



UNRWA DISPUTE TRIBUNAL

Case No.: UNRWA/DT/WBFO/2008/05

Judgment No.: UNRWA/DT/2011/012

Date: 1 November 2011

Original: English

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**Before:** Judge Bana Barazi

**Registry:** Amman

**Registrar:** Laurie McNabb

GHATASHEH

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 Afif Ghatasheh (the “Applicant”) against the calculation of his retirement benefits by the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (the “Respondent”).

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 Area 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 judgments 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. Effective 8 February 1969, the Applicant was employed as Teacher in Hebron, in the West Bank.

5. On 2 May 2007, the Director of UNRWA Operations, West Bank (“DUO/WB”) informed the Applicant that he would be reaching retirement age on 29 February 2008, and advised him that he would be entitled to retirement benefits in accordance with the provisions of paragraph 5 of Area Staff Rule 109.2.

6. By Transmittal Memorandum No. 109 dated 21 June 2007, “West Bank, Gaza and Headquarters Gaza Currency Adjustment Factor”, the Commissioner-General informed staff that an artificial exchange rate would be implemented to protect the

amount of New Israeli Shekels (“NIS”) obtained from converting the United States Dollar (“USD”) or Jordanian Dinar (“JOD”):

1. With effect from 1 June 2007 and until further notice a Currency Adjustment Factor (CAF) will be introduced to the salaries in the West Bank and Gaza as follows:

\* \* \*

- b) The Currency Adjustment Factor will be applicable to net take home pay;
- c) The Currency Adjustment Factor does not apply to Provident Fund and other benefits.

\* \* \*

2. The CAF is an exceptional and temporary measure to be applied until further notice.

7. By Transmittal Memorandum No. 116 dated 27 November 2007, “Changes to Area Staff Salary Scale – West Bank”, the Commissioner-General promulgated a new salary scale for Area Staff of the West Bank Field, amending Appendix 1-D to Area Staff Rule 103.1, effective 1 September 2007.

8. On 17 December 2007, a Currency Technical Committee comprised of the management and Area Staff Union of the West Bank Field recommended a mechanism for managing currency exchange, i.e. handling currency volatility, in the compensation of Area Staff in the West Bank to be implemented in the payroll starting January 2008.

9. On 29 February 2008, the Applicant retired from the Agency.

10. By email dated 12 March 2008 to the DUO/WB, the Applicant requested administrative review regarding the calculation of his retirement salary benefits, which he

claims had been incorrectly calculated because the Field Personnel Officer had not included the Exchange Rate Adjustment, as a component of his basic salary.

11. On 8 May 2008, having not received a response to his request for administrative review, the Applicant filed an application.

### **Applicant's contentions**

12. The Applicant contends that:

- (i) his retirement benefits were incorrectly calculated because the calculation was based only on his base salary and did not include the Exchange Rate Adjustment;
- (ii) the Exchange Rate Adjustment was included in his basic salary for November 2007 and December 2007;
- (iii) the Exchange Rate Adjustment is part of the monthly salary, not an allowance, and Area Staff Rule 109.2 states that retirement benefits are to be calculated according to the last month's salary.

13. The Applicant requests the Tribunal to order the Respondent to include in the calculation of his retirement benefits the Adjustment Rate in his last month's salary, which would result in an increase in retirement benefits payable to him of JOD 6,086.644 (roughly USD 8,694.00 at today's exchange rate).

14. For clarification purposes, the Tribunal notes that when the Applicant refers to the "Exchange Rate Adjustment" or the "Adjustment Rate", he is referring to the CAF of Transmittal Memorandum 109 and 116.

### **Respondent's contentions**

15. The Respondent essentially submits that no appealable decision has been presented, and requests that the Tribunal reject the application as not receivable.

## Considerations

### *Main issue*

### *Is the Respondent's administrative decision appealable?*

16. The only issue in this case is whether the Respondent's calculation of the Applicant's retirement benefits can be the subject of an appeal.

17. To clarify the issue for the Applicant, the Tribunal will refer to several Area Staff Regulations and Rules as background.

18. Former Area Staff Regulation 11.1 (A), in effect at the time of the contested decision, provides that:

(A) The Commissioner-General shall establish a Joint Appeals Board with staff participation to advise him in case of any appeal by a staff member against an administrative decision alleging the non-observance of his or her terms of appointment, including all pertinent regulations and rules, or against disciplinary action.

19. Area Staff Regulation 3.1 provides that:

The salaries of staff members shall be as prescribed by the Commissioner-General in the staff rules.

20. Area Staff Rule 103.1, Salary scales, provides that:

The salaries payable to staff members in accordance with their respective grades, qualifications and duty stations shall be those set out in Appendix 1 to these rules:

\* \* \*

Appendix 1-D: Salary Scale – West Bank

21. Area Staff Rule 109.2, Retirement on Grounds of Age, provides that:

7. For the purposes of this rule ending annual salary shall mean the monthly salary as defined in staff rule 112.3(D), as at the date of retirement, multiplied by 12.

22. Area Staff Rule 112.3 defines base salary as being the “net contractual salary and increments only”.

23. The Tribunal draws the Applicant’s attention to the fact that his salary and his retirement benefits - and any staff member’s for that matter - are governed by Regulations and Rules, and are part of his terms of appointment.

24. Furthermore, the Tribunal finds that the Applicant’s retirement benefits were correctly calculated in accordance with the applicable Area Staff Regulations and Rules. For the purpose of calculating retirement benefits pursuant to Area Staff Rule 109.2, Area Staff Rule 112.3 (D) above defines base salary as “**net contractual salary and increments only**”. [Emphasis added] According to Area Staff Rule 103.1, Appendix 1-D, the base salary for the Applicant, at grade 10, step 24, was JOD 836.50, and in accordance with the adjustment for February 2008 set out in Transmittal Memorandum 116, his base salary was adjusted to JOD 862.00, the basis on which the Applicant’s retirement benefits were calculated.

25. The Applicant mistakenly seeks to include the CAF in the calculation of his retirement benefits. He is reminded that Transmittal Memorandum 109 establishing the CAF as a temporary currency adjustment, distinct from the adjustment to the base salary, was implemented by the Agency to offset the devaluation of the JOD relative to the NIS, and expressly limited its applicability to “salaries” defined as “net take home pay”, while expressly excluding “Provident Fund and other benefits”.

26. Additionally, the 17 December Proposed Mechanism for Handling Currency Volatility agreed to between the management and Area Staff Union of the West Bank Field Office and the Agency is clear that the adjustment is a “temporary currency adjustment”, applied only “while the JD is depreciating below 6.01 NIS”, and shall “be shown on the pay slip as a distinct entry (separate from ‘basic salary’) labeled ‘currency adjustment’.”

27. The Applicant correctly received the benefit of the CAF in respect of his salary in November and December 2007. The only adjustment to his base salary was made in accordance with Transmittal Memorandum No. 116, pursuant to which his base salary for February 2008 (and the basis on which the Applicant’s retirement benefits were calculated) was accordingly adjusted upwards from JOD 836.50 to JOD 862.00.

28. The Applicant must bear in mind that the CAF is not part of his base salary and therefore is not included in the calculation of his retirement benefits, and that these benefits have been calculated in accordance with the applicable Staff Regulations and Rules. The Applicant is also reminded that one does not create an appealable administrative decision by asking for a benefit that is not provided for in the relevant Staff Regulations and Rules and then complaining when it is denied.

29. The Tribunal finds that the determination of the base salary for the purpose of calculating the retirements benefits of a staff member does not constitute an administrative decision for the purpose of Area Staff Regulation 11.1, and therefore does not fall within the scope of the jurisdiction of the Tribunal as “an administrative decision alleging the non-observance of his or her terms of appointment”.

30. Therefore, the contested administrative decision is not appealable.

## **Status Conference**

31. On 15 September 2011, the Tribunal held a **Status Conference**, specifically to ask the parties if they had any new relevant evidence to submit in this case.

32. The Applicant did not produce any new relevant evidence. He reiterated that the devaluation of the JOD vis-à-vis the NIS had weakened the purchasing power of staff members, and referred - vaguely - to a deal between the Area Staff Union and the Agency which did not protect members from currency devaluation. The Tribunal understands this deal to be the previously referenced 17 December 2007 Currency Technical Committee's "Proposed Mechanism for Handling Currency Volatility." The Applicant also mentioned a letter from the Field Office PE/C208, 313 dated 19 January 1990 [sic] asking the Finance Department to pay the CAF. He added that at the time of their retirement, staff members should be protected against any decrease of salary.

33. The Applicant is reminded that the CAF is a temporary mechanism meant to dampen the impact of the exchange rate between the Jordanian Dinar and the New Israeli Shekel, and is distinct from salary. Staff members may confuse the two because they receive them in one payment. However, suffice it for the Applicant to look at his pay slip, adduced in evidence, to note that the salary and the CAF portion are distinct. As for the Applicant's claim that at the time of retirement, staff members should be protected against salary decrease, the Tribunal is of the opinion that it is not a basis for an application. The Applicant is reminded that it is not in the Tribunal's jurisdiction to enact new rules and therefore, it is not the proper forum to advocate for regulatory reform.

34. With regard to the letter referred to by the Applicant, i.e. from the Field Office PE/C208, 313 dated 19 January 1990, which he has not produced and which the Tribunal has not had the opportunity to examine, if indeed it is dated 1990, then it predates the CAF by 17 years, and is for all practical purposes irrelevant to this case.

## Conclusion

35. Given all the above, the Tribunal finds that the application is not receivable as no discretionary administrative decision was made by the Respondent for purposes of an appeal.

36. The application is dismissed.

(Signed)

Judge Bana Barazi

Dated this 1<sup>st</sup> day of November 2011

Entered in the Register on this 1<sup>st</sup> day of November 2011

(Signed)

Laurie McNabb, Registrar, UNRWA DT, Amman