

2023-UNAT-1353, Nisreen Abusultan

UNAT Held or UNDT Pronouncements

The UNAT held that the Appellant has failed to discharge her burden and has not demonstrated that the UNRWA DT committed any of the errors outlined in Article 2(1) of the UNAT Statute. It concluded that the Appellant relitigated arguments that failed before the UNRWA Dispute Tribunal and expressed her general disagreement with the impugned Judgment.

The UNAT held that the contested decision was a valid and lawful exercise of the Agency's discretion. It found that the Agency reviewed and considered the Appellant's request for telecommuting in accordance with the legal framework, i.e. Area Personnel Directive No. A/1/Rev.1/Part I/Section I (Telecommuting) (PD A/1). It denied it because there were no longer travel restrictions and the Agency was implementing a 30 per cent attendance requirement in the office as it moved out of the COVID-19 pandemic. Further, the Agency confirmed that the Appellant was "local staff" who had to be on standby to attend the office anytime upon request like the remaining staff in Jordan Field Office. Therefore, the UNAT concluded that it was not in the best interest of the Agency to approve her request.

Moreover, the UNAT found that there was no evidence that the contested decision was biased or based on any improper motive, or that it was arbitrary, irrational, absurd, or perverse.

As there was no unlawful administrative decision, the Appellant's claim for compensation failed.

The UNAT dismissed the appeal and affirmed Judgment No. UNRWA/DT/2022/029.

Decision Contested or Judgment/Order Appealed

The Appellant, a former Administration and Training Officer in the Finance Department, Jordan Field Office, contested the decision of the Agency to deny her

request to resume her duties via telecommuting from outside her duty station in Amman, Jordan, after the end of her second year of Special Leave Without Pay (SLWOP). In its Judgment No. UNRWA/DT/2022/029, the UNRWA DT dismissed the Appellant's application and concluded that the contested decision was lawful and that the Agency did not abuse its discretion by denying the Appellant's request to telecommute from outside her duty station.

Legal Principle(s)

An appellant has the burden of satisfying the Appeals Tribunal that the first instance judgment is defective based on one or more of the grounds in the Appeals Tribunal Statute.

When reviewing the validity of the Agency's exercise of discretion in administrative matters, the UNRWA DT determines if the decision is legal, rational, procedurally correct, and proportionate. This means reviewing whether relevant matters have been ignored or irrelevant matters considered, and whether the decision is absurd or perverse. However, it is not the role of the UNRWA DT to consider the correctness of the choice made by the Agency amongst the various courses of action open to it. Nor is it its role to substitute its own decision for that of the Agency.

Telecommuting is an exceptional arrangement based on the interests of the staff member and the Agency, and not an entitlement. The Area Personnel Directive further provides that telecommuting is contingent on the satisfactory performance by, and responsibility of, the requesting staff member and that staff members who are regularly required to be physically present at the duty station are not normally granted telecommuting.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Nisreen Abusultan

Entity

UNRWA

Case Number(s)

2022-1724

Tribunal

UNAT

Registry

New York

Date of Judgement

7 Jul 2023

President Judge

Judge Sandhu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Burden of proof

Discrimination and other improper motives

Applicable Law

UNAT Statute

- Article 2.1

UNRWA Area Staff Circulars

UNRWA Personnel Directives

Related Judgments and Orders

2018-UNAT-860

2017-UNAT-711

2021-UNAT-1082