



Judgment No. 2018-UNAT-894

Counsel for Appellants: Khaled Ahmad Abu-Nugira

Counsel for Respondent: Rachel Evers

JUDGE DIMITRIOS RAIKOS , PRESIDING30.9ug

Submissions

B. Kosbeh et al. 's Appeal

4. In response to the Commissioner-General's contention that the Appellants cannot receive the parallel education allowance because they ar

a party in the first instance proceedings and the decision has a negative impact on his/her situation. In this case, the appeal is a mechanism that allows the affected party to appeal a judgment or the portion of a judgment unfavourable to it, seeking to enlarge his or her own rights or to decrease the rights of his or her opponent under the judgment.

22. Consequently, in the two-tiered United Nations internal system of administration of justice - with the exceptions expressly provided for by law (i.e., appeals from decisions taken by the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board and by those organizations, agencies and entities that have accepted the Appeals Tribunal's jurisdiction, but have no first instance tribunals) - bypassing the jurisdiction of the first instance Judge, by directly lodging an appeal with the Appeals Tribunal against an impugned administrative decision, or by participating in an appeal filed by others who have litigated their cases before the first instance Tribunal, is not admissible.

23. In the case at hand, six of the Appellants (Ghassan Abu Rukbeh, Hiba Al Mashharawi, Mohammad Mousa, Ghaleb Al Khmour, Khaled Salem, and Ihab Abu Lafi) joined in the present appeal, without having previously been parties to the proceedings before the UNRWA DT. Consequently, their appeal is not receivable.

Merits

24. The issue before the Appeals Tribunal is whether the UNRWA DT erred in finding that the Agency's decision not to pay B. Kosbeh *et al.*⁵ a parallel education allowance, which is paid to teaching and non-teaching senior management staff at FESA and UNRWA Vocational Training Centres and their counterparts in governmental educational institutions, was lawful.

⁵ For ease of reference, the Appeals Tribunal will refer to the remaining 30 appellants also as "Appellants" or "B. Kosbeh *et al.*". It is understood that this group now excludes the six current or former staff members whose appeals have been found not receivable.

Legal framework

Annex 'E' to Part XI of PD A/3

ALLOWANCE AND PAY RATES FOR AGENCY AUTHORISED PARALLEL EDUCATION AND DEVELOPMENT PROGRAMMES

1. Purpose

1.1 To establish eligibility for an Additional Assignment Allowance and rates payable to Agency staff members who supervise, lecture or otherwise perform duties under Agency authorised parallel education or development programmes and who are eligible to receive an Additional Assignment Allowance for such duty.

...

3. Establishment of Additional Assignment Allowance Rates

...

3.2. For staff in Jordan Field vocational training centres:

3.2.1. Teaching staff: ...

3.2.2. Non-teaching senior management: ...

3.2.3. Non-teaching administrative staff: Given the difficulty in assessing the impact that the programme(s) will have on administrative staff, additional workload for non-management staff in:

3.2.3.1. posts up to grade 12 will be compensated by following UNRWA overtime rules (i.e. an extra payment per hour of overtime worked);

25. Annex E to PD A/3 sets out, *inter alia*, entitlements for those staff members involved in additional duties created by the PEP. Relevant to the case at hand is PD A/3 Annex E, paragraph 4 on "Eligibility of Agency staff members to receive Additional Assignment Allowance" which provides that:

4.1 Most Agency staff members are expected to assist as necessary with parallel education and development programmes as part of their normal duties and are not eligible to receive an Additional Assignment Allowance. Only those staff for whom the parallel education and development programmes require approved work beyond normal working hours are eligible. These staff are listed at Appendix A.

4.2 Parallel education programmes are only held in Agency facilities. The following classifications of staff members normally working in such Agency facilities are expected to work in their normal capacities without compensation, except where over-time is approved:

4.2.1. School Attendants;

- 4.2.2. Guards;
- 4.2.3. Cleaners;
- 4.2.4. Storekeepers.

26. Appendix A to Annex E provides a list of “UNRWA staff members eligible for additional remuneration for work in Parallel Education and Development Programmes”. Section 1 relates to authorised staff for Jordan Field Office in the following categories:

- Teaching Staff;
- Non-Teaching Administrative Staff and
- Non-Teaching Management Staff.

27. The UNRWA DT held that B. Kosbeh *et al.* were not entitled to any parallel education allowance, upon the following reasoning:⁶

... The Tribunal has examined the Applicants’ posts and the provisions covering the parallel education allowance and concludes that it is clear from Annex E to Part XI of PD A/3 that none of the Applicants are eligible to receive the parallel education allowance. Most of the Applicants are in categories and positions that are not listed in Annex E and/or the Appendix A. Therefore, they are not eligible to receive the allowance. A few of the Applicants fall under the category of ‘non-teaching administrative staff’, which is a category mentioned in paragraph 3.2.3 of Annex E. For this category of staff, the provision states that, considering the difficulty in assessing the impact that the programmes will have on administrative staff, the additional workload will be compensated by following UNRWA overtime rules. Therefore, these staff members are also not entitled to any parallel education allowance, apart from compensation according to UNRWA overtime rules in case of additional workload.

28. We find no error in, and uphold, this finding of the UNRWA DT. A reading of the plain text of the above cited provisions of Annex E to PD A/3 and Appendix A to Annex E satisfies us that the parallel education allowance is limited to Agency staff members who supervise, lecture or otherwise perform duties under Agency authorized parallel education programmes and who are eligible to receive an Additional Assignment Allowance for such duties. This is not the case of B. Kosbeh *et al.*

⁶ Impugned Judgment, para. 33.

29. The remainder of the Appellants' contentions that they should enjoy the same income as their counterparts in governmental universities and colleges and receive, on an equality basis, the parallel education allowance just like the deans and vice-deans who are also administrative staff, is also without merit. As correctly found by the UNRWA DT, the Agency is governed by its internal rules and regulations and not the national laws of its Member States. Besides, any different treatment of the deans and vice-deans is justified on account of the different functions performed by them under Agency authorized parallel education or development programmes. Therefore, in the present case, the principle "equal pay for work of equal value" does not apply. In other words, this is not a case of unequal treatment of equals.⁷

30. Accordingly, the appeal fails.

⁷ Comp. Elmi v. Secretary-General of the United Nations , Judgment No. 2016-UNAT-704, paras. 32-36, with references.

