



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

Judgment No. 2021-UNAT-1141

**Najwa Yusef, Imad El Manasri,
and Rabie Abdulghani
(Appellants)**
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 Graeme Colgan Judge Sabine Knierim
Case Nos.:	2020-1468
Date:	25 June 2021
Registrar:	Weicheng Lin

Counsel for Appellants:	Self-represented
Counsel for Respondent:	Rachel Evers

JUDGE KANWALDEEP SANDHU, PRESIDING.

1. The Appellants, Najwa Yusef, Imad El Manasri, and Rabie Abdulghani, Senior Vocational Training Instructors with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency), contest the Agency's decision to not grant them additional allowances after a salary survey (the administrative decision).

2. In Judgment No. UNRWA/DT/2020/046 (the Judgment), the UNRWA Dispute Tribunal (UNRWA DT) held their applications were not receivable as they did not file a timely request for decision review within the 60 calendar days as required by Area Staff Rule 111.2. The UNRWA DT held the Appellants knew of the administrative decision by 30 March 2019 and therefore had until 30 May 2019 to submit their request for decision review. Unfortunately, the requests for decision review were neither dated nor signed and the UNRWA DT relied on the date the Agency received the requests as date stamped on 3 June 2019 as the date of submission. The issue is whether the UNRWA DT erred in determining that the Appellants submitted their requests for decision review late based on the date the Agency received the requests.

3. For reasons set out below, we grant the appeal and remand the matter to the UNRWA DT to obtain additional evidence to make additional findings of fact pursuant to Articles 4 and 5 of the United Nations Appeals Tribunal Statute (the Statute). We note that there are other appeals that relate to the payment of these additional allowances to LFO staff, however, those appeals relate to different staff members and to different issues.¹

Facts and Procedure

4. The following are facts as found by the UNRWA DT in its Judgment.

5. At the relevant times, each of the Appellants were employed by UNRWA as Senior Vocational Training Instructors, Grade 12 at Sinlin Training Centre (STC), Lebanon Field Office (LFO).

¹ *Jihad AbdulGhani Oneis, Diab el-Tabari and Walid Abdullah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1139.

6. UNRWA requested the United Nations Office for Project Services to conduct a salary survey for the LFO. The survey was conducted in October and November 2018.

7. As a result of the survey, in March 2019, UNRWA decided to grant an allowance of USD 167.00 or USD 190.00 per month, depending on the grade, to all LFO staff members effective 1 January 2019.

8. Additional allowances of varying amounts (but not exceeding USD 160.00 per month) were granted to staff members encumbering certain types of specific posts. The Appellants were not given an additional allowance.

9. In their application to the UNRWA DT the Appellants indicated that they submitted their request for decision review in May 2019. The UNRWA DT ordered each applicant to submit further evidence establishing the date of submission of the request for decision review as the requests the applicants provided to the UNRWA DT were neither dated nor signed. The Agency provided copies of the requests for decision review that they say were received 3 June 2019 and were stamped accordingly.

10. The Appellants approached their supervisor when they became aware from their pay slips that they would not be granted the additional allowance. During May 2019, the supervisor followed up with higher officials and when this was unsuccessful, the supervisor advised the Appellants to file requests for decision review.

11. In its Judgment, the UNRWA DT dismissed the applications. It held it would not determine whether the applicants made individual requests to trigger a contestable administrative decision but would only review whether the applicants submitted timely requests for decision review. The Tribunal found that by 31 March 2019 (based on the Appellants' statements in their applications to the UNRWA DT), all relevant facts for the contested decision should have been reasonably known by the applicants therefore the deadline for the request was 30 May 2019. The UNRWA DT held that, unless an applicant establishes otherwise, the Tribunal must rely on a stamped copy of the request for decision review to find that the Appellants submitted their requests on 3 June 2019. As the Appellants had until 30 May 2019 to submit the request for decision review, the applications are not receivable *ratione materiae*.

Submissions

Appellants' Appeal

12. The Appellants request the Appeals Tribunal to reverse the Judgment and grant them the teaching allowance effective January 2019.

13. They state that there was no clear circular by the Agency excluding Senior Instructors from the allowance and they only learned they were excluded in their March 2019 pay slips which they checked “early in April 2019.”

14. The Appellants say the Agency did not include the Senior Instructors in the teaching allowance as an oversight and that decision to provide allowances was of a general nature but not implemented in a “general manner” and failed to consider equally all staff in the same category.

15. They say they tried to solve the issue of not receiving the teaching allowance through their supervisors. They view their exclusion from the allowance as a mistaken oversight that was being rectified and not an administrative decision in March/April. They waited until the Acting Principal of the Sinlin Training Center (P/STC) received a reply from the Agency which occurred in May—making them aware in May that this was now a decision.

16. As for the date of the request for a decision review, the Appellants say the four Senior Instructors submitted two sets of decision review requests in one envelope, though one set was unsigned and undated and the other set was signed and dated 30 May 2019 which shows the requests were submitted on time, (although it was received 3 June 2019). If there had been any delay in submitting the requests, it is not their responsibility but that of the UNRWA officials whose duty was to provide staff with proper advice.

17. The Appellants also provide additional information that after they received the Judgment, copies of the signed decision review requests were sought from the Human Resources Career Management Officer (HRCMO), but without a response.

Commissioner-General's Answer

18. The Respondent requests the appeal be dismissed in its entirety.

19. The Respondent submits that the Appellants failed to identify an error or defect in the impugned Judgment as required by Article 2 of the United Nations Appeals Statute. They merely disagreed with the outcome and reargue their case which is not sufficient for meeting their burden as appellants to identify an error.

20. The Respondent says the Appellants reassert their mere assertions of fact made to the UNRWA DT on the submission of the decision review requests. The UNRWA DT considered and addressed these assertions of fact and correctly found the applications not receivable. Also, asserting a person not party to this litigation submitted a timely request does not prove the current Appellants did as well.

21. Further, the Appellants' introduction of new evidence before the Appeals Tribunal on their unsuccessful post Judgment attempts to obtain copies of the signed requests that was not proffered before the UNRWA DT, is inappropriate. In addition, this evidence is patently baseless and irrelevant to the present proceedings and should be disregarded in its entirety.

22. With respect to the plea that the Appeals Tribunal grant the allowance, the Respondent says there is no legal basis for the consideration of this relief.

Considerations

Introduction of Additional Evidence

23. As a preliminary matter, we reject the Appellants' additional evidence on their post Judgment attempts to obtain copies of the signed decision review requests. This Tribunal may only receive additional evidence in exceptional circumstances under Article 2(5) of the Statute, and the request does not address this requirement. In any event, we find this evidence is irrelevant on the basis it relates to post Judgment information and conduct and is not ultimately material to the issue of whether the UNRWA DT erred in its Judgment in determining the applications as not receivable.

Validity of Appeal

24. Staff Rule 111.4 of UNRWA's Area Staff Rules (Area Staff Rules) provides that pursuant to Article 2 (10) of this Tribunal's Statute, we are competent to hear and pass judgment on an appeal that asserts that the UNRWA DT: a) exceeded its jurisdiction or competence, b) failed to exercise

jurisdiction vested in it, e) erred on a question of law, d) committed an error of procedure such as to affect the decision of the case, or e) erred on a question of fact, resulting in a manifestly unreasonable decision.

25. The Commissioner-General says the Appellants have failed to identify the grounds for appeal as required by the Statute. That is strictly correct. An appellant has the burden to demonstrate that the impugned Judgment is defective and must identify the specific errors allegedly committed by the UNRWA DT. On appeal, a party cannot merely repeat arguments that failed before the UNRWA DT. More is required. An appellant must demonstrate that the UNRWA DT has committed an error of fact or law warranting intervention by the Appeals Tribunal.² Sometimes, however, an appellant will need to reiterate those first-instance arguments in order to establish that the tribunal of first instance erred in one of the limited ways that will allow an appeal. Therefore, such re-arguments will need to be considered in this context.

26. Although, the appeal is technically inadequate because the Appellants have failed to specifically identify the errors allegedly committed by the UNRWA DT, 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.³ If, upon examination, one or more of the statutory grounds of appeal is discernable, it will be in the interests of justice not to dismiss the appeal on what might be seen as a technicality. That is the case here. Therefore, we will review the merits of the appeal.

Receivability:

27. Area Staff Rule 111.2 provides that:

1-A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules and relevant administrative issuances pursuant to staff regulation 11.1(a), shall, as a first step, submit a written request for a decision review:

(A) in the case of staff members of Field Offices, to the UNRWA Field Office Director in charge of the Field Office.

...

² *Houran et al. v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2020-UNAT-1019, para. 22. See also *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29.

³ *Houran et al.*, *supra*.

3. A staff member shall submit a request for decision review within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

28. The salary survey results for the LFO were implemented in March 2019 and the Agency made general decisions on the granting of allowances that affected a range of staff members based on these results. Unfortunately, we do not have evidence of the Administration circulating a clear communication on the decision to exclude the Senior Instructors from the teaching allowance.

29. Administrative decisions of general application seeking to promote the efficient implementation of administrative objectives, policies and goals can still be appealable administrative decisions depending on the nature of the decision, the legal framework under which the decision was made, and whether there are direct legal consequences of the decision.⁴

30. Regarding implied administrative decisions, the UNRWA DT must determine the date on which the staff member knew or reasonably should have known of the decision he or she contests.⁵ Stated another way, the UNRWA DT must determine the date of the implied decision based “on objective elements that both parties (Administration and staff member) can accurately determine”.⁶

31. It is this test of an implied administrative decision that the UNRWA DT applied in this present case. In the Judgment, the UNRWA DT relied on the Appellants’ indication in their application that they were informed in “March 2019” of the decision and therefore, it held that by 31 March 2019 (the last day in that calendar month), all relevant facts for the contested decision should have been reasonably known by the Applicants.

32. We find the UNRWA DT erred on a question of fact that resulted in a manifestly unreasonable decision. This is because it reached this conclusion solely on one notation in the Appellants’ applications. A closer review of the UNRWA DT applications shows that in answer to question “3. The date of the decision:”, they indicated “March 2019” but in answer to the

⁴ *Andati-Amwayi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-058, Former Administrative Tribunal Judgment No. 1157, *Andronov* (2003).

⁵ *Rosana v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-273. See also *Chahrour v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-406, para. 22.

⁶ *Awan v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-588.

question “4. The date on which you were notified of the decision:” they indicated “April 2019”. The March 2019 “decision” of the Administration would be the implementation of additional allowances for staff members encumbering certain types of specific posts as a result of the salary survey. The Dispute Tribunal failed to consider the full application and the question of when the Appellants received “notification of the administrative decision to be contested (see Staff Rule 111.2(3)).

33. The UNRWA DT application answers seem to be contradictory to the Requests for Decision Review forms that were previously submitted. In those Requests, the Appellants were asked to answer the question “When was the decision taken/when did you become aware of it?”, and they all indicated “March 2019”. However, this encompasses two separate questions and it is unclear whether this single answer is to the question of when the decision was taken (if so, it is consistent with the UNRWA DT applications) or when they became aware of it. However, given the Appellants’ evidence that they became aware of the lack of allowance in early April 2019 after a review of their March 2019 pay slips, the reasonable interpretation is that the answer to that question in the Requests was an answer to when the decision was taken, i.e., in March 2019. If, however, that was not the date on which the Appellants became aware of or were notified of the decision, then it is that later date that is crucial for time limitation questions.

34. Also, it is unclear why the UNRWA DT chose the date of 31 March 2019 to find that by this date, “all relevant facts for the Contested Decision should have reasonably been known” by the Appellants.⁷ Choosing 31 March seems arbitrary and without evidence.

35. As a result, we find the UNRWA DT erred in fact in finding that the Appellants should have reasonably known all relevant facts of the contested decision by 31 March 2019 because this finding is based on an inaccurate and incomplete review of the evidence. The UNRWA DT’s erroneous finding was based on incomplete consideration of the “objective elements” as required by the test for an implied administrative decision. By ignoring relevant evidence, the UNRWA DT erred, and the decision therefore is unlawful.

36. We grappled with whether we could “reverse or modify findings of fact of the UNRWA DT on the basis of the substantial evidence in the written record” of this appeal (see Article 4(a) of the Statute). We find that we cannot. There is insufficient evidence of when the Appellants were notified of the decision for this Appeals Tribunal to grant them the additional

⁷ Impugned Judgment, para. 32.

allowance. There is no evidence that the Agency provided a written circular or communications excluding senior instructors from the teaching allowance. The Appellants says that they became aware of the exclusion “through (the) March pay slip which we checked early in April 2019.” There is no evidence as to when they received or would have received the March 2019 pay slip; for example, did they receive pay slips electronically or by hard copy? How soon after issuance of a pay slip could or did they receive pay slips? The UNRWA DT issued an interim order (Order No. 053), dated 22 April 2020, ordering each Appellant to submit further evidence establishing the submissions of his/her individual request to the Agency to be granted an additional allowance. By a subsequent order (Order No. 080), the UNRWA DT ordered each Appellant to produce additional evidence establishing s/he had submitted a request for decision review. The UNRWA DT did not request additional evidence on the question of notification or receipt of the alleged administrative decision. In fact, the UNRWA DT dismissed the appeal without consideration of whether there was a “triggered” contestable administrative decision.

37. As a result, it did not consider whether the March 2019 pay slips were, or were evidence of, an appealable administrative decision. The Administration’s grant of additional allowances resulting from the March 2019 results of the salary survey was a policy decision of general application for staff members encumbering certain types of specific posts. In fact, the Administration in the UNRWA DT’s Judgment made the submission that the impugned decision was of “general order” and not of “individual application”. The UNRWA DT failed to consider whether the Agency’s decision of general application became individual administrative decisions in the pay slips that implemented the decision.⁸ If so, evidence of the Appellants’ receipt and knowledge of the March 2019 pay slips is highly relevant.

38. It is not disputed that the additional allowances resulting from the salary survey were not granted uniformly to staff members. The Appellants say that their work as Senior Vocational Training Instructors is equal to, or substantially the same as, that of staff who did receive the additional allowances. As stated by the Appeals Tribunal in *Tabari*⁹ “Pay includes net base pay and all admissible allowances. Denial of pay is a violation of the principle of “equal pay for equal work” which is a right granted under Article 23(2) of the Universal Declaration

⁸ *Abd Al Shakour et al. and Aksioutine et al. v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1107.

⁹ *Tabari v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-030.

of Human Rights, which stipulates: “Everyone, without any discrimination, has the right to equal pay for equal work.” The denial of full allowance is also a violation of the terms of employment.” However, due to the erroneous findings of fact on receivability, the UNRWA DT failed to consider these arguments or whether there was a rationale for any differential treatment of staff members.

39. As a result, we find the UNRWA DT erred finding the applications not receivable *ratione materiae*. As we are unable to make the required determination of facts on the existing evidence, we remand the matter back to the UNRWA DT pursuant to Articles 4 and 5 of the Statute for additional findings of fact on the notification and receipt of the impugned decision excluding the Appellants from the grant of the additional allowances.

Judgment

40. We vacate the UNRWA DT's Judgment No. UNRWA/DT/2020/046 and remand the cases to the UNRWA DT for additional findings of fact.

Original and Authoritative Version: English

Dated this 25th day of June 2021.

(Signed)

Judge Sandhu,
Vancouver, Canada

(Signed)

Judge Colgan
Auckland, New Zealand

(Signed)

Judge Knierim
Hamburg, Germany

Entered in the Register on this 19th day of August 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar