HARB

v.

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

JUDGMENT

Counsel for Applicant:
Amer Abu-Khalaf (LOSA)

Counsel for Respondent:
Lance Bartholomeusz (DLA)
Introduction

1. This is an application by Mohammad Harb (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 pay him a Special Occupational Allowance (“SOA”) at the rate of Occupational Classification Code (“OCC”) 66 from 9 December 2011.

Facts

2. Effective 1 July 1995, the Applicant was employed by the Agency as an Audio Visual Production Assistant, Grade 12, Step 1 in the Education Department, Headquarters, Amman (“ED/HQA”). His post description was grouped in OCC 01 (Educational Specialists) with a corresponding SOA of 15 percent.

3. On 4 May 1999, the Applicant was promoted to the post of General Education Specialist, Audio Visual Media, Grade 15 in the ED/HQA.

4. The post was later upgraded to Institute of Education Specialist Audio Media, Grade 16. As a result, the Applicant was promoted to Grade 16 Step 07 effective from 1 January 2008.

5. By letter dated 28 November 2011, the Human Resources Officer (“HRO”) informed the Applicant, that effective 1 December 2011, his appointment would be reclassified as Audio Visual Media and Multimedia Advisor (“AVM Advisor”), Grade 16, with no change to his current Grade and Step. The post description for the post of AVM Advisor was grouped under OCC 01.

6. By Interoffice Memorandum to the Director of Human Resources (“DHR”) dated 9 February 2013, the Chief, Compensation and Management Services Division (“C/CMSD”) recommended that the post of AVM Advisors change from OCC 01 to OCC 66 (Audio Visual Services).

7. On 11 March 2014, the DHR approved the grouping of AVM Advisors in OCC 66.

8. By email to the Head, Partnerships, Communication and ICT Unit (“HPC/ICT Unit”) dated 27 April 2014, the Applicant expressed surprise that he had not been retroactively
granted the SOA at the rate of OCC 066, since December 2011. The Applicant requested that the HPC/ICT Unit, his first supervisor, contact the Human Resources Department for rectification of the issue.

9. By email dated 27 April 2014 to the Chief, Human Resources Services Division (“CHRSD”), the HPC/ICT Unit noted that it was not fair to pay the new SOA only as of April 2014 as the incumbent has been doing the same duties since December 2011.

10. By email dated 30 April 2014, the CHRSD wrote to the HPC/ICT Unit, affirming that the new SOA rate, under OCC 66, would take effect on 1 April of 2014.

11. On 12 May 2014, the Applicant filed a request for decision review.

12. On 11 June 2014, the Deputy Commissioner-General (“DCG”) upheld the CHRSD’s decision.

13. On 25 June 2014, the present application was filed with the UNRWA Dispute Tribunal (“the Tribunal”). On 26 June 2014, the application was transmitted to the Respondent.


15. On 11 August 2014, the Applicant filed a “Motion to Submit Observations on the Reply of the Respondent”.

16. By Order No. 083 (UNRWA/DT/2014/ Corr.01), dated 27 August 2014, the Tribunal granted the Applicant’s request to file observations.

17. On 7 September 2014, the Applicant filed his observations.

18. By Order No. 007 (UNRWA/DT/2015), dated 25 January 2015, the Tribunal ordered the Respondent to submit a reply on the merits.

19. On 24 February 2015, the Respondent submitted his reply on the merits.

20. By Order No. 059 (UNRWA/DT/2015) (“Order No. 059”), dated 28 May 2015, the Tribunal ordered the Respondent to produce all of the Agency’s issuances relating to SOA and OCCs.
21. On 8 June 2015, the Respondent filed his response to Order No. 059.

**Applicant’s contentions**

22. The Applicant contends:
   
i) The Agency never intended to reclassify the Applicant’s post;

ii) He is entitled to the SOA at the rate of OCC 66, retroactively from 9 December 2011 because his qualifications, responsibilities and experience have not changed since the date of the approval of his post description;

iii) The only change made to the Applicant’s post description in March of 2014 was the correction of the OCC from 01 to 66;

iv) The application of OCC 01 for determining the applicable SOA rate did not apply to all Advisor positions in the Education Department in Headquarters, Amman; and

v) The refusal of the Agency to pay the Applicant a sum of money to which he is entitled constitutes a discretionary administrative decision that is receivable because it breached the terms of his employment.

23. The Applicant requests that he be paid the SOA for OCC O66 retroactively from the date of the approval of his post description, 9 December 2011.

**Respondent’s contentions**

24. The Respondent contends:

   i) That the application is not a receivable because no administrative decision has been taken;

   ii) Area Staff Rule 2.1 gives the Commissioner-General discretion to classify posts;

   iii) This classification was not an arbitrary decision taken against the Applicant; and

   iv) Area Staff Rule 103.5 requires that, in order to receive an allowance, a staff member must first be entitled to that allowance. In this case, the Applicant was not entitled to the allowance until 1 April 2014, i.e., after the new OCC was approved.
25. The Respondent requests that the Tribunal dismiss the Application in its entirety.

Considerations

26. By email dated 27 April 2014, the Applicant requested that his supervisor, the HPC/ICT Unit, assist him in obtaining the SOA retroactively at the rate of OCC 66. The HPC/ICT Unit then wrote to the CHRSD requesting that the Applicant be retroactively awarded the SOA at OCC 66. By email dated 30 April 2014, the CHRSD refused the request. On 12 May 2014, the Applicant requested decision review. The Tribunal considers that the Applicant contests the decision not to retroactively grant him the SOA at the OCC 66. The Respondent contends that the application is not receivable as no administrative decision has been made.

27. At the outset, the Tribunal must consider the receivability of the application. Article 2 of the Tribunal’s Statute states:

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 [.

28. The nature of the SOA is explained in a Memorandum dated 14 June 1996, which in relevant part states:

SOA is a post allowance related to the duties of a post and not a personal allowance of an incumbent. Payment of SOA is made in order to enable the Agency to recruit for posts or retain their existing incumbents when sufficient evidence exists that the established pay levels alone (salary and related allowances) are not sufficient to attract or retain staff whose occupations are in high demand on the local market.

29. Based on the above, it is clear that 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 this allowance based on the Agency’s needs and the current market. The only criterion is that the decision be in the interest of the Agency. Therefore, this means that the Agency can decide to grant a staff member a SOA at any
moment when there is a need for the Agency to attract or retain the person. It also means that the Agency could remove such allocation at any point in time during a staff member’s contract, if the need to retain the staff member has ceased.

30. Whether the Agency grants or denies payment of a SOA is a totally discretionary decision and cannot be considered as an administrative decision to be contested before the Tribunal as this decision cannot affect the terms of appointment or contract of employment of a staff member. Such a matter would not come within the scope of the Tribunal’s jurisdiction, as defined in Article 2(1)(a) of the Tribunal’s Statute. Of course the same shall apply with respect to the decision to retroactively grant a SOA.

31. It follows from above that the application is not receivable.

Conclusion

32. In view of the foregoing, the Tribunal hereby DECIDES:

The application is dismissed.

(Signed)___________________________
Judge Jean-François Cousin
Dated this 30th day of July 2015

Entered in the Register on this 30th day of July 2015

(Signed)____________________________
Laurie McNabb, Registrar, UNRWA DT, Amman