



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

Judgment No. 2021-UNAT-1085

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

JUDGMENT

Before:	Judge John Raymond Murphy, Presiding Judge Martha Halfeld Judge Sabine Knierim
Case No.:	2020-1399
Date:	19 March 2021
Registrar:	Weicheng Lin

Counsel for Respondent:	Amer Abu-Khalaf, LOSA
Counsel for Appellant:	Rachel Evers

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. Alaa Abu Skheileh (Mr. Abu Skheileh) appealed the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) not to reimburse him for medical expenses he incurred in Germany.
2. By Judgment No. UNRWA/DT/2020/017,¹ the UNRWA Dispute Tribunal (UNRWA DT) rescinded the administrative decision not to reimburse Mr. Abu Skheileh and directed the Agency to reimburse the latter upon production of evidence substantiating his claim.
3. The Agency now appeals, and for reasons set out below, the appeal is upheld.

Facts and Procedure

4. Mr. Abu Skheileh commenced employment as a Medical Officer with UNRWA on 1 March 2009 at the Syria Field Office in Damascus. He was involved in a serious motor vehicle accident on 17 October 2012 while commuting from home to work in his private car. He suffered severe injuries.
5. A legal consultant at the Syria Field Office, in an e-mail to a Staff Relations Officer dated 8 December 2012, concluded that the accident was service-incurred.
6. Mr. Abu Skheileh underwent five surgeries in Syria, for which he was fully reimbursed by the Agency, but he needed additional care. By e-mail dated 14 March 2016, the Chief, Field Health Programme, (the Chief FHP) informed the Family Health Team Coordinator (the Health Coordinator) that he had consulted several orthopedic surgeons regarding Mr. Abu Skheileh's condition but recommended an operation outside Syria.
7. On 14 March 2016, the Health Coordinator noted that the operation could be performed in Jordan, but he recommended that the operation be done in Germany.

¹ *Abu Skheileh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2020/017 dated 31 March 2020 (Impugned Judgment).

8. On 22 March 2016, the Staff Relations Officer transmitted to the Chief FHP the documents provided by Mr. Abu Skheileh in support of his request to travel to Germany for medical treatment. In May 2016, before receiving authorisation from the Agency, Mr. Abu Skheileh travelled to Germany and underwent three successful surgeries. On 5 January 2017, he submitted a claim for reimbursement of his medical expenses incurred in Germany, in the amount of Euro 53,444.87 and USD 450.00.

9. On 22 July 2018, Human Resources at the Syria Field Office denied Mr. Abu Skheileh's request for reimbursement on the premise that there had been no approval for his medical treatment outside Syria at the expense of the Agency (the Administrative Decision).

10. On 2 September 2018, Mr. Abu Skheileh submitted a request for decision review. The Agency affirmed the Administrative Decision on 9 September 2018. On 7 January 2019, the staff member filed an application with the UNRWA DT contesting the Administrative Decision.

11. The UNRWA DT rejected the Agency's contention that the injuries were not service related or attributable to the performance of official duties. The appropriate authorities at the Syria Field Office had determined that the accident was service-incurred. That determination had not since been rescinded by another administrative decision and accordingly remained valid.

12. The Director of UNRWA Affairs, Syria, (DUA) in its management review affirmed the Administrative Decision on the ground that Mr. Abu Skheileh failed to follow proper procedure in seeking authorisation to obtain medical treatment in Germany – not on the basis that the accident was not service-incurred. Mr. Abu Skheileh had relied on the determination of his injuries as service related and had been reimbursed his medical expenses for the surgeries performed in Syria. The UNRWA DT accordingly held that the equities required the Agency to be estopped from changing the determination that the accident was not service-incurred. It referred also to Area Staff Rule 106.4 and concluded that there is nothing in the rule that explicitly excluded compensation for injuries sustained while commuting to work in a private vehicle on the basis that such were not service-incurred.

13. With regard to the reimbursement of the medical expenses incurred in Germany, the UNRWA DT accepted that Mr. Abu Skheileh had not obtained authorisation as he was required to do, but in the special circumstances of the present case it was unreasonable for the Agency not to reimburse Mr. Abu Skheileh, especially in view of the fact that there was no provision in the Agency's regulatory framework that would render reimbursement unlawful. It accordingly rescinded the Administrative Decision and directed the Agency to reimburse Mr. Abu Skheileh on the production of additional evidence substantiating his claim.

Submissions

The Agency's Appeal

14. The Agency submitted that the UNRWA DT erred in failing to address or determine its main contention in opposing the application. Mr. Abu Skheileh, it submitted, was debarred from receiving compensation on account of his failure to comply with the provisions of Area Staff Rule 106.4 (12) and (15). These provisions require injured staff members to assign to the Agency any right of action against a third-party following death or injury. In the instant case, Mr. Abu Skheileh was awarded damages (in the amount of 50 percent of the damages incurred as there was contributory negligence on his part) and an insurance payout for medical expenses from third parties, which he failed to disclose to the Agency. Failure to comply with the provisions of Area Staff Rule 106.4 effectively debars a staff member from receiving compensation

15. Thus, the Agency submits that the UNRWA DT failed to exercise jurisdiction by not addressing the application of Area Staff Rule 106.4 to the instant case. As such, the Agency also submits that the UNRWA DT erred as a matter of law when it held that there was no provision that would prohibit reimbursement to the staff member, given the clear directive under Area Staff Rule 106.4.

16. Second, the Agency argued that the doctrine of estoppel does not apply in this instance because there was no direct representation on the part of the Agency to Mr. Abu Skheileh that the accident was service-incurred. Moreover, there is no law that puts a time limit on the right and duty of the Administration to correct a patently incorrect administrative error.

Mr. Abu Skheileh's Answer

17. Mr. Abu Skheileh argued that the Agency was fully aware of his medical situation and that through correspondences, it was clear that the Agency's Health Coordinator himself recommended that the operation be performed in Germany. He also submitted that he acted with "clean hands and in good faith as he took into consideration the urgency of his health situation". As such, all the elements of estoppel were met.

18. Mr. Abu Skheileh argued further that the delay in granting approval (more than one month) in light of the emergency situation was unreasonable on the part of the Administration.

19. Mr. Abu Skheileh does not address the main issue raised by the Agency - the application of Area Staff Rule 106.4 (15), which requires staff members to assign to the Agency any right of action acquired against a third-party following death or injury.

Considerations

20. Area Staff Rule 106.4 sets out the principles of compensation for area staff members in the event of death, injury or illness, which is determined by the Agency to be attributable to the performance of official duties. It provides in relevant part as follows:

1. Compensation shall be awarded, in the event of death, injury or illness of a staff member which the Agency determines to be attributable to the performance of official duties on behalf of the Agency (...)

2. Without restricting the generality of paragraph 1 of this rule, the death, injury or illness of a staff member shall be deemed to be attributable to the performance of official duties on behalf of the Agency in the absence of any wilful misconduct or wilful intent when:

(A) The death, injury or illness occurred as a direct result of travel by means of transportation furnished by, or at the expense of the Agency, in connection with the performance of official duties; provided that the provisions of this sub-paragraph shall not extend to private motor vehicle transportation sanctioned or authorised by the Agency solely on the request and for the convenience of the staff member ...

21. This provision construed purposely favours the interpretation of the Agency that travel from home to work by a staff member in his/her private vehicle is not official travel. Injuries in vehicle accidents attributable to official duties are those incurred “as a direct result of travel by means of transportation furnished by or at the expense of the Agency, in connection with the performance of official duties”. Mr. Abu Skheileh’s vehicle was not an official vehicle. It was his private vehicle. And he was injured not in the course of performing official duties but when he was travelling to work, before he reported on duty.

22. Additionally, the intent of excluding compensation for injuries incurred during private travel is reinforced by the proviso in Area Staff Rule 106.4(2)(A) that the cover does not extend to the use of private vehicles for official work where such usage has been “sanctioned or authorised by the Agency solely on the request and for the convenience of the staff member”. Hence, a proper contextual reading of this provision raises significant doubt about the correctness of the determination by the legal consultant at the Syria Field Office that the accident was service-incurred.

23. The UNRWA DT’s finding that the Agency is estopped from revisiting the determination of his injury as service related is however convincing. Mr. Abu Skheileh relied on various representations of the Agency over a period of time and acted on them to obtain medical treatment in Syria. He was reimbursed for his medical expenses in Syria, and therefore, justifiably relied on the validity of the decision that his injury was service-incurred. It would be detrimental and inequitable to reverse the determination that the injury was service-incurred on the basis of an authority to reverse patent errors. While the determination was most likely erroneous, the consistent acceptance of it by the Agency and the repeated reliance on it by Mr. Abu Skheileh estop the Agency from asserting the error. Accordingly, the UNRWA DT did not err in holding that the Agency is estopped from re-visiting its decision that the injury was service-incurred. However, the fact that medical expenses were covered in Syria does not mean that Mr. Abu Skheileh had a right to recover expenses incurred in Germany.

24. Area Staff Rule 106.4(3) provides that the amount of compensation payable under the rule shall be the amount which would normally be payable in the circumstances of the case under the law applicable in Syria, provided that where such compensation includes the cost of medical or hospital treatment, such treatment or hospitalisation shall be provided in Agency-operated or subsidised hospitals, unless in exceptional circumstances the Agency

authorises other arrangements. That provision clearly requires that an injured staff member who needs hospital treatment will be expected to attend an Agency-operated hospital before being entitled to reimbursement. However, it also permits reimbursement of the costs of medical treatment in other hospitals, including in countries other than Syria, only with prior authorisation. It is common cause that Mr. Abu Skheileh did not obtain authorisation before seeking medical assistance in Germany.

25. The decision of the UNRWA DT was that the refusal to give retrospective authorisation was unreasonable and thus unlawful. That line of reasoning is not sustainable. At the time Mr. Abu Skheileh incurred the medical costs in Germany, the expenditure was unauthorised. This denied the Agency the prior opportunity to interrogate the proposed expenditure and to consider alternatives before granting or refusing authorisation. But more importantly, an administrative decision to reimburse Mr. Abu Skheileh after he had incurred the unauthorised expenditure would have been illegal because a mandatory and material condition prescribed by the empowering provision was not complied with.

26. Added to that, and most decisively in this case, the UNRWA DT erred in not considering and upholding the main argument of the Agency. It is not disputed that Mr. Abu Skheileh received damages and insurance compensation. Area Staff Rule 106.4(14) provides that if a staff member prosecutes to judgment or settles any claim in relation to damages for service-incurred injuries, the proceeds therefrom shall be used to reimburse the Agency for any compensation including expenses of medical services provided under Area Staff Rule 106.4 with respect to injury. Despite being awarded 50 percent of his damages, Mr. Abu Skheileh did not reimburse the Agency. Area Staff Rule 106.4(15) provides that any person claiming or in receipt of compensation under the rule who fails to comply with any provisions thereof shall be debarred from receiving compensation unless the Commissioner-General decides differently in exceptional circumstances. Hence, Mr. Abu Skheileh is debarred under this provision from claiming or receiving additional compensation in respect of the medical costs he incurred in Germany.

27. The UNRWA DT consequently erred in rescinding the Administrative Decision. The appeal of the Agency must be upheld.

Judgment

28. The appeal is upheld, and the Judgment of the UNRWA DT is reversed and set aside.

Original and Authoritative Version: English

Dated this 19th day of March 2021.

(Signed)

Judge Murphy, Presiding
Cape Town, South Africa

(Signed)

Judge Halfeld
Juiz de Fora, Brazil

(Signed)

Judge Knierim
Hamburg, Germany

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

(Signed)

Weicheng Lin, Registrar