MANSOUR

v.

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

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Anna Segall
Introduction

1. This is an application by Abdul Hakim Mansour (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 include his post among those reclassified, on 1 April 2011, in the Agency’s Lebanon Field Office.

Facts

2. On 1 September 1981, the Applicant joined the Agency as a Typist, Grade 06, at the Siblin Training Centre (“STC”), Lebanon.

3. On 1 March 1989, the Applicant was upgraded to the post of Clerk A, Grade 07, at STC.

4. By letter dated 4 April 2011, the Applicant requested from the Director of UNRWA Affairs, Lebanon (“DUA/L”) to consider upgrading his post in the framework of the upgrading of Finance posts in the Lebanon Field Office which had taken place on 1 April 2011. The Applicant stated *inter alia*:

   As you may know, the post of Area Finance Clerk in all the Lebanese areas has been upgraded from grade 8 to 10 effective 01/04/2011, and will be later upgraded to grade 12.

   * * *

   … you are kindly requested to look into my case, since it is unjust [sic] for my post to be overlooked in the upgrading process, which has been applied to the Area Finance Clerk post, taking into consideration that the post I currently hold is strictly in the Finance Domain, with my current Principal STC, Deputy Field Finance Officer, Lebanon, and the Chief of Education as a reference, since they are the most involved in what I do.

Consequently, and with all due respect, I think my post should follow the afore-mentioned upgrading policy which has been granted to my fellow Area Finance clerks, regardless of the new re-classification of jobs which will be applied at the center in the coming future.
5. By email dated 2 May 2011, the Deputy Director of UNRWA Affairs, Lebanon (“D/DUA/L”) responded to the Applicant:

…The post that you occupy is “Clerk A”. This is not one of the posts that is/was covered by the Agency-wide reclassification of finance posts that was conducted a couple years ago [sic] and which we have only recently been able to implement in Lebanon Field.

I have received confirmation that your case is the same in other Fields. In this regard, no Vocational Training Centre in the Agency engages a “Finance Clerk”. For the administration/management of Vocational Training Centres, the Agency uses “Admin Officers”, “Chief Clerks” and “Clerk A’s”. To my knowledge, there is currently no intention of creating a Finance Clerk position in Vocational Training Centres.

I am genuinely sorry that this is not the answer you were hoping for.

6. By letter dated 6 May 2011, the Applicant reiterated his request to the DUA/L to have his post upgraded.

7. By letter dated 23 June 2011, the DUA/L responded to the Applicant’s request, explaining *inter alia*:

I refer to your letter, dated 6 June, requesting an upgrade inline [sic] of upgrades given to Finance Clerks. I understand that you have already contacted the Deputy Director of UNRWA Affairs with regard to this issue and received an email, dated May 2, explaining that the Agency cannot accommodate your request … Accordingly, I am treating your letter as a request of reconsideration.

You currently hold the position of Clerk A. As a staff member in this post you are assigned numerous duties including handling the Siblin Training Center’s finances. I confirm that the Agency does not engage a Finance Clerk in any of the vocational centers in any field. The Clerk A post you are occupying is not included in the reclassifications carried out of the Agency’s finance posts a few years ago.

In light of the above, the Agency’s decision still stands.
8. By letter dated 11 July 2011 to the DUA/L, the Applicant expressed his disagreement with the Respondent’s decision not to upgrade his post and informed the DUA/L that he reserved his “right to appeal … before the UNRWA Area Joint Appeals Board [sic]”.

9. On 24 July 2011, the Registrar received documentation submitted by the Applicant which was not in compliance with Article 4 of the Rules of Procedure of the UNRWA Dispute Tribunal (the “Tribunal”).

10. On 15 August 2011, a letter was sent to the Applicant informing him of the irregularity and including instructions for applications filed with the Tribunal.

11. On 18 September 2011, the Applicant complied with the instructions of the Tribunal and resubmitted his application in line with Article 4 of the Rules of Procedure of the Tribunal. However, he submitted additional documentation which was not in accordance with Practice Direction No. 1.

12. On 20 September 2011, the Registrar sent an email to the Applicant requesting him to organise his documentation accordingly in order to enable the Tribunal to proceed with his application.

13. On 17 January 2012 and on 25 April 2012, two separate reminders were sent by the Registrar to the Applicant.

14. On 10 May 2012, the Applicant finally completed his application.

15. On 14 January 2013, the Respondent filed his reply.

**Applicant’s contentions**

16. The Applicant contends that:

   (i) he has been performing the duties of a finance clerk since 1987;

   (ii) when the Agency proceeded to an Agency-wide reclassification of finance positions, it should have included his post.
17. The Applicant requests from the Tribunal to have his post upgraded.

**Respondent’s contentions**

18. The Respondent contends that there is no appealable administrative decision.

19. The Respondent requests the Tribunal to dismiss the application.

**Considerations**

*Preliminary Issues*

20. As stated above, the Respondent submitted his reply on 14 January 2013. In his reply to the application, the Respondent requested leave from the Tribunal to take part in the proceedings.

21. Article 30 of the Rules gives the authority to the Tribunal to shorten or extend a time limit fixed by the Rules or waive any rule\(^1\) when the interests of justice so require. Pursuant to Article 14 of the Rules, the Tribunal may make any order or give any direction which appears to be appropriate for a fair and expeditious disposal of the case and to do justice to the parties. It is the Tribunal’s belief that submissions from both parties will better equip the Tribunal to render a fair and comprehensive judgment. Therefore, the Tribunal finds that it is in the interests of justice - and that it would be appropriate for a fair and expeditious disposal of the case, and would do justice to the parties - for the Tribunal to extend the time limit under Article 6 and accept the late filing of the Respondent’s reply. Therefore, the Tribunal accepts the Respondent’s reply.

22. The Tribunal notes that although the Applicant finalised his application much beyond the deadline granted to him by the Registrar, the Respondent does not submit that the application is not receivable *ratione temporis*.

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\(^1\) The Tribunal notes the exception of decision review per Article 8 of the Statute of the UNRWA Dispute Tribunal which states: “The Dispute Tribunal shall not suspend, waive or extend the deadlines for decision review.”
**Main Issue**

23. According to Article 5 of the Rules of Procedure of the UNRWA Dispute Tribunal, the Tribunal may determine, on its own initiative, that summary judgment is appropriate. This may happen when there is no dispute as to the material facts and judgment is restricted to a matter of law. The crucial question in this case – whether the Applicant contests an administrative decision – is such a matter of law.

**Did the Applicant contest an administrative decision?**

24. In accordance with Article 2, paragraph 1 (a), of the UNRWA Dispute Tribunal Statute, the Tribunal has jurisdiction to hear and pass judgment on an application filed by an individual to appeal “an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment”.

25. The former United Nations Administrative Tribunal has held that an administrative decision:

… is a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. 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. (Judgment No. 1157, Andronov (2003), quoted in Judgment No. 1213, Wyss (2004)).

This definition by the former United Nations Administrative Tribunal has been endorsed by the United Nations Appeals Tribunal in Tabari 2010-UNAT-030.
26. Given the above, the Tribunal is of the opinion that an administrative decision can only be considered as such if, _inter alia_, it is of individual application and has direct legal consequences on a staff member’s rights and obligations as held by the United Nations Dispute Tribunal in its Judgment _Planas_ UNDT/2009/086. In the case at bar, the Applicant, who occupied the post of Clerk “A”, alleges that his post should be included in those covered by the Agency-wide reclassification of Finance posts. He argues that in addition to his normal tasks as Clerk “A”, he had been carrying out the duties of Finance Clerk for several years. The Applicant asserted that his duties are primarily financial and requested that the Respondent upgrade his post in line with the upgrades given to Finance staff.

27. Area Staff Regulation 2.1 provides that:

> The Commissioner-General shall make appropriate provision for the classification of posts and staff into salary levels according to the nature of the duties and responsibilities required.

28. Area Personnel Directive No. PD/A/4/Part.II/Rev.7/Section I on Area Staff Selection Policy states in paragraph 77 that:

> An area staff post that is upgraded will not have to be advertised provided that the post is upgraded to align accurately with existing standards and equivalent posts within the Agency, or as a correction to an anomaly (not a promotion), and where there is no change to core responsibilities, or the addition of new responsibilities. Where the incumbent fully meets the minimum requirements of the upgraded post and has demonstrated satisfactory performance, he/she can be placed at the higher grade.

29. First, the Tribunal notes that the terms of the Applicant’s appointment under the Agency’s Area Staff Regulations and Rules do not provide for any entitlement to an upgrading of his post. In other words, the Respondent’s decision to reclassify certain posts is not a decision of individual application, and it has no effect on the Applicant’s terms of appointment or contract of employment and no consequences on his rights and obligations.

30. Second, the Tribunal notes that the Applicant was informed by email dated 2 May 2011 from the D/DUA/L that the post he occupied was “Clerk A”, that it
was not one of the posts covered by the Agency-wide reclassification of Finance posts and that there was no intention to create a Finance Clerk position in the Vocational Training Centres. The D/DUA/L also clarified that no Vocational Training Centre in the Agency engages a Finance Clerk and that for the administration/management of the Centres, the Agency uses Administrative Officers, Chief Clerks and Clerks A.

31. The Applicant is reminded that the Respondent has the discretionary authority, as per Area Staff Regulation 2.1, to provide for the reclassification of posts, upgrading or downgrading them. In the present case, the Respondent opted for the reclassification of the Finance posts which did not include any “Clerk A” post, such as the one filled by the Applicant.

32. Third, to the extent that the Applicant is seeking by this application to have his post reclassified as Finance Clerk, the Applicant is reminded that the Tribunal cannot substitute itself for the Administration or change the working conditions provided in an applicant’s letter of appointment. The description of posts, the classification of posts and the determination of the related salaries are policy prerogatives of the Agency. The Respondent had decided to conduct a reclassification of Finance posts, a decision which did not apply to the Applicant whose post as Clerk “A” was not in one of the specified categories for reclassification. Furthermore, even if the post filled by the Applicant had been included in the reclassification of Finance posts conducted by the Agency, and had been upgraded to a higher level post, the Applicant would not have been automatically entitled to be appointed to the upgraded post. He still would have had to comply with the requirements of Area Personnel Directive No. PD/A/4/Part.II/Rev.7/Section I on Area Staff Selection Policy.

33. Considering that the Applicant is seeking a benefit that was not provided for in the Area Staff Regulations and Rules, other administrative issuances or in his letter of appointment, the Tribunal is of the opinion that the Respondent’s decision not to include the Applicant’s post among those reclassified in the Agency’s Lebanon Field Office on 1 April 2011 did not affect the Applicant’s terms of appointment or contract of employment.
34. In light of the above, the Tribunal considers that the Respondent’s decision to conduct a wide reclassification of finance posts is *per se* an administrative act rather than an administrative decision, as it is not of individual application and does not have direct legal consequences on the Applicant’s rights and obligations derived from his terms of appointment or contract of employment. Basically, the Applicant’s post did not fall within the posts included in the reclassification exercise. Therefore, the Tribunal finds that no administrative decision has been presented for the purpose of an appeal and considers the application non-receivable *ratione materiae*.

**Conclusion**

35. For the reasons provided above, the application is dismissed.

__________Signed_____________

Judge Bana Barazi

Dated this 18th day of April 2013

Entered in the Register on this 18th day of April 2013

__________Signed_____________

Laurie McNabb, Registrar, UNRWA DT, Amman