 2007 e-mail advising her that she would not receive TSA after the expiration of her assignment within the time limits prescribed by former Area Staff Rule 111.3.

Submissions

Ms. El-Shobaky's Appeal

14. The Appellant submits that the UNRWA DT erred on a matter of law when it excluded evidence she had submitted demonstrating that at least one other UNRWA staff member had been paid certain entitlements in connection with her transfer to the Amman duty station. The evidence showed that although that other staff member was similarly advised in 2009 that transfer to the new post in Amman did not entitle her to a change in status or to any expatriate-related entitlements, that staff member received the installation grant and expenses

related to removal and transfer in 2013, upon asking. In refusing to pay the Appellant the same entitlements, UNRWA failed to be consistent and treated her unfairly. The UNRWA DT erred insofar as it failed to consider this important and relevant evidence.

15. The UNRWA DT erred on a matter of fact when it found that the Appellant's transfer to Amman was at her own request and for her own personal convenience. Although the correspondence from the Organization continues to state as much, at no point did she voice a request to be transferred to Amman. She was transferred to Amman without her consent and without a complete explanation as to what the transfer would entail. Given that her entire office subsequently transferred to Amman, the UNRWA DT could not hold that her transfer was solely for her personal convenience.

The Commissioner-General's Answer

16. The UNRWA DT did not exclude the evidence concerning payments of allowances to other staff members. Rather, by Order No. 48, the UNRWA DT found that the Appellant had not demonstrated how the circumstances or conditions of employment of the other staff members were different from her situation. It was open to the UNRWA DT to find that evidence was not relevant to the Appellant's matter.

17. The UNRWA DT did not err in finding that the Appellant's change of duty station was voluntary and this finding was open to the UNRWA DT on the basis of the ongoing correspondence between UNRWA and the Appellant. It is unreasonable for the Appellant to now contend that she was transferred without her consent and without any explanation of the effect of the transfer on her entitlements. The Commissioner-General requests that this Tribunal dismiss the Appellant's appeal in its entirety.

Considerations

18. The Appellant is seeking the payment of entitlements that she claims she is owed in connection with her change in duty station in January 2008. Central to adjudication of that claim is whether the Appellant was transferred to Amman at her own request and with her consent and knowledge, or whether she was required to transfer.

19. Area Staff Rule 107.9 on “Change of Official Duty Station” provides in relevant part that:

2. Where a staff member is required to change his/her official duty station, then subject to the provisions contained in paragraph 4 of this rule, he/she shall be paid Travel Subsistence Allowance [...] for a period of 30 days immediately following the date on which he/she is required to report at his/her new duty station.

[...]

4. Where a change of official duty station is authorised at the request of or solely for the personal convenience of a staff member, the Travel Subsistence Allowance provided for in paragraph 2 of this rule shall not be payable, unless in exceptional circumstances such payment is specially authorised by the Commissioner-General.

20. Although it may be argued that the Appellant did not *request* the transfer, but rather consented to it, we find on the totality of the evidence that it cannot be refuted that the transfer was effected for her personal convenience, i.e., at the end of October 2007 she chose to remain to work in Amman in view of the security situation in Gaza and in the interest of her two daughters. While she may not have been aware of the financial consequences of her choice at the time, the text of Area Staff Rule 107.9 is clear, and the UNRWA DT correctly concluded that she was not entitled to the payment which she sought.

21. The Appellant further claims that the UNRWA DT erred by excluding evidence that she contends proved that she was entitled to receive additional payments related to her change in duty station in January 2008. Contrary to her submissions, the UNRWA Dispute Tribunal did not exclude her evidence. The admission of evidence and the weight that is to be accorded to it are two separate matters. Pursuant to Article 13(1) of the UNRWA DT's Rules of Procedure, the UNRWA DT shall determine the admissibility of any evidence. Further, the Appeals Tribunal has confirmed that the UNRWA DT has broad discretion to the weight to be attached to the evidence before it.²

22. Although the UNRWA Dispute Tribunal admitted the Appellant's evidence, it found that it did not demonstrate of itself that the Appellant had a right to payment of the entitlements because it could not be ascertained that the other staff member was relocated to Amman

² *Beqai v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-434, para. 15, citing *Dannan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-340, para. 14 and cites therein; *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123.

in the same circumstances as the Appellant. We agree with the UNRWA DT's finding that the Appellant has not demonstrated how the circumstances or conditions of employment of other staff members were relevant to her situation and thus find that the UNRWA DT did not err in this regard.

23. We have reviewed the remainder of the UNRWA Dispute Tribunal Judgment and we find no error of law or error of fact, manifest or otherwise, on the part of the UNRWA DT. The UNRWA DT correctly found that the Appellant's claims for payment of outstanding TSA for the months of November and December 2007, as well as the additional issues which she raised in her judicial review application, had not been the subject of decision review and were thus not receivable. It is settled case law that requesting management evaluation or decision review is a mandatory first step in the appeal process.³ The Appeals Tribunal has consistently noted that the requirement of management evaluation or decision review assures that there is an opportunity to quickly resolve a staff member's complaint or dispute without the need for judicial intervention.⁴

24. Accordingly, we find that there is no merit in the appeal.

Judgment

25. The appeal is dismissed and the Judgment of the UNRWA Dispute Tribunal is upheld.

³ *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-521; *Wamalala v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-300; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-299.

⁴ *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-521.

Original and Authoritative Version: English

Dated this 2nd day of July 2015 in Geneva, Switzerland.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Simón

Entered in the Register on this 20th day of August 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar