



UNRWA DISPUTE TRIBUNAL

Case No.: DT/HQA/2007/04  
Judgment No.: UNRWA DT/2011/001  
Date: 25 July 2011  
Original: English

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**Before:** Judge Bana Barazi

**Registry:** Amman

**Registrar:** Laurie McNabb

DARTELL

v.

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

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**JUDGMENT**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
W. Thomas Markushewski

## **Introduction**

1. This is an application by Robin Dartell (“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 accelerated salary increments for passing the UN Language Proficiency Examinations (the “UNLPE”).

2. Pursuant to General Assembly Resolution 63/253 of 24 December 2008, the Joint Appeals Board was abolished as of 1 July 2009. Effective 1 June 2010, as set out in International Staff Regulation 11.1, the Agency established the UNRWA Dispute Tribunal (“the Tribunal”) and all appeals pending with the Joint Appeals Board on the date of its abolition, including this application, were transferred to the Tribunal.

3. As a transitional measure, Article 2, paragraph 5 of the Statute of the Tribunal provides that the Tribunal shall be competent to hear and pass judgment on cases filed prior to the establishment of the Tribunal and in respect of which no report of the Joint Appeals Board (JAB) has been submitted to the Commissioner-General.

## **Facts**

4. On 15 March 2004, the Applicant was hired by UNRWA as an International Staff member and served as Junior Professional Officer (Projects) until his separation from the Agency on 20 January 2007.

5. By letter dated 30 November 2006, the Chairperson of the International Staff Association (“ISA”) brought to the attention of the Director of Administration and Human Resources (“DAHR”) the existence of differences between UNRWA’s International Staff Regulations and Rules and those followed by other organizations

within the United Nations common system, namely that UNRWA does not provide any incentive, i.e. annual increment, to those staff members who pass the UNLPE.

6. By email dated 11 December 2006, the Applicant requested to the Head, International Personnel Section (“HIPS”) to be classified at another level (one step higher, at P-2 step IV) based on the fact that he had passed the UNLPE in French and English in January 2005.

7. By email dated 7 January 2007, the HIPS indicated, *inter alia*, to the Applicant that his request could not be satisfied because the language incentive did not exist for UNRWA’s staff in his (international professional) category.

8. By letter dated 8 January 2007, the Applicant asked the Respondent for an administrative review of the HIPS decision denying his request for accelerated salary increments based on his passing the UNLPE in French and English.

9. On 20 January 2007, the Applicant was separated from UNRWA on an inter-agency transfer to World Health Organization Regional Office for Europe in Copenhagen, Denmark.

### **Applicant’s Submissions**

10. The Applicant is contesting the administrative decision not to pay accelerated salary increments to professional service international staff members who passed the UNLPE in French and English. He further submits that the administrative decision was made in spite of the fact that:

- (i) the ISA had asked the DAHR to adhere to the International Civil Service Commission (“ICSC”) guidelines on entitlements;

(ii) UNRWA had encouraged its international staff to pass the UNLPE by circulating twice a year the UN Secretariat guidelines regarding language proficiency; and

(iii) UNRWA had established a language allowance scheme for general service staff following the ICSC guidelines for general service staff in the UN system.

11. The Applicant also submits that UNRWA never informed him prior to taking the UNLPE, that it would not follow the ICSC guidelines, and that he has been “penalized” for working for UNRWA since he “lost” one step due to UNRWA’s “non-adherence” to these guidelines. The Applicant requests UNRWA to reconsider its decision and inform the ISA of the outcome “as it will establish precedence on UNRWA’s obligations.”

### **Respondent’s Submissions**

12. The Respondent requests the Tribunal to reject the application as not receivable, submitting essentially that there exists no appealable decision of the Agency to be reviewed by the Tribunal, i.e. no discretionary administrative decision alleging the non-observance of the Applicant’s terms of appointment or disciplinary action.

### **Considerations**

#### *Main issue*

13. The main issue to be determined by the Tribunal is whether the contested decision is an appealable administrative decision?

14. With regard to what is an administrative decision, the Tribunal is guided by the definition found in Judgment No. 1157, *Andronov (2004)*, rendered by the former Administrative Tribunal and reiterated by the Appeals Tribunal in its Judgment *Tabari* No. 2010-UNAT-035:

*Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.*

15. In the case at bar, the Tribunal finds that the decision of the Respondent not to grant the Applicant accelerated salary increments and not to reclassify him to P-2 step IV based on his having passed the UNLPE in French and English is not an administrative decision within the meaning of former International Staff Regulation 11.1, which was in effect during the material time and provides:

*The Commissioner-General shall establish administrative machinery with staff participation to advise (her) in case of any appeal by staff members against an administrative decision alleging the non-observance of their terms of appointment, including all pertinent regulations and rules, or against disciplinary action.*

16. The evidence in the file indicates that language incentive does not exist for UNRWA staff in the professional service category. Therefore, the contested decision had no bearing on the Applicant's terms of appointment or on the Regulations and Rules governing his appointment. Furthermore, the Applicant did not identify any non-observance or breach of his terms of appointment. As stated by the former United Nations Administrative Tribunal in Judgment No. 1145, *Tabari (2004)*:

*In order for the JAB or the Tribunal to enjoy jurisdiction in any proceedings before it, the Applicant or staff member must seek to establish a breach of the terms of his appointment or the denial of some right thereunder or the breach of some regulation or rule affecting him as a staff member of the breach of a right by reason of disciplinary action taken against him.*

17. The Tribunal would like to refer to the recent jurisprudence of the United Nations Appeals Tribunal in its Judgment *Andati-Amjawi* 2010-UNAT-058, paragraph 18, regarding administrative decisions that cannot be the subject of an application or an appeal because they do not affect a specific staff member's terms of appointment:

*In other instances, administrative decisions might be of general application seeking to promote the efficient implementation of administrative objectives, policies and goals. Although the implementation of the decision might impose some requirements in order for a staff member to exercise his or her rights, the decision does not necessarily affect his or her terms of appointment or contract of employment.*

18. The Applicant has failed, in the Tribunal's opinion, to establish any breach of his terms of employment. Rather, the Applicant acknowledges the absence of a rule and regulation governing language incentive and requests an amendment to the rules with respect to incentive in order to ensure that UNRWA adheres to the ICSC. The Applicant is reminded that the ICSC recommended that introducing a language scheme should be left up to the needs of individual organizations, a proposal agreed to by the General Assembly in its Resolution 48/224, paragraph 25. As stated by the United Nations Administrative Tribunal in Judgment No. 689, *Metcalf* (1995):

*... The internal law of one organization is not necessarily applicable to others.*

19. The Tribunal would like to recall that one does not "create" an appealable administrative decision by asking for a benefit that is not provided for in the relevant Regulation and Rules, and then complaining when it is denied. Rather, an actionable administrative decision arises in the actual application of specific Staff Regulation and Rules. In the case at bar, the International Staff Regulations and Rules which apply to the Applicant do not provide for payment of accelerated salary increments for language

proficiency. Even if these Regulations and Rules were amended in the future with respect to language allowances or incentives, such amendments would not become effective retroactively.

*Other issues*

20. With respect to element a) of the Applicant's submission, i.e. the adherence of UNRWA to the ICSC recommendations concerning language proficiency, the Tribunal is not the appropriate forum to lobby for them, and refers to the Administrative Tribunal Judgment in *Tabari, supra* :

*... neither a JAB nor the Tribunal is a vehicle available to a staff member to be used to lobby management to effect what the staff member would perceive to be improvements in his working conditions or terms of employment, unless that staff member seeks to establish that the matter he complains arises from the infringement or denial of some employment right. Both the JAB and the Tribunal are parts of the judicial system whose primary objective is to right employment wrongs and to provide remedies to staff members who establish that they have been wronged in relation to a condition of employment or been denied an employment right.*

21. With respect to element b) of the Applicant's submissions, i.e. UNRWA had encouraged its international staff to pass the UNLPE by circulating the UN Secretariat guidelines regarding language proficiency, the Applicant has not produced any evidence that UNRWA circulated these guidelines. Assuming it had for informational purposes, the Applicant failed to submit evidence that a reasonable expectation was created among international professional staff members that they would receive accelerated salary increments as a result of passing the UNLPE since their International Staff Regulations and Rules did not provide for any such payment.

22. With respect to element c) of the Applicant's submissions, i.e. UNRWA had established a language allowance scheme for international general service staff following the ICSC guidelines, this scheme does not apply to the Applicant since he was employed under conditions of employment for international professional staff.

23. The Tribunal finds that the Applicant has failed to challenge a discretionary administrative decision regarding the non-observance of his terms of appointment.

### **Conclusion**

24. The Tribunal determines that the application is not receivable and the application is dismissed.

(Signed)

Judge Bana Barazi

Dated this 25th day of July 2011

(Signed)

Entered in the Register on this 25<sup>th</sup> day of July 2011

Laurie McNabb, Registrar, Amman