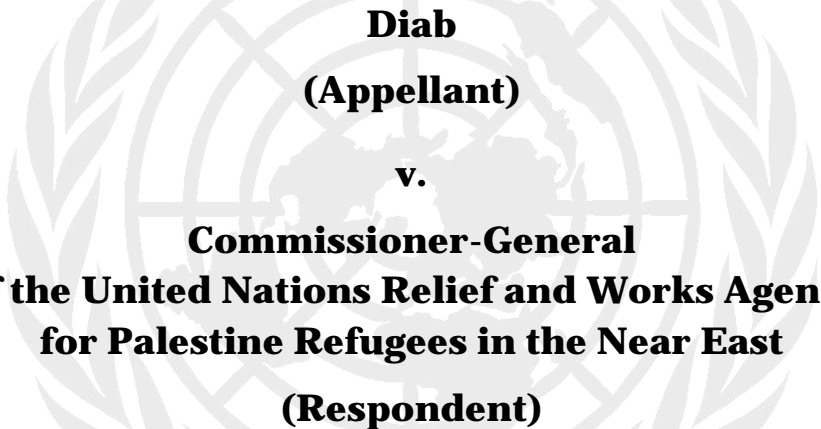




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2015-UNAT-495



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

**JUDGMENT**

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**Before:** Judge Inés Weinberg de Roca, Presiding  
Judge Sophia Adinyira  
Judge Luis María Simón

**Case Nos.:** 2012-418

**Date:** 26 February 2015

**Registrar:** Weicheng Lin

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**Counsel for Appellant:** Diab Khalil Tabari

**Counsel for Respondent:** Lance Bartholomeusz

**JUDGE INÉS WEINBERG DE ROCA, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Nadia Ali Diab against Judgment No. UNRWA/DT/2012/030, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or UNRWA Dispute Tribunal and UNRWA or Agency, respectively) on 1 July 2012 in the case of *Diab v. the Commissioner-General of UNRWA*.

**Facts and Procedure**

2. The facts as found by the UNRWA Dispute Tribunal read as follows:<sup>1</sup>

... Effective 1 June 1993, the Applicant was employed by the Agency as a Midwife at Beirut Polyclinic-Makassed Center, in Lebanon. Effective 1 July 2001, she was transferred to Shatila Camp Health Center, Beirut, where she occupied the post of Midwife at the time material to this application.

... On 30 May 2008, the Shatila Camp Health Center was sprayed with insecticide.

... On 8 June 2008, a week after the spraying, the Applicant was admitted to hospital for pneumonia and severe bronchospasm due to inhalation of chemicals.

... By letter dated 30 June 2008 to the Area Officer, Central Lebanon, the Applicant claimed that she suffered from a severe cough seizure as a result of the spraying of insecticide at the Shatila Camp Health Center.

... By note dated 14 July 200[8], the Camp Services Officer, Shatila Camp, described step by step the precautions taken prior to spraying.

... By memorandum dated 17 July 2008, the Chief, Field Health Programme, Lebanon ("CFHP/L") conveyed to the Field Administration Officer ("FAO") the information about the Applicant's absence from the Shatila Camp Health Center on the day of the spraying and the precautions taken prior to spraying. The CFHP concluded that the precautions taken by the Medical Officer were adequate to protect all the staff, and that the health problems of the Applicant were not related to the spraying of the insecticide.

... By letter dated 29 July 2008 to the Applicant, the FAO advised her of the conclusions of the CFHP regarding her case.

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<sup>1</sup> The following text is taken from Judgment No. UNRWA/DT/2012/030, paras. 4-15.

... By letter dated 11 August 2008 to the FAO, with copies to the CFHP/L and the Director of UNRWA Affairs, Lebanon (“DUA/L”), the Applicant requested review of her medical condition and requested that the Agency form an investigation committee to examine her case. She also stated that her health condition was due to the spraying of insecticide while at work in the Camp, adding that the Agency should bear the cost of the treatment.

... By letter dated 2 March 2009, the DUA/L rejected the Applicant’s request for financial assistance, indicating:

... I am satisfied that adequate precautions were taken before spraying of insecticide was started on the date in question last year. The procedure for spraying the Health Centre in Shatila had been agreed beforehand and steps taken to ensure that staff was aware that they should not be present during the spraying. On these grounds it is not possible for me to agree to your request of financial assistance.

... I suggest you contact our medical experts in the Health Department, some of whom are of course your colleagues, to ensure you receive the proper medical help.

... By letter dated 11 March 2009 titled “Reconsideration of Decision”, the Applicant again requested administrative review of the DUA/L’s decision.

... By letter dated 27 March 2009 to the Applicant, the DUA/L maintained his decision.

... On 9 June 2009, the Applicant filed an appeal with the [Joint Appeals Board (JAB)].

3. In Judgment No. UNRWA/DT/2012/030, the UNRWA Dispute Tribunal dismissed Ms. Diab’s application as not receivable, as she had failed to comply with the time limits for appeal and had failed to demonstrate that the delay was due to serious reasons or circumstances beyond her control. It recalled that former UNRWA Area Staff Rule 111.3 required a staff member to address a request to the Agency’s administration for review “within thirty days” from the date on which he or she received written notification of the contested decision and, moreover, to appeal to the JAB “within the next thirty days” if no reply was received. In the present case, Ms. Diab requested review of the decision taken by the CFHP/L on 11 August 2008. However, she did not receive a response within thirty days, i.e., by 10 September 2008. Consequently, she had to file her appeal within the next thirty days, i.e., by 10 October 2008. Ms. Diab did not file her appeal with the JAB until 9 June 2009, eight months later. The UNRWA Dispute Tribunal continued that even considering 2 March 2009 as the date of the Agency’s reply to Ms. Diab’s request for review,

Ms. Diab was still time-barred, as she should have appealed to the JAB within thirty days, i.e., by 1 April 2009, but did not do so until 9 June 2009. The UNRWA Dispute Tribunal did not examine the merits of the case.

4. The UNRWA DT Judgment is dated 1 July 2012. On 19 October 2012, the Registry of the Appeals Tribunal received an appeal filed by Ms. Diab against that Judgment. The appeal, however, was not accompanied by an appeal brief. Ms. Diab's counsel filed an appeal brief on 1 August 2013 and a motion for waiver of time limits on 8 October 2013. By Order No. 203 (2014) dated 28 October 2014, the Appeals Tribunal granted Ms. Diab's motion on the grounds of exceptional circumstances and in the interests of justice. Ms. Diab's appeal was forwarded to the Agency. On 19 December 2014, the Agency filed an answer.

5. On 13 January 2015, Ms. Diab filed a motion seeking leave for her to exercise her "exceptional right of intervention in response to" the Agency's 19 December 2014 answer. Ms. Diab alleged that in Order No. 203, the Appeals Tribunal had "ruled that the Respondent can respond to the substance of the Appeal and the Respondent had provided his arguments on the case. It is now important that [she] respond to the provided arguments otherwise it would not be clear to UNAT that the Respondent's new arguments are flawed and untrue."

6. On 23 January 2015, the Agency filed a response, requesting that this Tribunal dismiss Ms. Diab's 13 January 2015 motion as she "has failed to demonstrate 'exceptional circumstances' that warrant granting leave to file additional pleadings". The Agency stressed that contrary to Ms. Diab's assertion, this Tribunal "did not direct the Respondent to submit an answer on the merits". Moreover, the Agency "did not advance new arguments" in its 19 December 2014 answer.

### **Submissions**

#### **Ms. Diab's Appeal**

7. It is "appalling" for the UNRWA Dispute Tribunal to "hide behind administrative delay" and to dismiss her case claiming it was time-barred. The decision of the UNRWA Dispute Tribunal runs counter to the principle of the tribunal.

8. It is unacceptable for the UNRWA Dispute Tribunal to refuse to examine the merits of her case. She was at the Shatila Camp Health Center on the day of the spraying of the insecticide. The UNRWA Dispute Tribunal failed to call a witness, the sanitation laborer responsible for the spraying, to get his statement, despite her repeated requests. It should be noted that neither the CFHP/L nor the Agency's administration interviewed the laborer in question before they concluded that the Agency was not at fault.

9. It is not clear that the DUA/L's letter of 2 March 2009 contained a final decision, because "though the answer was negative, the Agency still suggested that [she] further seek medical assistance".

10. Ms. Diab requests that the Appeals Tribunal order "[f]ull assessment [of her] health case" and "payment of the medications and all other medical expenses" as well as "compensation for normal damage estimated at 5000 [sic]".

### **The Agency's Answer**

11. The Appellant has not indicated any errors on the part of the UNRWA Dispute Tribunal that would require a reversal of its Judgment. She does not explain how the UNRWA Dispute Tribunal, in judging that her application was not receivable and dismissing it on that basis, exceeded or failed to exercise its jurisdiction or competence, erred on a question of law or procedure, or erred on a question of fact resulting in a manifestly unreasonable decision.

12. The impugned Judgment was as a matter of law free of error and is consistent with the jurisprudence of this Tribunal. The UNRWA Dispute Tribunal did not err when it first considered the preliminary issue of receivability and declined to go into the merits of the case upon determining that the application was time-barred and therefore not receivable. It referenced the relevant parts of the legal framework in effect at the time and reviewed the chronology of the events.

13. With respect to the repeated requests for review, the UNRWA Dispute Tribunal correctly held that any further request for review after Ms. Diab's first request for review which was exchanged between her and the DUA/L did not alter the prescribed deadlines for initiating the appeals process. In the present case, the DUA/L's 2 March 2009 reply did not

reset the clock for filing the appeal as the date of filing (10 October 2008) had effectively passed.

14. The Agency requests that this Tribunal reject Ms. Diab's pleas and dismiss her appeal in its entirety.

### **Considerations**

15. Ms. Diab did not file her appeal with the JAB until 9 June 2009, eight months after the expiry of the filing deadline. The UNRWA Dispute Tribunal decided that even assuming 2 March 2009 as the date of the Agency's reply to her request for review, Ms. Diab was still late and therefore time-barred, as she should have appealed to the JAB within thirty days, i.e., by 1 April 2009, but did not do so until 9 June 2009.

16. The UNRWA Dispute Tribunal did not examine the merits of the case.

17. The UNRWA DT Judgment is dated 1 July 2012. On 19 October 2012, the Registry received an appeal filed by Ms. Diab against that Judgment. The appeal, however, was not accompanied by an appeal brief. Ms. Diab's counsel filed an appeal brief on 1 August 2013, i.e., 13 months after delivery of the Judgment.

18. On 13 January 2015, Ms. Diab filed a motion seeking leave for her to exercise her "exceptional right of intervention in response to" the Agency's 19 December 2014 answer.

19. On 23 January 2015, the Agency filed a response, in which the Respondent requested that this Tribunal dismiss Ms. Diab's 13 January 2015 motion as she "has failed to demonstrate 'exceptional circumstances' that warrant granting leave to file additional pleadings".

20. Ms. Diab has not indicated any errors on the part of the UNRWA Dispute Tribunal that would require a reversal of its Judgment.

21. Having considered the record as well as the parties' submissions, we find no error in the UNRWA DT's finding. Under former UNRWA Area Staff Rule 111.3(4), "[a]n appeal shall not be receivable by the Joint Appeals Board unless the above time limits have been met, provided that the Board may waive these time limits in exceptional circumstances".

22. Ms. Diab did not comply with the filing deadlines either before the UNRWA DT or the Appeals Tribunal. This Tribunal granted Ms. Diab's motion for waiver of time limits for submitting her appeal brief on the grounds of exceptional circumstances but did not accept her 13 January 2015 motion seeking leave to exercise her "exceptional right of intervention in response to" the Agency's 19 December 2014 answer.

23. The appeal brief of 1 August 2013 is a reiteration of Ms. Diab's grievances and in no way contradicts the UNRWA DT findings.

24. The UNRWA DT did not commit any error when it determined that Ms. Diab's application before it was not receivable as it was time-barred.

25. The Appeals Tribunal has repeatedly held that it "has been strictly enforcing, and will continue to strictly enforce, the various time limits".<sup>2</sup>

### **Judgment**

26. The appeal is dismissed.

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<sup>2</sup> *Mezoui v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-043, para. 21.

Original and Authoritative Version: English

Dated this 26<sup>th</sup> day of February 2015 in New York, United States.

*(Signed)*

Judge Weinberg de Roca,  
Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Simón

Entered in the Register on this 17<sup>th</sup> day of April 2015 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar