UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2020-UNAT-1019

Houran *et al.*
(Appellant)

v.

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

JUDGMENT

Before:	Judge Kanwaldeep Sandhu, Presiding Judge Martha Halfeld Judge Jean-François Neven
Case No.:	2020-1345
Date:	26 June 2020
Registrar:	Weicheng Lin

Counsel for Houran et al:	Milad Moussa Chebli
Counsel for Commissioner-General:	Rachel Evers

JUDGE KANWALDEEP SANDHU, PRESIDING.

1. The Appellants[1] were staff members employed by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) as instructors at the Siblin Training Centre (STC), Lebanon Field Office (LFO). They challenged the Agency's decision to not compensate them for "casual hours" and filed applications to the UNRWA Dispute Tribunal. The UNRWA Dispute Tribunal held the applications were not receivable as the requests for decision review were filed out of time contrary to Area Staff Rule 111.2.

2. For reasons set out below, we dismiss the appeal.

Facts and Procedure

3. During 2017, the Appellants performed "casual hours" in addition to their normal duties as instructors and were compensated for these casual hours.

4. From 1 January to 30 May 2018, the Appellants again performed casual hours/overtime in addition to their normal duties.

5. Around March/April 2018, they requested they be compensated for the casual hours/overtime they had been performing since the beginning of 2018. The Principal of the STC explained to the Appellants he was trying to resolve the issue with the Agency's management.

6. By letter to the Chairperson of the Lebanon Staff Union dated 1 May 2018, the Chairperson of the Staff Union Committee at the STC requested the Union to intervene with respect to the compensation for the casual hours/overtime issue.

7. In May 2018, the Principal verbally advised the Appellants that the Agency would not compensate them for the casual hours/overtime performed since the beginning of 2018. Also, in May 2018, the Appellants met with the Chief, Field Education Programme, LFO (C/FEP/L).

[1] The following 12 individuals are part of the *Houran et al.* group: Milad Mousa Chebli; Ali Mohammed Dib; Ali Nayef Khalil; Eyad Saleh Merhi; Mohammed Mah,d Othman; Riyad Mohammed Khalil; Rim Marwan Iskandarani; Walid Abdullah Houran; Kholoud Hamatto Faour; Nahed Saleh Saleh; Maan Mohammad Merhi; and Khaled Ahmad Sabha.

8. By e-mails dated 15 and 27 February 2019 to the C/FEP/L, one of the Appellants requested, on behalf of all the Appellants, compensation for their casual hours/overtime performed from January to May 2018 with details. The C/FEP/L did not respond to these requests.

9. In a letter dated 2 May 2019 to the Director of UNRWA Affairs, Lebanon (the Director) followed by an e-mail dated 23 May 2019, the Appellant reiterated this request for compensation on behalf of all the Appellants. The Director did not respond.

10. Between 17 June and 6 July 2019, the Appellants filed applications to the UNRWA Dispute Tribunal.

11. By Judgment No. UNRWA/DT/2019/066 dated 12 November 2019, the UNRWA Dispute Tribunal held the Appellants knew in May 2018, latest by 31 May 2018, that their request for compensation had been denied by the Agency. The Appellants' requests through the Principal were informal attempts to resolve the issue and could not be considered a written request for decision review as it was not "unambiguous written request which clearly identifies the staff member and contested decision".[2] Assuming *arguendo,* the 2 May 2019 letter to the Director was a request for decision review, the UNRWA Dispute Tribunal held it was outside the statutory time limits based on the contested decision that was known by the Appellants as of 31 May 2018. As a result, the UNRWA Dispute Tribunal held the applications were not receivable and dismissed the Respondent's request for costs.

Submissions

Appellants' Appeal

12. The Appellants request payment of the required benefits to employees and fining the UNRWA Administration due to unfair employee loss. They say the casual hours are not overtime hours because they are essential part of the study program.

13. From 1 January to 15 June 2018, a group of instructors at the STC taught additional periods above the basic load with prior approval and schedule from the highest management in UNRWA HQ in Amman. This was routine practice in past years.

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[2] Impugned Judgment, paras. 38 and 39.

14. After four months had passed, they say the Administration surprised everyone by stopping payment of these hours.

15. They entered into dialogue with the Principal who informed them that the decision of the Commissioner-General had been issued at the beginning of 2018 with the financial austerity plan that prevented overtime.

16. In several conversations with the Principal in April 2018 and beyond, they were advised that the Principal was working with the Administration to solve the problem.

17. On 1 May 2018, they asked the ASUL Chairman to intervene and continued to request compensation. On 15 and 27 February 2019, they also contacted the Chief of the Education Department and the Director of UNRWA Affairs, Lebanon (DUAL) on 23 May 2019. The Appellants did not receive a response.

18. The Appellants say that UNRWA failed to provide a proper decision in a proper way and in proper time.

The Commissioner-General's Answer

19. The Respondent submits that the UNRWA Dispute Tribunal did not err as a matter of fact, law, or procedure when it dismissed the applications as not receivable.

20. The Respondent says the Appellants have the burden on appeal to establish that the UNRWA Dispute Tribunal judgment is defective within the meaning of Article 2(1) of the United Nations Appeals Tribunal Statute (the "Statute") and the Appellants did not meet this burden.[3] The Appellants have not demonstrated in what aspect the UNRWA Dispute Tribunal exceeded or failed to exercise its jurisdiction, erred on a question of law, committed an error of procedure or erred on a question of fact resulting in a manifestly unreasonable decision. The Appellants do not question the Judgment on receivability but repeat arguments on the merits of the appeal.

[3] In support of his contention, the Commissioner-General references the Appeals Tribunal Judgment in *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540, para. 29.

Considerations

21. Staff Rule 111.4 of UNRWA's Area Staff Rules (Area Staff Rules) provides that pursuant to Article 2(10) of the United Nations Appeals Tribunal Statute, the United Nations Appeals Tribunal (the Appeals Tribunal) is competent to hear and pass judgment on an appeal that asserts that the UNRWA Dispute Tribunal committed errors of fact, law, procedure or jurisdiction in its judgment.

22. An appellant has the burden to demonstrate that the Dispute Tribunal Judgment is defective and identify the alleged errors. On appeal, a party cannot merely repeat arguments that did not succeed before the UNRWA Dispute Tribunal. More is required. An appellant must demonstrate that the UNRWA Dispute Tribunal has committed an error of fact or law warranting intervention by this Tribunal.[4]

23. Here, the Appellants fail to specifically identify the errors allegedly committed by the UNRWA Dispute Tribunal and therefore, the appeals are defective for that reason. However, we have previously recognized that if an appellant is not legally represented, as is the case here, some latitude may be allowed in the interests of justice.[5]

24. Therefore, although the Appellants have not clearly formulated the grounds of appeal, the main issue on appeal for our consideration is whether the UNRWA Dispute Tribunal erred in law or fact resulting in a manifesting unreasonable decision when it concluded the applications were not receivable because the Appellants did not file a timely request for review of the impugned administrative decision according to the applicable staff rules and regulations.

Receivability of Appellant's Request for Decision Review

25. Generally, in reviewing the evidence before the UNRWA Dispute Tribunal, we are troubled by the Agency's pattern of not responding to the Appellants. After conducting the May 2018 meetings, the Agency did not respond to repeated requests made over the course of

[4] *Madi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-853, para. 21, citing, *inter alia*, *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035, para. 30. See also *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29.
[5] *Madi*, *supra*.

more than a year to resolve the Appellants' disagreement with the impugned decision and, importantly, to obtain a written confirmation of the impugned decision. E-mails reiterating requests for compensation of casual hours were sent to the C/FEP/L on 15 and 27 February 2019. The C/FEP/L did not respond to these e-mails. The Appellants then turned to the DUAL on 2 May 2019 and with a 23 May 2019 follow up. The Director simply did not respond. This continued lack of response is not acceptable, and we underscore the need for the Agency to act in good faith and transparency with its staff members.

26. Turning to the merits of the appeal, the UNRWA Dispute Tribunal held the applications were out of time pursuant to Area Staff Rule 111.2 based on its findings of when the Appellants were notified of the decision not to compensate them for the casual hours and, alternatively, if they submitted a timely request for decision review.

27. Area Staff Rule 111.2 requires that a staff member wishing to formally contest an administrative decision allegedly in non-compliance with his or her terms of appointment or contract of employment (including all pertinent regulations and rules and all relevant administrative issuances) shall as a first step submit a written request for a decision review. Pursuant to Area Staff Rule 111.2(3), the "staff member shall submit a request for a decision review within 60 calendar days from the date on which *the staff member received notification* of the administrative decision to be contested".[6]

i) Notification of the Administrative Decision

28. As was stated by the Appeals Tribunal in *Monarawila*:[7]

> It happens routinely that a UNDT judge may need to identify the existence and date of a contested decision which may be express or implied. This requires adequate interpretation and comprehension of the application and the response submitted by the parties. The judge has an inherent power to define the administrative decision impugned by a party and identify what is in fact being contested and subject to judicial review. With an implied administrative decision, the UNDT must determine the date on which the staff member knew or reasonably should have known of the decision he or she contests, based on objective elements that both parties can accurately determine.

[6] Emphasis added.
[7] *Monarawila v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-694, para. 33.

29. In this instance, despite repeated requests, the Appellants were not provided with written notification of the impugned administrative decision to not compensate for casual/overtime hours.

30. The Appeals Tribunal has considered what constitutes "notification" pursuant to Staff Rule 11.2, which provision has nearly identical language to Area Staff Rule 111.2. In this jurisprudence (which also applies here), it is accepted that there is no explicit requirement for written notification as a prerequisite to contest an administrative decision.[8] However, if there is no written notification, it is incumbent on the body reviewing the matter to consider whether the circumstances surrounding the verbal communication still constitutes notification.

31. The UNRWA Dispute Tribunal held that the Appellants were aware by 31 May 2018 that their request to be compensated had been denied when they met with the Principal and received verbal notification of the impugned decision. There is no dispute that the Appellants "knew" in May 2018 that they would not be compensated for the casual hours. However, the UNRWA Dispute Tribunal's reasons and analysis are sparse on the question of whether this verbal advice during the relevant meetings amounted to a "notification" of the administrative decision which triggers the time limits for formal review of that decision as required by Area Staff Rule 111.2(3).

32. For example, in prior cases, if there is a meeting wherein a staff member is verbally advised of an administrative decision, the Appeals Tribunal will review whether there are subsequent written communications including minutes, if they were "unsigned, undated and not shared" at the time, and whether the meetings had the "aim of notification of the administrative decision" or some other topic. If not, the verbal communication does not constitute "notification" as required by the Area Staff Rule.[9] Here, there appears to be no corroborating written evidence surrounding the May 2018 meetings between the Appellants and the Principal and the C/FEP/L, such as minutes or memoranda to confirm the discussion.

[8] *Auda v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-746, para. 30.
[9] *Jean v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-743, para. 23.

33. In determining the "decisive moment of notification" for the purposes of the Area Staff Rule, the Appeals Tribunal has previously held that it is when "all relevant facts…were known, or should reasonably been known".[10] In addition, the Appeals Tribunal will consider whether the verbal decision was communicated with "sufficient gravitas" in a meeting or whether it involved an informal or casual verbal communication or one where the content of the verbal communication is disputed and the facts do not support a reasonable basis upon which to make the necessary findings of "clear and unambiguous" and "sufficient gravitas".[11]

34. In this instance, the UNRWA Dispute Tribunal did not engage in this detailed review or analysis of the circumstances of the verbal communications but held that it was sufficient that the Appellants "knew" of the impugned decision by May 2018. In May 2018, the Appellants met separately with the Principal and with the (C/FEP/L). The latter meeting seemed to have some "gravitas" given the participation of the Chief and appeared to be for the purpose of discussing the compensation. However, it is not known whether the discussion wherein they were advised of the contested decision was "clear and unambiguous". There are no details available as to the content of the meetings other than the Appellants were advised of the decision to not compensate them for the casual hours.

35. Having said the above, the Appellants rely heavily on the fact they did not receive the impugned decision in writing, therefore, they argue there was no notification. They indicate in their applications to the UNRWA Dispute Tribunal that the date of the notification of the administrative decision is not "clear" but "maybe" it was the May 2018 meeting with the (C/FEP/L). Their arguments incorrectly postulate that the notification of the administrative decision should be in writing and as a result, the applications are receivable.

36. As indicated above, there is no requirement in Area Staff Rule 111.2 that the notification be in writing. They provide no evidence or submissions on how the verbal communication of the impugned decision they received in the relevant meeting was not "clear and unambiguous".

37. The UNRWA Dispute Tribunal in this case concluded that the decision denying the Appellants compensation for casual hours was expressed in the May 2018 meetings. However, as indicated above, there is no detailed review of those meetings and what was expressed in those

[10] *Ibid.*, para. 31, citing *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-691, para. 21.
[11] *Ibid.*, para.

meetings other than the verbal statement given to the Appellants that they would not receive the compensation for the casual hours.

38. Nevertheless, we find that any error on a finding of fact of when the Appellants received notification of the administrative decision, did not result in a manifestly unreasonable decision. Even if we accept that the discussions in May 2018 meetings did not objectively amount to "notification" as required by the Area Staff Rule, the Appellants should have reasonably known of the administrative decision when they failed to receive a response to their subsequent requests for compensation in February 2019. This failure or refusal to respond could arguably be an implied administrative decision which would trigger the time limits for formal review of that decision. However, the Appellants have not made this claim in their applications or appeal and the parties have not made any submissions on this issue.

39. Whether the administrative decision is the expressed verbal communication of the denial to provide compensation or is implied from the refusal or failure to respond, the Appellants did not meet the Area Staff Rule requirement that a request for review of the administrative decision be made within 60 days.

40. In the alternative, the UNRWA Dispute Tribunal held that none of the Appellants submitted an identifiable request for decision review. In the alternative, assuming *arguendo* that the 2 May 2019 letter to the Director was a request for decision review, it was still outside the 60-day statutory time limit. This is also true if we accept that the Appellants should have reasonably known by February, 2019 of the administrative decision to not compensate them for the casual hours. And hence the UNRWA Dispute Tribunal correctly held the applications in relation to this decision were not receivable.

ii) Adequate Request for Decision Review

37. Area Staff Rule 111.2 requires that:

> 1. A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her terms of appointment or the contract of employment including all pertinent regulations and rules and all relevant administrative issuances pursuant to Staff Regulation 11.1 (A), shall, as a first step, submit a written request for decision review:
>
> > (A) in the case of staff members of Field Offices, to the UNRWA Field Office Director in charge of the Field Office; and

> (B) in the case of staff members of Headquarters, to the Director of Human Resources.

41. There is no requirement for a particular form for a request for decision review however, the fundamental requirement is that a staff member's request "must be an unambiguous written request which clearly identifies the staff member and the contested decision".[12]

42. We find the UNRWA Dispute Tribunal correctly determined that there was no identifiable request for decision review. Before the UNRWA Dispute Tribunal, the Appellants argued that they sent a letter to the Director "to solve the problems of the unpaid casual hours" and therefore sought a "fair solution for our problem" (see Letter to Director of UNRWA Affairs in Lebanon 2 May 2019 filed as annex 4 before the UNRWA Dispute Tribunal). The Appellants admit this was not a request for a decision review because they had "in [their] hands no decision from the administration" and that the "administration simply decided not to pay and not to inform that they will not pay, while [the Appellants] chose to continue [their] work and teach [their] students because [they] trusted that this problem sure w[ould] find a way to be fairly solved and [their] administration at the end w[ould] pay [them] the hours".[13]

43. In reviewing the May 2019 letter, we agree that it is not an "unambiguous written request" for a decision review; it is just as likely that the letter was a request for dispute resolution and as a result, it cannot be said to be "unambiguous". This is essentially admitted by the Appellants in their submissions when they confirm it was not a request for decision review. It is trite law that in the context of a case such as the present, a request for decision review is a perquisite for the UNRWA Dispute Tribunal to entertain the challenge to an administrative decision.[14]

44. Therefore, the applications are also not receivable *ratione materiae* due to the lack of a clear and unambiguous request for decision review pursuant to Area Staff Rule 111.2. Even if this letter is considered a request for decision review, we have found above it is beyond the 60-day statutory time limit required by Area Staff Rule 111.2(3).

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[12] *Lemonnier v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-679, para. 51.
[13] (See Appellant's annex 06 filed with the Appeals Tribunal).
[14] *Mohanna v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-687, para. 29.

45. The UNRWA Dispute Tribunal did not err in fact or law in dismissing the applications.

Judgment

46. The appeal is dismissed.

Original and Authoritative Version: English

Dated this 26th day of June 2020.

(Signed)	*(Signed)*	*(Signed)*
Judge Sandhu, Presiding Vancouver, Canada	Judge Halfeld Bournemouth, United Kingdom	Judge Neven Brussels, Belgium

Entered in the Register on this 23rd day of July 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar