



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

Judgment No. 2021-UNAT-1139

**Jihad AbdulGhani Oneis, Diab El-Tabari
and Walid Abdullah
(Appellants)**

v.

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

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge Kanwaldeep Sandhu Judge Sabine Knierim
Case Nos.:	2020-1445
Date:	25 June 2021
Registrar:	Weicheng Lin

Counsel for Appellants: Diab El-Tabari

Counsel for Respondent: Rachel Evers

JUDGE GRAEME COLGAN, PRESIDING.

1. Jihad AbdulGhani Oneis, Diab El-Tabari and Walid Abdullah, current staff members with the Lebanon Field Office (LFO) of the United Nations Relief and Works Agency for Palestine in the Near East (UNRWA or the Agency), appeal the decision of the UNRWA Dispute Tribunal (UNRWA DT) dated 3 June 2020 declining to receive their challenges to UNRWA's refusal or failure to pay salary allowances to them.¹ The UNRWA DT concluded that because the Appellants had failed to prove that they had requested payment of the allowances from UNRWA, the Agency had not made a reviewable administrative decision, which is a necessary prerequisite to recovery of these unpaid allowances. The UNRWA DT did not deal with the merits of the Appellants' claims to the relevant allowances which are contested by the Respondent.

2. We note at this point that although other appeals addressing payments of these allowances to LFO staff have been dealt with at the same time and by the same panel of Judges, those other cases involve different staff members and raise different issues for decision.² The issues decided by this case are specific to the three named Appellants and their particular circumstances.

3. For the reasons set out below, we dismiss the appeals.

Facts and Procedure

4. In 2019 UNRWA conducted a salary review for all staff engaged in the LFO as the Appellants were. This concluded not only that there should be a general increase for all, but that there should also be an additional increase in some monthly allowances for the holders of 17 specified posts. Payment of these allowances, determined in March 2019, was to be retrospective to 1 January 2019.

5. The Appellants considered that although they were not holders of any of the 17 specified posts, their roles and their terms and conditions were so similar to some of those 17 that they too should be paid a similar additional allowance. That is, they considered that their work was equal to that of colleagues who received the additional allowances, and so warranted such

¹ Judgment No. UNRWA/DT/2020/029 (Impugned Judgment).

² *Najwa Yusef, Imad El Manasri, and Rabie Abdulghani v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1141.

payments being made to them. When no additional payments were included in their March 2019, pay slips, they sought managerial review of their failure to qualify, advancing the reasons for their claims in their documentation to the review process. These reviews were unsuccessful. They subsequently filed an application to the UNRWA DT.

6. In the course of preparation for their claims to be heard, and by its Order No. 053, the UNRWA DT required the Appellants to file evidence establishing that each had submitted a request for payment of the relevant allowance(s). They did not do so and were deemed thereby to have been unable to provide evidence that they had done so. The UNRWA DT issued its Judgment refusing to receive their claims because of that failure to establish their individual requests for allowances. In its conclusion, there could have been no administrative decision which could have been the subject of management evaluation and subsequent challenge in the Tribunal.

7. While acknowledging that the Agency's refusal of a request for financial payment may be either explicit or implicit, the UNRWA DT held, at paragraph 23 of its Judgment, that it has "consistently held" that "... only a request filed by the staff member himself/herself can trigger such an administrative decision." No regulatory authority was cited for this proposition, or prior cases in which it has been applied.

8. UNRWA sought orders for costs of USD 300 against each of the Appellants but this was refused by the UNRWA DT.

9. These appeals against the UNRWA DT's Judgment were not filed within time, but it was extended without opposition from the Agency, due to the disruptions caused by the COVID-19 pandemic.

Submissions

Appellants' Appeal

10. The following are summaries of the extensive points advanced on appeal by the Appellants. In March 2019 they received an allowance of USD 167.00 for three months with retroactive effect (January-February-March). There was an additional allowance of USD 160.00 paid to Account Officers but not to Budget Officers and Claims Officers of the

same level. They, as staff in the latter categories, assert they should have been paid this additional allowance as were the Account Officers.

11. The Appellants take issue with the process and results of the salary survey. They say that UNOPS should not have been the entity to conduct the survey, but rather it should have been UNRWA's Compensation Division. UNOPS was used because its people were personal friends/colleagues of the Chief of Staff (who was later placed on special leave without pay) which breached rules and constituted a conflict of interest. The allowance should have been a salary increase not an allowance. The allowance was notified to staff members via the Chief of Staff, and it should have been a communication from the Commissioner-General. The Chief of Staff responded to their complaints about the process via a Facebook message that the allowance decision was final. This is proof of an administrative decision that they requested be revised and in response the Chief made the decision final.

12. They did request the Agency to reconsider the decision publicly, and the Chief of Staff responded via Facebook. They assert they received incorrect amounts of allowances and should have received salary increases. They requested the Chief of Staff to reconsider, but he did not agree to do so. Thus, they filed requests for a decision review. The UNRWA DT erred in fact as they did request revision of the allowances from the Chief of Staff and the Facebook reply annexed is evidence of the final administrative decision for which they sought decision review.

13. UNRWA DT erred in its procedure and breached due process rights as it did not share with Appellants the Respondent's communications with UNRWA DT as mentioned in paragraphs 17-19 of the impugned Judgment.

14. The Appellants request:

- (a) the survey be reconducted with results by May 2019 (this date is now moot);
- (b) the allowance amount is included as a salary scale increase;
- (c) the payment be increased to Mr. Tabari as USD 327 on a monthly basis in the salary scale;
- (d) retroactive payment effective December 2017, with interest;
- (e) moral damages of six months' salary due to harassment by management for appealing;

- (f) Messers. Oneis and Abdullah to receive the same allowances of USD 160.00 monthly to equate them with Account Officers, effective January 2019, plus interest;
- (g) moral damages for the frustration of doing more work in Budget than in Accounts while being compensated less.

Secretary-General's Answer

15. The Respondent requests the appeal be dismissed and the impugned Judgment upheld.

16. The Appellants fail to identify an error or defect in the impugned Judgment. They do not even cite or reference a ground of appeal as set out in Article 2 of the Appeals Tribunal's Statute. The Appellants do not criticise the reasons for the dismissal of their applications and instead show disagreement with the regulatory framework and policy of the salary allowances. They merely disagree with the outcome which is not sufficient to meet their burden as Appellants to identify error. They are rearguing their case.

17. Recognising latitude is afforded to self-represented litigants, the issue is whether the UNDT erred in law in rejecting the applications as not receivable because of a failure to meet a jurisdictional threshold. The UNRWA DT did not err in this finding. The UNRWA DT set out in paragraphs 21 and 22 of its Judgment that in matters of financial entitlements, a staff member has a right to request the entitlements and as long as the Agency has not explicitly or impliedly refused, only a request filed by the staff member can trigger an administrative decision. In their appeal, the Appellants suggest they did request entitlements which were denied by the Chief of Staff and contend that the UNRWA DT therefore erred in fact. Their application indicates the decision was made by the Commissioner-General and not the Chief of Staff. In addition, the appeal requests a revision to the allowance and not a request to be attributed the financial entitlement. The UNRWA DT therefore correctly found that they never individually requested the entitlement and thus there was no administrative decision to contest and review.

18. The relief requested has no legal basis given the appealable decision relates to receivability.

Considerations

19. Although the Appellants advance many diverse grounds of appeal, our task is relatively narrow. That is because the claims were dismissed on a threshold jurisdictional point that had nothing to do with the merits of the claims. Our task is to ascertain whether the UNRWA DT erred in its Judgment on this point. It is not competent for us to determine the substantive issues as the Appellants claim in the grounds of appeal just set out. That is because they have not been examined by the UNRWA DT the correctness of whose decision can be reviewed on appeal.

20. All except two of the Appellants' multiple grounds of appeal fall outside those permitted by the Appeals Tribunal's Statute. We will summarise briefly those extra-jurisdictional grounds of appeal. The Appellants seek to have this Tribunal examine the fairness of the claimed disparity between certain staff who received additional allowances, and the Appellants who did not. They complain about the propriety of the survey by which the increased allowances came to be allocated to staff. They claim that their salaries should have been increased rather than allowances paid selectively. They argue that the wrong official advised them of the allowances. These are all grounds of appeal which do not avail the Appellants. Because of our conclusion on the receivability ground of appeal, there is no need to examine the other viable ground which alleges that the UNRWA DT failed or refused to advise the Appellants of communications it had with the Respondent. We suspect that, in any event, the Appellants have identified the wrong paragraphs of the impugned Judgment which they say illustrate this failing by the Dispute Tribunal, but we do not need to determine that ground. We will only say that it is axiomatic that all significant communications between the Tribunal and a party should always be shared with other parties as a matter of natural justice and procedural fairness.

21. The Appellants' strongest argument is that the UNRWA DT erred in law in failing to address the Appellants' claims and thereby concluded that the Chief of Staff's response via a Facebook post confirming the denial of the Appellants' claims to the additional allowances, evidenced or established an administrative decision having been made by the Agency in response to their claims to these additional allowances. The Appellants' application to the UNRWA DT included a document issued in response to the Chief of Staff's Facebook post in Arabic although there is now significant doubt about whether that latter document was ever translated into English by or for the UNRWA DT.

22. Although the Appellants sought to reserve the right to later comment on the manner of this communication, for the purposes of establishing whether an administrative decision had been made by the Agency and thus grounds to seek a review of that decision established, this was an issue, supported by a document, before the Dispute Tribunal. Even if an UNRWA DT practice, it was unnecessary, in these circumstances, that the UNRWA DT directed by order that the Appellants establish their requests of the Agency, when the Agency's response to such a request was an exhibit in evidence before it. For threshold jurisdictional purposes, and even if it is the UNRWA DT's practice to obtain evidence of an express request for payment of remuneration, where such a request has necessarily been made (even implicitly) to evoke the response that had been placed before the Tribunal, then this should not stand in the way of the Tribunal considering the merits of the claims.

23. From the documents in the UNRWA DT's file which we now have before us, it seems clear that on an unknown date before 22 February 2019, the Chief of Staff (a representative of UNRWA) published a post on his Facebook page intended to address all relevant staff of UNRWA. The UNRWA DT's official English translation of this post made at our request (the Arabic version of which was an exhibit before the Dispute Tribunal) reads:

Reference is made to the Salary Survey in Lebanon Field Office [LFO].

After the approval of the results in LFO, and after extensive discussion with the members of the Executive Council, the allowance will be disbursed in March and will include the first and second months of this year pursuant to the relevant allowance table.

It seems that there are some people who have objection. They started collecting signatures in this regard.

I would like to note that collecting signatures for the purposes of objection will lead to freezing the allowance for everyone who has objection or rejection. I stress that there is no room for negotiating the approved results.

24. This post was responded to by staff (including the Appellants) by a published message dated 22 February 2019 in which they referred, among other things, to the Chief of Staff's "threatening message" and expressed their intentions to continue to press their claims to allowances.

25. The natural inferences to be drawn from the statement by the Chief of Staff, set out above, is that UNRWA had been approached by staff for entitlements in addition to those it had announced. Further, it had decided not to entertain, let alone agree to any changes to

them and that if there was further disputation about the allowances, payment of all additional allowances would be suspended. Although our decision of this appeal does not turn on the threat to penalise applicants contained in the final sentence of the Facebook post, we note that it identifies two forensic elements in the case. First, it emphasises the Organisation's stance of non-negotiability of the Appellants' requests. Second, it reinforces the strong inference that this was an administrative decision that affected the Appellants' employment entitlements including, as they did, to seek to be paid equally with their colleagues who received the additional allowances, for what they contended was their equal work. That employment right is embedded as deeply as in Article 23(2) of the General Assembly's 1948 Universal Declaration of Human Rights upon which the United Nations itself was founded.

26. That being so, the Chief of Staff's words strongly evidence an administrative decision having been made in response to the same issue the Appellants now claim, and which was the subject of their claims first to management evaluation and subsequently to the UNRWA DT. In that sense, the Facebook post may amount to notification to the Appellants of that administrative decision. The UNRWA DT's Judgment does not refer at all to this correspondence, although it was on the Tribunal's file. It is unclear why, but the fact remains that the UNRWA DT had evidence implying strongly that there had been an administrative decision by UNRWA not to pay allowances to those who claimed them as their entitlement. Therefore, its conclusion to the contrary was wrong.

27. It follows that the UNRWA DT erred in law by not taking account of this evidence and thereby concluded wrongly that there was no evidence of an administrative decision affecting the Appellants' which was a necessary precondition for managerial evaluation and to receivability by the Tribunal.

28. However, a necessary consequence of this conclusion which is in the Appellants' favour, is that notice of the administrative decision of the Agency came to the Appellants' attention no later than 22 February and probably earlier than that date. Even assuming that it did so as late as 22 February, more than 60 days elapsed before they sought management evaluation of that decision. That was beyond the statutory period for doing so and this failure to apply in time left the Appellants unable in law to apply to the UNRWA DT. Although neither the parties nor the UNRWA DT considered or addressed this point, it is essential to jurisdiction in both the UNRWA DT and, on appeal, in this Tribunal that there must have been compliance with such time limits. There was not.

29. It follows that, although we are satisfied that the UNRWA DT erred in law, its Judgment dismissing the Appellants' claims must nevertheless be upheld on another ground (lateness of their request for management evaluation) as we have just outlined.

Judgment

30. For the foregoing reasons, we dismiss the appeals and uphold the UNWRA DT's Judgment No. UNRWA/DT/2020/029.

Original and Authoritative Version: English

Dated this 25th day of June 2021.

(Signed)

Judge Colgan
Auckland, New Zealand

(Signed)

Judge Sandhu
Vancouver, Canada

(Signed)

Judge Knierim
Hamburg, Germany

Entered in the Register on this 19th day of August 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar