ABED

v.

COMMISSIONER-GENERAL OF THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Rachel Evers (DLA)
Introduction

1. This is an application by Eman Abed (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 raise her grade from Grade 15 to Grade 16 following her academic promotion.

Facts

2. Effective 25 September 2005, the Applicant was employed by the Agency on a fixed-term appointment as Assistant Professor (Maths), Grade 14, Step 1, at the Educational Sciences Faculty.

3. Effective 26 September 2015, the Applicant’s appointment was converted to “A” category temporary indefinite appointment, Grade 15, Step 9, at the Faculty of Educational Sciences & Arts (“FESA”).

4. By letter dated 23 February 2016, the Applicant was academically promoted to the rank of Professor of Curricula and Methods of Teaching Mathematics, effective 19 April 2016.

5. On 17 May 2017, the Applicant sought review of “the delay in disbursing the financial entitlements related to [her] academic promotion”.

6. By letter to the Applicant dated 19 June 2017, the Director of UNRWA Operations, Jordan (“DUO/J”) rejected the Applicant’s review request as time-barred.

7. On 18 August 2017, the application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on 24 August 2017.

8. On 22 September 2017, the Respondent submitted his reply. The reply was transmitted to the Applicant on 24 September 2017.
9. On 29 September 2017, the Respondent filed a “Motion for Extension of Time to Translate a Reply”. The motion was transmitted to the Applicant on 1 October 2017.

10. By Order No. 142 (UNRWA/DT/2017) dated 11 October 2017, the Respondent’s motion was granted.

11. On 19 October 2017, the Respondent filed the Arabic translation of his reply. The translation was transmitted to the Applicant on the same day.

12. On 23 October 2017, the Applicant filed a motion for leave to submit observations. The motion was transmitted to the Respondent on 23 October 2017.

13. By Order No. 153 (UNRWA/DT/2017) dated 2 November 2017, the Applicant’s motion was granted.

14. On 8 November 2017, the Applicant submitted her observations. These were transmitted to the Respondent on 9 November 2017.

15. By Order No. 178 (UNRWA/DT/2018) dated 16 October 2018 (“Order No. 178”), the Tribunal ordered the Applicant to provide further information with respect to the date of her request to be upgraded.

16. On 29 October 2018, the Applicant submitted her response to the Order No. 178 and copied the Respondent on the email.

17. On 31 October 2018, the Applicant’s response to Order 178 was transmitted to the Respondent with a courtesy copy of the Tribunal’s English translation.

**Applicant’s contention**

18. The Applicant contends she was discriminated against as there were more than 16 similar cases of promotion and upgrade at the FESA, and, in all these cases, all of the concerned staff members received related financial entitlements as a result of their upgrade.
19. The Applicant requests:

   i) To be paid financial entitlements related to her upgrade with retroactive effect; and

   ii) To be compensated for the delay and for the moral damages she suffered.

**Respondent’s contentions**

20. The Respondent contends:

   i) The application is not receivable *ratione materiae*;

   ii) The Applicant failed to submit a timely written decision review request, as she had known since May 2016 that her upgrade had not been effected; and

   iii) The Applicant should have known that no upgrade had been effected in her case upon receipt of her March 2016 payslip, and she should have submitted a decision review request by the end of May 2016.

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

**Considerations**

22. The Respondent claims that the application is not receivable for the reason that the Applicant’s decision review request was not submitted within the time-limits prescribed in the Agency’s regulatory framework. In the Tribunal’s view, the Respondent’s reasoning is erroneous.

23. By letter dated 23 February 2016, the Applicant, along with other staff members at the FESA, was promoted within the academic field. The Respondent does not contest that the Applicant’s promotion to the rank of Professor of Curricula and Methods of Teaching Mathematics could have consequences on the Applicant’s financial entitlements. It is clear in the case file that the Agency was requested, in particular by the staff representative at the FESA, to process the Applicant’s and
others administrative upgrade as well as associated financial entitlements following their academic promotions. However, the Agency has never explicitly pronounced a refusal decision in this regard.

24. The Respondent claims that, as early as March 2016, the Applicant should have known that an implied decision not to upgrade her had been made, as she was able, by that time, to notice in her pay slip that she had not been administratively upgraded. The Tribunal does not agree with this reasoning of the Respondent.

25. In fact, in matters of financial entitlements, a staff member has a right to request to be attributed entitlements, as long as the Agency has not explicitly or impliedly refused his/her request, and only a request filed by the staff member himself/herself can trigger such an administrative decision. In the present case, it was only on 4 May 2017, that the Applicant personally requested to be administratively upgraded and to be attributed associated financial entitlements, as was the case with two other staff members. Accordingly, the Tribunal holds that only this request could trigger an explicit or implicit administrative decision on the part of the Agency. Afterwards, once this request has been denied by the Agency, the Applicant can first submit a decision review request and, later, an application before the Tribunal.

26. In the view of all the foregoing, the Tribunal holds that, as the Applicant submitted her first request on 4 May 2017, no implied decision had been made by the Agency before that date with respect to the Applicant’s request.

27. On 17 May 2017, the Applicant submitted a request for decision review. Even though the time was less than two weeks between the Applicant’s first request and her request for decision review, the Respondent has never claimed that the Applicant’s request was granted. Therefore, the Tribunal considers that an implied decision was made by the Agency following the Applicant’s 4 May 2017 request. Consequently, the application is receivable as the decision review request was submitted within the prescribed time-limits.
Conclusion

28. In view of the foregoing, the Tribunal DECIDES:

i) The application is receivable; and

ii) The Respondent is hereby ordered to submit a reply on merits on or before 4 January 2019.

(SIGNED)

Judge Jean-François Cousin

Dated this 5th day of November 2018

Entered in the Register on this 5th day of November 2018

(SIGNED)

Laurie McNabb, Registrar, UNRWA DT, Amman