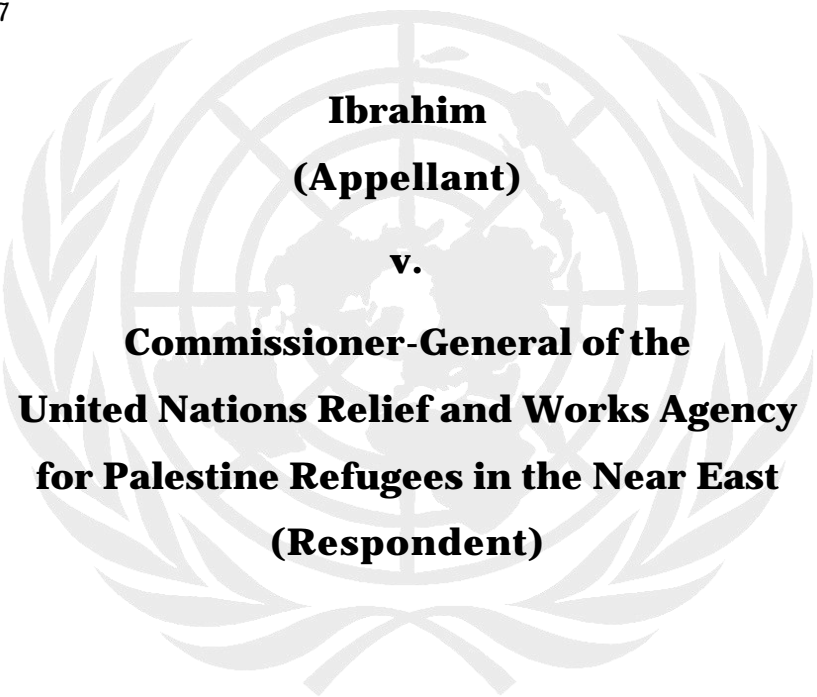




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2010-047



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

JUDGMENT

Before:	Judge Sophia Adinyira, Presiding Judge Mark P. Painter Judge Inés Weinberg de Roca
Judgment No.:	2010-UNAT-069
Date:	27 October 2010
Registrar:	Weicheng Lin

Counsel for Appellant:	Aref R. Zafari
Counsel for Respondent:	W. Thomas Markushewski

JUDGE SOPHIA ADINYIRA, Presiding.

Synopsis

1. The service of the appellant, Mohammed Nayef Ibrahim (Ibrahim), a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the respondent, was terminated by a letter dated 18 May 2006. His request for an administrative review was refused by a letter dated 3 August 2006.
2. On 28 February 2008 (18 months later), Ibrahim appealed to the UNRWA Joint Appeals Board (UNRWA JAB) for a waiver of the time limit and for his appeal to be heard.
3. The UNRWA JAB rejected the application for the reason that Ibrahim failed to demonstrate any exceptional circumstances to justify or excuse his failure to comply with the time limits prescribed in the UNRWA Area Staff Rules.
4. Ibrahim appeals against the decision by the Commissioner-General of UNRWA to confirm the recommendation of the JAB that the appeal is time-barred.
5. This Court stresses the importance of time limits and affirms the decision of the Commissioner-General.

Facts and Procedure

6. Ibrahim held a two-year fixed-term appointment as Teacher from 16 September 2000 at Arrabeh School, South Area, UNRWA. His appointment was extended twice, and was due to expire on 30 June 2006.
7. On 16 March 2006, the Officer-in-Charge, UNRWA Affairs, Syrian Arab Republic (OiC/UA/SAR), was informed of allegations that Ibrahim had been “misbehaving with [his] pupils and exercising sexual harassment against them.” By letter dated 16 March 2006, the OiC/UA/SAR informed Ibrahim of the complaints against him and the decision to suspend him from duty without pay in order to facilitate the investigation.

8. On 19 March 2006, the Acting Director of UNRWA Affairs, Syrian Arab Republic (A/DUR/SAR) convened a Board of Inquiry (BoI) to investigate the allegations against Ibrahim. In its report dated 23 March 2006, the BoI concluded that Ibrahim had used unacceptable language in class, sexually harassed a pupil when she rode in his car, invited a female pupil to his home, made phone calls to female pupils to invite them to visit his home and threatened two pupils.

9. By letter dated 7 May 2006, the A/DUA/SAR informed Ibrahim of the findings of the BoI and advised him that “it has been determined that you have exercised serious misconduct against your female students”. She requested Ibrahim’s written comments regarding the allegations before UNRWA considered imposing any disciplinary measures. Ibrahim denied the allegations of misconduct in his response dated 9 May 2006. By letter dated 18 May 2006, the A/DUA/SAR informed Ibrahim that his appointment would be terminated with immediate effect in the interests of UNRWA under Area Staff Regulation 9.1 and Area Staff Rule 109.1. By letters dated 8 June, 27 June, and 19 July 2006, Ibrahim requested an administrative review of the decision to terminate his appointment. On 3 August 2006, the OiC/UA/SAR informed Ibrahim that she had reviewed Ibrahim’s case and was satisfied that the decision should stand.

10. On 28 February 2008, Ibrahim filed an appeal with the UNRWA JAB. In its report dated 29 April 2009, the UNRWA JAB recommended to the Commissioner-General that Ibrahim’s appeal be dismissed on the basis that it was time-barred and not exceptionally receivable. In its view, having not received a reply by 8 July 2006 to his request for administrative review dated 8 June 2006, Ibrahim had thirty days, that was until 8 August 2006, to submit his appeal to the UNRWA JAB under Area Staff Rule 111.3(3). Even if the date of the OiC/UA/SAR’s response to Ibrahim’s request for administrative review was taken as the date for calculating the time limit to appeal, the appeal was still time-barred as it should have been filed within thirty days, by 3 September 2006. Ibrahim sought a waiver of the time limit to appeal on the basis that his legal counsel had been away from Syria for medical treatment for a year. However, the UNRWA JAB found that there were no exceptional circumstances to justify Ibrahim’s

delay in filing his appeal. It noted that there were at least three avenues which Ibrahim could have pursued in order to satisfy the temporal requirements for filing an appeal, including submitting an appeal in the absence of his lawyer, retaining another lawyer or requesting an extension of the time limit.

11. On 19 May 2009, the Commissioner-General dismissed Ibrahim's appeal as not receivable *ratione temporis*, based on the recommendation of the UNRWA JAB.

12. Ibrahim filed an appeal, dated 29 July 2009, which was received by the former Administrative Tribunal on 8 September 2009. The appeal was rejected and a corrected appeal was received by the former Administrative Tribunal on 4 November 2009. On 28 January 2010, the appeal was received by the Registry of the Appeals Tribunal.

13. On 23 April 2010, the Registrar of the Appeals Tribunal transmitted Ibrahim's appeal to the Commissioner-General. There followed an exchange of correspondence between the Registrar and UNRWA regarding the competence of the Appeals Tribunal with respect to the appeal. The Registrar observed that, pursuant to General Assembly resolution 63/253, the former Administrative Tribunal's authority to accept new cases ceased as of 1 July 2009. The former Administrative Tribunal erred in accepting Ibrahim's appeal, which was filed after 1 July 2009. Further, under Article 2(7) of the Special Agreement between UNRWA and the Secretary-General of the United Nations, dated 11 December 2009, the Appeals Tribunal's jurisdiction over "transitional" cases involving UNRWA staff or former staff did not apply as the Commissioner-General's decision was made before 1 July 2009.

14. The President of the Appeals Tribunal decided to accept Ibrahim's appeal as the former Administrative Tribunal had accepted and transferred the appeal to this Tribunal notwithstanding its lack of competence to do so. Further, Ibrahim would be left without any recourse due to the lacuna in the transitional provisions in the Special Agreement. The Appeals Tribunal suspended the time limit for the Commissioner-General to file an answer to the appeal until UNRWA amended its Staff Regulations and Rules to reflect the Tribunal's jurisdiction over cases involving UNRWA staff and former staff.

15. By e-mail dated 17 September 2010, the Registrar of the Appeals Tribunal advised UNRWA that the deadline for the Commissioner-General to file an answer to the appeal was 8 October 2010. The Commissioner-General filed an answer on 8 October 2010.

Submissions

Ibrahim's Appeal

16. Ibrahim submits that the panel of the UNRWA JAB was prejudiced in favour of the Commissioner-General. In this regard, Ibrahim contends that the Commissioner-General's reply to his appeal before the UNRWA JAB was due to be filed by 27 May 2008. But it was only filed on 6 April 2009. Ibrahim contends that his appeal to the JAB was not time-barred as he did in fact seek an extension of time from the JAB to file an appeal. Further, he was waiting to receive certified copies of the investigation documents from UNRWA, which failed to provide them to him. It was not possible for him to file his appeal without the assistance of a lawyer as the appeal was required to be in English and he is not fluent in English. He was unable to retain another lawyer due to the cost. Moreover, Ibrahim contends that the Commissioner-General does not provide legal counseling for staff members, in contrast with other United Nations bodies.

17. Ibrahim argues that the decision of the Commissioner-General to terminate his appointment is tainted with mistakes of fact and errors of law. The decision was flawed, as the allegations against him were required to have been brought before the school's disciplinary board.

18. Ibrahim contends that the charge that he harassed one pupil is fabricated and has no foundation. Ibrahim submits that the allegations were contradicted by testimony from other witnesses and this was not properly taken into account by the Commissioner-General.

19. Ibrahim requests the Appeals Tribunal to order the Commissioner-General to produce authentic and certified copies of all the documents relating to the case; rescind the decision to terminate his appointment; treat the period of his cessation including suspension without pay as leave with full pay; and reinstate him to his original post.

Commissioner-General's Answer

20. The Commissioner-General submits that Ibrahim's appeal to the former Administrative Tribunal is time-barred and not receivable. Under Article 7(4) of the Statute of the former Administrative Tribunal, Ibrahim was required to either file his appeal or a request for an extension of time to appeal from the Commissioner-General's decision within 90 days from the date of the communication of the decision. On 8 June 2009, Ibrahim received the decision of the Commissioner-General to dismiss his appeal, based on the UNRWA JAB's recommendation. Ibrahim's appeal was received by the former Administrative Tribunal on 8 September 2009, two days after the expiry of the 90-day period. Ibrahim's appeal was returned to him for correction, and he filed the corrected appeal on 4 November 2009, a delay of two months. The Commissioner-General contends that Ibrahim has not demonstrated any exceptional circumstances that would justify an extension of the time limits in this case in accordance with the jurisprudence of the former Administrative Tribunal. Ibrahim has not provided any explanation for his delay in filing a corrected appeal until 4 November 2009.

21. The Commissioner-General further submits that the decision to dismiss Ibrahim's appeal to the UNRWA JAB on the basis that it was time-barred and not receivable was, as a matter of law, free of error. The UNRWA JAB properly considered that there were no exceptional circumstances justifying a waiver of the time limit to file an appeal to the JAB. Ibrahim did not provide any evidence that he had sought and received an extension of time from the JAB to file his appeal. The Commissioner-General contends that even if there had been a delay in filing a reply to Ibrahim's appeal to the UNRWA JAB, such a delay would not excuse Ibrahim's failure to file his appeal on time. Further, UNRWA was under no duty to provide counsel to Ibrahim for the purposes of his appeal to the UNRWA JAB.

22. The Commissioner-General requests the Appeals Tribunal to reject Ibrahim's appeal on the basis that it is time-barred. In the alternative, the Commissioner-General requests that this Tribunal find that the Commissioner-General did not err in dismissing Ibrahim's appeal before the JAB, and reject this appeal. In the further alternative, the Commissioner-General requests this Tribunal to remand the case to the UNRWA Dispute Tribunal for consideration on the merits.

Considerations

23. This appeal is only centred on the receivability of Ibrahim's appeal to the UNRWA JAB. Ibrahim sought a waiver of the time limit to appeal before the UNRWA JAB on the basis that his legal counsel was away from Syria for medical treatment for a year.

24. The UNRWA JAB found that there were no exceptional circumstances to justify Ibrahim's delay in filing his appeal. It therefore refused to exercise its discretion under Area Staff Rule 111.3(4).

25. The UNRWA JAB noted that there were at least three avenues which Ibrahim could have pursued in order to satisfy the temporal requirements for filing an appeal, including submitting an appeal in the absence of his lawyer, retaining another lawyer or requesting an extension of the time limit.

26. We do not find any exceptional circumstances to justify Ibrahim's 18-month delay in filing his appeal pending either his counsel's return or his replacement.

27. This Court emphasizes the need to observe time limits. The UNRWA JAB properly considered that there were no exceptional circumstances justifying a waiver of the time limit to file an appeal to the UNRWA JAB.

28. We therefore affirm the decision of the Commissioner-General to dismiss Ibrahim's appeal as time-barred.

Judgment

29. The appeal is dismissed and the Commissioner-General's decision to dismiss Ibrahim's appeal to the UNRWA JAB as time-barred is affirmed.

Dated this 27th day of October 2010 in New York, United States.

Original and authoritative version: English

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Painter

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 29th day of December 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar