ENAYA

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 Adham Medhat Ismail Enaya ("Applicant") against the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA ("Respondent"), not to pay him a special allowance.

Facts

2. On 12 July 2016, the Agency offered the Applicant the post of Analyst Programmer in Headquarters, Amman. The Applicant accepted the offer on 15 August 2016.

3. On 16 August 2016, the Director of Human Resources ("DHR") approved a monthly Special Allowance ("SA") for the Applicant in the amount of 190 Jordanian Dinars.

4. By email dated 17 August 2016, the Human Resources Services Officer informed the Chief, Information Management Services Division ("C/IMSD") of the DHR’s approval of the payment of the SA to the Applicant, noting that it was applicable for a period of one year.

5. Effective 11 September 2016, the Applicant was appointed to the post of Analyst Programmer on a fixed-term appointment, Grade 14, Step 1.

6. In September 2017, the Agency stopped paying the SA to the Applicant.

7. By memorandum to the DHR dated 18 September 2017, the C/IMSD requested the extension of the Applicant’s SA.

8. By memorandum to the Director of Information Management Department dated 8 November 2017, the DHR declined to extend the Applicant’s SA.

9. By emails dated 22 March and 5 April 2018 to a coordinator within the Information Management Services Division, sent by a staff member on behalf of himself and the Applicant, enquiries were made regarding the progress in renewing
their SAs. His request was forwarded to the Human Resources Department in April 2018.

10. On 11 June 2018, the Applicant sent a follow-up email to the Officer-in-Charge, Information Management Department (“OiC/IMD”). By email to the Applicant dated 12 June 2018, the OiC/IMD informed him of the decision not to grant him the SA.

11. On 25 June 2018, the Applicant submitted a request for decision review.

12. On 29 August 2018, the application was filed with the UNRWA Dispute Tribunal (“Tribunal”). It was transmitted to the Respondent on 3 September 2018.

13. On 2 October 2018, the Respondent filed his reply. The reply was transmitted to the Applicant on 3 October 2018.

14. On 8 October 2018, the Applicant filed a motion for leave to file observations and supplementary evidence. The Applicant’s motion was transmitted to the Respondent on the same day.

15. By Order No. 182 (UNRWA/DT/2018) dated 18 October 2018, the Applicant’s motion was granted.

16. On 28 October 2018, the Applicant filed his observations and supplementary evidence. The Applicant’s submission was transmitted to the Respondent on the same day.

17. By Order No. 195 (UNRWA/DT/2019) dated 6 October 2019 (“Order No. 195”), the Tribunal ordered the Respondent to respond to the Applicant’s observations and supplementary evidence.

18. On 21 October 2019, the Respondent filed his response to Order No. 195. The Respondent’s submission was transmitted to the Applicant on the same day.

**Applicant’s contentions**

19. The Applicant contends:
i) His SA was negotiated and granted before he accepted the post in September 2016; and

ii) His SA is part of his contract.

20. The Applicant requests to be granted his SA as of September 2017.

**Respondent’s contentions**

21. The Respondent contends:

i) The request for decision review was never received by the DHR or by the office of the Deputy Commissioner-General ("DCG"); and

ii) The Applicant failed to submit a timely request for decision review.

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

**Considerations**

**Receivability**

**Applicant’s request for decision review**

23. The Applicant contests the decision not to pay him his SA as of September 2017. The Respondent claims that the application is not receivable, as the Applicant did not submit a request for decision review, or in the event that he did, it was not submitted in a timely manner.

24. Attached to his application, the Applicant submitted a request for decision review form dated 25 June 2018. He also submitted to the Tribunal a copy of an email sent by another staff member on behalf of himself and other staff members including the Applicant, to the DCG dated 1 July 2018 with the subject line: “Decision review Request: our post allowance” and with an attachment “DRR. PDF”. Therefore, the Tribunal holds that the Applicant provided sufficient evidence
that he submitted a request for decision review. The Respondent may not refute this evidence by simply alleging that the DCG did not receive the Applicant’s email.

The date of the contested decision

25. The Tribunal considers that, in the present case, the contested decision is the Agency’s decision not to pay the Applicant’s SA beyond September 2017.

26. The Applicant noticed on his September 2017 payslip that his SA had not been paid. He then requested his Chief, the C/IMSD, to request the extension of his SA. He did not, at that point in time, personally request the Agency to extend the payment of his SA. The response of the Agency denying the request of the C/IMSD was made by letter dated 8 November 2017. This letter was sent to the Applicant’s Director. There is no evidence in the case file that the Applicant was informed of this letter.

27. 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.

28. It is clear from the case file that the DHR approved the SA for the Applicant on 16 August 2016 for a period of one year. The Applicant’s payslip of September 2017 cannot be regarded as an administrative decision not to extend the payment of the Applicant’s SA beyond September 2017. The Tribunal recalls that, when a staff member notices that his payslip is incorrect according to him/her, before submitting a formal request for decision review, he/she first has to request the Agency to correct the alleged error. Only the Agency’s implied or explicit reaction to such a request can trigger an administrative decision for which the concerned staff member may submit a request for decision review. Therefore, the Respondent’s reference to Tintukasiri et al. UNDT/2014/026 is not relevant in the present case, as its paragraph 42 does not address the issue regarding when an administrative decision is made.
29. The Respondent claims that the email of 14 November 2017, sent by the Applicant to his Chief, must be regarded as a request for payment of the SA. The Tribunal agrees that this email can be regarded as the Applicant’s first personal request for payment of the SA.

30. However, as it is not contested that, prior to 12 June 2018, the Applicant was never informed in writing that his request had been denied, the Tribunal has to decide when the Applicant reasonably should have known that an implied decision refusing the Applicant’s request was made.

31. In this respect, the United Nations Appeals Tribunal (“UNAT”) held in Chahrour 2014-UNAT-406, paragraph 31, as follows:

   31. To determine the date by which a staff member must seek decision review of an implied decision, it is incumbent on the UNRWA Dispute Tribunal to first establish the date on which the staff member knew or reasonably should have known of the implied decision.

32. On 12 June 2018, the Applicant was informed of the existence of the letter dated 8 November 2017, denying his request for extension of the SA. There is no sufficient evidence in the case file that the Applicant could have reasonably known before 12 June 2018 that his request had been denied. The Tribunal considers that, until this date, the Applicant could have legitimately expected a written decision with respect to his request. In fact, the Applicant had sent the email to his Chief on 14 November 2017, while the letter of denial had been sent to the Director already on 8 November 2017.

33. Before their departures from the Agency, both the Applicant’s Director and the C/IMSD neglected to inform the Applicant that his request had been denied. The Applicant should not bear the negative effects of such errors. Likewise, the Agency should not benefit from such neglect of its senior managers. In Haq and Kane 2019-UNAT-922, while there were uncertainties about the receivability of the application, the UNAT decided to address the case on the merits.

34. Therefore, the Tribunal considers that only on 12 June 2018, the Applicant was informed that his request for the extension of his SA had been denied. The
Applicant then submitted his request for decision review on 1 July 2018, within the prescribed time-limits. In view of the foregoing, the Tribunal holds that the application is receivable.

Conclusion

35. 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 the merits on or before 11 February 2020.

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Judge Jean-François Cousin
Dated this 12th day of January 2020

Entered in the Register on this 12th day of January 2020

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Laurie McNabb, Registrar, UNRWA DT, Amman