

2018-UNAT-854, Abu Nqairah

UNAT Held or UNDT Pronouncements

UNAT considered whether UNRWA DT correctly concluded that the application was non-receivable *ratione materiae*. UNAT found that the Appellant failed to reference the grounds of appeal he relied upon, pursuant to Article 2(1) of the UNAT Statute. UNAT held that, because the Appellant did not identify the defects or grounds that rendered the impugned decision erroneous, the appeal must fail for this reason alone. In considering the rest of the appeal, UNAT also found that the Appellant knew, or reasonably should have known, that his allowance request had been refused since 2009. Moreover, UNAT applied the Rosana test insofar as silence from the Agency in response to a request ordinarily constitutes a negative reply, resulting in an implied administrative decision. UNAT further held that the Appellant's claim that he did not receive the letter dated 29 June 2014 was not receivable. UNAT noted that it was not raised before the UNRWA DT and thus could not be introduced for the first time on appeal. Moreover, UNAT held that there was no merit in the Appellant's contention that the decision on his request for decision review is challengeable before the internal justice system, as the Appellant failed to comply with the time limits set forth in relevant UNRWA provisions, especially Area Staff Rule 111. 2. UNAT accordingly dismissed the appeal and affirmed UNRWA DT's judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the Agency's decision not to pay him the parallel education allowance. UNRWA DT found that since the Applicant had failed to comply with the time limit set forth in Area Staff Rule 111. 2, and as it did not have jurisdiction to waive the deadline for decision review, the application was not receivable. UNRWA DT also found that the DUO/J's decision from 1 June 2017 was not an appealable administrative decision because it was the response to the Applicant's request for decision review from 4 May 2017 and, as such, not subject to judicial review in accordance with established UNAT jurisprudence. UNRWA DT dismissed the

application in its entirety.

Legal Principle(s)

The reiteration of an original administrative decision, if repeatedly questioned by a staff member, does not reset the clock with respect to statutory timelines; rather, time starts to run from the date on which the original decision was made. The request for management evaluation or decision review provides the Administration with the opportunity to reassess the situation and correct possible mistakes or errors with efficiency and the tribunals have no jurisdiction to waive deadlines for requests for management evaluation or decision review.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Abu Nqairah

Entity

FESA

Case Number(s)

2018-1143

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Jun 2018

Language of Judgment

Arabic

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Implied administrative decision

Jurisdiction / receivability (UNDT or first instance)

Temporal (ratione temporis)

Applicable Law

Staff Rules

UNRWA International Staff Rules

- Rule 111.2

UNAT Statute

- Article 2.1

UNRWA DT Statute

- Article 8