

2011-UNAT-177, Tabari

UNAT Held or UNDT Pronouncements

On the issue of receivability, UNAT noted that not taking a decision was also a decision. UNAT noted that the alleged discrimination was based on a comparison between the claimant and staff members of a different category, namely international staff members. UNAT held that the general principle of equal pay for equal work does not prevent a legislative body or the Administration from establishing different treatments for different categories of workers or staff members if the distinction is made on the basis of lawful goals. UNAT held that there was no discrimination when the non-payment of special compensation for working in hazardous duty stations is based on a general consideration of a category of staff members, in comparison to another category. UNAT noted that different treatment becomes discriminatory when it negatively affects the rights of certain staff members or categories of them, due to unlawful reason; but when the approach is general by categories, there is no discrimination when the difference is motivated in the pursuit of general goals and policies and when it is not designed to treat individuals or categories of the unequally. UNAT stated that the principle of equality meant equal treatment of equals, and also meant unequal treatment of unequals. UNAT found no illegality in the administrative act of not awarding the Appellant hazard pay because it was part of the general treatment of the area staff member of UNRWA, who are not entitled, under their terms of appointment, to that kind of payment, in contrast to international staff members. UNAT clarified that UNRWA area staff members are not part of the UN common system of salaries, allowances or other conditions of services. UNAT noted that the entitlement to hazard pay to area staff members depends on the policies, procedures, rules and discretionary – but non-arbitrary – distribution of the budget by the UNRWA Administration. UNAT dismissed the appeal.

Decision Contested or Judgment/Order Appealed

UNRWA decision: The Applicant, an area staff member, contested the decision not to pay him to hazard pay, having not received a response to his request for such payment. Endorsing the recommendation of the Area Appeals Board, the UNRWA Commissioner-General dismissed the application.

Legal Principle(s)

Not taking a decision is also a decision; it is an implied decision. Equal pay for equal work does not prevent the legislative body or the Administration from establishing different treatments for different categories of workers or staff members if the distinction is made on the basis of lawful goals. The principle of equality means equal treatment of equals; it also means unequal treatment of unequal.

Outcome

Appeal dismissed on merits

Outcome Extra Text

No relief ordered; No relief ordered

Full judgment

[Full judgment](#)

Applicants/Appellants

Tabari

Entity

UNRWA

Case Number(s)

2010-182

Tribunal

UNAT

Registry

New York

Date of Judgement

21 Oct 2011

President Judge

Judge Simón

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Implied administrative decision

TEST -Rename- Benefits and entitlements-45

Danger/hazard pay

Discrimination and other improper motives

Applicable Law

UNAT Statute

- Article 2.1

Related Judgments and Orders

