

2019-UNAT-911, El-Arqan

UNAT Held or UNDT Pronouncements

UNAT held that UNRWA DT committed an error of fact in stating that the OPT Allowance was paid in local currency, which led UNRWA DT to commit an error of law in stating that Area Staff Circular No. A/04/2014 was applicable. UNAT held that Area Staff Circular No. A/04/2014 was only applicable to the Jerusalem Allowance and not the OPT Allowance, which was paid in US Dollars. UNAT held that such an error of law would be inconsequential if its second line of reasoning, that no rule or policy requires the CAF be applied to the OPT Allowance, was correct. UNAT held that there was no rule requiring the application of the CAF to the OPT Allowance. However, UNAT held that the UNRWA Commissioner-General was not prevented from applying the CAF and it lay in his discretion as to whether to apply the CAF to allowances. Noting that the Commissioner-General applied the CAF to several other allowances, UNAT held that without knowing an articulated reason for the Commissioner-General's decision it was unable to assess whether such a decision was arbitrary, capricious, or unlawful. UNAT remanded the case to UNRWA DT to review the Commissioner-General's reasons for the decision not to apply the CAF to the OPT Allowance and determine whether his decision constituted a lawful exercise of his discretion.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to subject the Occupied Palestinian Territory (OPT) Allowance to the Currency Adjustment Factor (CAF), an artificial exchange rate which is applied to protect the amount received in local currency by staff members while converting their salaries from US Dollars or Jordanian Dinars. UNRWA DT dismissed the application on the ground that the Applicant had failed to establish any rule or policy requiring that the CAF must be applied to the OPT allowance.

Legal Principle(s)

A decision of the Administration may be impugned if it is found to be arbitrary or capricious, motivated by prejudice or extraneous factors, or was flawed by procedural irregularity or error of law. Stated reasons for an administrative decision are essential for UNAT to exercise its judicial review of the decision. When a justification is given by the Administration for the exercise of its discretion, it must be supported by the facts.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

El-Arqan

Entity

UNRWA

Case Number(s)

2018-1205

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Mar 2019

President Judge

Judge Knierim

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Reasons

Benefits and entitlements

Applicable Law

Other UN issuances (guidelines, policies etc.)

- UNRWA Transmittal Memorandum (TM) No.109
- UNRWA Transmittal Memorandum (TM) No.113

UNRWA Area Staff Circulars

- Circular A/04/2014

UNRWA Area Staff Rules

- Appendix to the Staff Rules 1-D/E effective 2015 (Salary Scale Gaza and West Bank)
- Rule 103.8.1