

2016-UNAT-643, Harb

UNAT Held or UNDT Pronouncements

UNAT held that there was merit in the Appellant's argument that the issue to be decided was not whether he was entitled or not to the SOA, but the refusal of its retroactive payment at the correct rate from the date of the signature of his post description. UNAT held that UNRWA DT erred when it failed to consider that the Appellant was contesting a specific decision denying him a retrospective payment of the higher SOA. UNAT held that UNRWA DT erred in law in deciding that the Appellant had failed to identify an administrative decision capable of being brought within the scope of judicial review. UNAT held that the Agency's refusal of a retrospective payment of the higher SOA was an administrative decision that clearly and unequivocally impacted the Appellant's terms and conditions of appointment. UNAT upheld the appeal and the UNRWA judgment was vacated, and the case was remanded to UNRWA DT for consideration of the merits before a different judge.

Decision Contested or Judgment/OrderAppealed

The Applicant contested the decision not to pay him Special Occupation Allowance (SOA) at the rate of Occupation Classification Code 66 (OCC 66), from 1 December 2011. UNRWA DT found that the SOA was created as a management strategy to offer more competitive salaries to attract or retain staff members who could otherwise be lured away by more lucrative offers. UNRWA DT held that the Commissioner-General had discretionary authority in approving and removing this allowance based on the Agency's needs and the current market. UNRWA DT found that the decision to grant or deny payment of an SOA did not affect the terms of the appointment or contract of employment of a staff member as defined in Article 2. 1(a) of the UNRWA DT Statute and was, therefore, not subject to judicial review. UNRWA DT dismissed the application as not receivable.

Legal Principle(s)

There is no dispute as to what an “administrative decision” is. It is acceptable by all administrative law systems, that an “administrative decision” is a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Harb

Entity

UNRWA

Case Number(s)

2015-852

Tribunal

UNAT

Registry

New York

Date of Judgement

24 Mar 2016

Language of Judgment

Arabic

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Applicable Law

UNRWA DT Statute

- Article 2.1(a)

Related Judgments and Orders

2015-UNAT-563

2010-UNAT-058