UNRWA DISPUTE TRIBUNAL

Case No.: UNRWA/DT/WBFO/2015/029
Judgment No.: UNRWA/DT/2016/015
Date: 25 April 2016
Original: English

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

HUSSSEINI

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:
Rachel Evers (DLA)
Introduction

1. This is an application by Mutaz Ibrahim Husseini (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 an Acting Appointment Allowance for the entire period from 15 December 2014 to 20 January 2015 when he was acting as the Officer-in-Charge for the Field General Services Officer.

Facts

2. Effective 17 October 2007, the Applicant was appointed as an Area staff member to the post of Field Administrative Services Officer in the West Bank Field Office (“WBFO”) on a fixed-term appointment at Grade 14. On 9 July 2014, his appointment was converted to an “A” category Temporary Indefinite Appointment.

3. On various dates between 2009 and 2014, the Applicant was appointed as the Officer-in-Charge of the General Services Office (“OiC, GSO”) during the absences of the Field General Services Officer (“FGSO”). During these times, the Applicant was paid an Acting Appointment Allowance (“AAA”).

4. From 15 December 2014 through 20 January 2015, the Applicant was appointed as the OiC, GSO during the absence of the FGSO.

5. By email dated 21 January 2015 to the FGSO, the Applicant requested to be paid an AAA for the period from 15 December 2014 to 20 January 2015. The FGSO authorized the request the same day.

6. By email dated 3 February 2015, the Human Resources Services Officer (“HRSO”) informed the Applicant that he had authorized the AAA payment only for the period of time from 14 January to 20 January 2015. Upon the Applicant’s request, the HRSO clarified that the Applicant was entitled to an “AAA from day 31 onwards and none for the first 30 days” in accordance with the relevant circular.
7. On 13 February 2015, the Applicant submitted a written request for decision review challenging the decision not to pay him an AAA for the entire period in which he acted as the OiC, GSO.

8. By letter dated 13 March 2015, the Director of UNRWA Operations, West Bank (“DUO/WB”) affirmed the contested decision.

9. On 13 May 2015, the Applicant filed his application with the UNRWA Dispute Tribunal (“Tribunal”). On that same day, the application was transmitted to the Respondent.

10. On 8 June 2015, the Respondent filed his reply to the application. On that same day, the reply was transmitted to the Applicant.

Applicant’s contentions

11. The Applicant contends:

   i) In the past, he always received an AAA when he acted as OiC, GSO;

   ii) He fully met the requirements established in the Area Personnel Directive No. A/3/Rev.1/Amend.5, Part XI, on “Special Allowances” effective 1 October 2012 (“APD No. A/3”) to receive an AAA;

   iii) The Area Staff Circular No. A/04/2010 on “Interim measure to provide an [AAA] to Area staff temporarily acting in International professional posts” that was issued on 22 December 2010 (“ASC No. 04/2010”) does not “abrogate nor amend” the legal provisions of APD No. A/3 concerning the special allowances;

   iv) After the issuance of the ASC No. 04/2010, the Applicant acted as OiC, GSO on five different occasions and regularly received an AAA;

   v) APD No. A/3 refers to a staff member who has assumed higher level duties. APD No. A/3 does not establish that it only applies to an Area staff member acting in another Area staff post; and
vi) The Agency did not have the authority to arbitrarily interpret ASC No. 04/2010 as dismissing the provisions of APD No. A/3, which the Agency had applied in the past when he temporarily acted in the same international post.

12. The Applicant requests:

i) Rescission of the administrative decision not to pay him an AAA for the entire period from 15 December 2014 to 20 January 2015 when he acted as the OiC, GSO; and

ii) Payment of the AAA for the full time period.

**Respondent's contentions**

13. The Respondent contends:

i) The decision not to pay the Applicant an AAA in respect of the full period he temporarily acted in an International professional category post as OiC for the FGSO was properly effected;

ii) ASC No. 04/2010 is clear and provides that an Area staff member who temporarily assumes the duties and responsibilities of an International professional post for a time period exceeding one month may, in exceptional cases, be granted an AAA “from the beginning of the second month of assignment in the international professional post”;

iii) The Applicant was appointed OiC for the FGSO post (a P-3 international post) from 15 December 2014 to 20 January 2015. Therefore, pursuant to ASC No. 04/2010, the Applicant was entitled to an AAA for the period from 14 January 2015 to 20 January 2015;

iv) APD No. A/3 applies only to Area staff posts and not to the international posts;

v) There is no conflict between APD No. A/3 and ASC No. 04/2010; and
vi) The fact that on previous occasions the Applicant had been paid an AAA from the first day he was acting as the OiC, GSO does not give him any right as the payment of such was an administrative error.

14. The Respondent requests the Tribunal to dismiss the application in its entirety.

Considerations

15. The Applicant contests the Agency’s decision not to pay him an AAA for the entire time period from 15 December 2014 to 20 January 2015 when he was acting as the OiC, GSO.

16. The Applicant claims that the applicable administrative issuance is APD No. A/3 dated 1 October 2012, while the Respondent maintains that only ASC No. 04/2010 dated 22 December 2010 is applicable.

17. ASC No. 04/2010 provides:

… When an Area staff member is required to serve in a post in the International professional category, an Acting Appointment Allowance (AAA) may be paid when the staff member assumes higher duties and responsibilities according to the following arrangements:

1. Without prejudice to the principle that promotion shall be the normal means of recognizing increased responsibilities and demonstrated ability, an Area staff member temporarily assuming the duties and responsibilities of an International professional post for a period exceeding one month, may, in exceptional cases, be granted an AAA from the beginning of the second month of assignment in the International professional post. (emphasis added)

* * *

6. The amount of the AAA shall be in the form of a monthly lump sum payment in accordance with the schedule set out below. Fractional periods shall be paid in accordance with Staff Rule 103.8 [.]
18. APD No. A/3 dated 1 October 2012 provides:

2.1 An Acting Appointment Allowance may be authorized for a staff member who has assumed higher level duties and responsibilities for a period of one month (30 consecutive calendar days) or more.

* * *

2.5 An Acting Appointment Allowance may be paid to a staff member only if he/she possesses the qualifications which would permit his/her promotion to the grade of the higher level post. If staff member possesses a part of the required qualifications for that post, then the amount of any Acting Appointment Allowance shall be governed by the grade to which the staff member’s qualifications would entitle him/her on appointment or transfer.

19. It is not contested that from 15 December 2014 through 20 January 2015 the Applicant was appointed as the OiC, GSO which is an International post. The above quoted ASC No. 04/2010 is clear – an Area staff member who temporarily assumes the duties and responsibilities of an International professional post for a period exceeding one month may be granted an AAA from the beginning of the second month of his assignment. The Agency has applied this provision and the Applicant was paid an AAA only for the time period from 14 January 2015 to 20 January 2015.

20. The Applicant claims that the earlier ASC No. 04/2010 is not applicable; rather, the more recent APD No. A/3 has implicitly abolished ASC No. 04/2010. The Applicant is incorrect. The fact is that APD No. A/3, Part XI on “Special Allowances” applies to Area staff members who assume higher level duties and responsibilities and is of a general application. However, ASC No. 04/2010 applies only to Area staff members who are temporarily serving in a post in the International professional category, which is the situation in the present case.

21. There exists a legal maxim which states that lex specialis derogat lege generali. It suggests that whenever two or more norms deal with the same subject matter, priority should be given to the norm that is more specific. The principle that special law has priority over general law is justified by the fact that such special law, being more concrete, generally takes into account the particular
features of the context in which it is to be applied, whereas applicable general law often does not.

22. Therefore, the issuance of APD No. A/3 in 2012, which is of general application for all Area staff members, could not have implicitly abrogated the specific circular issued in 2010, namely ASC No. 04/2010, which applies only to those Area staff members who temporarily serve in International professional posts.

23. Furthermore, the provisions for determining the amount of the AAA in ASC No. 04/2010 and in APD No. A/3 are not the same. ASC No. 04/2010 provides that the amount of the AAA shall be a monthly lump sum. APD No. A/3 determines the amount of this lump sum according to the level of the post and qualifications of the staff member. Specifically, as quoted above, paragraph 2.5 provides that the amount of the AAA fluctuates with the qualifications of the acting staff member and the grade of the higher post. Therefore, the AAA is not a lump sum as it is in ASC No. 04/2010.

24. It is clear for the Tribunal that the applicable administrative issuance in this case is ASC No. 04/2010, which provides that the Applicant is allowed to be granted an AAA only after the first month he is acting in the International professional post.

25. The Applicant’s claim that on previous occasions when he was the OiC, GSO and was paid an AAA starting from the first day of service in that post does not change the facts. Assuming this is true, it was an administrative error and the Agency has the obligation to correct its error as soon as it is discovered. See Das, 2014-UNAT-421: “Undoubtedly, in situations where the Administration finds that it has made an unlawful decision or an illegal commitment, it is entitled to remedy that situation”.

Page 7 of 8
Conclusion

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

The application is dismissed.

(Signed)________________________
Judge Jean-François Cousin
Dated this 25th day of April 2016

Entered in the Register on this 25th day of April 2016

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