AL-HARIRI et al.

v.

COMMISSIONER GENERAL
OF THE UNITED NATIONS RELIEF AND
WORKS AGENCY FOR PALESTINE REFUGEES

JUDGMENT

Special Occupational Allowance

Counsel for Applicants:
Self-represented

Counsel for Respondent:
W. Thomas Markushewski
Introduction

1. These are applications by 30 Area Staff members (the “Applicants”) against the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (the “Respondent”), to reduce the amount of Special Occupational Allowances (“SOA”) paid to Area Staff members between grades 12 and 20 at Siblin Training Center following salary increases for Area Staff in Lebanon.

2. Considering that each application is a copy of the others, raising identical facts, asserting the same claims and seeking the same relief, distinguished only by the name, date, and signature of the individual Applicant, and that consolidating them will serve judicial economy and consistency without changing or affecting the rights of each party, the Tribunal has decided to join them. Each of the 30 Applicants is identified in the list attached as Annex 6 to the application dated 30 November 2011.

3. Pursuant to General Assembly Resolution 63/253 of 24 December 2008, the Joint Appeals Board was abolished as of 1 July 2009. Effective 1 June 2010, as set out in Area Staff Regulation 11.1, the Agency established the UNRWA Dispute Tribunal (the “Tribunal”) and all appeals pending with the Joint Appeals Board on the date of its abolition, including this application, were transferred to the Tribunal.

4. As a transitional measure, Article 2, paragraph 5 of the Statute of the Tribunal provides that the Tribunal shall be competent to hear and pass judgments on cases filed prior to the establishment of the Tribunal and in respect of which no report of the Joint Appeals Board (JAB) has been submitted to the Commissioner-General.
Facts

5. On 20 December 2004, the Respondent’s Compensation Management and Services Division (“CMSD”), a branch of the Human Resources Department, embarked on an Agency-wide comprehensive study of the remuneration levels of key Area Staff positions with a view towards introducing Special Occupational Allowances. The study was divided into two phases: SOA Phase I, applicable to post grades 17 to 20; and SOA Phase II, applicable to posts grades 12 to 16.

6. On 17 April 2005, SOA Phase I was promulgated with payments to be effective on 1 June 2005. On 14 February 2006, SOA Phase II was promulgated with payments to be effective on 1 January 2006.

7. On 15 February 2006, Area Staff Circular No. A/01/2006 was issued providing “detailed information about the Study so that all employees understand how the Agency went about comparing how much UNRWA staff earn with employees doing similar jobs outside the Agency.”

8. By Transmittal Memorandum No. 122 dated 11 December 2008, the Commissioner-General informed all staff holding contracts subject to the Agency’s Area Staff Regulations and Rules that, as a result of the Government of Lebanon’s adjustments to the salaries of civil servants:

   2. Consequently salaries of UNRWA Area staff in Lebanon are adjusted by an amount of LBP*1 240,000 per month.

3. As a result of a 1992 decision to fix the IEA ‘floor’ exchange rate, i.e. LL**2 775=$1 the above adjustment is reflected in the salary scale as an increase of LL 123,920 per month. This rate, subject to the Interim Emergency Allowance (IEA) multiplier, will produce an amount of LL 240,000.

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1 * LBP = Lebanese Pound
2 ** LL = Lebanese Lira
4. The effective date of the salary adjustment is 1 November 2008.

9. By memorandum dated 14 January 2009, 33 Area Staff members at grade 12 and above at Siblin Training Center jointly wrote to the Field Administration Officer, Lebanon (“FAO/L”), stating that SOA should not decrease as a result of a salary adjustment for Area Staff in Lebanon, effective 1 November 2008 as reflected in Transmittal Memorandum No. 122 dated 11 December 2008.

10. By memorandum dated 25 February 2009, the same 33 Area staff members again jointly wrote to the FAO/L repeating their request of 14 January 2009.

11. By memorandum dated 2 March 2009, the FAO/L advised the 33 staff members that their query regarding their salary status was being reviewed by CMSD at Headquarters, Amman and the result would be communicated to them once it was received.

12. By memorandum dated 4 September 2009, the principal of Siblin Training Center was requested by the Field Personnel Officer, Lebanon (“FPO/L”) to inform the aforementioned staff members that “in the absence of evidence of a change in the market of vocational training specialists, revising the SOAs will not be feasible.”

13. By Transmittal Memorandum No. 132 dated 28 December 2010, the Commissioner-General again informed staff holding contracts subject to the Agency’s Area Staff Regulations and Rules that, given the results of a salary survey of October 2010, indicating that UNRWA salaries are largely at or above salaries paid by the Government of Lebanon for comparable jobs:

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3 Including all the Applicants joined in this application except Mr. Bilal Aziz, Mr. Mustafa Najah, Mr. Assad Assad, Ms. Rania Al Jazzar, Mr. Imad Shouli, Mr. Nayef Khalil and Ms. Rim Iskandarini (noting that while the fourth name on the list (attached to the application) appears to be that of Mr. Rabie A/Ghani, the print is not clear.
2. No significant salary adjustments have been made by the Host Government since the last salary survey. Some adjustments were noted with regard to allowances and certain categories of civil servants benefited from accelerated step increases. This brought a small number of UNRWA jobs slightly below our benchmark. To correct this I have decided to increase salaries for all UNRWA Area Staff in Lebanon by 3%.

3. The effective date of this increase is 1 January 2011.

4. The Special Occupational Allowance (SOA) of staff who are currently in receipt of this benefit, will be revised in accordance with the standing SOA policy.

14. By memorandum dated 11 April 2011, titled “Appeal to lift inequity caused to me by reducing my percentage of SOA” each Applicant wrote to the JAB.

15. Pursuant to a request from the Registrar of the Tribunal, due to the fact that there is no provision in the Area Staff Regulations and Rules for class action, each Applicant submitted an identical application on or about 12 June 2011.

 Applicant’s contentions

16. In each application, the Applicant claims that:

(i) by reducing the amount of SOA paid to each Applicant, “the application of article (11) [of Area Staff Circular No. A/01/2006] did not satisfy its main purpose, but did the opposite as it widened the gap”;

(ii) the 3% salary increase of January 2011 resulted in a reduction of SOA “because of the HCL [high cost of living], which is not related to SOA”;

(iii) the reduction of SOA is “unjustified and contradict[s] the spirit of article (11) [of Area Staff Circular No. A/01/2006]”.

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Each Applicant requests the Tribunal to order the Respondent to cancel the reduction of the SOA, with retroactive effect, and to “ensure that any future deductions be based on a lawful justification” in accordance with Article 11 of Area Staff Circular No. A/01/2006.

**Respondent’s contentions**

17. The Respondent essentially contends that:

   (i) no appealable administrative decision has been presented;
   (ii) each Applicant has failed to request decision review in respect of the second SOA reduction;
   (iii) each application is time-barred.

The Respondent requests the Tribunal to dismiss each application.

**Applicant’s rejoinder**

18. On 3 January 2012, the Applicant submitted a rejoinder of 4 pages (without requesting leave) following the Respondent’s Reply of 30 November 2011. Noting the absence of any provision in the Tribunal’s Statute regarding rejoinders, the Tribunal rejects the submission. The Tribunal notes that as a general rule it will not accept rejoinders which bring nothing new to the case at bar.

**Considerations**

*Main issues*

*Is the Respondent’s decision to reduce the SOA appealable?*

19. It is important to look at the legal and administrative framework applicable in the case at bar.
20. The Statute of the Tribunal, as set out in Area Staff Regulation 11.3, provides in Article 2, with regard to the types of decision that are appealable, that:

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Commissioner-General as the Chief Executive Officer of UNRWA;

   (a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The 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;

   (b) To appeal an administrative decision imposing a disciplinary measure.

21. Area Staff Regulation 3.1 provides in part that:

   The salaries of staff members shall be as prescribed by the Commissioner-General in the staff rules.

22. Area Staff Rule 103.1, “SALARY SCALES”, provides that:

   The salaries payable to staff members in accordance with their respective grades, qualifications and duty stations shall be those set out in Appendix I to these rules:

   Appendix 1-A: Salary Scale – Lebanon

23. Each application is premised on the assertion by the Applicant that SOA will be reduced only in three instances: (i) where UNRWA grants salary increases that are unrelated to salary increases by the comparator, usually a host government; (ii) where UNRWA’s salary increase is greater than a salary increase by the comparator; or (iii) where the Government of Lebanon reduces salaries.
24. However, Area Staff Circular No. A/01/2006 regarding SOA Phase II sets out the purpose of the SOA as follows:

11. It is worth reminding staff that the Special Occupational Allowance is intended to make up the difference in pay levels between UNRWA and the external market for a given job in a specific occupational group. Hence, when staff members in receipt of a Special Occupational Allowance get a salary increase, it follows that their allowance will reduce, because the gap between their salary and the external job market has been reduced by the salary increase.

25. The purpose of the SOA, as set out in the above Circular, was to try to compensate staff for differences between UNRWA pay levels and those for comparable positions in the external market. When staff salaries were increased, the SOA was reduced because “the gap between their salary and the external job market has been reduced by the salary increase”, such that the total received by the staff member, in other words the combined salary and SOA, remained the same. An increase in staff salaries, such as each of those effective 1 November 2008 and 1 January 2011, expressly triggers a corresponding decrease in SOA, as set out in paragraph 11 of Area Staff Circular No. A/01/2006.

26. The United Nations Appeals Tribunal in its Judgment *Andati-Amwayi* 2010-UNAT-058, paragraph 18 held:

…administrative decisions might be of general application seeking to promote the efficient implementation of administrative objectives, policies and goals. Although the implementation of the decision might impose some requirements in order for a staff member to exercise his or her rights, the decision does not necessarily affect his or her terms of appointment or contract of employment.

In the case at bar, the Agency’s determination of the amount of SOA payable with reference to the difference in pay levels between UNRWA and the external market is a decision of “general application” and has no effect on the Applicant’s terms of appointment or the contract of employment. Administrative decisions which do not affect
a specific staff member’s terms of appointment or contract of employment, as in the present case, cannot be the subject of an application or an appeal as affirmed by UNAT in *Andati-Amwayi*. 

27. The Applicant is reminded that one does not create an appealable administrative decision by asking for a benefit that is not provided for in the relevant Staff Regulations and Rules, and then complaining when it is denied. To accept the Applicant’s claim that SOA should have remained the same following salary increases would be contrary to Area Staff Circular No. A/01/2006 and to the rationale for paying the SOA and correspondingly reducing it when salaries are increased.

28. To the extent that the Applicant may be seeking to appeal the manner by which the amount of the SOA is determined, it is important to recall that the calculation does not constitute an administrative decision for purposes of Article 2, paragraph 1, of the Statute of the Tribunal and, as such, does not fall within the Tribunal’s jurisdiction as “an administrative decision alleging the non-compliance with the terms of appointment” or an appeal “against a disciplinary measure”.

29. The Applicant is also claiming an increase in the SOA related to the cost of living increases. Again, it is important to remember that the Tribunal is not the appropriate avenue of recourse, it is not in its jurisdiction to enact new rules and it is not the proper forum to advocate for regulatory reform. The reduction of the SOA did not affect the Applicant’s terms of appointment and, therefore, there is no discretionary administrative decision made by the Respondent for the purposes of an application.

30. The Tribunal determines that each application is not receivable as a matter of law in regard to the Respondent’s initial decision to reduce the SOA.
31. Article 8 (c) of the Statute of the UNRWA Dispute Tribunal provides that “an application shall be receivable if an applicant has previously submitted the contested administrative decision for decision review.”

32. The Applicant is reminded that decision review is an essential element of the recourse procedure and must be complied with. The Tribunal refers to the jurisprudence of the United Nations Appeals Tribunal, which has confirmed that it does not have jurisdiction over complaints that were not subject to administrative review.\(^4\) Appellant 2011-UNAT-143 paragraph 41:

> It is well established in the jurisprudence of the Appeals Tribunal, as expressed in \textit{Crichlow} and \textit{Planas}, in order to invoke the jurisdiction of the [United Nations] Dispute Tribunal, a specific administrative decision must be identified and that administrative review, as required under the former internal justice system, must be sought in relation to that decision.

33. While the former Area Staff Rule 111.3 paragraph 4, allowed the JAB to waive time limits in exceptional circumstances, under the current system, the Tribunal’s Statute expressly forbids waiving deadlines for decision review per Article 8(3):

> The Dispute Tribunal shall not suspend, waive or extend the deadlines for decision review (emphasis added).

34. The Tribunal notes that the United Nations Appeals Tribunal has affirmed this on a number of occasions, most recently in \textit{Ajdini} et al. 2011-UNAT-108:

\(^4\) General Assembly Resolution 63/253 of 24 December 2008, while abolishing the Joint Appeals Board, introduced the new United Nations Administration of Justice System (“AoJ”). Accordingly, new Regulations and Rules regarding UNRWA Staff appeals procedures were promulgated by the Agency on 1 June 2010. One such significant change was the newly introduced requirement of decision review, which replaced the former system’s administrative review.
This issue [authority to waive the deadline for administrative review] should now be considered as settled because the Appeals Tribunal in *Costa* and other judgments such as *Mezoui*, *Samardzic* and *Trajanovska*, has consistently held that the UNDT has no jurisdiction to waive deadlines for management evaluation or administrative review.

35. In the case at bar, the Applicant has not submitted to the Agency a request for decision review in respect of the second SOA reduction resulting from the implementation of Transmittal Memorandum No. 132, dated 28 December 2010. By not complying with Article 8 of the Statute of the Tribunal, the Applicant has placed that element of the application beyond the competence of the Tribunal.

36. The Tribunal determines that the portion of each application relating to the implementation of Transmittal Memorandum No. 132 is not receivable.

*Is the application time-barred?*

37. According to former Area Staff Rule 111.3, paragraphs 1 and 2, in effect at the material time, a staff member who wished to appeal against a decision shall, within 30 days of receipt of written notification of the decision in question, first address a letter to the Agency’s administration requesting that the decision be reviewed.

38. Former Area Staff Rule 111.3, paragraph 3, required:

A staff member who wishes to appeal under the terms of staff regulation 11.1, after having sent a letter to the Agency’s administration in accordance with the foregoing provisions of this rule, shall submit a written appeal, specifying his/her allegations, to the Secretary of the Joint Appeals Board within the following time limits:

* * *

(B) In the case of staff members of Field Offices, within thirty days from the date of the receipt of a reply from the UNRWA Field Office Director, or, if no reply has been received from the latter within thirty days of the date of the staff member’s letter, then within the next thirty days.
39. Each application seeks to challenge the alleged salary reduction resulting from the implementation of Transmittal Memorandum No. 122 dated 11 December 2008. The FPO/L responded to the request for administrative review of this element of the application on 4 September 2009. Pursuant to former Area Staff Rule 111.3, the Applicant then had 30 days, i.e. until 4 October 2009, to file an appeal. Each applicant wrote to the JAB on 11 April 2011.

40. The former United Nations Administrative Tribunal has consistently reaffirmed the importance of observing the time limits prescribed for the various stages of the appeals process, stating that time limits are of utmost importance for ensuring the smooth functioning of any administration and must be interpreted restrictively, Judgment No. 1213, Wyss (2004), para. V. Also, it is the Applicant’s burden to demonstrate that he or she was prevented from filing his or her application in due time due to serious reasons or circumstances beyond his or her control, as affirmed by the United Nations Appeals Tribunal in Diagne et al, 2010-UNAT-067. The Tribunal notes that the Applicant failed to provide reasons for filing the application 18 months (i.e. 4 October 2009 to 11 April 2011) after the due date.

41. Moreover, Article 8 of the Tribunal’s Statute provides that:

The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend, waive or extend the deadlines for a limited period of time and only in exceptional cases.

The Tribunal determines that the Applicant has failed to comply with the time limits as set out in both former Area Staff Rule 111.3 and Article 8 of the current Statute and has failed to demonstrate that the delay of over 18 months was due to “serious reasons” or “circumstances beyond his [or her] control.”

42. The Tribunal determines that the application is not receivable because it is time-barred.
Conclusion

43. Given all the above, the Tribunal dismisses each application.

(Signed)
Judge Bana Barazi
Dated this 16th day of February 2012

Entered in the Register on this 16th day of February 2012

(Signed)
Laurie McNabb, Registrar UNRWA DT, Amman