



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

Judgment No. 2024-UNAT-1415

Dua Smadi
(Respondent/Applicant)

v.

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

JUDGMENT

Before:	Judge Gao Xiaoli, Presiding Judge Katharine Mary Savage Judge Abdelmohsen Sheha
Case No.:	2023-1810
Date of Decision:	22 March 2024
Date of Publication:	19 April 2024
Registrar:	Juliet E. Johnson

Counsel for Commissioner-General:	Natalie Boucly
Counsel for Ms. Smadi:	Self-represented

JUDGE GAO XIAOLI, PRESIDING.

1. Ms. Dua Smadi (Ms. Smadi),¹ a staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or the Agency), contested a decision not to reclassify her post as Deputy Head Health Centre (D/HHC) “A” at Grade HL7 (contested decision).
2. By Judgment No. UNRWA/DT/2023/016, the UNRWA Dispute Tribunal (UNRWA DT) rescinded the contested decision and ordered that the Commissioner-General was to pay to Ms. Smadi the difference from 1 August 2017 between the salaries and associated entitlements of Grade HL6 and step which she held, and Grade HL7 and step to which she was entitled, but rejected all other pleas (impugned Judgment).²
3. The Commissioner-General 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 Procedure³

5. Effective 1 May 2000, Ms. Smadi was employed by the Agency on a fixed-term appointment, Grade 4A, Step 1, as Medical Officer “B”, at Husn Camp Health Centre, Jordan Field Office (JFO).⁴ Effective 1 August 2004, her appointment was converted from “Z” to “X” category, after which she occupied the same post but at Grade 14, Step 5.
6. Effective 1 August 2007, Ms. Smadi was selected and promoted to the post of Medical Officer “A”, Grade 15, at Baqa’a Camp Health Centre.⁵ Medical Officers “A” at Grade 15 had managerial responsibilities, unlike Medical Officers “B” at Grade 14. They managed small or

¹ Previously, we spelled her name differently in *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. But we adopt the spelling as it appears on her answer form and brief.

² *Smadi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, UNRWA DT’s Judgment dated 30 March 2023.

³ Summarized from the impugned Judgment as relevant to the appeal.

⁴ Impugned Judgment, para. 2.

⁵ *Ibid.*, para. 3.

medium Health Centres or assisted the Senior Medical Officers, Grade 16, in managing large Health Centres.

7. Effective 1 January 2012, Ms. Smadi's appointment was converted from fixed-term appointment to temporary indefinite appointment.⁶

8. Effective 1 January 2015, the posts of Medical Officer "B" were reclassified from Grade 14 to Grade 15.⁷ Soon thereafter the post title of Medical Officer "B" was changed to Medical Officer, and subsequently the Agency also began to refer to the former Medical Officers "A" as Medical Officers. Thereafter, there was no longer a difference between the grade of the Medical Officers "A" who had managerial responsibilities and the former Medical Officers "B" who had no managerial responsibilities. This caused dissatisfaction among the affected staff and a misalignment in the hierarchical structure.

9. By Interoffice Memorandum (IOM) to the Director of Human Resources, dated 1 April 2015, the Chief, Compensation and Management Services Division, recommended two reclassifications:⁸

(a) the reclassification of the post of Medical Officer with managerial responsibilities, Grade 15, in charge of small/medium Health Centres to Head Health Centre "B", Grade 15; and

(b) the reclassification of the post of Senior Medical Officer, Grade 16, in charge of large Health Centres to Head Health Centre "A", Grade 16.

10. There was no recommendation in the IOM of 1 April 2015 to reclassify the post of Medical Officers with managerial responsibilities, Grade 15, at large Health Centres, such as Ms. Smadi.⁹

11. Subsequently, the Agency made the reclassifications recommended by the IOM.¹⁰ The post description of the new post of Head Health Centre "B", Grade 15, remained similar to the prior post description of Medical Officer "A" in terms of functions and responsibilities. Ms. Smadi remained

⁶ Judgment No. 2022-UNAT-1241, para. 5.

⁷ Impugned Judgment, paras. 5-6.

⁸ *Ibid.*, para. 7.

⁹ *Ibid.*

¹⁰ *Ibid.*, para. 8.

a Medical Officer with managerial responsibilities at Grade 15, assisting the Head Health Centre “A” in managing the Irbid New Health Centre.

12. After this reclassification, a post description for D/HHC “A”, Grade HL7, was introduced.¹¹

13. On 7 December 2016, the Director of Human Resources (D/HR) issued Area Staff Circular No. A/05/2016 (Information on Occupational Health Salary Scale and Post Harmonization).¹² The Circular informed staff members about the Commissioner-General’s decision to introduce a new Occupational Health Salary Scale (OHSS), which would come into effect on 1 January 2017.

14. By letter dated 20 December 2016, the Director of UNRWA Operations, Jordan, (DUO/J) informed Ms. Smadi that her grade under the new OHSS would be HL6, Step 15, effective 1 January 2017.¹³ The DUO/J also attached to the letter a new post description for Ms. Smadi, corresponding to her new grade. In the new post description, the post title was Medical Officer and the managerial responsibilities were removed.

15. In accordance with the new OHSS, effective 1 January 2017:¹⁴

(a) all posts of Medical Officer (with and without managerial responsibilities), Grade 15, were transitioned to Grade HL6 and, accordingly, the post encumbered by Ms. Smadi was transitioned to Grade HL6;

(b) all posts of Head Health Centre “B”, Grade 15, were transitioned to Grade HL7; and

(c) all posts of Head Health Centre “A”, Grade 16, were transitioned to Grade HL8.

16. By e-mail dated 2 January 2017 to the Agency, Ms. Smadi and some other Medical Officers with managerial responsibilities who assisted a Head Health Centre “A” expressed their dissatisfaction with the reclassification of their posts.¹⁵ They argued that as former Medical Officers “A” with managerial responsibilities they should have been reclassified as D/HHC “A” at Grade HL7.

¹¹ *Ibid.*, para. 9.

¹² *Ibid.*, para. 10.

¹³ *Ibid.*, para. 11.

¹⁴ *Ibid.*, para. 12.

¹⁵ *Ibid.*, para. 13.

17. Effective 1 February 2017, the post of Medical Officer “A” in the Gaza Field Office (GFO) was reclassified to the post of Deputy Head Health Centre “A”.¹⁶ The post of Deputy Head Health Centre “A”, Grade HL7, was implemented only in the GFO, not the other UNRWA Field Offices.

18. By letter dated 14 April 2017, the Acting Head, Field Human Resources Office, JFO, informed Ms. Smadi that the requested reclassification of her post to D/HHC “A” was under review and that she would be notified of the outcome of the review once finalized and approved.¹⁷

19. By letter to the DUO/J, dated 31 July 2017, Ms. Smadi again objected to her post being reclassified as Medical Officer at Grade HL6 instead of Grade HL7 under the new OHSS.¹⁸

20. By letter dated 17 August 2017, the DUO/J maintained that Ms. Smadi had been properly and accurately transitioned from Grade 15 to Grade HL6 under the new OHSS.¹⁹ With respect to her prior request to be reclassified to D/HHC “A” at Grade HL7, the DUO/J stated that this was under review and that she would be notified once the review was finalized.

21. By letter to the Director of UNRWA Affairs, Jordan, dated 10 July 2019, Ms. Smadi reiterated her request for reclassification at Grade HL7.²⁰

22. By letter dated 29 July 2019, the Head, Field Human Resources Office, JFO, (H/FHRO/J) informed Ms. Smadi of the contested decision.²¹ The H/FHRO/J advised that her request to be reclassified to D/HHC “A”, Grade HL7, could not be accommodated as the proposal to establish the position had not yet been approved.

23. On 21 August 2019, Ms. Smadi submitted a Request for Decision Review (RDR).²² The Agency did not respond to her RDR.

24. On 22 October 2019, Ms. Smadi filed an application with the UNRWA DT.²³

¹⁶ *Ibid.*

¹⁷ *Ibid.*, para. 15.

¹⁸ *Ibid.*, para. 16.

¹⁹ *Ibid.*, para. 17.

²⁰ *Ibid.*, para. 18.

²¹ *Ibid.*, para. 19.

²² *Ibid.*, para. 22.

²³ *Ibid.*, para. 23. By Judgment No. UNRWA/DT/2021/017 dated 22 April 2021, the UNRWA DT dismissed the application as not receivable. In Judgment No. 2022-UNAT-1241 dated 1 July 2022, the Appeals Tribunal found the application receivable and remanded the case to the UNRWA DT for consideration on the merits.

The impugned Judgment

25. By Judgment No. UNRWA/DT/2023/016 dated 30 March 2023, the UNRWA DT rescinded the contested decision, ordered that the Commissioner-General was to pay to Ms. Smadi the difference from 1 August 2017 between the salaries and associated entitlements of Grade HL6 and step which she held, and Grade HL7 and step to which she was entitled, and rejected all other pleas. The UNRWA DT decided that if the Judgment was not appealed, the US Prime Rate applicable as of 30 May 2023 should apply during the period between 30 May 2023 and 30 July 2023 and ordered that if the sums were not paid on or before 30 July 2023, an additional five percentage points should be added to the US Prime Rate until the date of payment, unless Ms. Smadi requested a translation of the Judgment into Arabic.

26. The UNRWA DT held that the denial of Ms. Smadi's request for reclassification to Grade HL7 was a violation of the principle of "equal pay for equal work".

27. The UNRWA DT found that in the present case, the following reclassifications occurred:²⁴

(a) The post of Medical Officer without managerial responsibilities (former Medical Officer "B") was reclassified from Grade 14 to Grade 15 effective 1 January 2015 and then later transitioned to Grade HL6 under the new OHSS.

(b) The post of Medical Officer with managerial responsibilities (former Medical Officer "A") at small or medium Health Centres was first reclassified to the post of Head Health Centre "B" and then transitioned to Grade HL7 under the new OHSS. The post description for the new title remained very similar to the post description for Medical Officer "A".

28. The UNRWA DT noted that, in contrast, the post of Medical Officer with managerial responsibilities (also former Medical Officer "A") at large Health Centres, which was encumbered by Ms. Smadi, had been transitioned only to Grade HL6, except in the GFO where the position of D/HHC "A", HL7, had been established.²⁵ Apparently all Medical Officers "A" (Medical Officers with managerial responsibilities) had gone through the same selection process to be promoted to that position. Some were then assigned to manage small or medium Health Centres; others were assigned to assist in the management of large Health Centres. Both continued to have the same

²⁴ Impugned Judgment, para. 41.

²⁵ *Ibid.*

post description. Both continued to have managerial responsibilities. Medical Officers “A” moved between posts in differently sized Health Centres based simply on availability and vacancies. Ms. Smadi served as the Head of a small or medium Health Centre immediately before serving as Deputy Head of the Irbid New Health Centre.

29. The UNRWA DT accepted, based on the information available and on Ms. Smadi’s undisputed description of her workload during the last years, that she was performing tasks of the same quality and quantity as those of D/HHC “A” for whom the post at Grade HL7 was created in GFO. The single reason given for not implementing the respective recommendations in other Field Offices besides the GFO was a “financial crisis”. However, a lack of funds is not a valid criterion for awarding unequal payment for equal work. Her request for reclassification has still not been granted, more than six years later.

30. The UNRWA DT considered that, in the circumstances of this case, a time limit of six months for the reclassification exercise and implementation of the posts at HL7 in other areas than the GFO was reasonable and sufficient. Therefore, the difference must be paid as from 1 August 2017 in Ms. Smadi’s case.

31. The UNRWA DT held that as Ms. Smadi had failed to provide sufficient evidence of harm, it would not have been appropriate to award her any compensation for the alleged moral damage.

Procedure before the Appeals Tribunal

32. On 30 May 2023, the Commissioner-General filed an appeal of the impugned Judgment with the Appeals Tribunal, to which Ms. Smadi filed an answer on 24 July 2023.

Submissions

The Commissioner-General’s Appeal

33. The Commissioner-General requests the Appeals Tribunal to vacate the order for the payment of the difference in salary and associated entitlements.

34. The Commissioner-General argues that the UNRWA DT erred in law and fact in holding that Ms. Smadi should be paid the difference in salary and associated entitlements between her Grade HL6 and step and Grade HL7 and step from 1 August 2017. As a central issue, it erred in its determination of the *terminus a quo* for purposes of payment of the difference.

35. The Commissioner-General contends that the UNWA DT had failed to identify a causal link between the contested decision and the alleged injury. The letter of 29 July 2019 was the contested decision and, by the UNRWA DT's reasoning, a time limit of six months for the reclassification exercise was reasonable and sufficient—therefore the salary difference should be calculated from 29 January 2020.

36. The Commissioner-General submits that it was a material error to order the payment of salary for the period when no reviewable administrative decision had been taken. The UNRWA DT's competence is limited to the review of the contested decision, and does not extend to other, unchallenged administrative decisions. The contested decision was of prospective, not retroactive effect. There was no harm directly caused by the contested decision prior to 29 July 2019 to warrant any remedy.

Ms. Smadi's Answer

37. Ms. Smadi requests that the Appeals Tribunal dismiss the appeal.

38. She argues that the impugned Judgment was fair and just. The UNRWA DT correctly ordered compensation from 1 August 2017. The evidence and arguments presented established a causal link between the decision of 29 July 2019 and the ongoing harm to her terms and conditions of employment. The impugned Judgment was based on a thorough examination of the facts.

39. Ms. Smadi further submits that the contested decision of 29 July 2019 resulted in harm from the date of implementation of the new OHSS on 1 January 2017. UNRWA Area Staff Regulation 2.1 should have been applied to her on 1 January 2017 but it was not. She performed the duties of Grade HL7 during all this period but received the benefits and the salary of Grade HL6.

Considerations

40. There is no appeal against the rescission of the contested decision. The Commissioner-General's arguments on appeal address only the time from which the salary difference should be calculated. Therefore, the issue in the present case is whether the UNRWA DT erred in law or in fact, resulting in a manifestly unreasonable decision, in determining that the difference in salary and associated entitlements should be calculated from 1 August 2017.

41. We first consider the date of Ms. Smadi's request for reclassification. In *Chen*, we affirmed the calculation of the difference in salary from the date of the staff member's request for reclassification:²⁶

(...) The UNDT ordered the payment of compensation to Chen calculated by the difference in salary, allowances, and other entitlements between her current level of P-3 and P-4 level, for the period from 17 August 2006 (date of Chen's request) until December 2010 (date of her retirement), including the equivalent of the loss in pension rights.

...

(...) Judge Shaw of the UNDT heard the facts, considered the law, and rendered an excellent decision. We affirm it in all respects.

42. Based on the record, Ms. Smadi requested to be reclassified as D/HHC "A" at Grade HL7 in her e-mail dated 2 January 2017. On 14 April 2017, she was informed that the reclassification request was under review. On 31 July 2017, Ms. Smadi again objected to her post being reclassified as Medical Officer at Grade HL6 instead of Grade HL7 under the new OHSS. In response, the DUO/J informed Ms. Smadi on 17 August 2017 that she had been properly transitioned under the new OHSS and her prior request to be reclassified to D/HHC "A" at Grade HL7 was under review. On 10 July 2019, Ms. Smadi reiterated her request for reclassification at Grade HL7. The contested decision of 29 July 2019 referred to Ms. Smadi's request made on 10 July 2019. However, we can see from the foregoing that Ms. Smadi's letter of 10 July 2019 was merely a reiteration of her reclassification request made on 2 January 2017.

43. Secondly and more specifically, we find that compensation is calculated from the moment that the Administration failed to prevent the delay in reclassifying the post, provided that the Organization was already benefitting from the performance of the higher functions by the staff member. In *Aly et al.*, we referred to the application of classifications to posts with the same job description in determining the violation of the staff member's rights and held:²⁷

(...) The failure to apply the same job classifications to the Appellants' posts as applied to posts with the same job descriptions deprived the Appellants of their rightful opportunity to be considered for the reclassified posts.

²⁶ *Chen v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-107, paras. 10 and 28.

²⁷ *Aly et al. v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-622, paras. 45 and 46.

(...) [I]n this case, the Appellants performed the functions of the positions and the Organization has had the benefit of their performances at a lesser salary than that of their counterparts working under the same job descriptions.

44. The compensation to be paid to Ms. Smadi should compensate the actual loss of income she incurred from the moment her reclassification should have been implemented. In this regard, we find that the UNWRA DT appropriately considered the time limit of six months for the reclassification exercise by the Organization and the implementation of the posts at HL7 in other areas than the GFO reasonable. Ms. Smadi's post should have been reclassified to D/HHC "A" at Grade HL7 effective 1 August 2017. Therefore, we cannot agree with the Commissioner-General's arguments that the UNWA DT failed to identify a causal link between the contested decision and the alleged injury and that there was no harm directly caused by the contested decision prior to 29 July 2019.

45. In conclusion, the UNRWA DT did not err in law or fact in holding that Ms. Smadi should be paid the difference in salary and associated entitlements from 1 August 2017.

Judgment

46. The Commissioner-General's appeal is dismissed, and Judgment No. UNRWA/DT/2023/016 is hereby affirmed.

Original and Authoritative Version: English

Dated this 22nd day of March 2024 in New York, United States.

(Signed)

Judge Gao, Presiding

(Signed)

Judge Savage

(Signed)

Judge Sheha

Judgment published and entered into the Register on this 19th day of April 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar