

2016-UNAT-690, Abu Malluh

UNAT Held or UNDT Pronouncements

UNAT considered the appeal, specifically whether UNRWA DT erred by dismissing the staff members' motions to adduce supplemental evidence on the grounds of receivability, and whether UNRWA DT erred by finding that the final contested decision was taken on 3 August 2014. UNAT found that Abu Malluh et al. acted with due diligence in the proceedings before UNRWA DT and further demonstrated that the supplemental evidence they sought to have admitted would have led to different findings of fact and changed the outcome of the case. UNAT noted that while UNRWA DT has broad discretion to determine the admissibility of any evidence under its Statute, this power is not absolute. UNAT held that UNRWA DT erred in procedure by not admitting additional evidence that was relevant to the identification of the correct date of the impugned administrative decision. Moreover, UNAT found that a review of the relevant correspondence showed that Abu Malluh et al. received notification of the final and unambiguous administrative decision on 4 March 2015, not 3 August 2014. Therefore, the requests for decision review on 14 April 2015 were not time-barred and the applications filed by Abu Malluh et al. on 23 July 2015, were receivable *ratione materiae*. UNAT vacated the judgment and remanded the case to UNRWA DT for adjudication on the merits, after receiving a reply on the merits from the Commissioner-General.

Decision Contested or Judgment/Order Appealed

UNRWA DT judgment: Abu Malluh et al. contested the decisions to qualify their respective posts as Messenger Porter instead of Messenger "A. " UNRWA DT concluded that Abu Malluh, et al., were verbally informed of the contested decisions on 3 August 2014 and were required to submit their requests for decision review by 2 October 2014 to comply with the 60-day time limit established by Area Staff Rule 111. 2. UNRWA DT accordingly held that the applications were time-barred and, therefore, not receivable.

Legal Principle(s)

In exceptional circumstances, and where the Appeals Tribunal determines that the facts are likely to be established with documentary evidence, including written testimony, it may receive such additional evidence if that is in the interest of justice and the efficient and expeditious resolution of the proceedings. The date of an administrative decision is based on objective elements that both parties, Administration and staff member, can accurately determine.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Abu Malluh

Entity

UNRWA

Case Number(s)

2016-920

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Oct 2016

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Evidence

Admissibility

Jurisdiction / receivability (UNDT or first instance)

Temporal (ratione temporis)

Procedure (first instance and UNAT)

Admissibility of evidence

Production of documents

Applicable Law

UNAT RoP

- Article 10.1

UNAT Statute

- Article 2.5
- Article 8.1

Related Judgments and Orders

2015-UNAT-516

2015-UNAT-557

2013-UNAT-296

2012-UNAT-273

2015-UNAT-597

2015-UNAT-546