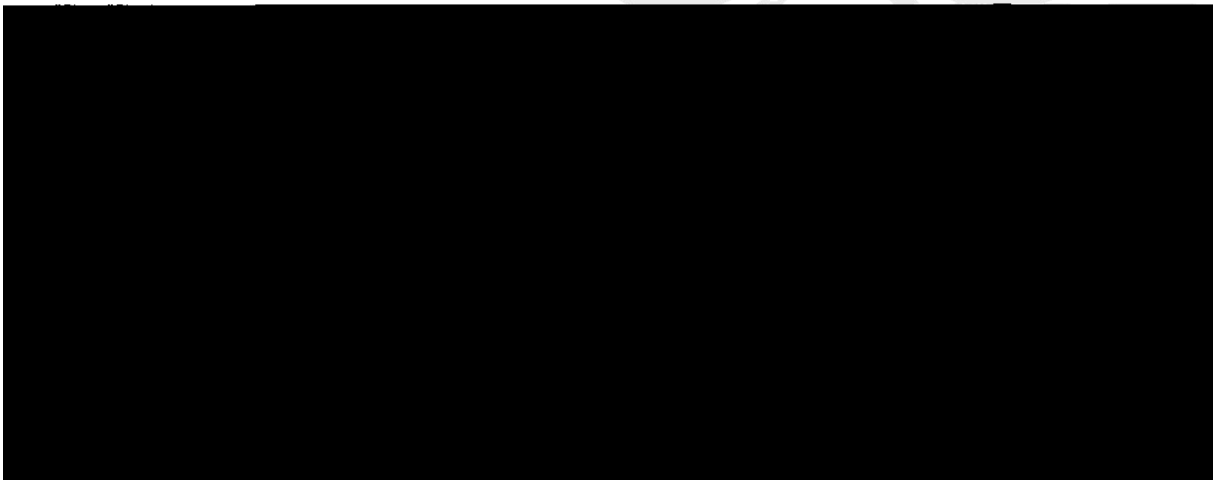


Judgment No. 2015-UNAT-564



JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2014/022, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or UNRWA Dispute Tribunal) on 28 July 2014 in the case of El-Shobaki v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Ms. Wafaa Mohamed El-Shobaky¹ filed her appeal on 14 September 2014 and the Commissioner-General of UNRWA answered on 5 November 2014.

Facts and Procedure

2. In 1996, the Appellant entered the service of UNRWA at Headquarters in Gaza (HQ/G) and in December 2005 she joined the Human Resources Planning Development Division. Due to the deterioration of the security situation in Gaza, her Division was relocated to Amman and Jerusalem and the Appellant was thus authorized to travel to, and work from, the Amman office for four months in 2007, between 1 July and 31 October 2007. She received JOD 6,000 to cover her four-month stay in Amman.

3. On 29 October 2007, just prior to the end of the four-month assignment, the Appellant was advised that she could continue to work in Amman rather than return to Gaza. However, if she chose to remain in Amman, she would be based there of her own voluntary choice and consequently, she would not be entitled to payment of any further subsistence allowance beyond 31 October 2007. She was also advised that notwithstanding the change in her duty station she would continue to be considered local staff, and not expatriate staff.

4. In view of the security situation in Gaza and in the interest of her two daughters, the Appellant chose to remain in Amman after 31 October 2007. Effective 1 January 2008, the Appellant's duty station was officially changed to Headquarters in Amman (HQ/A). In January 2008, she was again notified by a

5. On 31 March 2013, after discovering that other UNRWA staff members who had transferred to Amman at the same time or after her were retroactively being paid entitlements associated with their moves to Amman, the Appellant requested payment of removal expenses associated with her move from Gaza to Amman in 2008.

6. On 26 May 2013, the Director of Human Resources (HR Director) advised the Appellant that she was not entitled to receive any compensation in connection with the change of her official duty station pursuant to the terms of Area Staff Rule 107.9, since the transfer was effected at her request and for her “personal convenience”. In such circumstances, travel subsistence allowance (TSA) was not payable for January 2008.

7. On 11 July 2013, the Appellant requested review of the HR Director’s decision of 26 May 2013 that she was not eligible to receive TSA under Area Staff Rule 107.9. She claimed that her post was transferred from Gaza to Amman “without prior consultation” with her, such that Area Staff Rule 107.9(4) did not apply to her situation. She also requested payment of an installation grant and “the expatriates allowance” in order to cover the bank loan she took out to cover her living expenses in Amman.

8. On 2 August 2013, the Deputy Commissioner-General advised the Appellant that as per Area Staff Rule 107.9(4), she was not entitled to TSA as she had voluntarily changed her duty station. She was, however, entitled to other allowances under Area Staff Rule 107.12 (Removal Expenses). Pursuant to the direction of the Deputy Commissioner-General, on 3 September 2013, the Appellant received USD 9,000 (JOD 6,372) per Area Staff Rule 107.12 (Removal Expenses).

9. On 3 and 5 September 2013, the Appellant responded to HR requesting review of the decision of the Deputy Commissioner-General as to her eligibility for TSA for January 2008 as she had never asked for a post in Amman. She again requested payment of outstanding TSA for the months of November and December 2007, as well as expenses related to her change in duty station, namely TSA for January 2008 and transportation, claiming the latter were being paid out to other staff members.

10. On 5 September 2013, HR advised the Appellant that the decision of the Deputy Commissioner-General was final and advised her of her right to appeal to the UNRWA DT.

11. On 28 October 2013, the Appellant filed an application with the UNRWA DT, in which she contested, inter alia, the decision of the Deputy Commissioner-General refusing to pay her entitlements upon her change of duty station. She also challenged her exclusion from the short-list for three posts and the alleged abuse of power by HR. She requested the UNRWA DT to consider her status as an expatriate staff and to order payment of TSA for November and December 2007 and January 2008, as well as other removal-related entitlements, and compensation for moral damage.

12. On 28 July 2014, the UNRWA DT issued its Judgment in the matter and dismissed the application. The UNRWA DT found that the only issues before it were those that fell within the scope of the 26 May 2013 decision of the HR Director concerning her entitlements in connection with her change in duty station under Area Staff Rule 107. Consequently, the additional matters which the Appellant raised in her UNRWA DT application, namely claims as to her status as an expatriate staff, her exclusion from the short-list for three posts and the alleged abuse of power by HR, were not receivable.

13. In connection with her change in duty station in January 2008, the UNRWA DT held that she was not entitled to transportation expenses pursuant to Area Staff Rule 107.4(5), or to TSA for January 2008 pursuant to Area Staff Rule 107.9. While rightly entitled to removal expenses and terminal expenses, she had previously received payment for both. The UNRWA DT also found that her claims for payment of outstanding TSA for the months of November and December 2007 were not receivable as she had not requested review of the 29 October 2007 e-mail advising her that she would not receive TSA after the expiration of her assignment within the time limits prescribed by former Area Staff Rule 111.3.

Submissions

Ms. El-Shobaky's Appeal

14. The Appellant submits that the UNRWA DT erred on a matter of law when it excluded evidence she had submitted demonstrating that at least one other UNRWA staff member had been paid certain entitlements in connection with her transfer to the Amman duty station. The evidence showed that although that other staff member was similarly advised in 2009 that transfer to the new post in Amman did not entitle her to a change in status or to any expatriate-related entitlements, that staff member received the installation grant and expenses

related to removal and transfer in 2013, upon asking. In refusing to pay the Appellant the same entitlements, UNRWA failed to be consistent and treated her unfairly. The UNRWA DT erred insofar as it failed to consider this important and relevant evidence.

15. The UNRWA DT erred on a matter of fact when it found that the Appellant's transfer to Amman was at her own request and for her own personal convenience. Although the correspondence from the Organization continues to state as much, at no point did she voice a request to be transferred to Amman. She was transferred to Amman without her consent and without a complete explanation as to what the transfer would entail. Given that her entire office

19. Area Staff Rule 107.9 on “Change of Official Duty Station” provides in relevant part that:

2. Where a staff member is required to change his/her official duty station, then subject to the provisions contained in paragraph 4 of this rule, he/she shall be paid Travel Subsistence Allowance [...] for a period of 30 days immediately following the date on which he/she is required to report at his/her new duty station.

[...]

4. Where a change of official duty station is authorised at the request of or solely for the personal convenience of a staff member, the Travel Subsistence Allowance provided for in paragraph 2 of this rule shall not be payable, unless in exceptional circumstances such payment is specially authorised by the Commissioner-General.

20.

in the same circumstances as the Appellant. We agree with the UNRWA DT's finding that the Appellant has not demonstrated how the circumstances or conditions of employment of other staff members were relevant to her situation and thus find that the UNRWA DT did not err in this regard.

23. We have reviewed the remainder of the UNRWA Dispute Tribunal Judgment and we find no error of law or error of fact, manifest or otherwise, on the part of the UNRWA DT. The UNRWA DT correctly found th

