



**THE UNITED NATIONS APPEALS TRIBUNAL**



10. Furthermore, Tabari made reference to Shehadeh's case before the JAB which also related to payment of SOA Phase II. This appeal was received by the JAB and was indeed allowed on the same day Tabari's appeal was dismissed. According to Tabari there was no difference in the subject-matter of the two appeals. Therefore, his appeal was also receivable on a parity of reasoning.

11. Tabari seeks payment of the SOA at 51.31% retroactively from 1 January 2006, compensation in the amount of USD 10,000 for moral damages, and an order for continued payment of SOA Phase II.

#### **UNRWA's Answer**

12. UNRWA objects to the hearing of the appeal, alleging that it is time-barred by 63 days. Alternatively, if the appeal is found to be timely, it argues that Tabari's appeal was not receivable, because the formulation of SOAs or the methodology of calculating or paying the SOAs does not constitute an administrative decision, and hence cannot be challenged either before the JAB or this Tribunal.

#### **Considerations**

13. While dealing with the question of receivability we examined the exact movement of the appeal to determine if there were exceptional circumstances to justify the delay. The chronology of events is like this: Tabari received the Commissioner-General's decision on 17 February 2009. He had 90 days within which to lodge his appeal as per Article 7(4) of the Statute of the former United Nations Administrative Tribunal. The appeal was lodged on 27 April 2009, well within the time limit. On 14 May 2009 the Executive Secretary of the former Administrative Tribunal returned the appeal to Tabari, advising him that his appeal did not fulfill the formal requirements. Tabari was advised to file an amended appeal by 30 June 2009, but resubmitted his appeal on 21 July 2009.

14. We examined the dossier of the appeal to track the movement of the papers relating to the appeal, in order to find out if Tabari had failed to file the appeal within the time granted. We could not find anything in the dossier which would show the date on which Tabari's appeal was returned to him or received by him for re-filing.

15. It may be recalled that the General Assembly decided in A/RES/ 63/253 of 17 March 2009 (paragraph 42) that the United Nations Administrative Tribunal shall cease

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within administrative law systems, as *implied* administrative decisions (emphasis in the original).

19. The JAB showed inconsistency in its treatment of the cases of Tabari and Shehadeh. Both cases were decided on the same day by the same panel. But in Tabari's case there was a split verdict, the majority view being that there was no administrative decision that Tabari could appeal.

20. We find considerable merit in this appeal. There was definitely an anomalous situation which Tabari raised with the Internal Review Panel for consideration, but no action was taken to address the anomaly. Tabari has successfully demonstrated to us the manner in which the anomaly had arisen. Originally three posts were grouped together; later two posts were taken out of the group leaving only Tabari's post. The result was bound to be different. In the present case it appeared to favour Tabari. UNRWA had an opportunity to rebut Tabari's contentions, but failed to plea that Tabari was not discriminated against during the fixing of the appropriate level of SOA Phase II.

21. UNRWA's argument seems to be that Tabari had tried to "create" an appealable decision by asking for a benefit that was not provided in the relevant Staff Regulations and Rules, and complained

23. UNRWA seemed to be content with its pleading that the appeal was not receivable because there was no administrative decision which could be challenged. We have held that not taking a decision is also a decision. Since UNRWA altogether failed to rebut or contradict Tabari's claim for payment of SOA Phase II from 1 January 2006, we accordingly accept the appeal in this regard. There is no legal basis to deny the payment due to Tabari. The appeal deserves to be partly allowed. Tabari shall be granted reliefs 1

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Case No. 2010-035



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Judge Garewal, Presiding



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Judge Boyko

