



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

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Judgment No. 2022-UNAT-1299

**Hiba Mohamad Abou Salah  
(Respondent/Applicant)**

**v.**

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

**JUDGMENT**

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Before:	Judge John Raymond Murphy, Presiding Judge Dimitrios Raikos Judge Martha Halfeld
Case No.:	2021-1635
Date of Decision:	28 October 2022
Date of Publication:	23 December 2022
Registrar:	Juliet Johnson

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Counsel for Ms. Abou Salah: Self-represented

Counsel for Commissioner-General: Hannah Tonkin

**JUDGE JOHN RAYMOND MURPHY, PRESIDING.**

1. The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or the Agency) appeals against the Judgment of the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT), No. UNRWA DT/2021/044 of 31 September 2021, directing him to pay Ms. Hiba Mohamad Abou Salah a Senior Professional Officer Allowance (SPOA) equivalent to 25 per cent of her salary instead of an allowance of 15 per cent. We uphold the appeal on the ground that the application to the UNRWA DT was not receivable.

**Facts and Procedure**

2. The facts of the case are set out fully in the Judgment of the UNRWA DT as follows:<sup>1</sup>

... Effective 3 October 2011, the Applicant was employed by the Agency on a Fixed-Term Appointment, Grade 6, as Clerk B, at Procurement and Logistics Department, Lebanon Field Office (“LFO”).

... Effective 1 December 2014, the Applicant was reassigned and promoted to Grade 8. Effective 1 January 2017, the Applicant’s post was reclassified, and the Applicant was promoted to the post of Procurement Assistant, Grade 10, LFO.

... By Letter of Appointment (“LoA”) dated 16 January 2019, the Applicant was selected for the post of Senior Procurement Officer, LFO, Grade 17 (“SPO”). In accordance with her LoA, effective 1 February 2019, the Applicant was initially promoted to Grade 16, as she did not meet all the requirements of the post of SPO. The Applicant’s LoA provided that she would be promoted to Grade 17, effective 1 February 2021, subject to satisfactory performance. The Applicant’s LoA also indicates that, effective 1 February 2019, the Applicant would be eligible for a payment of Special Post Occupational Allowance equivalent to 25 percent of her salary.

.. The Applicant indicates that, at the time of the processing of her pay slip for February 2019, she was verbally informed by the Field Human Resources Office LFO (“FHRO/L”) that her Senior Professional Officer Allowance (“SPOA”) would temporarily be 15 percent, as the system did not identify the post of SPO among the posts at Grade 16.

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<sup>1</sup> Impugned Judgment, paras. 2 to 19.

... By email dated 20 February 2019, the Head, Field Human Resources Office, LFO (“H/FHRO/L”) requested an exceptional approval for an SPOA of 25 percent for the Applicant’s post.

... By letter dated 2 April 2019, the Director of the Human Resources (“DHR”) declined the request of the H/FHRO/L for an exceptional approval for an SPOA of 25 percent for the Applicant’s post, as the post of SPO was not included in Annex A of Area Staff Personal Directive No. A/21/Rev.3 Amend. 10 (“PD A/21”), which provides the list of the Grade 16 posts that are eligible for an SPOA of 25 percent.

... By email dated 9 April 2019, the Acting Human Resources Services Officer, LFO (“A/HRSO/L”) requested the reconsideration of the DHR’s decision to pay the Applicant an SPOA of 15 percent.

... By email dated 15 May 2019, the Applicant requested an update from the A/HRSO/L on the reconsideration request. On 21 May 2019, the Human Resources Officer (Entitlements) informed the A/HRSO/L that there was no change concerning the DHR’s decision to pay the Applicant an SPOA of 15 percent.

... On 10 and 14 June 2019, the Applicant sent other reminder emails to the A/HRSO/L. By email dated 17 June 2019, the A/HRSO/L informed the Applicant that the reconsideration request for an SPOA of 25 percent for the Applicant was declined.

... By email dated 25 July 2019, the Applicant requested support from the Deputy Director of UNRWA Affairs, LFO (“D/DUA/L”) on her case. On the same day, the Applicant’s supervisor, namely, the Acting Head, Field Procurement and Logistics Office, LFO (“A/HFPLO/L”), also sent an email to the D/DUA/L stating that paying the Applicant an SPOA of 15 percent was unfair, in view of the previous agreement reached between the Human Resources and Procurement and Logistics Department to pay her an SPOA of 25 percent.

... By email dated 25 July 2019, the D/DUA/L informed the Applicant and the A/HFPLO/L that she would inquire about the matter with her colleagues, as well as with the Human Resources Department (“HRD”), and that she would revert.

... By email to the A/HRSO/L dated 30 September 2019, the Applicant asked if there was an update on the adjustment of her SPOA. She further indicated that she had been waiting for eight months without any positive response.

... On 11 October 2019, the Applicant sent another reminder email to the D/DUA/L.

... By email to the DHR dated 26 December 2019, the Applicant reiterated her request to be paid an SPOA of 25 percent. On 20 January 2020, the Applicant sent a reminder email to the DHR. On the same day, the DHR informed the Applicant that the response for her request was not yet issued.

... The Applicant indicates that, on 11 March 2020, the A/HPFLO/L verbally informed her that the HRD made the final decision on her case, namely, that she was not entitled to an SPOA of 25 percent and that the HRD would issue a revised LoA indicating an SPOA of 15 percent for the Applicant, which would cancel and supersede her initial LoA. This is the contested decision.

... On 25 March 2020, the Applicant submitted a request for decision review contesting the decision to pay her an SPOA equivalent to 15 instead of 25 percent of her salary.

... By letter dated 27 April 2020, the Director of Health upheld the contested decision on the grounds that the commitment in the Applicant's LoA was erroneous and not in conformity with PD A/21, as only the posts at Grade 16 with managerial responsibilities were entitled to an SPOA of 25 percent.

... By letter dated 19 May 2020, the H/FHRO/L informed the Applicant that the percentage of SPOA in her LoA for her current post should have been read as 15 percent instead of 25 percent, effective 1 February 2019. The H/FHRO/L indicated that his letter superseded and replaced the Applicant's LoA on the issue of SPOA.

3. The UNRWA DT held that Ms. Abou Salah had filed a request for decision review timeously and that the application was accordingly receivable. On the merits, the UNRWA DT held that the Commissioner-General, having exercised his discretion in agreeing to payment of a 25 per cent SPOA, was bound by the LoA and could not correct his unilateral error on an irrational or unreasonable basis. It directed the Commissioner-General to pay the SPOA at 25 per cent and awarded ancillary relief to achieve that direction.

### **Submissions**

#### **The Commissioner-General's Appeal**

4. The Commissioner-General submits that the UNRWA DT erred in finding that the application was receivable. He contends that Ms. Abou Salah's request for decision review was not filed timeously. Hence, in terms of Article 8(1)(c) of the UNRWA DT Statute read with Area Staff Rule 111.2(3), the UNRWA DT lacked jurisdiction to pronounce on the merits of the case.

5. In relation to the merits, the Commissioner-General submits that the Agency was entitled in law to correct the erroneous LoA to ensure that it was in legal compliance with the issuances of UNRWA, and there was no basis for the operation of the doctrine of estoppel (or a similar doctrine) in this case.

6. He accordingly requests this Tribunal to uphold the appeal and to vacate the Judgment of the UNRWA DT.

**Ms. Abou Salah's Answer**

7. Ms. Abou Salah aligns with the reasoning and findings of the UNRWA DT holding that the application was receivable.

8. She reiterates that she has a contractual right to receive a 25 per cent SPOA and contends that the Commissioner-General has no right in law to amend her contract by reason of his unreasonable unilateral error.

9. She requests the appeal to be dismissed and the Judgment of the UNRWA DT to be affirmed.

**Considerations**

10. The preliminary issue for determination is whether the UNRWA DT erred in finding that Ms. Abou Salah's application was receivable. In terms of Article 8(1)(c) of the UNRWA DT Statute, an application shall be receivable if the applicant has previously submitted the contested administrative decision for decision review. In accordance with Area Staff Rule 111.2(3) a decision review request shall be submitted within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

11. In its Judgment, the UNRWA DT considered the correspondence leading up to the submission of the decision review request and concluded that a new written decision dated 19 May 2020 was issued, of which Ms. Abou Salah was verbally informed in advance on 11 March 2020, and that she contested that decision in a timely manner when she submitted a request for decision review on 25 March 2020.

12. The original administrative decision giving rise to the instant appeal was taken by the Director of Human Resources (DHR) on 2 April 2019. In a memorandum to the Director of UNRWA Affairs, the DHR set out the background and stated: “In accordance with the Personnel Directive A/21, the post of Senior Procurement Officer is not included in Annex “A”... (List of Posts included in the SPOA of 25%), I decline the request for an SPOA at the rate of 25% for (Ms. Abou Salah), Senior Procurement Officer Grade 16.”

13. The decision was communicated to Ms. Abou Salah by an official of the Agency in an e-mail of 25 April 2019 which read: “We had received a response from the HQ a week ago. Unfortunately, it was not positive. We asked for reconsideration and Sara will follow up to inform you about the final outcome as soon as possible.”

14. If it is accepted that the e-mail of 25 April 2019 was unequivocal and thus a final administrative decision, the limit of 60 days would run from the date of notification of the decision, i.e., 25 April 2019, and Ms. Abou Salah ought to have submitted a decision review request on 24 June 2019 at the very latest. She submitted a decision review request on 25 March 2020 and thus it would be outside the time limits. However, insofar as the notification referred to a request for reconsideration, Ms. Abou Salah is entitled to the benefit of the doubt and the notification of 25 April 2019 cannot be considered to be unequivocal. However, on 17 June 2019, a human resources officer, Ms. Abou Chakra, sent Ms. Abou Salah an e-mail which read: “I regret that HQ did not agree to the request of payment of SPOA of 25% instead of 15%.”

15. Thus, if the notification of 17 June 2019 is considered the terminus a quo for purposes of submitting a decision review request, the decision review request ought to have been submitted by or before 16 August 2019, which it was not.

16. However, the facts disclose that in July 2019, Ms. Abou Salah persisted in her efforts to have the decision reversed. Her immediate supervisor, the Acting Head, Field Procurement and Logistics Office, sent an e-mail to the Deputy Director of UNRWA Affairs, LFO (DDUAL) stating that it was unfair in view of the LoA to pay Ms. Abou Salah an SPOA of 25 per cent. The DDUAL, in an e-mail dated 25 July 2019, agreed to inquire about the matter. When no new decision was forthcoming, Ms. Abou Salah continued raising the issue in e-mails sent throughout the remainder of 2019. Eventually, her immediate superior verbally informed her

on 11 March 2020 that the HRD had made a final decision that she was not entitled to a SPOA at 25 per cent. Ms. Abou Salah made her request for decision review just over a week later.

17. Subsequent correspondence sent to Ms. Abou Salah during April and May 2020 by other officials of the agency confirmed the earlier decision. Of importance, is the letter of 19 May 2020, in which the Acting Head of Field Procurement informed Ms. Abou Salah that the percentage in her LoA should have been 15 per cent and not 25 per cent and that that letter would supersede the LoA.

18. The UNRWA DT considered that this letter issued on 19 May 2020 (subsequent to Ms. Abou Salah submitting a request for decision review) constituted a new decision of which she was supposedly informed verbally on 11 March 2020 and that therefore the request for review was timely. That finding is erroneous and wholly unsustainable.

19. Insofar as the decision of 25 April 2019 might not have been unequivocal, that decision was reiterated in the e-mail of 17 June 2019 leaving no doubt that the Agency had decided then to pay Ms. Abou Salah an SPOA of 15 per cent rather than 25 per cent, possibly in breach of her contract. The fact that other persons subsequently sought to intervene on her behalf did not change that. A staff member (or other staff members making representations on her behalf) may not, by her conduct subsequent to the notification of an administrative decision in effect, unilaterally determine the date of the administrative decision by engaging in ongoing correspondence. If that were the case, no management review would ever be time-barred because the staff member could always prevent that possibility by the simple expedient of sending an e-mail querying the basis of the decision.<sup>2</sup> Ms. Abou Salah's subsequent correspondence, as well as that written on her behalf, accordingly, did not extend the time limit for requesting decision review.

20. Furthermore, the letter of 19 May 2020, considered by the UNRWA DT as a new decision (supposedly communicated verbally two months earlier on 11 March 2020), was in reality no more than a confirmation (after Ms. Abou Salah had sought decision review) of the previous decision declining to grant the SPOA at 25 per cent as required by the LoA. Reliance on the alleged verbal notification of 11 March 2020 is also untenable. Without receiving written notification of a decision in writing, it is not possible to determine when the period of 60 calendar days starts. A written decision is necessary for the time limits to run. It was not

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<sup>2</sup> *Newland v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-820, para. 34.

possible for the time limits to commence prior to written notification, and if the final decision was taken or communicated subsequent to the request for decision review it can hardly be the contested administrative decision in issue.

21. Consequently, the UNRWA DT erred in law in determining the *terminus a quo* and that error led to the UNRWA DT exceeding its jurisdiction in determining the merits of the case. In terms of Article 8(3) of the UNRWA DT Statute, the UNRWA DT shall not suspend or waive the deadlines for decision review. As a result, since decision review was not requested timeously in this case, regardless of the obvious unfairness and injustice, the UNRWA DT did not have jurisdiction to hear the application and was barred in law from doing so.

22. The appeal on the question of receivability must be upheld. There is accordingly no reason to address the merits of whether the Agency was permitted in law to rectify its unilateral mistake.



**Judgment**

23. The appeal is granted and Judgment No. UNRWA DT/2021/044 is hereby reversed.

Original and Authoritative Version: English

Decision dated this 28<sup>th</sup> day of October 2022 in New York, United States.

*(Signed)*

Judge Murphy, Presiding

*(Signed)*

Judge Raikos

*(Signed)*

Judge Halfeld

Judgment published and entered into the Register on this 23<sup>rd</sup> day of December 2022 in New York, United States.

*(Signed)*

Juliet Johnson, Registrar