



1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Maha Mohammed Al Surkhi and 11 others (Al Surhki et al.) against Judgment No. UNRWA/DT/2012/022, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT and UNRWA or Agency, respectively) on 26 April 2012. Al Surkhi et al. appealed on 25 June 2012, and the Commissioner-General of UNRWA answered on 17 September 2012.

Facts and Procedure

2. On 12 and 13 May 2009, the UNRWA Area Staff Unions (Unions) organized a two-day strike at the UNRWA headquarters and the Jordan Field Office. The strike ended on 13 May 2009, but on 14 May 2009, several staff members who participated in the strike failed to report to work.

3. On 13 May 2009, the Agency and the Unions reached an agreement to end the strike. They also agreed to conduct discussions to address the issue of salaries for the days not worked, i.e., 12-13 May 2009 for all striking staff and 14 May 2009 for some of them.

4. On 23 July 2009, the Director of Human Resources issued Area Staff Circular No. 06/2009 (Circular) as follows:

In response to the recent strike action – which resulted in the closure of UNRWA offices and installations for three days (**12 to 14 May inclusive**) – the following action will be

10. The Appellants argue that they had no way of knowing when and if the Circular would be implemented. Contrary to the Circular, the deductions were not taken “from the next payroll”, i.e., August 2009, but from the September 2009 payroll. Moreover, the fact that the Circular employed the term “compensation proposal” shows that it was not an administrative decision.

11. The Appellants maintain that their requests for review were filed timely. In September 2009, the Agency effected deductions from the Appellants’ payrolls. Between 30 September 2009 and 4 October 2009, Al Surkhi et al. filed requests for review, well within the 30-day time limit. By the end of October 2009, when they did not receive a reply to their review requests, they had another 30 days to submit their appeals with the AJAB. This they did between 12 and 25 November 2009, again well within the time limits.

12. The Appellants submit that the UNRWA DT erred in procedure by allowing the Agency to be part of the proceedings, resulting in a manifestly unfair decision. They note that the Agency filed its reply two years and two months past the deadline, and that there is no record showing that the Agency ever requested leave from the AJAB or UNRWA DT to be allowed to take part in the proceedings as required by Article 6 of the UNRWA DT Rules of Procedure.

13. The Appellants also submit that the UNRWA DT erred in procedure when it relied on the Respondent’s arguments in deciding on the issue of receivability. The Appellants further submit that the UNRWA DT erred as a matter of law when it rejected observations made by those Appellants who did not seek leave to submit observations.

14. The Appellants request that this Tribunal find that the UNRWA DT’s Summary Judgment was incorrectly entered and award them compensation for emotional stress.

Commissioner-General’s Answer

15. The Commissioner-General submits that the UNRWA DT properly considered the “observations to the Respondent’s reply” as emanating only from those Appellants who had in fact requested leave from the UNRWA DT to submit such observations.

16. The Commissioner-General also submits that the delay in filing the Agency’s reply is an irrelevant consideration in determining whether the Appellants complied with the time limits. It should be noted that the Agency filed its reply in accordance with the schedule for submission of replies by the Agency fixed by the UNRWA DT.

17. The Commissioner-General further submits that the UNRWA DT was bound to consider the issue of receivability of the appeal *proprio motu* with or without the Respondent's reply and that the Appellants have failed to demonstrate how consideration of the Respondent's reply on the issue of receivability affected the decision in the present case. The UNRWA DT did not err when it entered a summary judgment as it was restricted to a matter of law.

18. The Commissioner-General maintains that the Judgment was free of error as a matter of

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14 May 2009: Payroll deduction will be made for all staff who were absent from work on that day (1 work day).

Staff members who prefer to work the extra day instead of using annual leave may submit a proposal to this effect through their supervisor and Department Director. Once the compensation proposal is implemented, the annual leave day will be returned to the staff member's leave balance.

28. It is the considered view of this Tribunal that, applying the test set out in *Andronov*, the Circular contained therein all the necessary components referred to in *Andronov* to give rise to legal consequences for the striking staff. More particularly, it contained information which affected the rights of the staff members in question, given that it was being clearly communicated to the relevant staff members that deductions were going to be made from their salaries. Therefore, vis-à-vis the striking staff members it had in

38. Notwithstanding the Appellants' submission on the above issue they have not demonstrated to this Tribunal how the UNWRA

