



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2023-UNAT-1363

**Mohammad Eid
(Respondent/Applicant)**
v.
**Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East
(Appellant/Respondent)**

JUDGMENT

Before: Judge Dimitrios Raikos, Presiding
Judge John Raymond Murphy
Judge Sabine Knierim

Case No.: 2022-1720

Date of Decision: 30 June 2023

Date of Publication: 28 July 2023

Registrar: Juliet Johnson

Counsel for Mr. Eid: Self-represented

Counsel for Commissioner-General: Natalie Boucly

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. Mohammad Eid, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency), contested the calculation and the amount of his UNRWA Provident Fund (PF) benefits, namely interest on his PF credits (contested Decision).
2. By Judgment No. UNRWA/DT/2022/023, the UNRWA Dispute Tribunal (UNRWA DT) rescinded the contested Decision and ordered the Agency to pay to Mr. Eid USD 3,024.98 (impugned Judgment).¹
3. The Commissioner-General lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).
4. For the reasons set out below, the Appeals Tribunal grants the appeal and reverses the impugned Judgment.

Facts and Procedure²

5. Effective 6 September 1972, Mr. Eid was employed by the Agency on a monthly paid, Category X appointment, as a Teacher “F” at Al-Karameh Elementary School, Lebanon Field Office (LFO).³
6. Effective 30 June 2009, Mr. Eid retired.⁴ By letter dated 24 June 2009, he requested to have all his PF benefits⁵ deferred until 30 June 2019.
7. On 12 December 2020, the Commissioner-General issued PF Secretariat Circular No. PFS/19/2020 on the Special Interest Rates for the Main and Conservative Funds from

¹ *Eid v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment dated 15 June 2022.

² Summarized from the impugned Judgment as relevant to the appeal.

³ Impugned Judgment, para. 2.

⁴ *Ibid.*, para. 3.

⁵ The nature of the PF and of PF benefits is clarified in UNRWA Area Staff Rule 106.1(1) which provides as follows: “The Provident Fund is a scheme established by the Commissioner-General within the framework of these rules for the purpose of providing to eligible staff members upon their separation those benefits (hereinafter called “Provident Fund benefits”) to which they may become entitled under the provisions of rule 109.10.” According to Area Staff Rule 109.10(2), the PF benefits upon separation are comprised of PF credits and interest on the credits.

1 January 2020 to 30 November 2020 (PFS/19/2020).⁶ It provided that the interest rate to be applied to the accounts of separating participants for the period from 1 January 2020 to 30 November 2020 is, for the main fund, +6.91 per cent.

8. By e-mail dated 23 December 2020, Mr. Eid requested a total withdrawal of his PF benefits, stating that his last day in the PF would be 31 December 2020.⁷

9. On 13 January 2021, the Commissioner-General issued PF Secretariat Circular No. PFS/20/2020 on the Special Interest Rates for the Main and Conservative Funds from 1 January 2020 to 31 December 2020 (PFS/20/2020).⁸ It provided that the interest rate to be applied to the accounts of separating participants for the period from 1 January 2020 to 31 December 2020 is, for the main fund, +10.19 per cent.

10. By e-mail dated 19 January 2021, the Finance Office, LFO, requested that the Finance Department, Headquarters Amman, transfer USD 141,896.90 to Mr. Eid's account.⁹ He was not provided with a calculation of his PF benefits. On 25 January 2021, he received USD 141,882 in his bank account. The payment of the amount of USD 141,896.90 is, in the context of Mr. Eid's application, considered as the contested Decision.

11. By e-mail dated 26 January 2021 to the Field Human Resources Office, LFO (FHRO/L), Mr. Eid inquired about the payment of interest accumulated over December 2020.¹⁰ By e-mail dated 26 January 2021, FHRO/L explained that the payment he had received included the interest accumulated over December 2020. On 28 February 2021, he submitted a request for decision review (RDR). The Agency did not respond to his RDR.

12. On 19 April 2021, Mr. Eid filed his application with the UNRWA DT.¹¹ He requested to be paid the difference between the amount he had been paid and the amount he should have been paid, i.e. USD 3,039. He contended that his funds had been invested in the PF up to 31 December 2020, so he was entitled to the accrued interest up that date; as the total return for the calendar year 2020 was +10.19 per cent, he should have received USD 144,921.

⁶ *Ibid.*, para. 5.

⁷ *Ibid.*, para. 4.

⁸ *Ibid.*, para. 6.

⁹ *Ibid.*, para. 7.

¹⁰ *Ibid.*, para. 10.

¹¹ *Ibid.*, para. 13.

The impugned Judgment

13. By Judgment No. UNRWA/DT/2022/023, the UNRWA DT decided that (i) the contested Decision with respect to the calculation of Mr. Eid’s PF benefits is rescinded; (ii) the Agency is to pay him USD 3,024.98; and (iii) if the Judgment is not appealed, the Commissioner-General is obliged to pay him the amount on or before 14 October 2022, during which period the United States Prime Rate, applicable as of 16 August 2022, shall apply; if the amount is not paid in time, an additional five percentage points shall be added to the United States Prime Rate until the date of payment.¹²

14. The UNRWA DT recognized that Mr. Eid contested the interest rate applied to his PF credits.¹³ Area Staff Rule 106.1(16)(D)(ii) does not contain a temporal restriction that “a staff member is entitled to receive the best available interest rate declared one month before payment”, and it is silent on the exact definition of “the last published special interest rate”, leaving its meaning unclear. As such, the lower norm—PFS/20/2020—aids in interpreting it.

15. The UNRWA DT found that PFS/20/2020 was unambiguous: the interest rate of +10.19 per cent was “to be applied to the accounts of separating participants for the period from 01 January 2020 to 31 December 2020”.¹⁴ This approach does not contradict Area Staff Rule 106.1(16)(D)(ii) and is also in line with Area Staff Rule 106.1(5): “Accrual of interest on credits will continue till the end of the deferral period and all remaining credits shall be withdrawn from the Provident Fund at that time”. It is also equitable, both for the Agency and Mr. Eid, as the PF could have had a positive or negative rate of return for December 2020.

16. The UNRWA DT observed that it was not contested that the balance of Mr. Eid’s PF benefits without the accrued interest for 2020 was USD 131,520 on 1 January 2021.¹⁵ Given the applicable interest rate of +10.19 per cent, he should have received USD 13,401.88 as interest. Given the amount he was paid, the Agency is obligated to pay USD 3,024.98 in addition.

¹² *Ibid.*, para. 33.

¹³ *Ibid.*, para. 26. The UNRWA DT noted that Mr. Eid argued that he was entitled to the accrued interest on his PF credits up to 31 December 2020 and that according to PFS/20/2020, the interest rate of +10.19 per cent should have been applied, instead of +6.91 per cent.

¹⁴ Impugned Judgment, para. 28.

¹⁵ *Ibid.*, para. 30.

17. The UNRWA DT pointed out that Mr. Eid was never provided with a calculation of his PF benefits.¹⁶ The Agency also did not reply to his RDR with such a calculation. A “manual calculation” subsequently provided by the Agency differs from the paid amount.

Procedure before the Appeals Tribunal

18. On 15 August 2022, the Commissioner-General filed an appeal of the impugned Judgment with the Appeals Tribunal, to which Mr. Eid filed an answer on 6 October 2022.

Submissions

The Commissioner-General’s Appeal

19. The Commissioner-General requests the Appeals Tribunal to vacate the impugned Judgment.

20. The Commissioner-General argues that the UNRWA DT erred in law in holding that Area Staff Rule 106.1(16)(D)(ii) was ambiguous, and in applying an incorrect interest rate. The date of requesting a total withdrawal of PF benefits, as well as the published interest rate, are material facts. Mr. Eid requested, on 23 December 2020, the withdrawal effective 1 January 2021. The interest rate of +6.91 per cent was published on 12 December 2020, being the last published interest rate at the time of the withdrawal. Until 15 January 2021, only PFS/19/2020 could be applied, since PFS/20/2020 was not yet published. In the absence of the December interest rate, the annualized November interest rate was applied in this case. The UNRWA DT did not appear to consider the clear provisions of Area Staff Rule 109.10(2)(C).

21. The Commissioner-General contends that the UNRWA DT exceeded its competence by substituting its own decision for that of the Agency. If an incorrect interest rate had been applied, the UNRWA DT should have directed the Agency to compute the correct amount, instead of proceeding to calculate the correct amount itself.

¹⁶ *Ibid.*, para. 31.

Mr. Eid's Answer

22. Mr. Eid requests the Appeals Tribunal to reject the Commissioner-General's appeal.
23. He argues that he was not aware of most of the internal laws of the Agency, put forth in the appeal, as they were not provided or easily accessible to him.
24. Mr. Eid submits that no one advised him of the amount of the PF benefit he was entitled to receive or provided a calculation to enable him to make an informed decision whether to withdraw the benefit. Several people in the financial sector have agreed that he is entitled to interest until the date of the withdrawal, i.e. 31 December 2020. Furthermore, the rules of withdrawal are vague. Despite his request, the Agency did not explain the rules and did not communicate with clarity. It would be unfair to grant the appeal.

Considerations

25. The only issue before the Appeals Tribunal is whether the UNRWA DT erred in law or in fact by applying the interest rate of +10.19 per cent provided in PFS/20/2020 in the calculation of Mr. Eid's PF benefits and ordering the Agency to pay him the amount of USD 3,024.98 as difference in the payable amount thereupon.

26. With regard to the legal framework, UNRWA Area Staff Regulation 6.1 provides the competence of the Commissioner-General to establish the conditions of the participation of staff members in the PF:

The Commissioner-General shall make provision for the participation of staff members in the Agency's Provident Fund and shall establish the conditions of such participation.

27. Area Staff Rule 106.1(5), in relevant parts, specifies the accrual of interest on deferred credits as follows:

5. (A) Except as provided for in paragraph (B) below, a staff member shall cease to be a participant in the Provident Fund at midnight on the date of his/her separation from Agency service.

(B) Upon separation a participant may opt to defer receipt of all or part of his/her Provident Fund credits, such option to be communicated in writing to the Agency on or before the date of separation, also specifying the period of deferment. Such deferred credits shall be subject to these rules provided that:

[...]

(iii) The total credits may be withdrawn at the end of any month during the period after separation.

(iv) Accrual of interest on credits will continue till the end of the deferral period and all remaining credits shall be withdrawn from the Provident Fund at that time. Withdrawals during or at the end of that period will be effective on the last official working day of the month when payment becomes due.

...

28. Area Staff Rule 106.1(16) sets out the allocation of investment income to participants' accounts, in relevant parts, as follows:

The income earned each year by the Provident Fund assets under paragraph 18 below shall be applied to the participants' accounts in the following manner: (...)

(A) The Commissioner-General shall each year declare and publish the interest rate at which the income earned in the previous year by the Provident Fund assets shall be reflected in arrears annually in the participants' accounts, provided that the total income so allocated shall not exceed the total net income under paragraph 18 of this rule, after deducting expenses under paragraph 19. Any net income of a year not allocated to participants' accounts as interest of that year may be included in a succeeding year's interest credit, at the discretion of the Commissioner-General.

...

(D) The Commissioner-General shall also declare and cause to be published each month a special interest rate to be applied to the accounts of separating participants in the manner described below: (...)

(i) In declaring this special interest rate each month, the Commissioner-General shall take account of the investment performance of the Provident Fund assets as reflected in the reports by the Global Custodian and the estimated results of the Provident Fund Humanitarian Repayable Withdrawals scheme, for the period between the first day of the year immediately following the year covered by the last declared interest rate under (A) above, up to but not including the month in which the special interest rate is declared; he/she shall also take account of the requirements of paragraph 19 of this rule.

(ii) The last published special interest rate shall be applied to a separating participant's account for the period between the first day of the year immediately following the year covered by the last declared interest rate under (A) above, up to and including the month immediately preceding payment.

...

(E) The interest rates referred to above may be positive, nil or negative, depending on the assessment of investment performance.

29. Area Staff Rule 109.10(2) lays down the PF benefits:

A staff member who is a participant in the Provident Fund shall, upon separation from the Agency's service and subject to the provisions of paragraphs 3 and 5 of this rule, be paid Provident Fund benefits as follows:

(A) A staff Provident Fund benefit equal to the balance of staff credits in his/her account current to the date of separation; and

(B) An Agency Provident Fund benefit equal to the balance of Agency credits in his/her account current to the date of separation.

(C) Interest at rates as provided for in rule 106.1 paragraph 16.

30. PFS/19/2020 issued by the Commissioner-General on 12 December 2020 provides the following interest rate:

[S]pecial interest rates – which are unaudited and subject to change when audited – to be applied to the accounts of separating participants for the period from 01 January 2020 to 30 November 2020, are set for:

- The main fund at +6.91% (six point ninety-one percent).

...

31. PFS/20/2020 issued by the Commissioner-General on 13 January 2021 provides the following interest rate:

[S]pecial interest rates – which are unaudited and subject to change when audited – to be applied to the accounts of separating participants for the period from 01 January 2020 to 31 December 2020, are set for:

- The main fund at +10.19% (ten point nineteen percent).

...

32. In the present case, it is common cause that Mr. Eid requested a total withdrawal of his PF benefits on 23 December 2020 and he received USD 141,882 in his bank account on 25 January 2021. Therefore, in accordance with the plain stipulations of Area Staff Rule 106.1(16)(D)(ii), which provide for the application of the last published interest rate “up to and including the month immediately preceding payment” to the calculation of a staff member's PF benefits, the applicable legal instrument in Mr. Eid's case was clearly PFS/19/2020 issued by the

Commissioner-General on 12 December 2020 and not PFS/20/2020 which was issued by the Commissioner-General later, on 13 January 2021.

33. Consequently, as the Agency correctly argues, the UNRWA DT erred in its determination to the contrary, namely that the interest rate set out in PFS/20/2020 of +10.19 per cent for the main fund should have been applied by the Agency to the calculation of Mr. Eid's PF benefits and that he should have received USD 13,401.88 as interest, and in ordering the Agency to pay Mr. Eid the amount of USD 3,024.98.

34. Next, the Appeals Tribunal addresses Mr. Eid's submission about the Agency's duty of care. Mr. Eid puts forward, though not in a clear and unambiguous way:

No [o]ne explained to me any of the rules or advised how much I will be getting or even provide the calculation to make things easier for me to decide whether to go forward with the withdrawal or not. The funds and the experts including HR has a duty of care towards me and have the duty to inform me about such critical decision ie, withdrawals as it affects my wellbeing. I asked several people in the financial sector and they all agreed with me that I have the right to the interest paid till the day my money is withdrawn which is end of Dec 2020.

35. The duty of good faith on the Administration includes responding appropriately to requests from participants of funds or beneficiaries for information regarding the exercise of their choice of benefit options.¹⁷ But the Appeals Tribunal has found that, "by the same token, this Tribunal has repeatedly held that it is the staff member's responsibility to ensure that he or she is aware of the provisions of the Regulations and the Administrative Rules and ignorance of the law is no excuse".¹⁸

36. Hence, it was incumbent on Mr. Eid to have acquainted himself with the Area Staff Regulations and Rules and their import before exercising his right to request a total withdrawal of his PF benefits. As the Appeals Tribunal has noted in *Schepens*, "[w]hile the duty of good faith requires the Fund to respond appropriately to a participant's legitimate requests for information, it cannot be expected of the Fund to provide information in relation to every conceivable

¹⁷ *Schepens v. United Nations Joint Staff Pension Board*, Judgment No. 2018-UNAT-830, para. 33.

¹⁸ *Ibid.* See also *Al-Dawoud v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-664, para. 21; *El Saleh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-594, para. 26; *Diagne et al. v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-067, para. 22.

contingency or possibility that might or might not eventuate in the future”.¹⁹ Mr. Eid does not even contend, much less establish in evidence, that he had been misled or misinformed in his communication with the Agency in terms of the critical time to request the withdrawal of his PF benefits. At any rate, on 23 December 2020 when Mr. Eid proceeded with such a request, the only existing published legal instrument of the two circulars in question was PFS/19/2020 issued by the Commissioner-General on 12 December 2020, which provided for an interest rate of +6.91 per cent. In these circumstances, there was no other information or advice the Administration could have provided to Mr. Eid with regard to the interest rate on the PF credits. In the premises, there was no breach of the duty of good faith or duty of care.

37. In view of the foregoing, the appeal succeeds.

¹⁹ *Op. cit.*, para. 34.

Judgment

38. The Commissioner-General's appeal is granted, and Judgment No. UNRWA/DT/2022/023 is hereby reversed.

Original and Authoritative Version: English

Decision dated this 30th day of June 2023 in New York, United States.

(Signed)

Judge Raikos, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Knierim

Judgment published and entered into the Register on this 28th day of July 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar