



Judgment No. 2016-UNAT-643



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Counsel for Commission

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requested that he contact the Human Resources Department for rectification of the issue. That same day, the HPC/ICT Unit wrote to the Chief, Human Resources Services Division (CHRSD) stating that it was not fair to pay the new SOA only as of April 2014, as Mr. Harb had been performing the same duties since December 2011.

7. By e-mail dated 30 April 2014 to the HPC/ICT Unit, the CHRSD reaffirmed the new SOA rate would take effect on 1 April 2014.

8. On 12 May 2014, Mr. Harb filed a request for decision review and on 11 June 2014, the Deputy Commissioner-General (DCG) upheld the CHRSD's decision.

9. On 25 June 2014, Mr. Harb filed an application with the UNRWA DT challenging the decision not to pay him SOA at the rate of OCC 66 from 1 December 2011.

10. On 30 July 2015, the UNRWA DT issued Judgment No. UNRWA/DT/2015/043, dismissing the application as not receivable. It stated "the SOA was created as a management strategy to offer more competitive salaries in order to attract or retain staff members who could otherwise be lured away by more lucrative offers. The Commissioner-General has discretionary authority in approving and removing this allowance based on the Agency's needs and the current market."¹ The decision to grant or deny payment of an SOA does not affect the terms of the appointment or contract of employment of a staff member as defined in Article 2(1)(a) of the UNRWA DT Statute and is therefore not subject to judicial review. The UNRWA DT noted that the same applied with respect to a decision to retroactively grant an SOA.

11. On 15 September 2015, Mr. Harb appealed and on 16 November 2015, the Commissioner-General answered.

Submissions

Mr. Harb's Appeal

12. The UNRWA DT failed to exercise jurisdiction vested in it by not considering within the scope of its jurisdiction the decision not to retroactively pay Mr. Harb SOA at OCC 66. Mr. Harb contends the UNRWA DT misunderstood the nature of the decision he challenged.

¹ Impugned Judgment, para. 29.

THE UNITED NATIONS APPEALS TRIBUNAL

Commissioner-General requests that the Judgment be remanded to the UNRWA DT for a consideration of the merits of the case.

Considerations

19. The issue in this appeal is whether the UNRWA Dispute Tribunal was correct in finding that the Administration's decision not to award Mr. Harb the SOA at OCC 66 retrospectively from 1 December 2011 was not an administrative decision subject to judicial review.

20. Article 2 of the UNRWA Dispute Tribunal's Statute provides that the UNRWA Dispute Tribunal "shall be competent to hear and pass judgement on an application filed by an individual ... against... (a) ... an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment". It also establishes that "[t]he terms 'contract' and 'terms of appointment' include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance".

21. Thus, in order to decide whether a staff member's application is receivable, the UNRWA Dispute Tribunal must consider whether there has been an administrative decision which affects that staff member's contract of employment or terms of appointment.

22. In the present case, the UNRWA Dispute Tribunal decided that the impugned decision was not a contestable administrative decision.

23. Mr. Harb claims that the UNRWA Dispute Tribunal failed to exercise its jurisdiction because it misunderstood what he was challenging. He submits that the decision he was challenging was the Agency's refusal to pay him the higher SOA to which he was entitled, at the rate of OCC 66, from 1 December 2011 "rather than from the date of the rectification of the mistake in the job description". According to Mr. Harb, the issue to be decided "is not whether [he] was entitled or not to the SOA, but the refusal of its retroactive payment corresponding to the correct OCC 66 from the date of the signature of his post description inasmuch his tasks and work remained the same during the two years and [a] half the Agency lasted to rectify its mistake".

... What constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision.

27. In short, as held by this Tribunal in *Lee*,⁶ the key characteristic of an administrative decision subject to judicial review is that the decision must produce direct legal consequences affecting a staff member's terms and conditions of appointment; the administrative decision must have a direct impact on the terms of appointment or contract of employment of the individual staff member.

28. We find that the Dispute Tribunal erred when it failed to consider that Mr. Harb was contesting a specific decision denying him a retrospective payment of the higher SOA. Accordingly, we find that the UNRWA Dispute Tribunal erred in law in deciding that Mr. Harb failed to identify an administrative decision capable of being brought within the scope of judicial review. The Agency's refusal of a retrospective payment of the higher SOA was an administrative decision which clearly and unequivocally impacted on Mr. Harb's terms and conditions of appointment.

29. We hold that Mr. Harb's application before the UNRWA Dispute Tribunal was receivable.

30. The appeal therefore succeeds.

Judgment

31. The appeal is allowed. Judgment No. UNRWA/DT/2015/043 is set aside and the case is remanded to the UNRWA Dispute Tribunal for a consideration of the merits before a different judge.

⁶ *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, para. 49.

