Case No. 2010-182

JUDGE LUIS MARÍA SIMÓN, Presiding.

Synopsis

1. This Court reiterates its jurisprudence that not taking a decision may constitute a decision subject to judicial review.

2. We hold that there is no discrimination when the non-payment of a special compensation for working in hazardous duty stations is based on a *general* consideration of a category of staff members, in comparison to another category of staff members. The different treatment becomes discriminatory when it affects negatively the rights of

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terms and conditions of his employment do not include the payment of hazard pay, and the UNRWA area staff are not part of the United Nations Common System. The Commissioner-General submits that the non-payment of hazard pay to Mr. Tabari as an UNRWA area staff member did not constitute an appealable administrative decision.

17. The absence of a response to Mr. Tabari's request for hazard pay does not constitute an appealable administrative decision inasmuch as hazard pay was not a term

23. In Judgment No. 2010-UNAT-030, the alleged discrimination related to an anomaly of the calculation of compensation, affecting individually Mr. Tabari, the claimant, while fixing the appropriate level of that remuneration. It concerned discrimination against a person in comparison with other individuals in the *same* category of staff members.

24. In the present case, however, the discrimination is allegedly based on a comparison between Mr. Tabari, the claimant, and the staff members of a *different* category. Mr. Tabari is essentially pleading that an area staff member of UNRWA should be treated equally as an international staff member.

25. The general principle of "equal pay for equal work" enshrined as a right under Article 23(2) of the Universal Declaration of Human Rights does not prevent the legislative body or the Administration from establishing different treatments for different categories of workers or staff members, if the distinction is made on the basis of lawful goals.

26. There is no discrimination when the non-payment of a special compensation for working in hazardous duty stations comes from a *general* consideration of a category of staff members, in comparison to another category of staff members. The different treatment becomes discriminatory when it affects negatively the rights of certain staff members or categories of them, due to unlawful reasons. But when the approach is general by categories, there is no discrimination, when the difference is motivated in the pursuit of general goals and policies and when it is not designed to treat individuals or categories of them unequally. Since Aristotle, the principle of equality means equal treatment of equals; it also means unequal treatment of unequals.

27. Therefore, in the present case, we find no illegality in the administrative act of not awarding Mr. Tabari hazard pay under that name, because it is part of the general treatmthe apea sfrs af UNRWw

which are not the same as those set forth in the common system or with respect to the international staff members working for UNRWA.

29. The different treatments, throughout years, have been based on a policy that takes into account that primarily the area staff

35. Under these circumstances, granting the present appeal would mean to substitute