



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

Judgment No. 2022-UNAT-1246

**Ashraf Ismail abed allah Zaqqout
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Martha Halfeld, Presiding Judge Dimitrios Raikos Judge Sabine Knierim
Case No.:	2021-1590
Date of Decision:	1 July 2022
Date of Publication:	28 July 2022
Registrar:	Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Hannah Tonkin

JUDGE MARTHA HALFELD, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2021/020, 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) on 6 May 2021, which dismissed the application of Mr. Ashraf Ismail abed allah Zaqqout, as not receivable. Mr. Zaqqout contested the decision to impose on him the disciplinary measures of a written censure and a two-month suspension without pay.
2. The UNRWA DT dismissed the application on grounds of receivability. For the reasons set out below, the Appeals Tribunal affirms the UNRWA DT Judgment.

Facts and Procedure

3. Mr. Zaqqout commenced service with UNRWA in 2015 under a Limited Duration Contract, which was extended several times, with the last extension expiring on 31 December 2018.
4. On 2 April 2018, the Director of UNRWA Operations, Gaza authorized an investigation into allegations that Mr. Zaqqout had provided misleading information on his job application in 2015.
5. On 29 April 2018, Mr. Zaqqout was interviewed as part of the investigation.
6. By letter dated 21 May 2018, Mr. Zaqqout was provided with the first due process letter, informing him of the findings of the investigation and inviting him to respond to the allegations.
7. On 21 June 2018, Mr. Zaqqout responded to the first due process letter.
8. Following new allegations relating to the subject matter of the investigation, Mr. Zaqqout was interviewed again on 17 July and 4 December 2018.
9. By letter dated 5 December 2018, Mr. Zaqqout was provided with the second due process letter, informing him of the new findings of the investigation and inviting him to respond to the allegations.

10. On 26 December 2018, Mr. Zaqqout responded to the second due process letter.
11. By letter dated 30 December 2018, UNRWA imposed on Mr. Zaqqout the disciplinary measures of a written censure and a two-month suspension without pay, effective 31 December 2018.
12. As of the close of business on 31 December 2018, Mr. Zaqqout was separated from UNRWA upon the expiration of his contract.
13. On 10 January 2019, Mr. Zaqqout collected a hard copy of the impugned decision and signed the acknowledgement of receipt.
14. On 11 March 2019, Mr. Zaqqout submitted a request for decision review.
15. On 8 July 2019, Mr. Zaqqout filed an application with the UNRWA DT challenging the contested decision.

The UNRWA DT Judgment

16. On 6 May 2021, the UNRWA DT issued Judgment No. UNRWA/DT/2021/020, dismissing the application as not receivable on the basis that Mr. Zaqqout failed to submit a request for decision review within 60 calendar days from the date on which he received notification of the contested decision as required under Area Staff Rule 111.2. Mr. Zaqqout claimed that he did not check his UNRWA e-mail and that his access to UNRWA e-mail was disabled after 3:00 p.m. on 31 December 2018 as a result of his separation and therefore he was notified of the contested decision on 10 January 2019 when he received its hard copy.
17. The UNRWA DT found that since it was clear from the case record that the impugned decision was sent to Mr. Zaqqout by e-mail on 30 December 2018, this was sufficient to consider that he was notified of the decision on 30 December 2018, regardless of whether or not he checked his e-mail on 30 or 31 December 2018.
18. In addition, the UNRWA DT found that it was not convinced that Mr. Zaqqout did not access his e-mail on 30 or 31 December 2018 as the Note for the Record of 13 January 2019 and an e-mail dated 2 January 2019 sent by Mr. A. W. showed that Mr. Zaqqout had called Mr. A. W. on 31 December 2018 and stated that he had received the contested decision by e-mail and that he wanted to receive a hard copy. Therefore, the UNRWA DT concluded that

the evidence was unrefuted that Mr. Zaqqout had actually received the contested decision, at the latest, by 31 December 2018.

19. The UNRWA DT found that Mr. Zaqqout was notified of the contested decision on 30 December 2018 and therefore he had until 28 February 2019 to submit his request for decision review. By filing a request for decision review on 11 March 2019, Mr. Zaqqout failed to submit a timely request for decision review. The UNRWA DT held that it had no jurisdiction to waive this requirement and therefore dismissed the application as not receivable *ratione materiae*.

20. Therefore, the UNRWA DT dismissed Mr. Zaqqout's application.

Procedure before the Appeals Tribunal

21. On 2 September 2021, Mr. Zaqqout filed an appeal against Judgment No. UNRWA/DT/2021/020, and the appeal was registered with the Appeals Tribunal as Case No. 2021-1590. On 2 November 2021, the Commissioner-General of UNRWA filed his answer.

22. On 16 June 2022, Mr. Zaqqout submitted a motion to file additional evidence.

Submissions

Mr. Zaqqout's Appeal

23. Mr. Zaqqout submits that the UNRWA DT did not respect his due process rights by rejecting his evidence and not translating certain documentary evidence, which is relevant to his claim that the contested decision was invalid. He claims that he was not a staff member anymore at the time the contested disciplinary measure was imposed on him and therefore the contested decision was invalid.

24. Mr. Zaqqout further submits that the UNRWA DT erred in deciding not to hold a hearing as he did not agree to the case being decided on the papers and the disputed facts needed to be established by hearing witnesses.

25. Mr. Zaqqout submits that the Director of UNRWA Operations, Gaza did not have the authority to open an investigation since he was absent on annual leave. He submits that the Director of UNRWA Operations, Gaza was also absent on annual leave when the contested

decision letter was issued in his name and therefore the contested letter was invalid and UNRWA committed misconduct in the form of deception.

26. Mr. Zaqqout submits that notifying him of the contested decision via e-mail was unlawful for the following reasons:

- (a) There is no letter from the Director of UNRWA Operations, Gaza instructing a staff member from the Field Legal Office to send the contested decision via e-mail;
- (b) The contested decision did not provide that he be informed of the decision by electronic notice, text messages, and/or telephone calls;
- (c) The e-mail notification of the contested decision is contrary to the UNRWA's standard practice as during the investigation and disciplinary process, he was requested to receive relevant letters by hand and sign and date to confirm receipt of these letters. This practice further created a legitimate expectation on his part that the contested decision would be notified in a similar manner;
- (d) The e-mail message sent to him on 30 December 2018 was written in English only, which is a procedural error;
- (e) Paragraphs 20, 32 and 35 of Area Personnel Directive A/10/rev.3, taken together, provide that he be notified of a disciplinary decision in writing rather than electronically;
- (f) It should be taken into account that he was denied access to UNRWA buildings and access to communications and information technology infrastructure as he was imposed suspension without pay. The disciplinary measure entered into force on the day the decision was made, and his e-mail was disabled as of 30 December 2018, contrary to the Respondent's argument that his e-mail was disabled after 1500 hours on 31 December 2018;
- (g) He was on authorized leave from 26 to 31 December 2018 and therefore was entitled not to access e-mail, answer phone calls, or respond to text messages in accordance with Area Staff Rule 109.1(2), which provides that "[s]taff members shall continue to perform their duties ... unless they are on authorized leave of absence";

(h) He did not receive the disciplinary decision that was attached to the e-mail message.

27. Mr. Zaqqout submits that the UNRWA DT erred in law when it relied on *Shehadeh*¹ which concerned a filing of a UNAT appeal via the electronic filing portal in accordance with the Appeals Tribunal's rules since the notification of a disciplinary measure in this case is governed by UNRWA rules.

28. Mr. Zaqqout submits that Mr. A. W., who is a legal adviser to the staff of the Gaza Field Office, violated the principle of conflict of interest by confirming that Mr. Zaqqout had received the contested decision. He argues that Mr. A. W. engaged in deception in order to obtain evidence that he received the contested decision. He further argues that it is impossible to lend credence to Mr. A. W.'s account as it came late and was influenced by the head of the Field Legal Office who was already deeply involved in this issue. Therefore, the UNRWA DT erred when it relied on Mr. A. W.'s statement that is not credible and dubious without verifying his statement through an oral hearing or independent corroborating evidence.

29. Mr. Zaqqout submits that the Deputy Commissioner-General was absent and did not name an acting Deputy Commissioner-General and therefore he did not have a competent party with whom to file a request for review of the contested decision.

30. Mr. Zaqqout submits that for all the foregoing reasons, the period of limitation for submitting a request for review of the contested decision started from 10 January 2019 and therefore the submission of his request for review on 11 March 2019 was timely.

The Commissioner-General's Answer

31. First, the Commissioner-General submits that Mr. Zaqqout's request to adduce additional evidence (Annex 38) should be rejected as he failed to show exceptional circumstances that justify the admission of additional evidence at this stage. This evidence should have been presented during the UNRWA DT proceedings.

32. Second, the Commissioner-General submits that Mr. Zaqqout's request for an oral hearing should be rejected as factual and legal issues were appropriately dealt with by the UNRWA DT.

¹ *Shehadeh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-689.

33. Third, the Commissioner-General submits that the UNRWA DT did not err on a question of law and fact when it held that the application was not receivable *ratione materiae*. In response to Mr. Zaqqout's claim that he was on authorized annual leave at the material time and had no obligation to open his e-mail or reply to calls, the Commissioner-General submits that this is a new argument that was not put forward before the UNRWA DT and therefore cannot be introduced for the first time on appeal in accordance with the Appeals Tribunal's jurisprudence. The Commissioner-General submits that at any rate as the UNRWA DT found in paras. 50-51 of the impugned Judgment, Mr. Zaqqout accessed his e-mail and received the contested decision. Concerning Mr. Zaqqout's argument that e-mail notification is not an official method of communication, the Commissioner-General submits that there was no evidence adduced before the UNRWA DT to support this claim and by General Staff Circular No. 5/2016, UNRWA recognized e-mail as an official communication medium.

34. Fourth, the Commissioner-General submits that the UNRWA DT did not err in procedure by not conducting an oral hearing or requesting additional documentary evidence. Under article 14 of the UNRWA Tribunal's Rules of Procedure, the UNRWA DT has large discretion in relation to case management that will not be lightly interfered by the Appeals Tribunal.

35. In light of the above submissions, the Commissioner-General submits that the remedies sought by Mr. Zaqqout have no legal basis and the appeal should be dismissed in its entirety.

Considerations

Oral hearing

36. As a preliminary matter, the Appeals Tribunal deals with the request for an oral hearing. Oral hearings are governed by Article 8(2) and (3) of the Appeals Tribunal's Statute and Article 18(1) of the Appeals Tribunal's Rules of Procedure (Rules). The Statute provides that the Appeals Tribunal shall decide whether the personal appearance of the appellant or any other person is required at oral proceedings and the appropriate means to achieve that purpose; and that the judges assigned to a case will determine whether to hold oral proceedings.² In turn, the Rules of Procedure stipulate that the judges hearing a case may hold

² Article 8 of the UNAT Statute.

oral hearings on the written application of a party or on their own initiative if such hearings would assist in the expeditious and fair disposal of the case.³

37. Under these provisions, the oral hearing before the UNAT, however, does not aim to provide any further oral evidence or otherwise, but to discuss elements of fact and of law which are already on the record.⁴ In this sense, Mr. Zaqqout's arguments for a hearing are that he wishes to question witnesses and the translator who prepared the letter, in order to determine whether the disciplinary decision should have been communicated in writing and not via e-mail. Mr. Zaqqout would also like to comment on the Respondent's annexes attached to the answer to the appeal, of which the translation was made available only after the issuance of Order 123 (UNRWA/DT/2020), denying Mr. Zaqqout leave to file any motion and preventing him from producing oral evidence.

38. Mr. Zaqqout contends that an oral hearing is necessary to present new evidence and legal arguments, particularly because the head of the legal office has left her position in the Gaza Field Office, where she was his direct supervisor. A technical expert should also be heard: i) to provide a report on Mr. Zaqqout's e-mail history and to show that he was unable to open his e-mails; ii) to provide information as to whether Mr. Zaqqout was considered a staff member "through 31 December 2018 or through 30 September 2018". According to Mr. Zaqqout, the UNRWA DT did not hear oral evidence and relied on untrue written testimony from witnesses.

39. Since the application was dismissed on grounds of receivability, the Appeals Tribunal finds that Mr. Zaqqout's arguments are not persuasive enough so as to justify an oral hearing at this stage. Some of the issues raised in the appeal are connected to the merits of Mr. Zaqqout's application and do not meet the threshold of the receivability assessment. Likewise, the issue of whether or not the use of an e-mail to communicate the disciplinary measure was lawful is a matter of law for the Appeals Tribunal to decide, regardless of any further factual finding on the subject.

³ Article 18(1) of the UNAT Rules of Procedure.

⁴ *Gabriel Vincent Branlidor v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1234, paras. 32 and 33.

40. Furthermore, the argument that Mr. Zaqqout had been notified of the contested administrative decision on 30 December 2018, and which was ultimately accepted by the UNRWA DT in its Judgment as the reason for the finding of non-receivability of the application, had been put on the record in the Respondent's answer to the application,⁵ which was translated into Arabic and transmitted to Mr. Zaqqout on 23 December 2019.⁶ The annexes to the Respondent's reply, whose translation had also been requested by Mr. Zaqqout, were also transmitted to Mr. Zaqqout on 20 August 2020,⁷ and Mr. Zaqqout had the opportunity to file his observations on the Respondent's reply on 31 August 2020.⁸ After that, what Mr. Zaqqout did was to embark on a journey for the recusal of the presiding Judge, before the case was eventually assigned to a different Judge at the end of the tenure.

41. Therefore, the Appeals Tribunal did not find any indication of Mr. Zaqqout's filing of a motion to produce oral evidence before the UNRWA DT regarding the issues of receivability which he now raises on appeal. Since Mr. Zaqqout was made aware at the very early stage of the proceedings of the Respondent's allegation that he had been notified of the impugned decision on 30 December 2018, he should have requested the oral evidence which he now wishes to provide, that is, "that the email was disabled as of the date of the disciplinary decision on 30 December 2018". He failed to do so, and he is now precluded from doing this at this stage. In other words, whether or not Mr. Zaqqout was unable to open his e-mails in order to receive the disciplinary measure on 30 December 2018 was a matter of fact to be examined before the UNRWA DT, which is the proper instance to firstly assess factual questions in a case.

42. Lastly, if what Mr. Zaqqout claims was that the UNRWA DT should have held an oral hearing, the Appeals Tribunal recalls that, according to Article 14 of UNRWA DT Rules of Procedure, it is incumbent upon the presiding Judge to exercise discretion to decide whether to hold an oral hearing in a particular case. The present case was dismissed on grounds of receivability, so there was no such necessity.

43. In light of the above, the Appeals Tribunal finds that the factual and legal issues arising from the appeal have already been clearly defined by the parties and there is no need for further clarification. All elements for discussion are already on the record. Moreover, we do not find

⁵ Impugned judgment, para. 40.

⁶ Impugned judgment, para. 21.

⁷ Impugned judgment, para. 33.

⁸ Impugned judgment, para. 34.

that an oral hearing would “assist in the expeditious and fair disposal of the case”, as required by Article 18(1) of the Rules. Therefore, Mr. Zaqqout’s request for an oral hearing is denied.

Request to accept additional evidence

44. In his appeal, Mr. Zaqqout requests that the Appeals Tribunal accept an annex in Arabic as further evidence that his e-mail was disabled once the disciplinary decision was taken on 30 December 2018. However, apart from the facts that there has been no motion for this request and that the annex has not been translated into English, a review of Mr. Zaqqout’s submissions in support of the request leads us to conclude that this piece of evidence should have been presented to the UNRWA DT at the trial level, rather than to the Appeals Tribunal. Although Mr. Zaqqout had this opportunity when he filed his observations on the Respondent’s reply on 31 August 2020, he did not do so, and he is now estopped from raising this issue. Mr. Zaqqout’s claim that he “was unaware of the importance of filing Annex 38” at the time, as admitted in his appeal, is unpersuasive, as ignorance of the law is no excuse for not complying with it.

45. Moreover, according to Article 2(5) of the UNAT Statute and Article 10.1 of the UNAT Rules of Procedure, only in exceptional circumstances can additional evidence be submitted at the appellate level, “provided that the Appeals Tribunal shall not receive additional written evidence if it was known to the party seeking to submit the evidence and should have been presented to the Dispute Tribunal”. Mr. Zaqqout has not demonstrated what those exceptional circumstances are which could justify the filing of such an annex at this stage of the proceedings. Moreover, there is no allegation that this annex was not known to Mr. Zaqqout at the time when the proceedings were still before the UNRWA DT.

46. The request to submit additional evidence is hence denied.

Motion to file additional evidence

47. On 16 June 2022, that is, just before the present session that started on Monday 20 June 2022, Mr. Zaqqout submitted a nine-page motion to file additional evidence together with annexes amounting to 39 pages, which he had not previously submitted. He claims that there are exceptional circumstances justifying his motion because: i) due to the Covid pandemic, he was unable to obtain legal advice from staff members of UNRWA or from a local law firm to refute evidence presented by the Commissioner-General; ii) he did not have access

to certain evidence due to the fact that his e-mail access had been disabled; iii) he was working more than 13 hours per day from 25 Aug 2020 as a psychologist due to the Covid pandemic which prevented him from writing the response and providing all the evidence and facts.

48. The Appeals Tribunal is not persuaded by Mr. Zaqqout's contention. There are no exceptional circumstances under Article 2(5) of the UNAT Statute which could justify such filing for additional evidence. Moreover, his motion cannot serve as a means to reargue his case, nor to add any arguments to his appeal as a response to the Commissioner-General's answer to his appeal. Mr. Zaqqout's contention based on the Covid pandemic could have given rise to a possible request of extension of time limits to file his appeal, which was not the case. Once Mr. Zaqqout filed his appeal, he is now estopped from requesting any opportunity to further develop his arguments or to adduce evidence previously known to him and which should have been introduced at the UNRWA DT level. It is now for the Appeals Tribunal to deal with the case, with due regard to the appeal and the answer to the appeal.

49. The motion is thus refused.

Merits of the appeal – the receivability of the application

50. The main issue for consideration and determination in the present case is whether the UNRWA DT erred when it found that the application was not receivable *ratione materiae*, because Mr. Zaqqout did not submit a request for a decision review of the contested administrative decision in a timely manner.

51. Mr. Zaqqout contends that the UNRWA DT erred in its Judgment that: i) it was "biased in favour of the Respondent"; ii) it did not assess the observations nor the evidence before it; iii) it failed to translate documents into English; iv) it limited the number of pages of Mr. Zaqqout's observations; v) the case required an oral hearing on the merits; vi) he was prevented from proving that the disciplinary measure was invalid; vii) the UNRWA DT failed to correctly examine the evidence before it.

52. At the outset, the Appeals Tribunal finds that the UNRWA DT was not biased against Mr. Zaqqout, nor did it violate his due process rights. The UNRWA DT has broad discretion under its Rules of Procedure to determine the admissibility of any evidence and the weight to be attached to such evidence. The presiding Judge also has the authority to issue any order or

give any direction which is appropriate for a fair and expeditious disposal of the case and to do justice to the parties.⁹ Our jurisprudence has consistently held that the Appeals Tribunal will not lightly interfere with the broad discretion conferred on the first instance tribunal in the management of its cases to enable cases to be judged fairly and expeditiously and for dispensation of justice. We will intervene only in clear cases of denial of due process of law affecting a party's right to produce evidence. In the instant case, we do not accept Mr. Zaqqout's argument that this threshold has been met. Furthermore, if the application was dismissed on grounds of receivability, the UNRWA DT did not have to order the translation of documents which were not relevant to such a determination.

53. The legal framework specifically applicable to the present case provides that a staff member wishing to formally contest an administrative decision alleging non-compliance with his or her terms of appointment or the contract of employment, including all pertinent regulations and rules and all relevant administrative issuances, shall, as a first step, submit a written request for a decision review: (a) in the case of staff members of Field Offices, to the UNRWA Field Office Director in charge of the Field Office; and (b) in the case of staff members of Headquarters, to the Director of Human Resources.¹⁰

54. In the same sense, Article 8.1(c) of the UNRWA DT Statute stipulates that an application shall be receivable if an applicant has previously submitted the contested administrative decision for a decision review. Furthermore, Article 8.3 bars the UNRWA Dispute Tribunal from suspending, waiving, or extending the deadlines for decision review.

55. It has long been established in the Appeals Tribunal's jurisprudence that a request for decision review/management evaluation is a mandatory first step in the appeal process.¹¹ Being a mandatory first step before coming to the internal justice system, the request for management evaluation or decision review provides the Administration with the opportunity to reassess the situation and correct possible mistakes or errors with efficiency without the

⁹ Article 14 of the Rules of Procedure of the UNRWA Dispute Tribunal.

¹⁰ UNRWA Area Staff Rule 111.2(1).

¹¹ *Faye v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-654, para. 31; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-293, para. 27.

need of judicial intervention.¹² The tribunals have no jurisdiction to waive deadlines for requests for management evaluation or decision review.¹³ This jurisprudence is in full accordance with the applicable legal framework set out in the UNRWA DT Statute, particularly Article 8.¹⁴

56. The requirement of requesting decision review/management evaluation may, however, have exceptions, according to the case. Staff Rule 11.2(b) of the United Nations exempts from requesting a management evaluation, for example, the staff member wishing to formally contest an administrative decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure following the completion of a disciplinary process. However, unlike the Staff Rules of the United Nations, the UNRWA Statute and Area Staff Rules provide no exemption to the general requirement of requesting decision review/management evaluation being a mandatory first step in the appeal process.

57. Having established the applicable legal framework of what remains to be determined in the present case, the Appeals Tribunal will now assess whether the UNRWA DT erred when it found that the application was not receivable *ratione materiae*. In reaching its conclusion, the UNRWA DT found that Mr. Zaqqout was notified of the impugned decision on 30 December 2018 and that he had until 28 February 2019 to submit his request for decision review. Therefore, his request for decision review on 11 March 2019 was not timely.

58. Mr. Zaqqout maintains that he was no longer employed by UNRWA from 30 September 2018. Therefore, he argues that he was not a staff member at the time the disciplinary measure was imposed and communicated to him. However, the disciplinary letter informs that, even though he had been separated from service along with other staff members

¹² *Vukasović v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-699, para. 13, citing *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-521, para. 17, in turn citing *Servas v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-349, para. 22 and citations therein.

¹³ *Faust v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-695, para. 40, citing *Eggesfield v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-402, para. 23 and citations therein.

¹⁴ *Lara Sahyoun v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1149, para. 28. Also, *Vukasović v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-699, para. 13; *Faye v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-654, para. 31; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-293, para. 27.

around that time due to funding issues, he was later reinstated, and his contract was restored with the end date of 31 December 2018, upon expiry of his LDC.¹⁵

59. Having considered the circumstances of the case, the Appeals Tribunal finds that the UNRWA DT was correct when it found that: i) the e-mail communicating the contested decision and its reasons (both in Arabic and in English) was sent to Mr. Zaqqout on 30 December 2018 informing him of the date of the decision that day and the suspension was effective starting the following day; and ii) Mr. Zaqqout's argument that he was not made aware of the content of the letter until the 10 January 2019, when he collected the hard copy of the decision and signed acknowledgment of receipt, is not convincing.¹⁶

60. In this regard, Mr. Zaqqout asserts that all the previous letters to him had been sent on a paper version, even though some had also been sent via e-mail and that some deadlines during the investigation phase had been extended based on the date of receipt of the paper copy. For Mr. Zaqqout, this electronic notification should not be authorised in accordance with UNRWA's standard practice. However, UNRWA General Staff Circular 5/2016 dated 18 December 2016 "recognises email as an official communication medium" within the Agency. It also establishes that reading e-mail messages and taking necessary actions are among the responsibilities of the user (Section 2.1) and that English is the official language used to address staff (Section 5). Mr. Zaqqout's reliance on Area Personnel Directive A/10/rev 3 that a disciplinary decision should be notified in writing "rather than electronically" is misplaced, as an e-mail is considered to be a *written* communication, as opposed to an *oral* communication.

61. Furthermore, the evidence in the record corroborates the UNRWA DT's factual finding that 30 December 2018 was indeed the date on which Mr. Zaqqout received the contested administrative decision. This evidence includes: i) the note for the record signed on 13 January 2019 by the Head, Field Legal Office, Gaza; ii) the printed version of the text message sent to Mr. Zaqqout on his mobile phone on 30 December 2018; iii) the e-mail from the Administrative Assistant of the UNRWA Field Legal Office, Gaza, dated 31 December 2018; and iv) the e-mail from the Head, Field Legal Office, Gaza, dated 2 January 2019. In this regard, the Appeals Tribunal does not accept Mr. Zaqqout's argument that there was a conflict of interest of the staff member who gave the information mentioned in the note for the record

¹⁵ Paragraphs 11 and 14 of the disciplinary letter dated 30 December 2018. See also impugned judgment, para. 11.

¹⁶ Impugned judgment, paras. 47 and 50.

based solely on his role as a staff member with no decision power or authority. Likewise, Mr. Zaqqout's claim that this same information had been influenced by the Head of the Field Legal Office is unsubstantiated.

62. These pieces of evidence reveal that, on 30 December 2018, the Administrative Assistant of the UNRWA Field Legal Office, Gaza, sent to Mr. Zaqqout an e-mail forwarding the contested decision itself at 2:53 p.m. and a mobile phone text message at 3:00 p.m. to call Mr. Zaqqout's attention to the important letter from the Director of UNRWA Operations which had been sent to his e-mail on that day. Then, the Administrative Assistant phoned Mr. Zaqqout on the next day (31 December 2018 at 2:02 p.m.), and during the conversation Mr. Zaqqout first complained about the time the e-mail and message had been sent the day before was beyond the end of the working day, at 1:30 p.m., before stating that he had not been accessing his e-mails after 3:00 p.m. and that the access to his e-mail account had been disabled on that day. Mr. Zaqqout also affirmed that the communication via e-mail was disrespectful, because staff members should have the opportunity to see the decision and sign the acknowledgment of receipt before it is applied.

63. The content of the phone call held on the following day after the contested decision was sent to Mr. Zaqqout indicates that he was well aware of the substance of the decision to impose on him the disciplinary measure. The fact that he complained about the time of the day when the e-mail and the mobile message were sent to him the day before, and about being disrespected by being informed of such a decision by e-mail and not by hard copy are relevant to the conclusion that he could only have expressed such disagreements had he been already informed of the contested decision at that time.

64. The note for the record dated 13 January 2019 and the e-mail dated 2 January 2019 corroborate this conclusion. Moreover, they prove that on 31 December 2018, Mr. Zaqqout had called a colleague in order to obtain some advice with regard to whether to consider a letter from the Field Legal Office he had received via e-mail as an official means of communication. Mr. Zaqqout believed that he should have received the letter in hand; thus, he thought that he had not received anything officially. The advice he then received was rather that the e-mail was an official means of communication. This conversation took place at 10:15 a.m., even before Mr. Zaqqout received the phone call from the Administrative Assistant of the UNRWA Field Legal Office, Gaza, on the same day, as previously noted.

65. Therefore, the UNRWA DT correctly assessed the evidence before it and found that the date when Mr. Zaqqout was informed of the contested decision was 30 December 2018, and that his request for a decision review was beyond the prescribed window of opportunity to challenge it. Even if the Appeals Tribunal were to consider that Mr. Zaqqout had actually been informed of the contested decision on 31 December 2018, his request for a decision review would have also been beyond the statutory time limit. In any event, there is no room for Mr. Zaqqout's contention that the starting date for the time window to request a decision review was 10 January 2019, when he eventually collected the hard copy of the letter at the Gaza Field Office. In this regard, the note for the record clarifies that it was Mr. Zaqqout who took the initiative to make an appointment to receive a hard copy of the letter, initially on 9 January 2019 and then, due to his personal reasons, again on the following day.

66. The date when an administrative decision is communicated cannot depend on the willingness of the staff member to receive it. Nor does it depend on his or her personal beliefs of procedures, or his or her commitments. Nor can a staff member unilaterally determine the date of an administrative decision.¹⁷ This is because “[t]he date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine”.¹⁸

67. There is one last issue raised in the appeal which the Appeals Tribunal is barred from analysing, on pain of infringement of the two-tier principle of administration of justice.¹⁹ Indeed, Mr. Zaqqout's argument that he was on authorised leave from 16 to 31 December 2018 was raised for the first time on appeal, and this cannot be accepted.

¹⁷ *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 31, citing *Chahrour v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-406, citing in turn *Rosana v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-273.

¹⁸ *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 28 citing *Rabee v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-296, in turn citing *Rosana v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-273.

¹⁹ *Ho v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-791, para. 37; *Haimour and Al Mohammad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-688, para. 38; *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-547, para. 25; *Simmons v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-221, para. 61.

68. Mr. Zaqqout was not satisfied by the reasons provided by the Agency, nor by the UNRWA DT Judgment itself. However, having considered all of Mr. Zaqqout's submissions, we find that he has failed to persuade the Appeals Tribunal that the UNRWA DT committed any error of law, fact or procedure in reaching its decision. The UNRWA DT did review the entirety of the evidence produced in the record before determining whether he submitted a request for a decision review in a timely manner. Furthermore, the UNRWA DT did not err in finding that Mr. Zaqqout had failed to submit a request for a timely decision review.

69. Considering the above, the UNRWA DT did not err when it found that Mr. Zaqqout's application was not receivable *ratione materiae* on the basis that he failed to file a request for a decision review.

70. The other arguments and remedies sought by Mr. Zaqqout would demand a full assessment of the merits of the application. However, the Appeals Tribunal cannot determine these on the merits, since Mr. Zaqqout failed to provide elements to overrule the UNRWA DT finding that his application was not receivable.

71. The appeal accordingly fails.

Judgment

72. Mr. Zaqqout's appeal is dismissed, and Judgment No. UNRWA/DT/2021/020 is upheld.

Original and Authoritative Version: English

Decision dated this 1st day of July 2022.

(Signed)

Judge Halfeld, Presiding
New York, United States

(Signed)

Judge Raikos
New York, United States

(Signed)

Judge Knierim
Hamburg, Germany

Judgment published and entered into the Registry on this 28th day of July 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar