Before: Judge Jean-François Cousin
Registry: Amman
Registrar: Laurie McNabb

SALAH

v.

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

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Lance Bartholomeusz (DLA)

Notice: This Judgment has been corrected in accordance with Article 26 of the Rules of Procedure of the UNRWA Dispute Tribunal.
Introduction

1. This is an application by Mohammad Yousef Suleiman Salah (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 69.9 percent for the period of 23 February 2012 to 1 February 2013, when he was Officer-in-Charge (“OiC”) Deputy Field Finance Officer (“D/FFO”).

Facts

2. Effective 22 June 2005, the Applicant was appointed to the post of Health Centre Clerk, Amman Town Health Centre on a fixed-term appointment, Grade 05, Step 1. Following several promotions, effective 16 June 2010, the Applicant was appointed to the post of Budget Officer, Grade 15.

3. Effective 23 February 2012, the Applicant was assigned as OiC D/FFO.

4. By email dated 5 April 2012, the Head Field Finance Officer authorised payment of an Acting Appointment Allowance (“AAA”) to the Applicant.

5. By email dated 22 April 2012 to the Deputy Director of UNRWA Operations, Jordan (“D/DUO/J”), the Applicant noted that the calculation for his acting appointment did not include the SOA.

6. On 4 July 2012, the Director of Human Resources (“DHR”) approved an SOA at the rate of 20 percent for the Applicant’s post of Budget Officer.

7. By letter dated 18 November 2013, the Applicant was informed of his selection for the post of D/FFO, Grade 17, in the Jordan Field Office (“JFO”).

8. By email to the Human Resources Officer (“HRSO”) dated 30 September 2014, the Applicant requested payment of the SOA at the rate of 69.9 percent for the period he was the acting D/FFO.
9. By email dated 26 November 2014, the Applicant enquired whether there had been any action taken with respect to his 30 September 2014 request.

10. By email dated 27 November 2014, the Applicant was informed that Headquarters, Amman had rejected his request for payment of the SOA, for the period he was acting D/FFO.

11. By email to the DHR dated 27 November 2014, the Applicant requested payment of the SOA.

12. By email dated 21 January 2015, the Chief Human Resources Services Division (“CHRSD”) rejected the Applicant’s request for payment of the SOA when acting D/FFO.

13. By email dated 21 January 2015, the Applicant sought clarification from the CHRSD with respect to her email.

14. On 17 February 2015, the UNRWA Dispute Tribunal (the “Tribunal”) received the Applicant’s unperfected application. On 4 March 2015, the Applicant’s resubmitted his application in accordance with the Tribunal’s Practice Direction No. 1. The application was transmitted to the Respondent on 4 March 2015.

15. On 16 April 2015, the Respondent filed a “Request for Extension of Time to File a Reply” (“request”). The request was transmitted to the Applicant on 19 April 2015. He did not file any response to the request.


17. On 31 May 2015, the Applicant filed a motion for leave to submit observations on the Respondent’s reply (the “motion”). The motion was transmitted to the Respondent on 1 June 2015. The Respondent did not file any response to the motion.

18. By Order No. 069 (UNRWA/DT/2015) dated 18 June 2015, the Tribunal granted the Applicant’s motion to submit observations.
19. On 29 June 2015, the Applicant filed his observations on the Respondent’s reply. On 30 June 2015, the Tribunal transmitted the observations to the Respondent.

**Applicant’s contentions**

20. The Applicant contends:

   i) He accepted the Agency’s April 2012 decision not to include the SOA in his acting allowance in accordance with the Agency’s regulatory framework. However, after discovering that a colleague in a similar situation was paid the SOA, he raised the issue with the Agency;

   ii) Although he requested clarification from Headquarters, Amman he never received compelling reasons why his request for payment of the SOA was rejected; and

   iii) Since other staff members in similar situations received the SOA, in the interest of fairness, he should receive the SOA for the period he was acting D/FFO.

21. The Applicant requests:

   i) Payment in the amount of 6,969.164 Jordanian Dinars for “the allowance difference” for the period of 23 February 2012 to 1 February 2013, when he was acting D/FFO; and

   ii) The Agency to amend the Area Staff Rule that restricts the payment of post-related SOAs.

**Respondent’s contentions**

22. The Respondent contends:

   i) The application is not receivable because it is time-barred;

   ii) The Applicant had 60 days from receipt of the Agency’s 22 April 2012 decision not to pay him the SOA to request review of the decision. However, he did not request decision review until 27 November 2014; and
iii) The Applicant’s repeated requests for a retroactive payment of the SOA were restatements of his original claim and therefore did not stop the clock from running on the 60-day time limitation.

23. The Respondent requests that the Tribunal dismiss the application in its entirety.

**Considerations**

24. The Applicant contests the Agency’s decision not to pay him the SOA at the rate of 69.9 percent for the period of 23 February 2012 to 1 February 2013 when he was acting D/FFO.

25. The Respondent claims that the application is not receivable as it is time-barred.

26. Area Staff Rule 111.2 provides:

1. A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her terms of appointment or the contract of employment, including all pertinent regulations and rules and all relevant administrative issuances pursuant to Staff Regulation 11.1 (A), shall, as a first step, submit a written request for a decision review:

   (A) in the case of staff members of Field Offices, to the UNRWA Field Office Director in charge of the Field Office [.]

[...]

3. A staff member shall submit a request for decision review within 60 calendars days from the date on which the staff member received notification of the administrative decision to be contested.

27. The United Nations Appeals Tribunal (“UNAT”) held in Adjini et al 2011-UNAT-108 that:

   An application is only receivable when a staff member has previously submitted the impugned administrative decision for management evaluation and the application is filed within the specified deadlines.

28. According to the Applicant’s statement in his unperfected application dated 17 February 2015, his first request for payment of the SOA at a rate of 69.9 percent was on 22 April 2012 by email to the DUO/J. Specifically the Applicant requested that the SOA be included in the calculations of the AAA.
29. The Tribunal notes that, following this email, the Applicant never received an explicit
decision from the Agency that rejected his request for payment of the SOA. Therefore, an
implied administrative decision was created. In Awan 2015-UNAT-588, the UNAT stated
that “[w]ith an implied administrative decision, the Dispute Tribunal must determine the date
on which the staff member knew or reasonably should have known of the decision he or she
contests”. See also Rosana 2012-UNAT-273 and Chahrour 2014-UNAT-406. On 4 July
2012, the DHR approved a 20 percent SOA for the Applicant’s post of Budget Officer.
Therefore, when the Applicant received his salary at the end of July 2012, he should have
reasonably known that his request for the rate of 69.9 percent had been denied.

30. As the Tribunal has set the date of Agency’s implied decision as 31 July 2012, from that
date the Applicant had 60 days to file his request for decision review. Even assuming that the
Applicant’s 30 September 2014 email to the HRSO is his formal request for decision review,
per Area Staff Rule 111.2, his request was filed well outside the time limit and is therefore
not receivable.

Conclusion

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

The application is dismissed.

(Signed)____________________
Judge Jean-François Cousin
Dated this 18th date of January 2016

Entered in the Register on this 18th day of January 2016

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