



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2022-UNAT-1299

Hiba Mohamad Abou Salah
(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 John Raymond Murphy, Presiding Judge Dimitrios Raikos Judge Martha Halfeld
Case No:	2021-1635
Date of Decision:	28 October 2022
Date of Publication:	23 December 2022
Registrar:	Juliet Johnson

Counsel for Ms. Abou Salah

Self-represented

Counsel for Commissioner-General:

Hannah Tonkin

JUDGE JOHN RAYMOND MURPHY , PRESIDING .

1. The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or the Agency) appeals against the Judgment of the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT), No. UNRWA DT/2021/044 of 31 September 2021, directing him to pay Ms. Hiba Mohamad Abou Salah a Senior Professional Officer Allowance (SPOA) equivalent to 25 per cent of her salary instead of an allowance of 15 per cent. We uphold the appeal on the ground that the application to the UNRWA DT was not receivable.

Facts and Procedure

2. The facts of the case are set out fully in the Judgment of the UNRWA DT as follows:¹

... Effective 3 October 2011, the Applicant was employed by the Agency on a Fixed-

... By email dated 20 February 2019, the Head, Field Human Resources Office, LFO (“H/FHRO/L”) requested an exceptional approval for an SPOA of 25 percent for the Applicant’s post.

... By letter dated 2

... By email to the DHR dated 26 December 2019, the Applicant reiterated her request to be paid an SPOA of 25 percent. On 20 January 2020, the Applicant sent a reminder email to the DHR. On the same day, the DHR informed the Applicant that the response for her request was not yet issued.

... The Applicant indicates that, on 11 March 2020, the A/HPFLO/L verbally informed her that the HRD made the final decision on her case, namely, that she was not entitled to an SPOA of 25 percent and that the HRD would issue a revised LoA indicating an SPOA of 15 percent for the Applicant, which would cancel and supersede her initial LoA. This is the contested decision.

... On 25 March 2020, the Applicant submitted a request for decision review contesting the decision to pay her an SPOA equivalent to 15 instead of 25 percent of her salary.

... By letter dated 27 April 2020, the Director of Health upheld the contested decision on the grounds that the commitment in the Applicant's LoA was erroneous and

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on 11 March 2020 that the HRD had made a final decision that she was not entitled to a SPOA at 25 per cent. Ms. Abou Salah made her request for decision review just over a week later.

17. Subsequent correspondence sent to Ms. Abou Salah during April and May 2020 by other officials of the agency confirmed the earlier decision. Of importance, is the letter of 19 May 2020, in which the Acting Head of Field Procurement informed Ms. Abou Salah that the percentage in her LoA should have been 15 per cent and not 25 per cent and that that letter would supersede the LoA.

18. The UNRWA DT considered that this letter issued on 19 May 2020 (subsequent to Ms. Abou Salah submitting a request for decision review) constituted a new decision of which she was supposedly informed verbally on 11 March 2020 and that therefore the request for review was timely. That finding is erroneous and wholly unsustainable.

19. Insofar as the decision of 25 April 2019 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. 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 timebarred because the staff member could always prevent that possibility by the simple expedient of sending an e-mail querying the basis of the decision.² Ms. Abou Salah's subsequent correspondence, as well as that written on her behalf, accordingly, did not extend the time limit for requesting decision review.

20. 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

possible for the time limits to commence prior to written notification, and if the final decision was taken or communicated subsequent to the request for decision review it can hardly be the contested administrative decision in issue.

21. Consequently, the UNRWA DT erred in law in determining the [redacted] and that error led to the UNRWA DT exceeding its jurisdiction in determining the merits of the case. In terms of Article 8(3) of the UNRWA DT Statute, the UNRWA DT shall not suspend or waive the deadlines for decision review. 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.

22. The appeal on the question of receivability must be upheld. There is accordingly no reason to address the merits of whether the Agency was permitted in law to rectify its unilateral mistake.

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