

2016-UNAT-701, Hussein

UNAT Held or UNDT Pronouncements

UNAT held that both the ASC and APD bestow discretion on the Agency to pay an AAA. UNAT held that the two instruments, the ASC and the APD, were easily reconcilable. UNAT held that the ASC deals with the specific situation where an Area staff member acts in an International professional post, while the ADP deals with all other cases of acting appointments. UNAT held that there was no manifest intention or inevitable construction that the Agency intended to abrogate the specific policy in the ASC. UNAT held that UNRWA DT was correct in its finding that the ASC had not been implicitly abrogated by the APD and that it accordingly still applied as the UNRWA instrument that specifically governed the situation where an Area staff member acted in an International professional post. UNAT held that Appellant never had had a right to an AAA; he only had an expectation that the Agency would exercise its discretion to grant him an AAA fairly, properly, and in accordance with the legal provisions of the policy. UNAT dismissed the appeal and affirmed the UNRWA DT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to pay him AAA for the entire period in which he acted as the Officer-in-Charge of the General Services Office (OiC, GSO). UNRWA DT dismissed the application and found that the UNRWA Area Staff Circular No. A/04/2010 (ASC) governed the situation. UNRWA DT rejected the Appellant's assertion that Area Personnel Directive No. A/3/Rev. 1/Amend. (APD) had impliedly repealed the ASC. UNRWA DT applied the legal maxim *lex specialis derogat legi general*. UNRWA DT noted that APD No. A/3 issued in 2012 applied to all Area staff members who assumed higher-level duties and responsibilities and was of general application. UNRWA DT found that the ASC, issued earlier, in 2010, was introduced specifically to provide an AAA to Area staff temporarily acting in International professional posts and, therefore, applied to all Area staff members serving in such posts. UNRWA DT accordingly found that the issuance of the general APD could not

have implicitly abrogated the specific ASC.

Legal Principle(s)

While circulars may be lower in the contractual hierarchy to the staff regulations and directives, they are of equal standing as legal instruments potentially introducing or establishing implied terms of the contract. In nature and in practical terms, they are employment policy guidelines and thus differ from provisions that might be regarded strictly as terms or conditions of employment agreed ab initio. A staff member has no contractual right to receive an Acting Appointment Allowance (AAA). Where there are two existing provisions that seem to clash, but which can be interpreted to give full force and effect to each, then such an interpretation should be adopted rather than one which will partly undermine the effect of one of them.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Husseini

Entity

UNRWA

Case Number(s)

2016-932

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Oct 2016

President Judge

Judge Murphy

Language of Judgment

Arabic

English

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Special Post Allowance

Applicable Law

Laws of other entities (rules, regulations etc.)

- UNRWA Organization Directive No.1 of 15 July 1987

Other UN issuances (guidelines, policies etc.)

- UNRWA Area Staff Circular A/04/2010

UNRWA Personnel Directives

- PD No.A/3/Rev.1/Part XI/Amend.5

Related Judgments and Orders

2013-UNAT-367