Before: Judge Bana Barazi
Registry: Amman
Registrar: Laurie McNabb

BUSTAN

v.

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

JUDGMENT

Counsel for Applicant: Self-represented

Counsel for Respondent: Anna Segall
**Introduction**

1. This is an application by Mohd Mahmoud Bustan¹ (the “Applicant”) against the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (the “Respondent”), not to grant him a supplementary allowance of 20% of base salary.

2. Pursuant to General Assembly Resolution 63/253 of 24 December 2008, the Joint Appeals Board (the “JAB”) 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 JAB on the date of its abolition, including this application, were transferred to the Tribunal.

3. 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 judgment on cases filed prior to the establishment of the Tribunal and in respect of which no report of the JAB had been submitted to the Commissioner-General.

**Facts**

4. On 1 November 1997, the Applicant was employed with the Agency as a Guard at Qalqilia Hospital, in the West Bank, on a fixed-term appointment.

5. On 15 June 2005, the Applicant was transferred to the post of Ambulanceman², grade 6, at Qalqilia Hospital on a fixed-term appointment.

6. By email dated 12 December 2007, the Chief, Compensation and Management Services Division (the “CCMSD”) advised the officers concerned in the West Bank and Gaza that following the results of a comprehensive review of the staff salaries and benefits in the West Bank and Gaza, conducted in July-

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¹ The Tribunal notes that while the Respondent refers to the Applicant as “Mohammed Bustan” in his reply, the Applicant’s Letter of Appointment actually states “Mohd Mahmoud Bustan”.

² It should be noted that “Ambulanceman” is the post title of the Applicant’s position per the personnel record dated 25 July 2005.
August 2007, supplementary allowances would be paid to certain categories of staff.

7. By memorandum dated 21 January 2008, the Director of Human Resources (the “DHR”) advised the Directors of UNRWA Operations in the West Bank and Gaza that a supplementary allowance for the West Bank and Gaza had been authorised and would be paid effective 1 September 2007 in the following manner:

- a supplementary allowance of 20% of base salary to para-medical posts at grades 2, 5, 6, 7, 8 and 9;
- a supplementary allowance of 9% of base salary to Sanitation Foremen at grades 3 and 4;
- a supplementary allowance of 20% of base salary to staff occupying the posts in grades 5-9 in the sanitary occupations namely: Camp Sanitation Officer at grade 8, Chief Sanitation Foreman at grade 5, Sanitation Inspector grade 9, and Area Sanitation Officer at grade 8.

8. By a joint memorandum with a colleague dated 24 June 2009 to the Director of UNRWA Operations, West Bank (the “DUO/WB”), the Applicant claimed that he and his colleague had been treated unfairly by being excluded from the supplementary allowance of 20% applied to para-medical posts.

9. In a second co-authored memorandum dated 8 August 2009, the Applicant and his colleague complained again to the DUO/WB, repeating their request for the inclusion of ambulance drivers\(^3\) in the list of para-medical posts eligible for a supplementary allowance.

10. On 26 August 2009, the Applicant filed his appeal with the JAB.

11. On 30 July 2012, the Respondent filed his reply.

Applicant’s contentions

12. The Applicant contends that:

\(^3\) The Tribunal notes that while the Applicant’s post title is “ambulanceman”, he is in fact an ambulance driver, per his own words.
(i) he has been treated unfairly by the Agency by being excluded, as an ambulance driver, from the supplementary allowance of 20% of base salary given to para-medical posts;

(ii) ambulance drivers are para-medical posts as they involve working directly with patients when they carry them and put them inside the ambulance, their role is not less than the role of the nurse or doctor in serving patients and therefore these reasons qualify them to ask for this allowance.

13. The Applicant requests payment of the 20% supplementary allowance of base salary.

Respondent’s contentions

14. The Respondent contends essentially that there is no appealable administrative decision and that the application is not receivable *ratione temporis*.

15. The Respondent requests the Tribunal to dismiss the application.

Considerations

*Main Issues*

*Is there an appealable administrative decision?*

16. Former Area Staff Regulation 11.1 (A), in force at the time of the facts, provides that:

   The Commissioner-General shall establish a Joint Appeals Board with staff participation to advise him in case of any appeal by a staff member against an administrative decision alleging the non-observance of his or her terms of appointment, including all pertinent regulations and rules, or against disciplinary action.

17. In accordance with Article 2(a) of the UNRWA Dispute Tribunal Statute, the Tribunal has jurisdiction to hear and pass judgment on an application filed by an individual to appeal an “administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment”.
18. The former United Nations Administrative Tribunal ("UN Administrative Tribunal") has held that 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 direct legal consequences. (Judgment No. 1157, Andronov (2003), quoted in Judgment No. 1213, Wyss (2004)).

It is worth recalling that this definition by the UN Administrative Tribunal has been endorsed by the United Nations Appeals Tribunal in Tabari 2010-UNAT-030.

19. Given the above, the Tribunal is of the opinion that an administrative decision can only be considered as such if, inter alia, it has direct legal consequences on a staff member’s rights and obligations. In the case at bar, the Applicant contends that the post of ambulance driver should be classified as a para-medical post because ambulance drivers “work directly with patients when we carry them and put them inside the ambulance, our role is not less than the role of the nurse of doctor in serving patients; these reasons qualify us to ask for this allowance”.

20. It is important to look at the legal and regulatory framework applicable in this case. Area Staff Regulation 3.1 provides that:

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

21. Staff Rule 103.1 sets out the Salary Scales payable to staff members as prescribed by the Commissioner-General.

22. Personnel Directive No. A/3 Rev. 1, Part XI establishes discretionary allowances, and sets out the conditions governing payment of and the authorities for approving such allowances. More specifically, in paragraph 5:
5. **SPECIAL CASES**

Chiefs of Divisions at Headquarters and Field Office Directors in the Fields may present any recommendations for payment of other special allowances to the Director of Personnel for decision.

And in paragraph 6:

6. **PERSONNEL ACTIONS**

When the allowances outlined above have been authorized, an authority to effect payment will be conveyed to the Finance Office by Personnel Action Form (PAF), indicating the name of the allowance, its rate and term, and any special conditions or limitations attached thereto by the authorizing officer, and the reference and date of the authority.

23. Looking at the record, the Tribunal notes that Area Staff are categorised under Occupational Classification Codes ("OCC"). The Applicant’s post of Ambulance driver is categorised as OCC 81 designated for vehicle operation. The para-medical posts, which benefit from the supplementary allowance, are categorised under entirely distinct OCCs, the list of which as specified in the record clearly does not include the post of Ambulance driver. The Tribunal also notes that the express terms of the supplementary allowance provide that 20% of base salary is applicable only to para-medical posts in grades 2, 5, 6, 7, 8, and 9, as well as to sanitary posts in grades 5 to 9.

24. To the extent that the Applicant is seeking by this application to have his post as Ambulance driver classified as a para-medical post, and therefore qualify for the supplementary allowance on that basis, the Applicant is reminded that the Tribunal is not the proper forum to advocate for regulatory reform as it has no jurisdiction to enact new regulations, rules or administrative issuances. The Tribunal cannot substitute itself to the Administration or change the working conditions provided in an applicant’s Letter of Appointment. The classification of posts and the payment of supplementary allowance, like the payment of hazard pay, are policy prerogatives of the Agency.

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4 Such posts include: Assistant Pharmacist, Dental Hygienist, Lab Technician, Midwife Maternity, Nurse Anaesthetics [sic], Physiotherapist, X-Ray etc.
25. The United Nations Appeals Tribunal has held in Tabari 2011-UNAT-177 that the payment of hazard pay to area staff members depended, *inter alia*, on the policies, procedures and rules of the UNRWA administration. In dismissing the appeal, it stated at paragraph 35:

Under these circumstances, granting the present appeal would mean to substitute UNRWA’s lawful authority to administer the budget relating to its staff and to assume legislative prerogatives to rule on the matter of hazard pay and redesign the general policies of that Agency.

26. The Tribunal would like to remind the Applicant 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. Rather, an appealable administrative decision arises in the application of the Staff Regulations and Rules and no such Regulation or Rule entitled the Applicant to a supplementary allowance. Accordingly, the Tribunal is of the opinion that the non-payment of a supplementary allowance did not affect the Applicant’s terms of appointment, and therefore the Tribunal finds that no discretionary administrative decision has been presented for the purposes of an appeal.

27. As the Respondent’s decision to pay supplementary allowance to certain categories of OCCs did not apply to the Applicant whose post was not in one of the specified categories, and as the Applicant has failed to identify any non-observance of the terms of his employment or any breach of a Regulation or a Rule by the Respondent, the Tribunal finds that the Respondent’s contested decision does not give rise to an appealable administrative decision.
Conclusion

28. In light of the foregoing, the Tribunal finds that the application is not receivable. The application is dismissed.

(Signed)

Judge Bana Barazi
Dated this 15th day of August 2012

Entered in the Register on this 15th day of August 2012

(Signed)

Laurie McNabb, Registrar, UNRWA DT, Amman