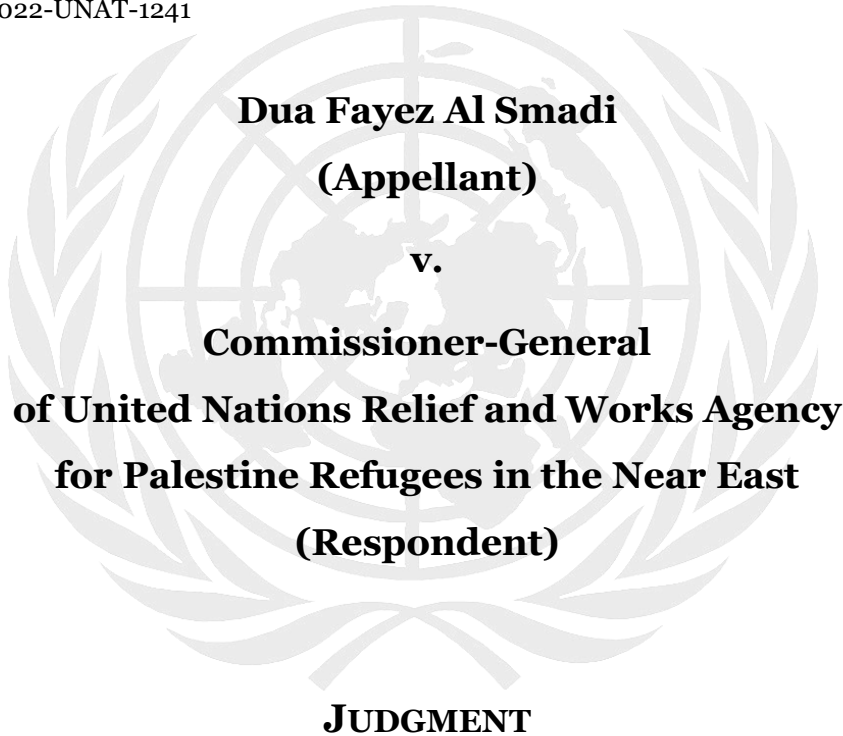




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2022-UNAT-1241

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**Dua Fayez Al Smadi
(Appellant)**
v.
**Commissioner-General
of United Nations Relief and Works Agency
for Palestine Refugees in the Near East
(Respondent)**

JUDGMENT

Before:	Judge Kanwaldeep Sandhu, Presiding Judge John Raymond Murphy Judge Dimitrios Raikos
Case No.:	2021-1568
Date of Decision:	1 July 2022
Date of Publication:	18 July 2022
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Ana Peyro-Llopis

JUDGE KANWALDEEP SANDHU, PRESIDING.

1. Ms. Dua Fayez Al Smadi,¹ a Medical Officer, contests the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or the Agency) not to reclassify her post as Deputy Head Health Centre “A”.
2. In Judgment on Receivability No. UNRWA/DT/2021/17 dated 22 April 2021 (the Judgment), the UNRWA Dispute Tribunal, or UNRWA DT, held her application was not receivable *ratione materiae* for failure to submit a timely request for decision review. Ms. Al Smadi appeals.
3. For reasons set out below, we allow the appeal and vacate the Judgment.

Facts and Procedure

4. Effective 1 May 2000, Ms. Al Smadi was employed by UNRWA on a fixed-term appointment, Grade 4A, Step 1, as Medical Officer “B”, at Husn Camp Health Centre, Jordan Field Office (JFO).
5. Effective 1 January 2012, her appointment was converted from “X” category fixed-term appointment to “A” category temporary indefinite appointment.
6. On 7 December 2016, the Director of Human Resources (DHR) issued Area Staff Circular No. A/05/2016. The Circular informed staff members about the Commissioner-General’s decision regarding the introduction of a new Occupational Health Salary Scale (OHSS), which would come into effect on 1 January 2017.
7. On 20 December 2016, Ms. Al Smadi was informed that her grade under the OHSS would be HL6, step 15, effective 1 January 2017.
8. In an e-mail dated 2 January 2017 addressed to the Agency, a Medical Officer in charge of the Awajan Health Centre, on behalf of ten Medical Officers including Ms. Al Smadi, questioned the description of their functional titles as “Medical Officers” at the HL6 level, and not as “Deputy Head Health Center A” at the HL7 level in the newly introduced contract under the new OHSS.

¹ The UNRWA DT spelled Ms. Al Smadi’s last name as “Smadi”. But we adopt the English spelling of “Al Smadi” as it appears on the appeal form.

9. In a letter dated 14 April 2017, the Acting Head Field Human Resources Office Jordan informed Ms. Al Smadi that the reclassification of her post of Medical Officer to the post of Deputy Head Health Center “A” was under review at the UNRWA Headquarters in Amman (HQA) and that she would be notified of the outcome of the review once finalized and approved.

10. In a letter dated 31 July 2017 to the Director of UNRWA Operations, JFO (DUO/J), Ms. Al Smadi expressed her objection to her post being reclassified as Medical Officer at the HL6 level, instead of as Deputy Head Health Centre “A” at the HL7 level under the new OHSS.

11. In a letter dated 17 August 2017, the DUO/J confirmed to Ms. Al Smadi that she had been correctly and accurately transitioned from Grade 15 Step 15 to Grade HL6 Step 15. He also advised Ms. Al Smadi, as did the Acting Head Field Human Resources Office Jordan on 14 April 2017, that the reclassification of her post was still under review and that she would be notified once it was finalized.

12. More than 22 months later, on 10 July 2019, Ms. Al Smadi sent a letter to the DUO/J, requesting her post’s reclassification to Deputy Head Health Centre “A” at the Grade HL7 level.

13. In a letter dated 29 July 2019, the Head Field Human Resources Office Jordan (H/FHRO/J) informed Ms. Al Smadi that the proposal to establish the post of Deputy Head Health Centre “A” was not yet approved and that this issue would be revisited in 2020. He continued: “if establishment of such a position in JFO is approved, [Ms. Al Smadi] will be notified in due time”.

14. On 21 August 2019, Ms. Al Smadi filed a request for review of this decision. On 22 October 2019, she filed an application with the UNRWA Dispute Tribunal contesting the 29 July 2019 decision to refuse to reclassify her post at the HL7 level under the new OHSS.

15. In Judgment on Receivability No. UNRWA/DT/2021/017 dated 22 April 2021, the UNRWA Dispute Tribunal dismissed the application as not receivable *ratione materiae*. The UNRWA DT noted that Ms. Al Smadi had requested twice, on 31 July 2017 and 10 July 2019,² to reclassify her post from Grade HL6 to Grade GL7, but the Agency “denied” both of her

² The UNRWA DT said Ms. Al Smadi’s second request was made to the H/FHRO/J on 4 July 2019. This appears to be a mistake. According to the 29 July 2019 letter, on 10 July 2019, Ms. Al Smadi addressed a request to the DUO/J to have her post of Medical Officer at the HL6 level reclassified to the Deputy Head Health Centre “A” at the HL7 level. Her letter was forwarded to the H/FHRO/J for review and response. On 29 July 2019, the H/FHRO/J responded to Ms. Al Smadi’s request.

requests, on 17 August 2017 and 29 July 2019, respectively. In the view of the UNRWA DT, while she was contesting the 29 July 2019 decision in her application, that decision was a “reiteration of the 17 August 2017 decision, and as such, it cannot be considered as a new decision”.³ Further, the UNRWA Dispute Tribunal stated in *obiter dictum* that Ms. Al Smadi had constantly disputed the decision to classify her post at the HL6 level as conveyed to her on 20 December 2016, but she did not challenge that decision then, and a challenge now was equally time-barred.

16. On 18 June 2021, Ms. Al Smadi appealed the UNRWA DT Judgment to the United Nations Appeals Tribunal (Appeals Tribunal or UNAT). The Commissioner-General filed an answer to the appeal on 20 August 2021.

Submissions

Ms. Al Smadi’s Appeal

17. Ms. Al Smadi requests that the Appeals Tribunal vacate the decision of the UNRWA Dispute Tribunal declaring her application to be non-receivable.

18. Ms. Al Smadi states that she objected to the new grading of the Medical Officers and did not sign any contract for the new post and grade. The last contract signed between her and the Agency was 8 January 2012 “under the post of Medical Officer A Grade 15”.

19. Ms. Al Smadi notes that the 14 April 2017 letter from the Acting H/FHRO/J stated that her reclassification request was “under review”. It was on the strength of that message that she and her colleagues waited for a long time in a hope that the Agency would correct this anomaly once the financial situation improved. This “under review” message was reiterated by the DUO/J in his letter of 17 August 2017 to her. In contrast, the 29 July 2019 letter informing her that her reclassification request had been reviewed and could not be accommodated did not contain any “under review” language. In her view, that was clearly a new decision.

20. Furthermore, Ms. Al Smadi says the UNRWA DT failed to present the fact in full when it stated that she was employed by the Agency as a Medical Officer “B” effective May 2000, without mentioning that she was later promoted to Medical Officer “A” on 1 August 2007.

³ Impugned Judgment, para. 26.

Note should also be taken that the Commissioner-General acknowledged before the UNRWA DT that, in April 2015, the Agency had reclassified her post to Head Health Center B, A-15 and subsequently transitioned all those posts to an equivalent HL7 level, and that the post of Deputy Head Health Center “A”, HL7, which was her post, was introduced but it was not implemented due to financial crisis.

The Commissioner-General’s Answer

21. The Commissioner-General requests that the Appeals Tribunal dismiss the appeal in its entirety on the basis that the UNRWA Dispute Tribunal did not err on a question of law, as a matter of fact or in procedure when it dismissed the application as not receivable.

22. The Commission-General says the UNRWA DT was cognizant of the applicable jurisprudence of the UNAT in relation to the reiteration of original administrative decisions. It correctly identified the contested decision as the letter dated 29 July 2019. It noted that Ms. Al Smadi had twice requested the reclassification of her post as Deputy Head Health Centre “A” (Grade HL7), but her requests were denied on 17 August 2017 and 29 July 2019, respectively. In the opinion of the UNRWA DT, the letter of 29 July 2019 was a reiteration of the decision of 17 August 2017. Notably, the letter of 17 August 2017 clearly informed Ms. Al Smadi the reclassification of her post was “under review”; the letter of 29 July 2019 informed her that her “request has been reviewed but cannot be accommodated at the moment because the proposal to establish the position of Deputy Head Health Centre ‘A’ has not been approved yet”. Ms. Al Smadi’s contention that this letter of 29 July 2019 contained a new decision is misconceived as both letters conveyed the same position, i. e., no final decision had been made.

23. The Commissioner-General submits that Ms. Al Smadi’s contention that certain documents were ignored or that the UNRWA DT neglected certain facts is to no avail to her in the consideration of the crux of this appeal, namely, whether the UNRWA DT was correct in its determination and subsequent dismissal of her case.

Considerations

24. The issue in the appeal is whether Ms. Al Smadi’s request for review of the 29 July 2019 letter is receivable *ratione materiae*, specifically, whether the UNRWA Dispute Tribunal erred in finding that the 29 July 2019 “decision” was a reiteration of a decision of 17 August 2017.

25. Article 2(1) of the UNDT Statute provides that the Dispute tribunal is limited to hearing appeals against “administrative decisions”. An “appealable administrative decision is a decision whereby its key characteristic is the capacity to produce direct legal consequences affecting a staff member’s terms and conditions of appointment”.⁴

26. We find the UNRWA Dispute Tribunal erred in its finding that the 17 August 2017 letter was an administrative decision. The 17 August 2017 letter from the DUO/J to Ms. Al Smadi reads it was in response to Ms. Al Smadi’s letter of 31 July 2017 in which she “expressed dissatisfaction” with her position and levelling in the new health structure. With regard to the new level, the 17 August 2017 letter stated that Ms. Al Smadi had “been properly and accurately transitioned from grade 15 step 15 to grade level HL6 step level 15”. As for the reclassification of her current post to the post of Deputy Head Health Centre “A”, the letter reiterated the Acting H/FHRO/J’s letter of 14 April 2017 that the matter remained “*under review by the Human Resources Dept. at HQA and [Ms. Al Smadi] will be notified once it is finalized*”.⁵ The only interpretation of this letter is that it is not a decision that had any legal effect or consequences on Ms. Al Smadi’s terms and conditions of appointment. Rather, it was simply a notification that Ms. Al Smadi’s reclassification request was still being reviewed but that the review had not been “finalized” or decided upon as of that date.

27. The 29 July 2019 letter from the H/FHRO/J to Ms. Al Smadi, on the other hand, states it was in response to Ms. Al Smadi’s letter of 10 July 2019 (not 4 July 2019 as indicated in paragraph 24 of the Judgment) in which she repeated her request for a reclassification of her current post to Deputy Head Health Centre “A”. This was a repeated request for reclassification to this post presumably because she had not received a decision on the request. The 29 July 2019 letter then stated that Ms. Al Smadi’s request “has been reviewed but cannot be accommodated at the moment because the proposal to establish the position of Deputy Head Health Center ‘A’ has not been approved yet. This issue may be revisited in 2020 and if the establishment of such a position in JFO is approved, you will be notified in due time.” This was a decision wherein UNRWA’s Field Human Resource Office in Jordan notified Ms. Al Smadi that her reclassification had been reviewed but could not be “accommodated”, namely, the review of her reclassification request had been finalized but the request was not granted. This was the

⁴ *Olowo-Okello v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-967, para. 31. See also *Archana Patkar v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1102, para. 22ff.

⁵ Emphasis added.

administrative decision and not a “reiteration of an earlier decision”. It was a clear and unambiguous decision that had a legal effect on Ms. Al Smadi’s terms and conditions of employment and a definitive response to her request for reclassification that was finally communicated to Ms. Al Smadi from the H/FHRO/J.⁶ It stated the reason why Ms. Al Smadi’s request had not been granted or accommodated, which was the proposal to establish the position had not been approved. This was the rationale for Ms. Al Smadi’s reclassification request being declined.

28. Because the 17 August 2017 letter was not an administrative decision, but the 29 July 2019 letter was, the UNRWA Dispute Tribunal factually erred resulting in a manifestly unreasonable decision when it found the 29 July 2019 decision was not a new decision, but was merely a “reiteration of the 17 August 2017 decision”.⁷ Further, it provided no probative reasons or analysis to support this factual finding as the language and content of the two letters were clearly different.

29. Also, the UNRWA Dispute Tribunal’s reliance on *Sethia*⁸ cannot be supported as the facts in that appeal were that the Administration had clearly communicated its decision to the staff member, but the staff member continued to make subsequent repeated requests. This is not the same here where although Ms. Al Smadi made repeated requests for reclassification, she did so because she did not receive a decision to her request until 29 July 2019 when the Agency advised that her request could not be accommodated. Therefore, Ms. Al Smadi’s request for review of the decision of 29 July 2019 was not time barred, as it was filed on 21 August 2019 within the 60-day time limit set forth in Staff Rule 111.2 of the Area Staff Rules.

30. In conclusion, the application is receivable and Ms. Al Smadi’s application should be considered by the UNRWA Dispute Tribunal.

⁶ *Auda v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-746.

⁷ Impugned Judgment, para. 26.

⁸ *Sethia v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-079, para. 20.

Judgment

31. The appeal is granted, and Judgment on Receivability No. UNRWA/DT/2021/017 is reversed. The application before the UNRWA Dispute Tribunal should be considered as filed.

Original and Authoritative Version: English

Decision dated this 1st day of July 2022 in New York, United States.

(Signed)

Judge Sandhu, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Raikos

Judgment published and entered into the Register on this 18th day of July 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar