



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2024-UNAT-1503/Corr.1

Amjad Hanna Issa
(Appellant)

v.

Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East
(Respondent)

JUDGMENT

Before:	Judge Nassib G. Ziadé, Presiding Judge Gao Xiaoli Judge Graeme Colgan
Case No.:	2023-1870
Date of Decision:	25 October 2024
Date of Publication:	18 December 2024
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Stephen Margetts

JUDGE NASSIB G. ZIADÉ, PRESIDING.

1. Mr. Amjad Hanna Issa (Mr. Issa), a current staff member of the West Bank Field Office (WBFO), filed an appeal with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) against Judgment No. UNRWA/DT/2023/041 (the impugned Judgment)¹ of the Dispute Tribunal for the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or Dispute Tribunal). The Dispute Tribunal had found that his application was not receivable *ratione materiae*.
2. In his application before the UNRWA DT, Mr. Issa contested the “decision of [the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) to place him on strike leave from 4 March to 31 May 2023]” (contested Decision).²
3. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

4. At the time of the appeal, Mr. Issa was employed as a Dental Surgeon by the WBFO.
5. On 24 January 2023, the WBFO notified its staff members of their right to participate in an open strike declared by the Area Staff Union, while advising those who did not wish to participate to inform their supervisors and the designated Human Resources (HR) focal point.
6. On 24 January 2023, Mr. Issa e-mailed the Area Health Officer (AHO) and the Head of the Field Human Resources Office (FHRO) to declare that he did not wish to participate in the strike.
7. The strike began on 23 January 2023 and ended on 8 February 2023. The staff members who had been on strike then returned to work.³

¹ *Issa v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2023/041.

² Annex 14 to Mr. Issa’s appeal (Mr. Issa’s application to the UNRWA DT). However, in his appeal form before the Appeals Tribunal, he clarified the scope of the contested Decision and requested “[r]escission of the UNRWA administrative *decisions* to place [him] on ‘strike leave’ *and* withhold [his] salaries and related entitlements for the months March, April, and May 2023” (emphasis added).

³ Annex 5 to Mr. Issa’s appeal (Response to Request for Decision Review), at 3.

8. On 25 February 2023, Mr. Issa e-mailed several staff members to inform them of his intention to take annual leave from 13 to 27 March 2023.

9. On 3 March 2023, before Mr. Issa's scheduled leave, the Director of UNRWA Affairs, West Bank, issued an e-mail to all staff members—including Mr. Issa—informing them of a second strike called to begin on 4 March 2023 and advising that staff members who wished to work should so indicate to the FHRO and to report to work on 4 March 2023. The e-mail confirmed that staff members who did not report to work would not be paid.⁴

10. Mr. Issa did not communicate his intention to return to work and in fact did not report to work on 4 March. Instead, he remained absent from work until his pre-announced annual leave of 13 to 27 March 2023.

11. On 17 March 2023, during Mr. Issa's leave, the Deputy Director of UNRWA Affairs, West Bank, instructed all WBFO staff members to complete an online form indicating whether they intended to participate in the strike, regardless of any prior communication with the FHRO or management.

12. On 21 March 2023, the Deputy Director sent a reminder to all staff members about the deadline to report their participation status in the strike. With no response from Mr. Issa, the WBFO placed Mr. Issa on strike leave and withheld his salary for March, April, and May 2023.

13. Mr. Issa received another e-mail on 31 March 2023, after returning from his annual leave, again requesting a declaration of his status either as on strike or not.⁵ Mr. Issa did not respond to that request. He also did not return to work after his annual leave but instead waited to return to work until the strike was over.⁶

14. On 5 July 2023, Mr. Issa submitted a Request for Decision Review (RDR) of the decision to place him on strike leave. The Agency responded to his RDR on 4 August 2023, confirming the contested Decision.

⁴ Annex 11 to Mr. Issa's appeal; Annex 5 to Mr. Issa's appeal (Response to Request for Decision Review), at 1.

⁵ Annex 10 to Mr. Issa's appeal.

⁶ Annex 2 to the Commissioner-General's answer (Application to the UNRWA DT), at 6. Annex 5 to Mr. Issa's appeal (Response to Request for Decision Review), at 1.

Procedure before the Dispute Tribunal

15. On 15 September 2023, Mr. Issa filed an application with the UNRWA DT, contesting the decision to place him on strike leave and requesting the restoration of all entitlements lost as a result of the contested Decision. Mr. Issa argued that he had reported twice that he was not participating in the strike and missed the e-mail deadline only because he was on annual leave and did not have access to his official e-mail address.⁷

The impugned Judgment

16. The UNRWA DT noted that during the strike, the UNRWA E-Time Management system remained partially operational and continued to provide access to pay slips. Therefore, the UNRWA DT found that Mr. Issa should have known by 7 April 2023 that he had not been paid his salary for March, making 7 April 2023 the start of the 60-day period to submit an RDR. Consequently, the deadline for submitting a request for review was 6 June 2023; however, Mr. Issa did not submit his RDR until 5 July 2023. The UNRWA DT concluded that the case was not receivable *ratione materiae* by way of summary judgment.⁸

Procedure before the Appeals Tribunal

17. On 17 November 2023, Mr. Issa filed an appeal against the impugned Judgment with the Appeals Tribunal, to which the Commissioner-General responded on 26 January 2024.

Submissions

Mr. Issa's Appeal

18. Mr. Issa requests that the Appeals Tribunal rescind the “administrative decisions to place [him] on ‘strike leave’ and withhold [his] salaries and related entitlements for the months March, April, and May 2023”.

19. Mr. Issa submits that the UNRWA DT erred on a question of fact by setting 7 April 2023 as the date of the contested Decision. Mr. Issa argues that the time limit should be reset to 7 May and 7 June 2023, as each payment inconsistent with a staff member's terms of reference

⁷ Impugned Judgment, paras. 12-13.

⁸ *Ibid.*, paras. 17-20.

constitutes a separate administrative decision.⁹ Mr. Issa further argues that since the non-payment of his salary during April and May also had direct legal consequences on his rights and obligations, the 60-day time limit should start running from 7 June 2023.¹⁰ Mr. Issa claims that because he did not receive any notification and was unaware of these decisions, they were implied administrative decisions.

20. Mr. Issa claims that the UNRWA DT had wrongly found that he “should have known he had not been paid his salary by no later than 7 April 2023”, and he should have realized that he had been placed on a three-month strike leave and would not receive payment for the entire period based solely on the non-receipt of one month’s salary. Instead, Mr. Issa contends that he did not become aware of the contested Decision until 17 June 2023, after returning to duty.

21. Mr. Issa argues that the UNRWA DT “exceeded its jurisdiction or competence” when determining the receivability of his application. Mr. Issa contends that by deciding that the time limit began on 7 April 2023, the UNRWA DT made a presumption that his salaries and entitlements would be withheld after that date but the UNRWA DT “has no jurisdiction to hear appeals against administrative decisions which may potentially affect a staff member’s terms of appointment or contract of employment in the future”.¹¹

22. Mr. Issa acknowledges that the E-Time Management system was partially operational during the strike but argues that the UNRWA DT exceeded its jurisdiction by considering it as evidence. He contends that the UNRWA DT was not permitted to evaluate any evidence or argument regarding the merits of an applicant’s claim when the application was deemed non-receivable.¹²

23. Mr. Issa submits that the UNRWA DT erred on a question of law by using the summary judgment procedure to address the issue of receivability. Instead, the issue of receivability should have been determined as a matter of law.¹³

⁹ Mr. Issa relied on *Atome (De Bondt) v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-877, para. 16.

¹⁰ Mr. Issa cited *Afeworki v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-794, para. 28.

¹¹ *Mirella et al. v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-842, para. 42.

¹² Mr. Issa relied on *Sawenja v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-986, para. 31.

¹³ *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-313, para. 23; *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 42.

The Commissioner-General's Answer

24. The Commissioner-General requests that the Appeals Tribunal uphold the impugned Judgment and dismiss Mr. Issa's appeal in its entirety.

25. The Commissioner-General submits that the UNRWA DT did not err, either in fact or law, in its use of summary judgment to conclude that Mr. Issa should have known, by no later than 7 April 2023, of the contested Decision to place him on strike leave and withhold his pay for the months of March, April, and May 2023.

26. The Commissioner-General claims that Mr. Issa failed to establish any reversible error in the impugned Judgment. In particular, the Commissioner-General argues that the UNRWA DT did not err in setting 7 April 2023 as the date of the contested Decision. He emphasizes that the sole administrative decision subject to judicial review was the one placing Mr. Issa on strike leave for three months, as acknowledged by Mr. Issa in his RDR and application to the UNDT.

27. The Commissioner-General contends that, unlike *Atome*¹⁴ cited by Mr. Issa—where the pay slips were the only means for the staff member to know that he had not been paid the correct amount—Mr. Issa knew or should have known that he had been placed on strike leave and would not be paid during this period through multiple channels, including communications with the Agency and the E-Time Management System. Therefore, the non-payments in April and May are not separate administrative decisions but merely reiterations of the contested Decision to place Mr. Issa on strike leave.

28. The Commissioner-General argues that it is implausible that Mr. Issa was unaware of the contested Decision until 17 June 2023. He claims that there is no evidence that Mr. Issa was unable to access the E-Time Management system, check his bank accounts, or communicate with the Agency to confirm his status during the three-month period. Moreover, non-payment at the end of each month following strike action should have been sufficient notice that he was not paid while on strike.

29. The Commissioner-General further argues that the UNRWA DT did not exceed its competence. Contrary to Mr. Issa's interpretation, in *Mirella et al.*¹⁵ the UNAT addressed the

¹⁴ *Atome (De Bondt)* Judgment, *op. cit.*, para. 16.

¹⁵ *Mirella et al.* Judgment, *op. cit.* para. 42.

uncertainty about whether the dependent spouse allowance for the applicants would be reduced or abolished, which meant there was no direct negative impact on their terms of employment. In contrast, in this case, there was no uncertainty; the WBFO staff members were clearly informed they would not be paid while on strike leave.

30. The Commissioner-General asserts that the UNRWA DT did not exceed its competence when considering the E-Time Management System as evidence. Instead, this fact that the E-Time Management System was partially functional so that Mr. Issa was able to check his pay slips was part of the record before the UNRWA DT, which Mr. Issa had never disputed at any stage of the proceeding.

31. The Commissioner-General claims that the UNRWA DT has appropriately ruled on the issue of receivability as a matter of law by way of summary judgment under Article 5 of the Rules of Procedure of the UNRWA DT (UNRWA DT Rules).¹⁶

32. The Commissioner-General concludes that there is no basis for considering the reliefs sought by Mr. Issa, as he failed to establish any reversible errors by the UNRWA DT, and the merits of the case have yet to be addressed by the UNRWA DT.

Considerations

33. The first issue to be decided is whether Mr. Issa's application to the UNRWA DT was receivable. Under the applicable Area Staff Rule, in order to preserve his right to challenge an administrative decision, Mr. Issa was first required to submit an RDR within 60 calendar days from the date on which he received notification of the decision to be contested.¹⁷

34. Mr. Issa submitted his RDR on 5 July 2023. Accordingly, such review may only entail an administrative decision communicated to him within the 60-calendar day period commencing on or after 6 May 2023. For the March 2023 payroll period, Mr. Issa would have been paid by 31 March 2023, well before the cutoff date.¹⁸ Accepting the UNRWA DT's reasonable conclusion that Mr. Issa should have known of his non-payment by no later than a week later (7 April 2023),¹⁹ the conclusion remains the same: any challenge regarding his

¹⁶ *Ronahi Majdalawi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2023-UNAT-1322, para. 34.

¹⁷ Area Staff Rule 111.2.

¹⁸ Impugned Judgment, para. 19.

¹⁹ *Ibid.*

salary for March is untimely. To this extent, we agree with the impugned Judgment that Mr. Issa's challenge to his payroll status for March 2023 is not receivable.

35. We part ways with the impugned Judgment regarding the receivability *vel non* of Mr. Issa's challenge to the decision not to pay him for April or May 2023. Payments for those months would have been made in early May and early June, respectively, both within the 60-day period prior to the RDR.

36. The UNRWA DT appears to have based its decision on receivability on the preliminary determination that Mr. Issa challenged only a single administrative decision, which it found he should have been aware of as of the payroll date for March 2023. But Mr. Issa in fact contests the decision not to pay him for each of the three months at issue (March, April, and May), and each such decision is itself an administrative decision subject to review.²⁰

37. Having determined that Mr. Issa's application is receivable in relation to the April and May non-payment of wages, we nonetheless conclude that Mr. Issa's application fails on its merits.

38. Mr. Issa takes the position that UNRWA wrongly placed him on strike leave and, accordingly, did not pay his salary for the challenged period. The stated basis for this position is that he never affirmatively stated he would be on strike for the March-May 2023 time period, and that various notices sent to staff members in March seeking confirmation of their intentions during the strike were sent while he was on leave, precluding his response.²¹ The record does not support these contentions.

39. The record shows that Mr. Issa was advised on 3 March 2023, prior to his going on leave, of his obligation to either report to work or be treated as having exercised his right to strike without pay by 4 March, and that he elected not to report to work. Moreover, at no time after his leave was over did he communicate with management regarding that issue. Although he contends that he simply wished to remain neutral and not take sides one way or the other, the fact remains that, by declining to report to work, Mr. Issa forfeited his right to be paid under clearly established policy as communicated to him in advance by UNRWA. Moreover,

²⁰ *Atome (De Bondt)* Judgment, *op. cit.*, para. 16 ("A payment to a staff member which is not in accordance with the terms of his or her appointment constitutes an administrative decision under Articles 2(1)(a) and 8(1)(c) and (d) of the UNDT Statute.").

²¹ Annex 2 to the Commissioner-General's answer (Application to the UNRWA DT), at 6.

while seeking an order from this Tribunal that he be paid for three months in which he did not work, Mr. Issa in his RDR acknowledged that he had been willing to bear the cost “to remain sitting on the fence and watching even if Management would cut my pay”.²²

40. Because Mr. Issa disregarded the directive of 3 March 2024 to report his intention to strike or not, and at no point between then and the end of the strike did he in fact report to work as he was permitted to do, we find no merit in his claim for restoration of his pay during the months in which he did not work. Although his application to the UNRWA DT was receivable with respect to April and May 2023, there is no substantive merit to his underlying claim for relief.

²² Annex 2 to Mr. Issa’s appeal (Request for Decision Review), at 3.

Judgment

41. Mr. Issa's appeal is dismissed, and Judgment No. UNRWA/DT/2023/041 is hereby affirmed for different reasons.

Original and Authoritative Version: English

Decision dated this 25th day of October 2024 in New York, United States.

(Signed)

Judge Ziadé, Presiding

(Signed)

Judge Gao

(Signed)

Judge Colgan

Judgment published and entered into the Register on this 18th day of December 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar