



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2017-UNAT-760

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Sa'adeddin
(Appellant)

v.

Commissioner-General

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Counsel for Mr. Sa'adeddin:

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Jamila Al-Abbasi, LOSA

Counsel for Commissioner-General:

Rachel Evers

the application was therefore receivable as Mr. Sa'adeddin had filed his request for decision review and his application before the UNRWA DT within the applicable time limits.

4. The UNRWA DT noted that the GMIP in effect for Lebanon at the time of the application was an insurance contract with a private company. Under the insurance contract, UNRWA retirees from all fields who move to Lebanon upon retirement and who opt to enrol in GMIP Lebanon are eligible for participation in the GMIP, provided that they were insured by an UNRWA Group Medical Insurance Plan in the previous year. The UNRWA DT noted that the provisions in the GMIP are mandatory for the Agency, that the GMIP does not include a provision with respect to retroactivity and that the Agency has no discretionary authority to enrol former staff members, if this is not allowed in the contract. Since Mr. Sa'adeddin was not insured by an UNRWA Group Medical Insurance Plan in 2014, the Agency had to rescind its unlawful decision of approving the enrolment of Mr. Sa'adeddin and his wife.

5. The UNRWA DT rejected Mr. Sa'adeddin's claim that the lack of response from the

failed to request review of the initial decision. The UNRWA DT erred in fact in particular at paragraph 4 of its Judgment when stating that th

12. The UNRWA DT erred in fact and law in dismissing Mr. Sa'adeddin's case on the ground that he had failed to comply with the time limits of the GMIP Insurance Terms and Conditions. The UNRWA DT erred in assessing the evidence and failed to consider the history of the case which proved that the final decision was made in December 2014 on a request made in 2011. Mr. Sa'adeddin was diligent in his efforts to receive a clear response from the Agency. As is clear from the evidence of communication between his representative and the Agency officials, he enquired, and was advised, every year that he should wait until the Agency change the insurance company and until the new rules for retirees were put into place. The UNRWA DT's finding at paragraph 25 of its Judgment that his request for enrolment was verbally denied by the Agency in August 2011 is false. The Agency in fact advised him that the insurance group did not accept his inclusion but that it would try its best to include him. It therefore did not deny his request, but continued to try to add him to the insurance. Moreover, when the new rule came into effect in 2012 allowing all retirees to be included in the insurance not excluding those who had already retired, UNRWA should have included him in the insurance in 2012 in accordance with the new rules. The new rules included staff members who had already retired and who were insured by an UNRWA Group Medical Insurance plan in the previous year.

13. In addition, Mr. Sa'adeddin contests the UNRWA DT's finding that he should have known that his request had been denied since he had been employed with the Agency for more than 30 years and should have known that GMIP premiums are deducted on a monthly basis and he was not requested to pay any GMIP premiums. Since he had been advised that he should wait for the issuance of the new insurance contract, he could not presume that a final decision not to include him had been taken.

14. Mr. Sa'adeddin requests that the Appeals Tribunal reverse the UNRWA DT Judgment and remand the case for adjudication; rescind the Agency's decision not to include him in the GMIP with his spouse as required by the 2012 GMIP Terms and Conditions; and order compensation for moral damages and stress caused due to the excessive delay in his case.

The Commissioner-General's Answer

15. The UNRWA DT did not err in fact or law by concluding that Mr. Sa'adeddin's requests for enrolment lodged prior to 2014 were denied through separate decisions taken by the Agency before the December 2014 decision and that, by consequence, any challenge by Mr. Sa'adeddin

of decisions taken prior to the December 2014 decision was not receivable because he had failed to request decision review with respect to these earlier decisions.

16. The UNRWA DT's Judgment demonstrates that the history of the case as established by the evidence before the UNRWA DT was fully taken into account in its ruling on these issues.

17. The UNRWA DT correctly held that Mr. Sa'adeddin failed to submit any evidence of a request for decision review of any decision taken by the Agency prior to the December 2014 decision. The UNRWA DT therefore correctly concluded that he could rightly only challenge the December 2014 decision.

18. The UNRWA DT correctly concluded that the Agency had separately decided to deny Mr. Sa'adeddin's enrolment request prior to his 2014 request and the related December 2014 decision. The fact that Mr. Sa'adeddin was not enrolled in the GMIP between the time of his initial 2011 request and his 2014 request represents a unilateral act taken by the Agency that carried direct legal consequences for him. Further, there are several objective indicators that would have clearly demonstrated to Mr. Sa'adeddin that his requests pre-dating 2014 had not succeeded, including the fact that the Agency had taken no action following his initial 2011 request up to the time of the 2014 request. Mr. Sa'adeddin's knowledge that he was not enrolled in the GMIP was tantamount to confirmation that his request had been denied, as substantively, the outcome or object of his request was enrolment rather than to be notified of whether or not he had been enrolled.

19. Furthermore, the record of evidence submitted by Mr. Sa'adeddin only establishes that the Agency undertook to look into his initial 2011 request on an exceptional basis based on an e-mail dated 15 August 2011. From then onward, Mr. Sa'adeddin presented no proof of any communication with UNRWA until 2014, when Mr. Sa'adeddin reinitiated his request for enrolment. As such, he has presented no proof that would have warranted the UNRWA DT to determine that he had been misled or deceived by the Agency in such a way as to validate that

24. The UNRWA DT did not err in fact or law in dismissing Mr. Sa'adeddin's case for failure to comply with the Terms and Conditions of the GMIP. The UNRWA DT correctly determined that, due to the lapse in enrolment in the GMIP, Mr. Sa'adeddin was not eligible to be enrolled pursuant to his 2014 request. With regards to the alleged fault of the Agency for the lapse in Mr. Sa'adeddin's enrolment in the GMIP, the Agency recalls its contention that the UNRWA DT correctly determined that any challenge to Agency decisions taken prior to December 2014 was not receivable because Mr. Sa'adeddin had failed to request decision review in respect of these earlier decisions.

25. The Agency requests that the Appeals Tribunal find that the UNRWA DT did not err

29. We agree with the UNRWA DT's finding that "the provisions in the GMIP are mandatory for the Agency, and the GMIP does not include a provision with respect to retroactivity"² and that the Agency has no "discretionary authority to enrol former staff members if this is not allowed in the contract".³ We therefore find that the GMIP cannot apply outside of its scope of application.

30. We have examined all of the evidence and find no evidence that the UNWRA DT erred on the law or the facts. We find no merit in Mr. Sa'adeddin's claim.

² Impugned Judgment, para. 35.

³ *Ibid.*

Judgment

31. The appeal is dismissed and Judgment No. UNRWA/DT/2016/033 is affirmed.

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