



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

Judgment No. 2023-UNAT-1327

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

JUDGMENT

Before:	Judge Gao Xiaoli, Presiding Judge Sabine Knierim Judge Martha Halfeld
Case No.:	2022-1658
Date of Decision:	24 March 2023
Date of Publication:	19 April 2023
Registrar:	Juliet Johnson

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Natalie Boucly

JUDGE GAO XIAOLI, PRESIDING.

1. Mr. Hussein Taha Abu Heija contested a decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) concerning the classification of his post. His matter was related to a decision to classify his post under a new occupational health salary scale (Transition Decision) and a subsequent decision not to reclassify his post (Reclassification Decision).
2. By Judgment No. UNRWA/DT/2021/064 ¹ (impugned Judgment), the UNRWA Dispute Tribunal (UNRWA DT) concluded in respect of both decisions that Appellant had failed to submit a timely Request for Decision Review (RDR) and dismissed the application as not receivable *ratione materiae*.
3. Appellant lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

5. Effective 31 January 2012, Appellant served as Deputy, Senior Medical Officer, Grade 16, at Irbid Town Health Centre, Jordan Field Office, on a temporary indefinite appointment in category A. He had been employed by the Agency since 1 February 1996.
6. On 7 December 2016, the Director of Human Resources (DHR) issued Area Staff Circular No. A/05/2016 with subject “Information on Occupational Health Salary Scale [OHSS] and Post Harmonization”, informing staff members that the Commissioner-General had decided to introduce a new OHSS, with an effective date of 1 January 2017.
7. By letter dated 20 December 2016, the Transition Decision was communicated to Appellant. In it, he was informed that his post would be classified under the OHSS as Medical Officer HL6, Step 19, effective 1 January 2017.

¹ *Abu Heija v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment dated 30 November 2021.

8. By e-mail dated 2 January 2017, Dr. S. A., on behalf of a group of Medical Officers—including Appellant—raised the issue of the reclassification with the Field Human Resources Office, Jordan Field Office (FHRO/J), contending that under the new OHSS their posts should be classified as D/HHC (Grade HL7) instead of Medical Officer (Grade HL6).

9. By e-mail dated 14 April 2017, Appellant was informed by the Acting Head of FHRO/J that his request to have his post reclassified from Medical Officer (Grade HL6) to D/HHC (Grade HL7) was under review.

10. By several e-mails in 2018, 2019 and 2020 and a letter dated 20 July 2019, Appellant requested to have his post reclassified from Medical Officer (Grade HL6) to D/HHC (Grade HL7).

11. By e-mail dated 9 July 2019, the Entitlements Officer communicated the Reclassification Decision to Appellant. In it, Appellant was informed about his reclassification request as follows: “Upon reviewing your request with [Chief, Field Health Programme] and [Department of Health at Headquarters, Amman], the received feedback was that the post of D/HHC, HL7 cannot be established in the meantime, but may be considered in 2020 budget and work plan.”

12. By letter dated 27 August 2019, the Head of FHRO/J informed Appellant as follows: “Please be informed that your request has been reviewed but cannot be accommodated at the moment because the proposal to establish the position of [D/HHC] has not been approved yet. This issue may be revisited in 2020 and if establishment of such a position [...] is approved, you will be informed in due time.”

13. By e-mail dated 9 July 2020, the Head of FHRO/J informed Appellant that the situation had not changed and that his request for the reclassification of his post could not be accommodated.

14. On 9 August 2020, Appellant filed his first RDR, against the 9 July 2020 decision of the Head of FHRO/J (First RDR). On 25 August 2020, the Director of UNRWA Affairs, Jordan, responded to Appellant’s First RDR and held that the 9 July 2020 decision of the Head of FHRO/J was not an appealable administrative decision, and as such, the First RDR was not receivable.

15. On 12 October 2020, Appellant filed another RDR, against the Transition Decision (Second RDR). On 9 December 2020, the DHR responded to Appellant's Second RDR and held that the Transition Decision was not an appealable administrative decision, and as such, the Second RDR was not receivable.

The Impugned Judgment

16. On 30 November 2021, the UNRWA DT rendered the impugned Judgment, dismissing the application.

17. The UNRWA DT held that Appellant must be considered as contesting two decisions, namely, the Transition Decision and the Reclassification Decision. As to the Transition Decision, the UNRWA DT held that this decision was conveyed to Appellant on 20 December 2016 and there was nothing in the case record indicating that this decision was under review and not final.² As to the Reclassification Decision, the Agency's reiteration of an original administrative decision, in response to repeated questions from a staff member, does not reset the clock with respect to statutory timelines.³ The UNRWA DT found in respect of both decisions that Appellant had failed to submit a RDR within the prescribed 60-day limitation period and concluded that the application was not receivable *ratione materiae*.

Procedure before the Appeals Tribunal

18. On 29 January 2022, Appellant filed an appeal of the impugned Judgment with the Appeals Tribunal, to which the Commissioner-General responded on 1 April 2022.

Submissions

Appellant's Appeal

19. Mr. Abu Heija requests the Appeals Tribunal to reverse the impugned Judgment.

20. Mr. Abu Heija argues that the impugned Judgment is unfair as the UNRWA DT did not take into consideration the following facts which justified his failure to meet the 60-day statutory deadline.

² Impugned Judgment, para. 30.

³ *Ibid.*, para. 37.

21. Mr. Abu Heija points out that the Agency had not provided him with the administrative decision upon which it based its decision to change his post title from Medical Officer, category A, to Medical Officer HL6 and he had pointed out this fact in his application to the UNRWA DT. Appellant, along with his colleagues, had sent an e-mail on 2 January 2017 to DHR at the Jordan Field Office, asking for a correction of the situation. He further puts forth that the UNRWA DT did not take into consideration the reply of 14 April 2017 by DHR at the Jordan Field Office, from which he had understood that his issue was suspended and the limitation periods would not start to run until he received the final decision on the matter.

22. Appellant maintains that the Director of UNRWA Affairs in Amman has contradicted himself or herself by holding that the letter of 20 December 2016 was not an administrative decision, and, at the same time, that even if it were an administrative decision, it is time-barred. If this was not an administrative decision, it is unclear why the Agency did not notify him of the conversion of his post. If the Agency considered his post redundant, it is not discernable why the appropriate procedure was not applied in his case. If this was an administrative decision, it is not comprehensible why the facts mentioned by him do not constitute sufficient justification for exceeding the limitations period.

23. Mr. Abu Heija argues that it follows from the impugned Judgment that the Agency did not act in good faith and transparency.

The Commissioner-General's Answer

24. The Commissioner-General requests that the Appeals Tribunal dismiss the appeal.

25. The Commissioner-General submits that the UNRWA DT correctly interpreted the application before it and concluded that Appellant contested the Transition Decision and the Reclassification Decision and was correct in dismissing both as not receivable *ratione materiae*.

26. The Commissioner-General points out that it is established jurisprudence of the Appeals Tribunal that an administrative decision will have the effect of triggering the running of a time limit if it is intended to have final effect in the form of direct legal consequences on the rights and obligations of the staff member. Appellant has identified or presented no reversible errors warranting the interference of this Tribunal with the UNRWA DT's determination on receivability.

27. The Commissioner-General argues that Appellant's contention as to his understanding that the issue regarding reclassification was suspended, is misconceived. The communication of 14 April 2017 is irrelevant, given that subsequent letters of 9 July 2019 and 27 August 2019 were intended to have final effect. This Tribunal has consistently established that the reiteration of an administrative decision does not reset the clock with respect to statutory timelines, rather time starts to run from the date on which the original decision was made.

Considerations

28. The issue to be considered in this case is whether the UNRWA DT erred in finding that Mr. Abu Heija had failed to submit a timely RDR for the Reclassification Decision. In particular, could the following facts submitted by Appellant justify exceeding the limitation period: (a) Mr. Abu Heija raised in the e-mail of 2 January 2017 the issue of the reclassification of his post and received the 14 April 2017 e-mail informing him that his request to have his post reclassified from Medical Officer (Grade HL6) to D/HHC (Grade HL7) was under review; (b) the Agency not providing him with the administrative document on the basis of which it adopted the Transition Decision; and (c) the Agency not acting in good faith and transparency regarding his reclassification requests?

29. Article 2(1)(a) of the UNRWA DT Statute provides that the UNRWA DT is limited to hearing appeals against "administrative decisions". An "appealable administrative decision is a decision whereby its key characteristic is the capacity to produce direct legal consequences affecting a staff member's terms and conditions of appointment".⁴

30. We agree that it is part of the duties and inherent powers of a Judge to adequately interpret and comprehend the application submitted and to identify what is being contested.⁵ Even though it was the Transition Decision which was indicated as the contested decision in Mr. Abu Heija's application, and on appeal he believes that "the root of [his] case" is the "conversion" or classification of his former post title to Medical Officer HL6, we identify in view of the case record that the contested administrative decision is the Reclassification Decision.

⁴ *Archana Patkar v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1102, para. 22; *Olowo-Okello v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-967, para. 31.

⁵ *Cardwell v. Secretary-General of the United Nations*, 2018-UNAT-876, para. 23; *Fasanella v. Secretary-General of the United Nations*, 2017-UNAT-765, para. 19.

31. The letter dated 20 December 2016 informed Mr. Abu Heija that his post would be classified under the OHSS as Medical Officer HL6, Step 19, effective 1 January 2017. Referred to by the UNRWA DT and the Appeals Tribunal as the Transition Decision, this is an administrative decision. However, after the request for reclassification of his post on 2 January 2017, Mr. Abu Heija was informed by e-mail dated 14 April 2017 of the Acting Head of FHRO/J that his request to have his post reclassified from Medical Officer (Grade HL6) to D/HHC (Grade HL7) was under review. Appellant contests the UNRWA DT's finding that there was nothing in the case record indicating that this Transition Decision was under review and not final. Appellant contends that his "issue" was under review and that the Transition Decision was not final due to his continuous correspondence with the Agency and, in particular, due to what was communicated in the Agency's 14 April 2017 e-mail. It was not until 9 July 2019 that Mr. Abu Heija was informed by the Entitlements Officer about his reclassification request: "Upon reviewing your request (...) the received feedback was that the post of D/HHC, HL7 cannot be established in the meantime". This Reclassification Decision of 9 July 2019 is the final administrative decision concerning the request for reclassification of the post.

32. We find that whether Mr. Abu Heija could have reasonably understood the given communication to mean that the Agency reopened the matter of the classification of his post under the OHSS as Medical Officer HL6, is immaterial. Even if the Appellant's contentions were justified, the matter was resolved by the Reclassification Decision of 9 July 2019, at the latest.

33. The Appeals Tribunal in *Smadi*⁶ has found as follows:

The 29 July 2019 letter then stated that Ms. Al Smadi's request "has been reviewed but cannot be accommodated at the moment because the proposal to establish the position of Deputy Head Health Center 'A' has not been approved yet. This issue may be revisited in 2020 and if the establishment of such a position in [Jordan Field Office] is approved, you will be notified in due time." This was a decision wherein UNRWA's Field Human Resource Office in Jordan notified Ms. Al Smadi that her reclassification had been reviewed but could not be "accommodated", namely, the review of her reclassification request had been finalized but the request was not granted. This was the administrative decision and not a "reiteration of an earlier decision". It was a clear and unambiguous decision that had a legal effect on Ms. Al Smadi's terms and conditions of employment and a definitive response to her request for reclassification that was finally

⁶ *Dua Fayez Al Smadi v. Commissioner-General of United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2022-UNAT-1241, para. 27.

communicated to Ms. Al Smadi from the H/FHRO/J. It stated the reason why Ms. Al Smadi's request had not been granted or accommodated, which was the proposal to establish the position had not been approved. This was the rationale for Ms. Al Smadi's reclassification request being declined.

34. Based on the contents, the letter dated 27 August 2019 and the e-mail dated 9 July 2020 are only the reiterations of the Reclassification Decision of 9 July 2019. The expressions, such as "may be considered in 2020 budget and work plan" in the e-mail dated 9 July 2019 and "[t]his issue may be revisited in 2020 and if establishment of such a position [...] is approved, you will be informed in due time" in the letter dated 27 August 2019, did not add to or subtract from the unambiguous meaning of what had been communicated to Mr. Abu Heijja in the 9 July 2019 letter. Being a definitive response to Appellant's request, the 9 July 2019 letter clearly amounted to a decision not to reclassify his post.

35. Based on the foregoing, we can see that the contested administrative decision in this case is the Reclassification Decision of 9 July 2019. We set out the relevant legal framework below.

36. Staff Rule 111.2 (Decision review) of the UNRWA Area Staff Rules provides as follows:

...

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.

...

6. The deadlines in Staff Rule 111.2, paragraphs 3 and 5, may be extended by the Commissioner-General pending efforts for informal resolution.

37. Article 8 of the UNRWA DT Statute provides:

1. An application shall be receivable if:

...

(c) An applicant has previously submitted the contested administrative decision for decision review; (...)

...

3. (...) The Dispute Tribunal shall not suspend, waive, or extend the deadlines for decision review.

38. Article 7 of the Appeals Tribunal Statute provides:

3. (...) The Appeals Tribunal shall not suspend or waive the deadlines for management evaluation.

39. Although Appellant argues that exceptional elements in his case justify exceeding the time limit for filing the RDR, we note that neither the UNRWA DT nor the Appeals Tribunal may suspend or waive the deadline for requesting decision review. It was on 9 August 2020 that Mr. Abu Heija filed his First RDR against the Reclassification Decision of 9 July 2019. It obviously exceeded the 60-calendar-day limitation period to request review of the Reclassification Decision. Therefore, the UNRWA DT was correct to conclude that he failed to submit a timely RDR as required prior to filing his application before the UNRWA DT.

40. In *Sahyoun*⁷, we have noted the importance of a timely decision review as follows:

(...) [O]ur jurisprudence is clear that, being a mandatory first step before coming to the internal justice system, the request for management evaluation or decision review provides the Administration with the opportunity to reassess the situation and correct possible mistakes or errors with efficiency. The tribunals have no jurisdiction to waive deadlines for requests for management evaluation or decision review. This jurisprudence is in full accordance with the applicable legal framework set out in the UNRWA DT Statute, particularly Article 8 (...).

41. In *Wesslund*⁸, we stated also, with respect to repeated communications:

(...) A subsequent reiteration or reaffirmation of a previously communicated decision, if it does not add anything different or material to the original decision or subtract same from the original decision, is not a new administrative decision triggering a new time limit for appeal. A staff member cannot unilaterally determine what an administrative decision is or when it is taken for the purpose of an appeal.

42. As the Appeals Tribunal may not waive the requirement of deadlines, the Tribunal reaffirms the UNRWA DT's conclusion that the application is not receivable *ratione materiae*. Mr. Abu Heija's arguments that the UNRWA DT did not take into consideration the above-mentioned facts which justified his failure to meet the 60-day statutory deadline are not

⁷ *Lara Sahyoun v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1149, para. 28.

⁸ *Wesslund v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-959, para. 28.

supported. The UNRWA DT did not err in finding that Mr. Abu Heijja failed to submit a timely RDR for the Reclassification Decision.

Judgment

43. The Appellant's appeal is dismissed, and Judgment No. UNRWA/DT/2021/064 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 24th day of March 2023 in New York, United States.

(Signed)

Judge Gao, Presiding

(Signed)

Judge Knierim

(Signed)

Judge Halfeld

Judgment published and entered in the Register on this 19th day of April 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar