



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

**Adwan
(Appellant)**

v.

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

JUDGMENT

[No. 2010-UNAT-020]

Before:	Judge Rose Boyko, Presiding Judge Mark P. Painter Judge Luis María Simón
Case No.:	2010-025
Date:	30 March 2010
Registrar:	Weicheng Lin

Counsel for Appellant: Aref R. Zafari

Counsel for Respondent: W. Thomas Markushewski

JUDGE ROSE BOYKO, Presiding.

Synopsis

1. The Appellant, Samir Adwan (Adwan), a teacher with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) for 22 years, submitted a letter of resignation and shortly thereafter indicated that he wished to withdraw his letter of resignation and be reinstated. UNRWA had already filled his position and refused to reinstate him. Adwan appealed to the UNRWA Area Staff Joint Appeals Board (UNRWA JAB), but the Commissioner-General confirmed the decision. This Court holds that UNRWA had the discretion and authority not to reinstate the staff member as it had already filled his position before receiving his letter attempting to withdraw his resignation.

Facts and Procedure

2. By letter dated 28 September 2003, Adwan notified the Director of the Regional Education Programme, UNRWA/Syria, of his resignation “as [of] the 1st of October 2003 for private reasons”. The date stamped on the letter indicated that the UNRWA Personnel Section received it on 1 October 2003.

3. In a reply written in English and Arabic, the Field Personnel Officer and Deputy Field Administration Officer, Syria Field Office of UNRWA, advised Adwan as follows:

[Y]our resignation has been approved effective close of business on **30 September 2003**. *However, should you change your mind and wish to cancel your request for resignation, such request may be reviewed on its own merits and without any obligation on the part of the Agency only within 6 working days from the date you left Agency service.* (Bold and Italics in original)

The letter continued: “A Personnel Action Form will be issued in due course to establish your separation...” It is not clear when this letter was mailed to Adwan. The copy of the letter that was attached to the Respondent’s Answer provides no such information. But the copy that Adwan has provided bears a date stamp of 13 October 2003. According to Adwan, UNRWA dispatched the said letter on 13 October 2003, but backdated it to 5 October 2003.

4. On 7 October 2003, Adwan wrote the following to the Chief of the Field Education Programme in Syria:

I hope you would kindly reconsider reinstating me at work and annulling my resignation, which I submitted on 28/9/2003 under stressful family and psychological circumstance.

5. The next day, the Chief of the Field Education Programme made the following note on the lower portion of the letter: "To: F.P.O [Field Personnel Officer]. Not recommended. We fill[ed] the post."

6. On 12 October 2003, the Field Personnel Officer wrote to Adwan and advised him that his request could not be approved as the post had already been filled.

7. In letters dated 12 October and 20 October 2003 to the Chief of the Field Education Programme, Adwan reiterated his request to cancel his resignation. He stated that he had not received any "financial settlement" in connection with separation and proposed that his absence from work be treated as "leave without pay". He received no response.

8. In a letter dated 30 October 2003 to the Director of UNRWA in Syria (DU/S), Adwan recounted the background of his resignation, explaining that it was "[d]ue to special circumstances". He stated that on 13 October 2003 he received a letter from the Personnel Department rejecting his request for reinstatement and accepting his resignation. Thereafter he received clearance papers. Adwan asked the DU/S to "consider my wish to go back to my job and to have my resignation cancelled", and to "consider the interruption of work as a leave without pay". Adwan sent the DU/S follow-up letters on 30 December 2003 and 26 January 2004, but received no reply.

9. On 12 February 2004, Adwan appealed to the UNRWA JAB, seeking reinstatement and treatment of the period of his absence as special leave with full pay.

10. It took the UNRWA Administration more than four years to finally submit its Respondent's Reply, on 24 February 2008. Adwan filed a rejoinder on 6 April 2008, to which UNRWA replied on 20 April 2008.

11. On 29 May 2008, the UNRWA JAB submitted its report to the UNRWA Commissioner-General. The majority of the JAB panel found that the appeal was not

receivable, because Adwan had filed his appeal one month and 13 days beyond the time-limit. The JAB reckoned that it was on 30 October 2003, when Adwan sent his first letter to DU/S, as the commencement of the time limit. The JAB panel reasoned that Adwan had two months within which to file an appeal to the UNRWA JAB, by 30 December 2003, but he did not appeal until 12 February 2004. The minority panel member, on the other hand, maintained that the appeal was receivable because Adwan had sent DU/S three letters, the last of which was dated 26 January 2004. In his view, 26 January 2004 should be taken as the cut-off date for time-limit purpose. The majority recommendation was adopted by the UNRWA Commissioner-General.

12. On 26 August 2008, Adwan wrote to the Administrative Tribunal Secretariat requesting an extension of the time-limit for filing an application. In a letter dated 10 September 2008, the Executive Secretary of the Administrative Tribunal informed Adwan of the President's decision to extend the time limit to 10 December 2008.

13. The secretariat of UN Administrative Tribunal received an application from Adwan on 14 November 2008. UNRWA in turn requested an extension of the time-limit and was permitted to file the Respondent's Answer by 9 June 2009. On 21 May 2009, the Secretariat of the Administrative Tribunal received the Respondent's Answer.

Submissions

14. Turning first to the issue of receivability, UNRWA argues that the present appeal is not receivable on grounds of delay. Adwan received the decision of the UNRWA Commissioner-General, approving the JAB recommendation, on 16 June 2008. He should have appealed to the former United Nations Administrative Tribunal within 90 days of receipt of the decision, on or about 16 September 2008. Instead he lodged his application with the Administrative Tribunal secretariat on 14 November 2008. There was no evidence showing that he was prevented from lodging his appeal in time due to "serious reasons" or "circumstances beyond his control". UNRWA's position is that the UNRWA JAB did not err when it found the appeal time-barred.

15. Adwan argues that his application to the former United Nations Administrative Tribunal was receivable because he filed it on 14 November 2008, before the authorized deadline of 10 December 2008. Adwan also argues that UNRWA tampered with the dates on its letter to him (dated 5 October 2003, but stamped 13 October 2003) in order to show that the delay was caused by Adwan and not the UNRWA Administration.

UNRWA's credibility is thus called into question because the day stamp was rubbed out from the copy of the letter attached to the Respondent's Answer.

16. Adwan further argues that because it failed to respond to his letters, UNRWA cannot now accuse him of not observing the time limits. Before UNRWA wrote to accept his resignation, Adwan had the right to withdraw his resignation. After he had sent repeated reminders to the UNRWA Administration, Adwan was verbally told to wait. Although UNRWA left open the possibility of Adwan withdrawing his resignation, but did not wait until the end of the six-day grace period to fill Adwan's post, especially since there were many vacant teacher posts that UNRWA could have used to accommodate Adwan.

17. On the merits of the reinstatement issue on appeal, UNRWA's position is that the UNRWA JAB did not err when it denied the appeal. UNRWA submits that there was no appealable decision presented to the JAB. It was Adwan who unilaterally decided to resign when he sent a notice of resignation on 28 September 2003 and ceased to report to work after 30 September 2003. The decision to resign was Adwan's and his alone. The UNRWA Administration did not take any decision in its wake that did not observe the terms of his appointment. It should be noted that no right of rescission exists in either Adwan's conditions of appointment or the Area Staff Regulations and Rules. There was no obligation for UNRWA to accept Adwan's request to withdraw his resignation.

18. The UNRWA Administration received Adwan's request to withdraw his resignation, but fulfilled all its obligations towards him in the proper exercise of its discretionary authority. UNRWA was entitled to rely on the voluntary and unilateral actions initiated by Adwan in the organization and management of its human resources. To permit otherwise would deny the Agency finality with respect to those decisions, rendering unworkable the operations of the Agency in the delivery of its mandate.

19. As Adwan resigned from his teacher position in the middle of a school year on a very short notice, the Agency was obliged to act expeditiously to fill the vacancy and replace him. The UNRWA Administration wrote and sent the letters dated 5 October and 12 October 2003 respectively. It did not alter the dates on the letters in any manner, or delayed their dispatch.

Considerations

20. The first issue in this appeal is whether the JAB erred in finding that the appeal was not receivable. If the appeal was receivable, the second issue is whether the JAB erred in dismissing the appeal.

21. This Court holds that the UNRWA JAB erred in finding that the appeal was not receivable due to late filing by Adwan. We affirm the findings in the minority opinion of the UNRWA JAB that from the correspondence filed on appeal, it is evident on its face that Adwan filed his JAB appeal on time.

22. Adwan resigned from his post voluntarily and was advised in writing that he had six working days from the effective date of his resignation on September 30, 2003, to notify his employer should he change his mind. But while it was open to his employer to review the matter of his reinstatement, the employer was under no obligation to reinstate him.

23. Adwan did change his mind, evidently soon after he had tendered his letter of resignation and after he had notified his employer of this in a timely way. However, by this time the employer had already filled the post he vacated with another employee and refused to reinstate him.

24. It was within the employer's right to refuse to reinstate him in these circumstances.

25. We find that the UNRWA JAB did not err in rejecting Adwan's request to withdraw his resignation. It was clearly within UNRWA's power and discretion to refuse his reinstatement since it had already filled his position.

Judgment

26. This Court affirms the JAB minority position that the appeal is receivable. It further affirms that the employer had the discretion and authority not to reinstate Adwan as it had filled his position before receiving his letter attempting to withdraw his resignation.

27. UNRWA's position that there was no error in refusing Adwan's reinstatement is affirmed and the appeal is dismissed.

THE UNITED NATIONS APPEALS TRIBUNAL

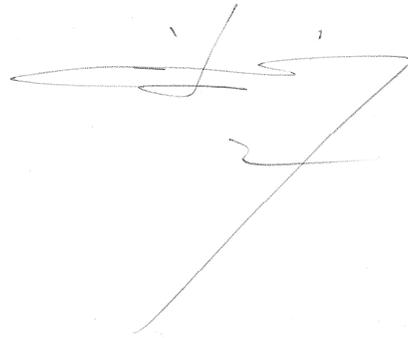
Case No. 2010-025



Judge Boyko, Presiding



Judge Painter



Judge Simón

Dated this 30th day of March 2010 in Geneva, Switzerland.

Original: English

Entered in the Register on this 26th day of April 2010 in New York, United States.



Weicheng Lin, Registrar, UNAT