



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

Judgment No. 2021-UNAT-1086

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

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge John Raymond Murphy Judge Dimitrios Raikos
Case No.:	2020-1401
Date:	19 March 2021
Registrar:	Weicheng Lin

Counsel for Appellant:	Amer Abu-Khalaf, LOSA
Counsel for Respondent:	Rachel Evers

JUDGE SABINE KNIERIM, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal by Ezzedine Loubani (Mr. Loubani), an Administrative Officer serving at the United Nations Relief and Works Agency for Palestine Refugees in the Near East (Agency or UNRWA). Mr. Loubani filed an application to the UNRWA Dispute Tribunal (UNRWA DT) challenging the Agency's decision to assign him additional duties and responsibilities, without proper notification from human resources and without being awarded a promotion or a special allowance. On 17 May 2020, the UNRWA DT issued Judgment No. UNRWA/DT/2020/025,¹ dismissing Mr. Loubani's application as not receivable *ratione materiae*. For the reasons set out below, we grant the appeal and remand the case to the UNRWA DT.

Facts and Procedure

2. Mr. Loubani began service on 1 March 2011 on a fixed-term appointment as an Administrative Officer at UNRWA Headquarters in Amman, Jordan.

3. In October 2018, the Central Support Services Division (CSSD), where Mr. Loubani worked, was restructured, and his colleagues received new Post Descriptions (PD) showing their updated duties and responsibilities, but Mr. Loubani did not receive same.

4. Upon inquiry and discussion with his supervisor, on 19 January 2019, Mr. Loubani requested a copy of his PD from Human Resources (HR). On 20 January 2019, HR sent him the same old PD even though his tasks and responsibilities had changed. But 20 minutes later on that same day, Mr. Loubani received another e-mail from HR asking him to ignore the previous correspondence and furnished him with a new PD.

5. On advice of his supervisor, Mr. Loubani signed the new PD on 23 January 2019 and, on the same day, his supervisor made a recommendation to HR to grant him a special allowance.

¹ *Loubani v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2020/025 dated 17 May 2020 (Impugned Judgment).

6. By e-mail dated 24 February 2019, Mr. Loubani requested an update on the matter “Special allowance for Ezzedine/reconsidering his duties” from HR, and the latter answered that the matter was still under review. On 6 March 2019, Mr. Loubani sent a reminder e-mail to HR.

7. As he did not hear anything about the matter, on 20 March 2019, Mr. Loubani sent a Request for Decision Review to the Director of Human Resources (DHR), HQ Amman, in which he challenged his new PD, the restructuring of his post and the assignment of additional duties without awarding him a special allowance or a promotion and the retitling of his post. In particular, he claimed that his PD contains new duties (supervising and managing an administrative team, vendor verification etc.) and that some of his current duties and responsibilities are misrepresented. Additionally, the new PD also ignored the fact that he was leader of a Tender Opening Committee.

8. On 18 April 2019, the Deputy Commissioner-General responded “[a]s a result of my review, I find no basis to alter the decision not to pay you a special allowance” and added that Mr. Loubani had the right to appeal the decision.

9. On 16 July 2019, Mr. Loubani filed an application with the UNRWA DT. He complained that his new PD assigned new duties and responsibilities which had not previously been in his original PD. Additionally, he was also given the responsibility of Chairman of the Tender Opening Committee. He further emphasized that he was never informed of his new PD (like his colleagues were in September 2018) and had he not made the necessary inquiries, he would have never learned of the changes to his post. As a remedy, Mr. Loubani requested to be paid a special allowance or to be granted a promotion and the retitling of his post. Further, he requested compensation for the unfair treatment.

10. By Judgment dated 17 May 2020, the UNRWA DT dismissed the application as not receivable. It held that, in matters of financial entitlements, a staff member had a right to request to be attributed entitlements, but only a request filed by the staff member himself/herself could trigger an administrative decision subject to review. In the case at hand, Mr. Loubani never personally requested the Agency to grant him a special allowance; he only asked his supervisor to do so, which his supervisor did. The DHR did not respond to the request of Mr. Loubani’s supervisor. Subsequently, Mr. Loubani, without ever having personally submitted a request for the payment of a special allowance, submitted a Request for Decision Review. The UNRWA DT

reasoned there was no administrative decision, implied or explicit, that Mr. Loubani was entitled to contest or request to be reviewed. And as such, he could not contest an implied negative decision concerning his supervisor's request. Consequently, given the fact that Mr. Loubani failed to contest an administrative decision subject to judicial review, the UNRWA DT found the application not receivable *ratione materiae*.

11. In June 2020, the Agency responded to Mr. Loubani's supervisor regarding the special allowance and denied the request.

Submissions

Mr. Loubani's Appeal

12. Mr. Loubani contends that he and his supervisor followed the procedure outlined in Area Staff Personnel Directive PD/A/3/Rev.1/Part XI/Amend.5 (Special Allowances) which requires supervisors (and not the staff member) to make recommendations to the DHR regarding payment of special allowances. His grievance was not only circumscribed to the issue of the special allowance, however, but also included that he was given additional assignments without promotion or proper notification. He was performing duties above and beyond those for an Administrative Support Officer. He never received an updated PD until he requested it in January 2019, whereas his colleagues had received theirs in September 2018. He had been previously told that his duties had not changed. But when he compared his original PD and the updated PD, he found new managerial duties had been added without him receiving any new benefits. He was also tasked to lead the Tender Opening Committee in addition to the duties outlined in the updated PD, which required him to put in additional duty hours, for which no allowance was paid.

13. Upon finding the changes in his updated PD, he followed the proper procedure in cooperation with his supervisor to request a special allowance in January 2019. Having not heard back from HR, he requested a decision review in March 2019, which affirmed the decision not to grant him a special allowance.

14. The UNRWA DT focused only on the special allowance while his application also challenged the new assignments added to his PD without promotion and without notifying him.

The Commissioner-General's Answer

15. The Commissioner-General contends that the UNRWA DT followed Article 2(1) of the UNRWA Dispute Tribunal's Statute and that in matters of financial entitlements, only a request filed by the staff member, and not by his or her supervisor, can lead to an administrative decision. As Mr. Loubani never personally requested the Agency to grant him a special allowance, there was no administrative decision, implicit or explicit, for him to challenge and as such his application was not receivable *ratione materiae*.

16. The Commissioner-General also contends that the UNRWA DT must have considered issues relating to the additional duties conferred to Mr. Loubani because those were essentially linked to his supervisor's request for the special allowance.

Considerations

17. The relevant question on appeal is whether the UNRWA DT erred in holding that Mr. Loubani's application was not receivable for lack of an adverse administrative decision. We find that the UNRWA DT committed errors of fact and law, and the application is receivable.

18. Article 2(1)(a) of the UNRWA Dispute Tribunal Statute provides that the UNRWA DT is competent to review an application contesting an administrative decision that is alleged to be in non-compliance with an applicant's terms of appointment or the contract of employment.

19. As we have stated in *Hassanin*,² with reference to *Andronov*:³

It is acceptable by all administrative law systems that an "administrative decision" is a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules and regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.

² *Hassanin v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-759, para. 36.

³ Former Administrative Tribunal Judgment No. 1157, *Andronov* (2003), para. V.

Special Allowance

20. The UNRWA DT erred on a question of law and fact resulting in a manifestly unreasonable decision in holding that Mr. Loubani's application was not receivable because he himself did not make the request for a special allowance.

21. In principle, we agree with the UNRWA DT that a staff member can only appeal the denial of an advantage, benefit or privilege if he or she has previously requested such advantage, benefit or privilege. Also, a recommendation under para. 6 of PD A/3/Rev.1/Part XI/Amend.5, and the subsequent decision of the Agency will often remain an internal procedure between the supervisor and the Agency in which the staff member is not involved.

22. In the present case, however, we find that the 23 January 2019 recommendation also constitutes a request by Mr. Loubani to the Agency to pay him a special allowance. Not only did the supervisor act on Mr. Loubani's express request when he sent the recommendation to the DHR, but it was also apparent and self-understood to both Mr. Loubani and the Agency that Mr. Loubani was a party to the process. It was Mr. Loubani who sent a follow-up e-mail "Special allowance for Ezzedine/reconsidering his duties" to HR on 24 February 2019, and he was told, on the same day, that the subject request was still under review. To his 20 March 2019 Request for Decision Review, he received an answer from the Deputy Commissioner-General on 18 April 2019, in which she informed him that she understood the request as related to "the decision not to pay you a special allowance" and concluded: "[a]s a result of my review, I find no basis to alter the decision not to pay you a special allowance. You have the right to appeal the decision."

23. The Deputy Commissioner-General clearly did not only address the recommendation made by Mr. Loubani's supervisor but also considered the request by Mr. Loubani himself. She expressly stated that Mr. Loubani had the right to appeal the Agency's decision to reject his request. In this situation, it is erroneous for the UNRWA DT to conclude that Mr. Loubani's application was not receivable *ratione materiae*.

2018 Post Description

24. The UNRWA DT further erred on a question of fact with regard to Mr. Loubani's 2018 PD, resulting in a manifestly unreasonable decision. We agree with Mr. Loubani that the UNRWA DT, like the Commissioner-General, focused only on the special allowance and ignored that the issue of the 2018 PD was also part of Mr. Loubani's proceedings. After he had been notified of his new PD on 20 January 2019, Mr. Loubani filed a Request for Decision Review on 20 March 2019 (hence within the 60-day time limit under Area Staff Rule 111.2(3)). In this request, he challenged the new PD, the restructuring of his post, the assignment of additional duties without awarding him a special allowance or a promotion and the retitling of his post. In particular, he claimed that the PD contained new duties and that some duties and responsibilities were misrepresented. The PD also did not mention that he was Chair of the Tender Opening Committee.

25. In her 18 April 2019 response, the Deputy Commissioner-General only addressed the issue of the special allowance but not the PD. The PD was also at the center of Mr. Loubani's 16 July 2019 application to the UNRWA DT (which was filed within 90 days of the receipt of the response to his Request for Decision Review according to Article 8(1)(d)(i) of the UNRWA DT Statute). Reiterating his legal arguments from his Request for Decision Review, Mr. Loubani, as a remedy, claimed a special allowance or promotion with retitling of his post and moral damages for the unfair treatment.

26. The Appeals Tribunal has acknowledged that a post description, particularly after a restructuring process, can constitute an administrative decision which may be appealed, provided such application is made within the prescribed time limits laid out in Area Staff Rule 111.2(3) and Article 8(1)(d)(i) of the UNRWA DT Statute.⁴

27. For Mr. Loubani, the new PD had direct adverse effects, particularly because he was assigned additional duties not mentioned in his previous PD. This is undisputed and also supported by the 23 January 2019 recommendation for a special allowance in which his supervisor enumerated Mr. Loubani's duties and responsibilities "[a]s per his respective

⁴ *Abu Malluh et al. v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-690, paras. 48–49.

attached Post Description”. Mr. Loubani also claims that other duties and responsibilities of his are misrepresented and that the current PD does not mention his additional duty as Chairman of the Tender Opening Committee.

28. By signing the PD on 23 January 2019, Mr. Loubani neither expressed his approval nor waived his right to appeal. Specifically, para. 6 of the PD contained a section “Acknowledgment of Receipt of Copy of Post Description” and a declaration that the staff member has been “informed about the duties and responsibilities attached to the post” and that he or she has been given a copy of the post description. A signature to such a declaration can only serve as proof that the staff member has been notified of the PD on a specified date (although in Mr. Loubani’s case it is uncontested that he was notified a few days earlier on 20 January 2019). While a staff member can declare to have been “informed about the duties and responsibilities” attached to a post, this does not imply that he or she is in agreement with the assignment(s) contained in the PD.

Judgment

29. The case is remanded to the UNRWA DT for a consideration on the merits.

Original and Authoritative Version: English

Dated this 19th day of March 2021.

(Signed)

Judge Knierim, Presiding
Hamburg, Germany

(Signed)

Judge Murphy
Cape Town, South Africa

(Signed)

Judge Raikos
Athens, Greece

Entered in the Register on this 15th day of April 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar