UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2021-UNAT-1126

Ahmad Mustafa *et al.*

(Appellants)

v.

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

JUDGMENT

Before:	Judge Martha Halfeld, Presiding Judge Kanwaldeep Sandhu Judge John Raymond Murphy
Case No.:	2020-1444
Date:	25 June 2021
Registrar:	Weicheng Lin

Counsel for Appellants:	Diab Al Tabari
Counsel for Respondent:	Rachel Evers

JUDGE MARTHA HALFELD, PRESIDING.

1. Mr. Ahmad Nimer Mustafa, Mr. Hicham El Chouli, Mr. Nabil Ahmad, Mr. Jamil Haj Dawud, Mr. Mohammad Serhan, Mr. Kassem Rabie, Mr. Ali Al Hafi and Mr. Jamil Abu Heit are engineers who have worked for the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) on either limited duration contract (LDC), special services agreement (SSA) or as an individual service provider (ISP). Their contracts were ultimately converted to fixed-term appointments (FTA), but they did not agree with the grade at which they were placed. In its Judgment now under review, the UNRWA Dispute Tribunal found that they did not request decision review of the impugned decision in a timely manner and dismissed the applications on grounds of receivability.

2. For the reasons set out below, the Appeals Tribunal affirms the UNRWA DT Judgment.

Facts and Procedure

3. As noted above, this appeal was filed by eight staff members. They were engineers working for the Agency on either LDC or SSA or as ISP. Effective 1 March 2017, six of them were offered FTAs at the Lebanon Field Office (LFO), and the other two received FTAs with the LFO effective 1 January and 1 March 2018 respectively. There was no break in service when their respective contracts were converted to FTAs. They were placed at Grade 14, Step 01, which resulted in reduction in pay for some of them. They expressed their disagreement with the new level assigned to them.

4. At their request for higher steps, on 16 January 2018, the Director of UNRWA Affairs, LFO (DUA/L) requested that the Appellants' level be set at Grade 14, Step 10, retroactively from the dates of their respective FTA appointments, in order to "decrease the reduction [in their pay] and show consideration for the matter". However, on 15 March 2018, the Officer-in-Charge, Human Resources Department (OiC/HRD) denied the DUA/L's request, as "there [was] a need to ensure a consistent application of exceptions across the Agency". By e-mail dated 19 March 2018, the Project Manager, Nahr el-Bared Camp, Reconstruction Unit, informed the Appellants of the Agency's decision not to grant them higher steps following the conversion of their contractual modalities to FTAs.

5. Each of the Appellants requested review of the contested decision on 17 July 2018. There was no response from the Agency to the Appellants' requests for decision review.

6. On 14 and 15 March 2019, the Appellants filed individual applications with the UNRWA Dispute Tribunal (or UNRWA DT). The UNRWA Dispute Tribunal consolidated the eight applications and issued Judgment on Receivability No. UNRWA/DT/2020/035 on 18 June 2020, dismissing all eight applications as not receivable *ratione materiae*. The UNRWA DT noted that the Appellants were informed of the contested decision to deny their request for higher steps on 19 March 2018, but they submitted their requests for decision review only on 17 July 2018, in excess of the 60-calendar-day statutory time limit for requesting a decision review, by almost two months. It also noted that the UNRWA DT had no jurisdiction to waive that statutory requirement.

Submissions

Mustafa *et al.*'s Appeal

7. The Appellants request that the Appeals Tribunal order that their steps (annual increments) be increased by nine levels in consideration of their experience and nine years' uninterrupted service before their respective contracts were converted to FTAs, interest accumulated on the unpaid higher steps and two years' salary in compensation for their moral damages and their time and expenses in pursuit of their case in 2019.

8. The Appellants submit that they filed their cases in accordance with the time limits. On 18 March 2018, the DUA/L's request to set their steps at Grade 14, Step 10, was denied. That decision was maintained on 19 March 2018.

9. The Appellants also submit that, when they filed their requests for decision review on 17 July 2018, the Director was still following their cases, which meant that their cases were still open for review. At the Agency, a staff member loses an entitlement if s/he does not claim it within one year of the contested decision. The Appellants filed their applications on 14 and 15 March 2019, within one year of receipt of the contested decision on 19 March 2018.

10. The Appellants maintain that both the Agency and the UNRWA DT did not want to address the substance of their cases, and they played a technicality game by dismissing their applications on receivability grounds.

The Commissioner-General's Answer

11. The Commissioner-General requests that the Appeals Tribunal dismiss the present appeal in its entirety.

12. The Commissioner-General maintains that the appeal is not well grounded on any of the grounds set out in Article 2(1) of the Statute of the Appeals Tribunal. The Appellants do not criticize the reasons for dismissing their applications or explain how the UNRWA DT erred in its decision. It is clear that they merely disagree with the outcome of the UNRWA DT Judgment.

13. The Commissioner-General submits that the UNRWA DT did not make factual or legal errors that warrant the intervention of the Appeals Tribunal. It was cognizant of the applicable legal framework and its consistent jurisprudence on receivability. Noting the undisputed fact that the Appellants learnt of the contested decision on 19 March 2018 but filed their requests for decision review only on 17 July 2018 and that it had no jurisdiction to wave the time limit for decision review, the UNRWA Dispute Tribunal correctly held that their UNRWA DT applications were not receivable *ratione materiae*.

14. The Commissioner-General maintains that the relief sought by the Appellants has no legal basis.

Considerations

15. The main issue for consideration and determination in the present appeal is whether the UNRWA DT erred when it found that the applications filed by Mustafa *et al*. were not receivable *ratione materiae*, due to their not having submitted the impugned administrative decision for review within the specified deadlines.

16. Area Staff Rule 111.2 provides in relevant parts concerning decision review that:[1]

> 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 a decision review:

[1] Emphases added.

> (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.
>
> …
>
> 3. A 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.*

17. In this regard, the UNRWA DT found that Mustafa *et al.* were informed of the impugned decision on 19 March 2018. Having incontrovertibly requested decision reviews only on 17 July 2018, their requests were untimely.

18. In their appeal now under examination, Mustafa *et al.* claim that, by 17 July 2018, when they filed individual requests for decision review, their cases were still open for review, meaning that the decision review process was still on-going, and that their requests for decision review were therefore timeous. However, it is undeniable that the request for higher steps sought by Mustafa *et al.,* as expressed in their own words, was "not approved" by a decision communicated to them in the 18 (*rectius*, 19) March 2018 e-mail. Therefore, Mustafa *et al.* admittedly acknowledged that they were fully aware of the adverse and direct impact of the decision of 18 March 2018 on their alleged entitlements.

19. The Appeals Tribunal has continuously held that "the key characteristic of an administrative decision subject to judicial review is that the decision must 'produce[] direct legal consequences' affecting a staff member's terms and conditions of appointment".[2] Furthermore, "[t]he date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine".[3] It follows that the UNRWA DT did not err when it found that Mustafa *et al.* "were informed of the impugned decision on 19 March 2018".[4]

[2] *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 28, citing *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, in turn citing former Administrative Tribunal Judgment No. 1157, *Andronov* (2003), para. V and *Andati-Amwayi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-058, para. 17.
[3] *Kazazi, supra* note, para. 28, citing *Rabee v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-296, in turn citing *Rosana v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-273.
[4] Impugned Judgment, para. 22.

20. Mustafa *et al.* argue that further e-mails and correspondence between the parties continued "with no change to the Decision", seemingly contending that the 19 March 2018 message conveying the contested decision had not been final, but rather that discussions were still ongoing. However, the 19 March 2018 e-mail, in its plain reading, already referred to a response from the Human Resources Department (HRD) at Headquarters dated 15 March 2018, which in turn stated the following:[5]

> ... I would like to *reiterate* HRD's decision (conveyed by CHROSD via email on 3 April 2017), which stated that there is a need to ensure a consistent application of exceptions across the Agency. A quick review showed that other Fields have had similar transitions of staff members (from LDC to FT) and no exceptions on additional steps were granted.
>
> ... Therefore, I cannot approve your request to appoint 10 NBC staff members (formerly on ISPs) at higher steps.

21. Moreover, the evidence on the record shows that the discussions started well before the 19 March 2018 e-mail, when the request was sent by e-mail a little more than a year before, on 10 March 2017, under the heading "New FX appointments at NMU – steps". After explanations had been requested and provided in another round of emails, the Appellants' claim was ultimately answered on 3 April 2017, in the following terms:

> I have discussed with Brian today and we agreed that we do not support this approach mainly because we need to ensure a consistent application of the exceptions and rules in all fields. A quick review showed that other fields have had similar transition of LDC to FT and no exception or additional steps were granted. We may discuss further on the phone if you wish.

22. Almost a year later, the 19 March 2018 e-mail *reiterated* this same decision. The Administration gave the Appellants the benefit of the doubt and considered this latest correspondence to be the administrative decision to be challenged.

23. Therefore, Mustafa *et al.*'s claim that the discussions were still ongoing after 19 March 2018 is without merit, firstly because there is no evidence of further discussions between the parties on the record, and secondly, because such an exchange of correspondence leading to the same outcome would be considered mere reiteration of the previous administrative decision. On this point, the Appeals Tribunal has consistently held

[5] Emphasis added.

that the reiteration of an original administrative decision, if repeatedly questioned by a staff member, does not reset the clock with respect to statutory timelines. Rather, the time window commences from the date on which the original decision was made.[6] For this reason, a staff member cannot delay the time for decision review by asking for reconsideration or confirmation of an administration decision that had been communicated to him or her earlier. Neither can a staff member unilaterally determine the date of an administrative decision.[7]

24. Relying on *Tabari*,[8] Mustafa *et al.* also assert that decisions can be challenged within the timeframe of one year from the date of receipt. This understanding is not correct. In *Tabari*, the Appeals Tribunal, invoking its authority under Article 7(1)(c) of its Statute given the circumstances of that case, waived *sua sponte* the time limits for Mr. Tabari to file his appeal. It is true that Article 7(4) of the Appeals Tribunal Statute stipulates the time limit of one year to file an appeal before the Appeals Tribunal, insofar as there are sufficient grounds for granting such waiver pursuant to Article 7(3).

25. In the present case, there was no such waiver. If there had been, it would not have related to the delay in filing the *appeal*, but rather to the delay in submitting the request for *decision review*. Yet, according to the same Article 7(3), in no circumstance has the Appeals Tribunal competence to waive deadlines for requesting management evaluation or decision review.[9]

26. Accordingly, the UNRWA DT did not err when it found that the applications were not receivable, because the requests for decision review were submitted after the deadline. Mustafa *et al.*'s request that the Appeals Tribunal examine the merits of the case cannot

[6] *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-546, para. 46, citing *Samuel Thambiah v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-385, *Cooke v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-275 and *Sethia v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-079.
[7] *Kazazi supra* note 2, para. 31, citing *Chahrour v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-406, citing in turn *Rosana v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-273.
[8] *Tabari v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-030.
[9] *Ajdini et al. v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-108, para. 27; *Le Boeuf et al., v. Secretary-General of the United Nations*, Judgment No 2015-UNAT-568, para. 68; *Pavicic v. Secretary-General of the United Nations*, Judgment No, 2016-UNAT-619, paras. 16, 18-21; *Clemente v. Secretary General of the International Civil Aviation Organization*, Judgment No. 2018-UNAT-857, paras. 46-48.

succeed, as the examination of the merits would depend on fulfilling the receivability requirements, which has not been the case.

Judgment

27. The appeal is dismissed and Judgment N. UNRWA/DT/2020/035 is affirmed.

Original and Authoritative Version: English

Dated this 25th day of June 2021.

(Signed)	*(Signed)*	*(Signed)*
Judge Halfeld, Presiding Juiz de Fora, Brazil	Judge Sandhu Vancouver, Canada	Judge Murphy Cape Town, South Africa

Entered in the Register on this 15th day of July 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar