

2022-UNAT-1296, Deema Jarallah

UNAT Held or UNDT Pronouncements

UNAT dismissed the appeal and affirmed the UNRWA DT Judgment. UNAT held that the UNRWA DT correctly concluded that the decision-maker had not exercised his discretionary power properly, in that the Agency had unlawfully paid Ms. Jarallah an SPOA of 25 per cent instead of an SOA of 35 per cent which was stipulated in her contract of employment.

UNAT found that a valid and binding contract of employment existed between Ms. Jarallah and the Agency. An integral part of Ms. Jarallah's letter of appointment was the Job Description contained in the vacancy announcement with a reference to the 35 per cent SOA. The language of the Job Description and concomitantly Ms. Jarallah's letter of appointment was clear, unambiguous and easy to understand. UNAT held that it would be unfair for Ms. Jarallah, who had relied on such percentage of allowance designated to the post to apply for it and accept the relevant offer of appointment, to be deprived of her entitlement to an SOA of 35 per cent that had already contractually vested for the period of her fixed-term appointment.

Decision Contested or Judgment/Order Appealed

Before the UNRWA DT, Ms. Jarallah contested the decision to pay her a Special Professional Officer Allowance (SPOA) of 25 per cent instead of a Special Occupation Allowance (SOA) of 35 per cent for the duration of her assignment in the post of Monitoring & Evaluation Team Leader, Field Office Jerusalem, as contained in her letter of appointment.

The UNRWA DT found that the Agency's contentions that Ms. Jarallah's letter of appointment erroneously stipulated that she was entitled to an SOA of 35 per cent and that the Agency was entitled to remedy such a commitment were unreasonable, had no legal basis and, as such, were without merit. The UNRWA DT granted the application by rescinding the decision to pay Ms. Jarallah an SPOA of 25 per cent

instead of an SOA of 35 per cent of her salary; and ordering the Administration to pay to Ms. Jarallah the differences between the salaries and associated entitlements she would have been paid, had she been paid an SOA of 35 per cent of her salary, effective 1 January 2020.

Legal Principle(s)

The issuance of a letter of appointment signed by the appropriate United Nations official or someone acting on his or her behalf is more than a mere formality. Rather, the letter of appointment governs the conditions of the employment relationship, along with the Regulations and Rules of the Organization which are incorporated into the contract.

Where a clear and unambiguous contractual undertaking has been made which forms part of the concluded relevant employment contract, as in the case at hand, the authority undertaking the contractual commitment will not be allowed to depart from it.

The Administration has an obligation to act in good faith and comply with applicable laws. Mutual trust and confidence between the employer and the employee are implied in every contract of employment. Both parties must act reasonably and in good faith.

Pursuant to the principle of legality of the Administration, where the Administration commits an irregularity or error in the exercise of its competencies, then, as a rule, it falls to the Administration to take such measures as are appropriate to correct the situation and align itself with the requirements of the law, including the revocation of the possibly illegal administrative act. Thus, if a favorable decision is void or erroneous, it may be revoked or varied, especially where the granting of a right or benefit has to be properly authorised or where changed circumstances—had they been known and taken into account at the time—would have affected the outcome of the decision differently. However, if the staff member has acted in good faith, he or she is entitled to compensation for the damage suffered as a result.

The revocation or variation of administrative decisions which “create rights” may cause legal uncertainty, disappointment of reasonable expectations as well as adversely affect the legal position of a person who was previously the beneficiary of a favorable act of the administrative authorities, which granted that person an

individual right or benefit. It is a serious matter subject to the principle of legality, which is the cornerstone of the rule of law, and the principle of certainty which prescribes that a person should be able to rely and safely act upon an administrative decision.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Deema Jarallah

Entity

UNRWA

Case Number(s)

2021-1634

Tribunal

UNAT

Registry

New York

Date of Judgement

21 Dec 2022

President Judge

Judge Raikos

Judge Murphy

Judge Halfeld

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Compensation

Remedies

Compensation (see also, Compensation)

Rescission

Applicable Law

UNRWA Area Staff Rules

UNRWA Personnel Directives

Related Judgments and Orders

2019-UNAT-934

2018-UNAT-849

2016-UNAT-635

2016-UNAT-636

2013-UNAT-367

2010-UNAT-037

2021-UNAT-1091

2011-UNAT-140