



JUDGE RICHARD LUSSICK, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Samira Mahmoud Hamad (the Appellant) against Judgment No. UNRWA/DT/2011/013, rendered on 2 November 2011 by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT and UNRWA, respectively) in Amman, Jordan. The Appellant appealed on 22 December 2011. The Commissioner-General of UNRWA answered on 19 March 2012.

Synopsis

2. Ms. Hamad contests the decision of the UNRWA DT that there was no appealable administrative decision. The UNRWA DT found that the Provident Fund Secretariat (the Secretariat), in calculating the interest applicable to her payout from the Provident Fund, was merely complying with the provisions of Area Staff Rule 106.1.16(D)(i) and (ii), which action did not amount to an administrative decision. The Appeals Tribunal dismisses the appeal and affirms the Judgment of the UNRWA DT.

Facts and Procedure

3. The Appellant joined UNRWA on 4 November 1967 as an elementary school teacher in Syria. Effective 30 September 1999, she was separated from service on early retirement.

4. On 7 October 1999, the Appellant requested that payment of the balance of her Provident Fund account be deferred for ten years.¹

5. On 3 December 2008, the UNRWA Commissioner-General declared the special interest rate for the month of November 2008 to be -18.49%.

6. On 21 December 2008, the Appellant requested withdrawal of the balance of her Provident Fund account. Her account was officially closed as of 30 November 2008. The -18.49% interest rate in effect for the month of November 2008 was applied to calculate the balance of

¹ The Provident Fund is a scheme established by the UNRWA Commissioner-General for the purpose of providing benefits to eligible UNRWA staff members upon their separation.

her Provident Fund account.

Submissions

Ms. Hamad's Appeal

13. The Appellant maintains that the UNRWA DT erred in law by basing its decision on Area Staff Rule 106.1.16 (D)(i) and (ii), when it should have applied Area Staff Rule 106.1.5 (B)(i)-(iv), so that the withdrawal could be made as of the end of the month of December 2008.

14. Ms. Hamad also maintains that, according to Section D(3) of the Administrative Rules of the United Nations Joint Staff Pension Fund (UNJSPF), the period of 21 days in December 2008 should have been calculated up to 31 December 2008. Ms. Hamad was of the opinion that the rules of UNRWA, being an agency of the United Nations, cannot contradict the UNJSPF rules.

15. The Appellant requests that the Appeals Tribunal order UNRWA to compensate her for the difference between the December and November 2008 interest rates for the withdrawal of her Provident Fund account.

UNRWA's Answer

16. The Commissioner-General of UNRWA submits that the UNRWA DT Judgment is consistent with the jurisprudence of the Appeals Tribunal that neither regulatory decisions nor decisions that do not infringe on a staff member's terms of appointment are appealable administrative decisions. The Commissioner-General points out that his decision to declare monthly the interest rate to be applied to the Provident Fund, including with respect to a withdrawing participant's account, is a decision of "general application" and has no effect on the withdrawing participant's terms of appointment.

17. The Commissioner-General also notes that the Appellant did not refer to the regulations and rules of the UNJSPF in her application to the UNRWA DT and only now seeks to introduce them on appeal. In any event, the Commissioner-General maintains that the UNJSPF rules are not applicable to the Appellant. Her conditions of service are governed exclusively by UNRWA's Area Staff Regulations, Rules and administrative issuances.

Considerations

18. The Appellant contends that the UNRWA DT erred in basing its decision on former Area Staff Rule 106.1.16(D)(i) and (ii) instead of applying Area Staff Rule 106.1.5(B)(i) to (iv).

19. Specifically, the Appellant relies on Area Staff Rule 106.1.5(B)(iv) which states that: “Accrual of interest on credits will continue till the end of the deferral period and all remaining

Provident Fund account for ten years, the Appellant agreed that, during the deferral period: “All sums in my account shall be held in accordance with the Area Staff Rules as may be amended from time to time, in the very same manner as for active staff members, including ploughback of any exchange rate movements and interest.” Moreover, the Appellant has not demonstrated how the UNRWA DT erred in finding that

the Applicant’s terms and conditions of employment are governed solely and exclusively by the Agency’s Area Staff Regulations and Rules and other relevant issuances as amended by the Agency, including those relating to the Provident Fund and payments upon withdrawal and the applicable interest rates (emphasis in original).

23. The UNRWA DT considered that the main issue before it was whether or not there was an appealable administrative decision. The UNRWA DT decided that the manner in which the Secretariat calculated the Provident Fund balance of separating participants did not constitute an administrative decision alleging the non-observance of the Appellant’s terms of appointment and was, therefore, not within its jurisdiction. The Appeals Tribunal finds that this decision is correct. 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 or 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 legal consequences.²

24. The actions of the Secretariat clearly do not fall within this definition. The Secretariat

or omissions or refusals to act in accordance with the law, nor to any violation of the law infringing her rights. On the facts, the loss she complains of was not caused by any action of the Secretariat, but rather by the poor investment performance of the Provident Fund.

25. For the foregoing reasons, the Appeals Tribunal holds that there was no appealable administrative decision.

Judgment

26. This appeal is dismissed and the Judgment of the UNRWA DT is affirmed.

Original and Authoritative Version: English

Dated this 1st day of November 2012 in New York, United States.

(Signed)

(Signed)

Judge Lussick, Presiding