



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

Judgment No. 2017-UNAT-760

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

JUDGMENT

Before: Judge Deborah Thomas-Felix, Presiding
Judge Richard Lussick
Judge Martha Halfeld

Case No.: 2016-1037

Date: 14 July 2017

Registrar: Weicheng Lin

Counsel for Mr. Sa'adeddin: Amer Abu-Khalaf, LOSA
Jamila Al-Abbasi, LOSA

Counsel for Commissioner-General: Rachel Evers

JUDGE DEBORAH THOMAS FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2016/033, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or UNRWA Dispute Tribunal and UNRWA or Agency, respectively) on 13 November 2016, in the case of *Sa'adeddin v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Zuhair Mohammad Sa'adeddin filed the appeal on 7 December 2016, and the Commissioner-General filed his answer on 6 February 2017.

Facts and Procedure

2. The following facts are uncontested:¹

... Effective 1 January 1978, the Applicant was appointed as an "A" category Area staff member, Assistant Mechanic in the Lebanon Field Office ("LFO"), Grade 5, Step 1. Effective 12 October 1978, the Applicant was transferred to the post of Assistant Mechanic in the Jordan Field Office ("JFO") as an expatriate staff member, while remaining at the same grade and step.

... Effective 31 July 2011, the Applicant was granted Early Voluntary Retirement ("EVR"). Following his retirement, he was repatriated to Lebanon in August 2011. At the time relevant to this application, the Applicant was not employed by the Agency.

... On 14 August 2011, the Applicant requested enrolment for him and his dependents in the LFO Group Medical Insurance Policy ("GMIP"). The Agency denied his request.

... Effective 1 January 2012, the LFO GMIP was revised to include paragraph 5.7, which explicitly permitted enrolment in the LFO GMIP for retirees from other UNRWA Field Offices who moved to Lebanon upon retirement "provided that they were insured by an UNRWA GMIP in the previous year".

... By email dated 20 October 2014, the Applicant's son, on behalf of his father, requested that the Applicant and the Applicant's spouse be enrolled in the LFO GMIP.

... By email dated 17 December 2014, the Human Resources ("HR") Assistant of the Department of HR of the LFO informed the Applicant that the request had been approved by the Agency effective 1 December 2014. Subsequently, on 30 December 2014, the Applicant was verbally informed about the rescission of this approval. By letter dated 21 January 2015, the Deputy Director of UNRWA Affairs, Lebanon

¹ Impugned Judgment, paras. 2-17.

("D/DUA/L") explained to the Applicant that the Applicant's prolonged break in UNRWA insurance coverage rendered him ineligible for enrolment under the terms of the LFO GMIP.

... On 24 February 2015, the Applicant requested decision review of the D/DUA/L's refusal to enrol him and his spouse in the LFO GMIP.

... By letter dated 24 March 2015, the Acting Director of UNRWA Affairs, Lebanon responded to the request for review and affirmed the D/DUA/L's decision.

... On 22 June 2015, the Applicant filed his application with the UNRWA Dispute Tribunal The application was transmitted to the Respondent on 23 June 2015.

... On 23 July 2015, the Respondent filed a motion for an extension of time to file a reply. On 26 July 2016, the motion was transmitted to the Applicant.

... On 28 July 2015, by Order No. 084 (UNRWA/DT/2015), the Respondent's motion for an extension of time to file a reply was granted.

... On 11 August 2015, the Respondent filed his reply. The Respondent submitted excerpts from the LFO GMIPs of 2011 and 2012 in annexes to the reply.

... On 15 May 2016, by Order No. 041 (UNRWA/DT/2016), the Respondent was ordered to produce the complete LFO GMIPs of 2011 and 2012.

... On 29 May 2016, the Respondent submitted, *ex parte*, the complete LFO GMIPs of 2011 and 2012. Furthermore, the Respondent requested leave "to make submissions with respect to redacting relevant portions for the purpose of preserving the confidentiality of the contract between UNRWA and the service provider".

... By Order No. 057 (UNRWA/DT/2016), dated 17 August 2016, the [UNRWA Dispute] Tribunal granted the Respondent leave to submit to the [UNRWA Dispute] Tribunal the redacted versions of the GMIPs of 2011 and 2012.

... On 31 August 2016, the Respondent submitted his response to Order No. 057 (UNRWA/DT/2016). On 4 September 2016, the GMIPs of 2011 and 2012 were transmitted to the Applicant with redactions.

3. On 13 November 2016, the UNRWA DT issued its Judgment dismissing the application. The UNRWA DT found that Mr. Sa'adeddin, after his retirement effective 31 July 2011, did not submit any request for decision review of the Agency's decisions not to enrol him in the LFO GMIP until 24 February 2015 and that therefore, the application was not receivable to the extent that it was contesting decisions taken before 30 December 2014. The UNRWA DT determined that the contested decision was the decision to rescind the decision to enrol Mr. Sa'adeddin and his spouse in the LFO GMIP, dated 30 December 2014. This decision was not a confirmation of the previous decisions denying their enrolment in the GMIP; this part of

the application was therefore receivable as Mr. Sa'adeddin had filed his request for decision review and his application before the UNRWA DT within the applicable time limits.

4. The UNRWA DT noted that the GMIP in effect for Lebanon at the time of the application was an insurance contract with a private company. Under the insurance contract, UNRWA retirees from all fields who move to Lebanon upon retirement and who opt to enrol in GMIP Lebanon are eligible for participation in the GMIP, provided that they were insured by an UNRWA Group Medical Insurance Plan in the previous year. The UNRWA DT noted that the provisions in the GMIP are mandatory for the Agency, that the GMIP does not include a provision with respect to retroactivity and that the Agency has no discretionary authority to enrol former staff members, if this is not allowed in the contract. Since Mr. Sa'adeddin was not insured by an UNRWA Group Medical Insurance Plan in 2014, the Agency had to rescind its unlawful decision of approving the enrolment of Mr. Sa'adeddin and his wife.

5. The UNRWA DT rejected Mr. Sa'adeddin's claim that the lack of response from the Agency for a protracted period of time with regard to his enrolment constituted an irregularity. As Mr. Sa'adeddin had been employed by the Agency for more than 30 years, he should have known that GMIP premiums are deducted on a monthly basis. He could not have ignored the fact that he was not requested to pay GMIP premiums by the end of each calendar month which meant that his enrolment had been denied. Moreover, at the date of his EVR, and before 1 January 2012, there were no provisions in the LFO or the JFO GMIP allowing the Agency to enrol Mr. Sa'adeddin and his wife.

6. Accordingly, the UNRWA DT dismissed the application.

Submissions

Mr. Sa'adeddin's Appeal

7. The UNRWA DT erred in fact and law when it determined that a decision had been made to not enrol Mr. Sa'adeddin in the GMIP in 2011 and that no decision review had been requested at that time by not considering the clear evidence and failing to assess the history of the final decision made in 2014. It is clear from the communications between Mr. Sa'adeddin's representative and the HR Department that no final decision was taken in 2011 that could have triggered the time limits for applying for decision review. The UNRWA DT wrongly found that the final decision which was made in December 2014 was a second decision and that he had

failed to request review of the initial decision. The UNRWA DT erred in fact in particular at paragraph 4 of its Judgment when stating that the Agency had denied his request to be added on the GMIP. The evidence reflects that HR advised Mr. Sa'adeddin by e-mail dated 15 August 2011 that there was a precedent case where exceptional circumstances were established and that his case would be discussed with the D/DUA/L.

8. Mr. Sa'adeddin submitted his request for decision review on 24 February 2015, as soon as he received a final decision. He was led to believe that no final decision had been taken before December 2014 and was advised verbally to wait for the update on changes to the insurance group. He relied on the information provided to him by the Agency officials upon whose advice it was reasonable for him to rely. Furthermore, as reflected in the ongoing communications with HR, he was actively and diligently seeking a final answer to his questions about his inclusion on the GMIP with his dependents and it was only the conflicting and misleading information provided by the Agency that prevented him from applying for decision review earlier. It is clear from the evidence that he acted diligently and in good faith, that he did not abandon his rights and did not abuse the process.

9. Mr. Sa'adeddin cannot be blamed for taking Agency representatives at their word when the Agency provided him with a clear expectation and promise of being enrolled in the GMIP whilst at the same time asserting that he failed to submit a timely request for decision review and that his claim in 2015 came too late based on the new rules of the GMIP and its terms and conditions as amended in 2012.

10. The Agency knew that when the new rule came out in 2012, he was eligible to be included in the insurance since he resigned in 2011 and was enrolled in the insurance until then. Any interpretation that he does not meet the requirements for enrolment in the insurance under the new GMIP is directly attributable to the Agency which delayed his case until the deadline for enrolment had passed.

11. The UNRWA DT erred in adopting the Commissioner-General's contentions without properly assessing the history of the case through the evidence provided. This is in line with the UNRWA DT's biased approach in favour of the Administration in other cases.

12. The UNRWA DT erred in fact and law in dismissing Mr. Sa'adeddin's case on the ground that he had failed to comply with the time limits of the GMIP Insurance Terms and Conditions. The UNRWA DT erred in assessing the evidence and failed to consider the history of the case which proved that the final decision was made in December 2014 on a request made in 2011. Mr. Sa'adeddin was diligent in his efforts to receive a clear response from the Agency. As is clear from the evidence of communication between his representative and the Agency officials, he enquired, and was advised, every year that he should wait until the Agency change the insurance company and until the new rules for retirees were put into place. The UNRWA DT's finding at paragraph 25 of its Judgment that his request for enrolment was verbally denied by the Agency in August 2011 is false. The Agency in fact advised him that the insurance group did not accept his inclusion but that it would try its best to include him. It therefore did not deny his request, but continued to try to add him to the insurance. Moreover, when the new rule came into effect in 2012 allowing all retirees to be included in the insurance not excluding those who had already retired, UNRWA should have included him in the insurance in 2012 in accordance with the new rules. The new rules included staff members who had already retired and who were insured by an UNRWA Group Medical Insurance plan in the previous year.

13. In addition, Mr. Sa'adeddin contests the UNRWA DT's finding that he should have known that his request had been denied since he had been employed with the Agency for more than 30 years and should have known that GMIP premiums are deducted on a monthly basis and he was not requested to pay any GMIP premiums. Since he had been advised that he should wait for the issuance of the new insurance contract, he could not presume that a final decision not to include him had been taken.

14. Mr. Sa'adeddin requests that the Appeals Tribunal reverse the UNRWA DT Judgment and remand the case for adjudication; rescind the Agency's decision not to include him in the GMIP with his spouse as required by the 2012 GMIP Terms and Conditions; and order compensation for moral damages and stress caused due to the excessive delay in his case.

The Commissioner-General's Answer

15. The UNRWA DT did not err in fact or law by concluding that Mr. Sa'adeddin's requests for enrolment lodged prior to 2014 were denied through separate decisions taken by the Agency before the December 2014 decision and that, by consequence, any challenge by Mr. Sa'adeddin

of decisions taken prior to the December 2014 decision was not receivable because he had failed to request decision review with respect to these earlier decisions.

16. The UNRWA DT's Judgment demonstrates that the history of the case as established by the evidence before the UNRWA DT was fully taken into account in its ruling on these issues.

17. The UNRWA DT correctly held that Mr. Sa'adeddin failed to submit any evidence of a request for decision review of any decision taken by the Agency prior to the December 2014 decision. The UNRWA DT therefore correctly concluded that he could rightly only challenge the December 2014 decision.

18. The UNRWA DT correctly concluded that the Agency had separately decided to deny Mr. Sa'adeddin's enrolment request prior to his 2014 request and the related December 2014 decision. The fact that Mr. Sa'adeddin was not enrolled in the GMIP between the time of his initial 2011 request and his 2014 request represents a unilateral act taken by the Agency that carried direct legal consequences for him. Further, there are several objective indicators that would have clearly demonstrated to Mr. Sa'adeddin that his requests pre-dating 2014 had not succeeded, including the fact that the Agency had taken no action following his initial 2011 request up to the time of the 2014 request. Mr. Sa'adeddin's knowledge that he was not enrolled in the GMIP was tantamount to confirmation that his request had been denied, as substantively, the outcome or object of his request was enrolment rather than to be notified of whether or not he had been enrolled.

19. Furthermore, the record of evidence submitted by Mr. Sa'adeddin only establishes that the Agency undertook to look into his initial 2011 request on an exceptional basis based on an e-mail dated 15 August 2011. From then onward, Mr. Sa'adeddin presented no proof of any communication with UNRWA until 2014, when Mr. Sa'adeddin reinitiated his request for enrolment. As such, he has presented no proof that would have warranted the UNRWA DT to determine that he had been misled or deceived by the Agency in such a way as to validate that he could have known that the Agency had denied his request in the time between his initial 2011 request and his 2014 request. Moreover, the context and substance of Mr. Sa'adeddin's 2014 request clearly indicate that it was not intended as a follow-up on the status of the initial 2011 request.

20. In the alternative, even if Mr. Sa'adeddin had provided evidence that prior to 2014 he had received incorrect information from the Agency, the circumstances are such that it still would have been unreasonable for him to conclude that the Agency had not taken a decision prior to the December 2014 decision as he claims. It could not have escaped his attention that with each passing calendar year between the time of his initial 2011 request and 2014, he had not been enrolled for the preceding year. As enrolment in the GMIP provides annual coverage for a maximum of one calendar year only, in line with the term of duration for each GMIP contract, each passing year would have indicated to Mr. Sa'adeddin that his request had not succeeded for the preceding year. Even if the evidentiary record before the UNRWA DT had established that the Agency would look into his ongoing requests between the time of the initial 2011 request and 2014, this undertaking alone would not give rise to a legitimate expectation that he would be enrolled.

21. As to Mr. Sa'adeddin's contention that he had no basis to be aware that the Agency had decided, by separate decision taken prior to the December 2014 decision, to deny his requests pre-dating 2014 because the Agency had never informed him of the outcome of its earlier decision, the Agency contends that the failure to inform an applicant of a decision in writing is immaterial to deciding whether a decision was made by the Agency. The jurisprudence has clearly established that an administrative decision need not be in writing.

22. Mr. Sa'adeddin's claim that any fault for his failure to comply with the rules concerning decision review requests lay with the Agency because it never informed him of any decision prior to the December 2014 decision lacks merit. The process for decision review is not necessarily triggered by whether or not Mr. Sa'adeddin was informed of the decision. If a decision is not made in writing and is unknown to the staff member concerned, the point in time for starting the process is from the time the staff member knew or should have known of the said decision. Mr. Sa'adeddin is therefore bound by the rules on recevabilty irrespective of whether he was subjectively aware of the Agency's earlier decision to deny his enrolment request. The UNRWA DT correctly concluded that he had failed to make a timely request for decision review.

23. The UNRWA DT fully considered the evidence and history of the case and did not err in concluding that Mr. Sa'adeddin's application should be dismissed.

24. The UNRWA DT did not err in fact or law in dismissing Mr. Sa'adeddin's case for failure to comply with the Terms and Conditions of the GMIP. The UNRWA DT correctly determined that, due to the lapse in enrolment in the GMIP, Mr. Sa'adeddin was not eligible to be enrolled pursuant to his 2014 request. With regards to the alleged fault of the Agency for the lapse in Mr. Sa'adeddin's enrolment in the GMIP, the Agency recalls its contention that the UNRWA DT correctly determined that any challenge to Agency decisions taken prior to December 2014 was not receivable because Mr. Sa'adeddin had failed to request decision review in respect of these earlier decisions.

25. The Agency requests that the Appeals Tribunal find that the UNRWA DT did not err when it dismissed Mr. Sa'adeddin's application and therefore dismiss his appeal in its entirety.

Considerations

26. It is not in contention that, at the time of Mr. Sa'adeddin's request in 2011 for the enrolment of him and his spouse in the GMIP, there was no policy or rule which permitted the enrolment in the LFO GMIP for retirees from other UNRWA Field Offices who moved to Lebanon upon retirement and therefore his request was denied. This refutes Mr. Sa'adeddin submission that no final decision was taken in 2011 that could have triggered the time limits for applying for decision review.

27. In our view, the evidence that there was no policy or rule in place at that time is uncontroverted; therefore the only decision which could be made in 2011 was an implied decision to deny the request for enrolment. This decision, though not explicit, ought to have been known by Mr. Sa'adeddin. As Mr. Sa'adeddin did not submit any request for decision review of the Agency's decision not to enrol him in the LFO GMIP until 24 February 2015, the UNRWA DT correctly found that his application was not receivable to the extent that it contested decisions taken prior to 30 December 2014.

28. Effective 1 January 2012, the LFO GMIP was revised to include paragraph 5.7, which permitted enrolment in the LFO GMIP for retirees from other UNRWA Field Offices who moved to Lebanon upon retirement "provided that they were insured by an UNRWA Group Medical Insurance Plan in the previous year". In fact, it is only from 1 January 2012 with this policy change that Mr. Sa'adeddin could have submitted a legitimate request for the enrolment of him and his spouse in the GMIP. He did so in 2014.

29. We agree with the UNRWA DT's finding that "the provisions in the GMIP are mandatory for the Agency, and the GMIP does not include a provision with respect to retroactivity"² and that the Agency has no "discretionary authority to enrol former staff members if this is not allowed in the contract".³ We therefore find that the GMIP cannot apply outside of its scope of application.

30. We have examined all of the evidence and find no evidence that the UNWRA DT erred on the law or the facts. We find no merit in Mr. Sa'adeddin's claim.

² Impugned Judgment, para. 35.

³ *Ibid.*

Judgment

31. The appeal is dismissed and Judgment No. UNRWA/DT/2016/033 is affirmed.

Original and Authoritative Version: English

Dated this 14th day of July 2017 in Vienna, Austria.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Lussick

(Signed)

Judge Halfeld

Entered in the Register on this 5th day of September 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar