

2022-UNAT-1270, Moayyad Naeem

Dahoud

UNAT Held or UNDT Pronouncements

The UNAT considered an appeal by Mr. Dahoud.

The UNAT held that the UNRWA DT correctly found that the disability benefit paid to Mr. Dahoud in accordance with Area Staff Rule 109.7(1) was different from the termination indemnity paid to certain staff members in accordance with Area Staff Rule 109.9.

The UNAT found that despite the Medical Board's conclusion that he had an 8 per cent permanent impairment, this does not necessarily lead to a finding of permanent and total disability, as required by Area Staff Rule 109.7(7), so as to receive the supplemental benefit. Nor does this medical conclusion mention any possible dependence by Mr. Dahoud on others for his care, or resulting expenses caused by such dependence. Apart from Mr. Dahoud's own assertions, there are no witness testimonies in the record, which could support his allegation of a significant deterioration of his medical condition. Even the higher alleged percentage of 80 per cent impairment, if this were to be considered, would not necessarily mean total disability without a medical declaration to this effect. The UNAT also dismissed Mr. Dahoud's accusations of bias by members of the Medical Board as groundless.

The UNAT detected two inconsequential mistakes in the UNRWA DT Judgment. The first concerns the finding that it was incumbent upon the Commissioner-General to exercise discretion over Mr. Dahoud's right to the supplemental benefit, since the Medical Board's conclusion was that he was not eligible to receive it. This understanding is incorrect and barred by the principle of legality. When Area Staff Rule 109.7(7) establishes that the staff member shall receive a supplemental benefit once the three conditions are presented, the best interpretation is that when such conditions are not fulfilled, the staff member shall not receive such a benefit. There was hence no room for discretion on the Commissioner-General's part, as the law is

clear and imperative. The UNRWA DT also erred when it held that the percentage of impairment was irrelevant with respect to Mr. Dahoud's entitlements to the supplemental benefit. This assertion is not correct, since total disability is one of the conditions for Mr. Dahoud's entitlement to the supplemental benefit. These minor errors are, however, irrelevant for the purposes of the present appeal, as they do not have any bearing on the final determination of the UNRWA DT.

The UNAT dismissed the appeal and affirmed the UNRWA DT Judgment No. UNRWA/DT/2021/041.

Decision Contested or Judgment/Order Appealed

Mr. Dahoud contested a decision not to pay him a supplemental benefit upon the termination of his services on medical grounds.

By Judgment No. UNRWA/DT/2021/041 of 15 September 2021, the UNRWA DT rejected his application on the merits.

Legal Principle(s)

The termination indemnity should be regarded as a general rule, while the disability benefit is the exception, only payable in those cases where there is disability. Apart from this, the plain reading of Area Staff Rule 109.9(2)B is clear: no termination indemnity shall be payable in cases when Area Staff Rule 109.7 is applicable, that is, when the staff member is eligible to receive a disability benefit.

In keeping with Area Staff Rule 109.7(7), there are three cumulative conditions which need to be fulfilled for the staff member to be entitled to the supplemental benefit. These conditions are: i) total and permanent disability; ii) dependence; and iii) expense.

UNRWA, being an international agency, should comply with its own internal regulations and not those of the host country, whose external assessments are not binding under UNRWA's rules.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Moayyad Naeem Dahoud

Entity

UNRWA

Case Number(s)

2021-1627

Tribunal

UNAT

Registry

New York

Date of Judgement

21 Nov 2022

President Judge

Judge Murphy

Judge Colgan

Judge Halfeld

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Benefits and entitlements

Compensation for injury, illness or death attributable to service (Appendix D to Staff Rules)

Jurisdiction / receivability (UNAT)

Applicable Law

UNRWA Area Staff Rules

- Rule 106.4
- Rule 109.7(7)

UNRWA DT Statute

- Article 10.5(b)

Related Judgments and Orders

2010-UNAT-096