

2022-UNAT-1299, Hiba Mohamad

Abou Salah

UNAT Held or UNDT Pronouncements

The Commissioner-General appealed.

The UNAT held that insofar as the Agency's decision of 25 April 2019 rejecting the request for an SPOA might not have been unequivocal, that decision was reiterated in the e-mail of 17 June 2019 leaving no doubt that the Agency had decided then to pay Ms. Abou Salah an SPOA of 15 per cent rather than 25 per cent, possibly in breach of her contract. The fact that other persons subsequently sought to intervene on her behalf did not change that.

The UNAT found that Ms. Abou Salah's subsequent correspondence, as well as correspondence written on her behalf, accordingly, did not extend the time limit for requesting decision review. Furthermore, the letter of 19 May 2020, considered by the UNRWA DT as a new decision (supposedly communicated verbally two months earlier on 11 March 2020), was in reality no more than a confirmation (after Ms. Abou Salah had sought decision review) of the previous decision declining to grant the SPOA at 25 per cent as required by her Letter of Appointment. Reliance on the alleged verbal notification of 11 March 2020 is also untenable. Without receiving written notification of a decision in writing, it is not possible to determine when the period of 60 calendar days starts.

The UNAT was of the view that the UNRWA DT had erred in law in determining the *terminus a quo* and that error had led to the UNRWA DT exceeding its jurisdiction in determining the merits of the case. As a result, since decision review was not requested timeously in this case, regardless of the obvious unfairness and injustice, the UNRWA DT did not have jurisdiction to hear the application and was barred in law from doing so.

The UNAT granted the appeal and reversed Judgment No. UNRWA DT/2021/044.

Decision Contested or Judgment/Order Appealed

Ms. Abou Salah contested a decision of the Administration to pay her a Senior Professional Officer Allowance (SPOA) equivalent to 15 per cent of her salary, instead of an allowance of 25 per cent.

By Judgment No. UNRWA DT/2021/044 of 31 September 2021, the UNRWA DT held that Ms. Abou Salah had filed a request for decision review timeously and that the application was accordingly receivable, and directed the Commissioner-General of UNRWA to pay the SPOA at 25 per cent and awarded ancillary relief to achieve that direction.

Legal Principle(s)

An application shall be receivable if the applicant has previously submitted the contested administrative decision for decision review.

A decision review request shall be submitted within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

A staff member (or other staff members making representations on her behalf) may not, by her conduct subsequent to the notification of an administrative decision in effect, unilaterally determine the date of the administrative decision by engaging in ongoing correspondence. If that were the case, no management review would ever be time-barred because the staff member could always prevent that possibility by the simple expedient of sending an e-mail querying the basis of the decision.

A written decision is necessary for the time limits [for decision review] to run.

The UNRWA DT shall not suspend or waive the deadlines for decision review.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Hiba Mohamad Abou Salah

Entity

UNRWA

Case Number(s)

2021-1635

Tribunal

UNAT

Registry

New York

Date of Judgement

23 Dec 2022

President Judge

Judge Raikos
Judge Murphy
Judge Halfeld

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Notification

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Extension of time

Management Evaluation

Applicable Law

UNRWA Area Staff Rules

- Rule 111.2

UNRWA DT Statute

- Article 8.1(c)
- Article 8.3

UNRWA Personnel Directives

Related Judgments and Orders

2018-UNAT-820