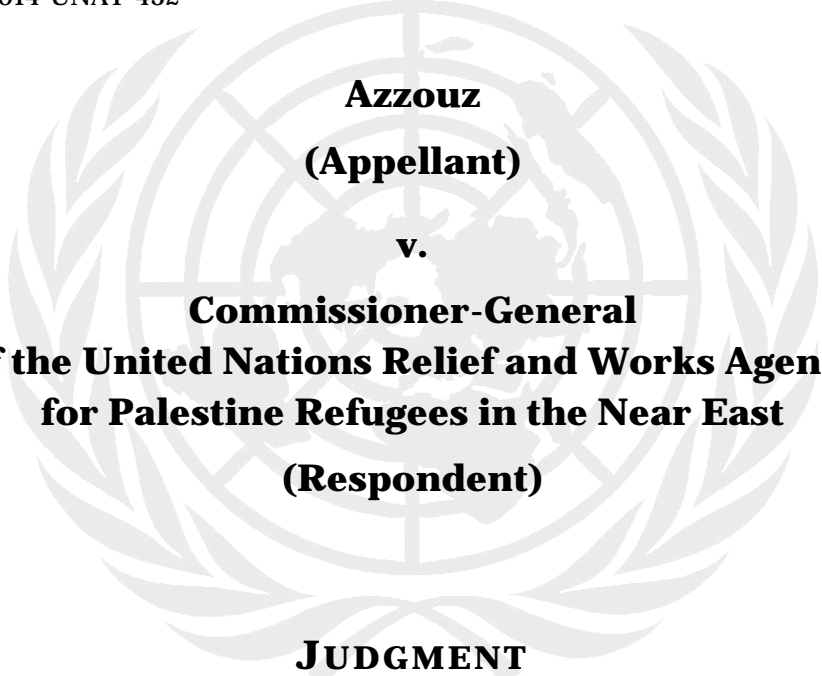




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2014-UNAT-432



**Azzouz  
(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 Richard Lussick, Presiding  
Judge Sophia Adinyira  
Judge Luis María Simón

**Case No.:** 2013-494

**Date:** 27 June 2014

**Registrar:** Weicheng Lin

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**Counsel for Mr. Azzouz:** Self-represented

**Counsel for Commissioner-General:** Lance Bartholomeusz

**JUDGE RICHARD LUSSICK, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Faisal Ali Azzouz against Judgment No. UNRWA/DT/2013/013, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or Dispute Tribunal and UNRWA or Agency, respectively) on 25 April 2013 in the case of *Azzouz v. Commissioner-General of UNRWA*. Mr. Azzouz appealed on 7 June 2013 and the Commissioner-General of UNRWA (Commissioner-General) answered on 20 August 2013.

**Facts and Procedure**

2. The following facts are uncontested:<sup>1</sup>

... Effective 12 July 1980, the Applicant entered the service of the Agency on a fixed-term appointment as a Trade Instructor Auto-Mechanic at the Damascus Vocational Training Centre (“DTC”), Syria, at Grade 8, Step 1. At the material time, the Applicant filled a Grade 11 post.

... In the last quarter of 2010, following a redeployment by the Agency of resources and funding from courses and posts which were no longer essential to more relevant ones, the Applicant’s post (Trade Instructor Auto-Mechanic) along with other posts were declared redundant and abolished effective 13 September 2010.

... By letter dated 15 November 2010, the Director of UNRWA Affairs, Syrian Arab Republic (“DUA/SAR”) informed the Applicant of the following:

This is to inform you that a review of staffing needs has been conducted in the Damascus Training Centre, with a view to redeploying resources from functions which are no longer essential to others which are, and for which funding can thereby be made available.

The post of Trds Inst Auto Mech against which you are currently placed, is one of the posts which were subject to this review, this post was deleted with effect from 13 September 2010.

Therefore, you are hereby declared provisionally redundant for a period of three months from the date of this letter, during which the Agency shall try to find you a suitable alternative post commensurate with your qualifications. In case no suitable alternative placement is found by the end of this period, your services shall be terminated on grounds of redundancy

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<sup>1</sup> *Azzouz v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2013/013, paras. 2-15.

and the notice period of termination provided for by Area Staff Regulation No. 9.1 shall be considered to have been granted to you.

... By letter dated 6 December 2010 to the Deputy Field Administration Officer (“D/FAO”), the Applicant requested to be transferred to the post of Housemaster at the DTC. On the Applicant’s letter, the Director of the DTC wrote a note to the D/FAO dated 12 December 2010:

I recommend transferring the assistant Housemaster Mr. Salim Madi to the post of Housemaster and appoint Mr. Faisal Azzouz to the post of Assistant Housemaster as Mr. Faisal Azzouz holds a preparatory school Education Certificate while Mr. Madi holds a Teaching Certificate which is a two year post secondary certificate and he has a good performance record.

... By letter dated 7 February 2011 to the D/FAO, the Applicant requested to be transferred to the post of Dispatcher or Head Mechanic. On the Applicant’s letter, the Director of the DTC wrote a note to the D/FAO also dated 7 February 2011:

I suggest transferring instructor Faisal Azzouz to either of the two posts [Dispatcher or Head Mechanic] as they are commensurate with his experience in the field of mechanics.

... The Applicant’s period of provisional redundancy was extended from 15 February 2011 to 31 March 2011 to provide him sufficient time to obtain the results of some technical tests of his competencies and to receive the final decision of the DUA/SAR.

... By letter dated 21 March 2011, the Applicant requested the DUA/SAR to place him in another post rather than terminate his appointment for post redundancy, as his family and the family of his late brother depended on him for a living.

... By letter dated 27 March 2011, the Applicant requested the D/FAO to transfer him to the then vacant post of Clinic’s Clerk at the Medical Department in the Al Elins area in Damascus.

... On 31 March 2011, the Applicant submitted a request for Early Voluntary Retirement (“EVR”) “in order to avoid a heavy financial loss due to the abolishment of his post by the Agency”. However, he indicated along with his request that “this was without prejudice to [his] right to file an application against the Agency in order to be given a post, in lieu of his post which was abolished by the Agency and to be treated in the same way as his colleagues whose posts were previously abolished”.

... On 5 April 2011, the Applicant’s request to take EVR effective 31 March 2011 was accepted.

... By letter dated 10 April 2011, the DUA/SAR rejected the Applicant’s transfer requests.

... On 12 May 2011, the Applicant submitted a Statement of Appeal to the former Joint Appeals Board (“JAB”), which was received by the Registry of the UNRWA Dispute Tribunal (the “Tribunal”) on 24 May 2011.

... By letter dated 24 July 2011, the Registrar of the Tribunal requested the Applicant to complete his application in accordance with Article 4 of the Tribunal’s Rules of Procedure.

... On 15 August 2011, the Applicant filed a complete application with the Registry of the Tribunal.

3. On 25 April 2013, the UNRWA DT issued Judgment No. UNRWA/DT/2013/013. The UNRWA DT rejected Mr. Azzouz’ application as not receivable *ratione materiae* on the ground that he had failed to request decision review pursuant to Area Staff Rule 111.2 (1)(A) and the UNRWA DT had no jurisdiction to waive this requirement. The UNRWA DT noted that, in any event, Mr. Azzouz’ application was rendered moot since he was separated in response to his request for early voluntary retirement which superseded the Commissioner-General’s decision to terminate his service.

### **Mr. Azzouz’ Appeal**

4. Mr. Azzouz contends that the Agency gave him “false hopes” that it would find him another post and that, in the circumstances, it would have been “an act of ingratitude” to file a case against it. The Agency cannot assert that he failed to request decision review when in fact he did continuously ask that he be kept on his post.

5. Mr. Azzouz submits that the termination of his appointment was unlawful. The Agency deprived him of his right to work and broke its promise to secure his employment. The abolition of his post was not based on any wrongdoing on his part.

6. Mr. Azzouz contends that his request for early retirement is invalid and has no legal effect, since he submitted his application for early retirement under coercion. The Agency was not clear about Mr. Azzouz’ post; it first abolished his post “temporarily, with a promise to secure him an alternative post” and then stopped paying his salaries. He was “practically forced” to make a request for voluntary early retirement.

7. Mr. Azzouz argues that the Agency “depriv[ed] [him] of legal assistance”.

8. Mr. Azzouz asks that he be reinstated in his post or be given an alternative post. He further requests compensation for any material loss.

**The Commissioner-General's Answer**

9. The Commissioner-General submits that the UNRWA DT properly held that it had no jurisdiction in this case on the ground that Mr. Azzouz had failed to file a request for decision review. Mr. Azzouz did not demonstrate that the Agency “misled” him into not filing the mandatory request for decision review.

10. The Commissioner-General contends that the UNRWA DT properly held that Mr. Azzouz’ request for early voluntary retirement was in fact voluntary. Mr. Azzouz does not show how the UNRWA DT erred in fact and merely disagrees with the UNRWA DT’s evaluation of facts.

11. The Commissioner-General submits that the UNRWA DT did not err in fact with regard to Mr. Azzouz’ new claim that he was denied legal representation. Since Mr. Azzouz did not raise the issue before the UNRWA DT, he cannot raise it, for the first time, on appeal. Furthermore, Mr. Azzouz has provided no evidence in support of this claim. The Commissioner-General also recalls that ignorance of the law is not an excuse for a staff member’s failure to comply with the Agency’s regulatory framework; Mr. Azzouz can therefore not argue that his ignorance of the law may warrant the waiver of the mandatory requirement of decision review.

12. The Commissioner-General requests that the Appeals Tribunal dismiss the appeal in its entirety and affirm the UNRWA DT Judgment.

**Considerations**

13. The UNRWA DT correctly identified the main issue in the case as whether, as a matter of law, Mr. Azzouz’ application was receivable.

14. The UNRWA Dispute Tribunal found that there was no evidence that Mr. Azzouz had requested decision review as required by Area Staff Rule 111.2 and, that being the case, the UNRWA DT was precluded by Article 8 of its Statute from suspending, waiving or extending the

deadline for decision review. The UNRWA DT therefore concluded that Mr. Azzouz' application was not receivable *ratione materiae*.

15. Mr. Azzouz' claim that he was misled into not requesting decision review was rejected by the UNRWA Dispute Tribunal, which concluded: "There is no evidence in the record that the Applicant was prevented or advised to refrain from requesting decision review of the impugned decision."<sup>2</sup> The UNRWA DT also held, correctly in our view, that Mr. Azzouz should have known his obligations under the Area Staff Regulations and Rules and that ignorance or unawareness was no excuse.

16. Mr. Azzouz is obviously not satisfied with the UNRWA DT's decision but he has failed to demonstrate any error on the part of the UNRWA DT. The Appeals Tribunal has consistently emphasized that the appeals procedure is of a corrective nature and is not an opportunity for a dissatisfied party to reargue his or her case. "A party cannot merely repeat on appeal arguments that did not succeed in the lower court. Rather, he or she must demonstrate that the court below has committed an error of fact or law warranting intervention by the Appeals Tribunal."<sup>3</sup>

17. The Appeals Tribunal holds that the UNRWA DT properly determined that Mr. Azzouz' application was not receivable.

18. Although it was not necessary to do so, the UNRWA DT went on to find that the application was moot in any event. Mr. Azzouz claimed that he had submitted his application for early voluntary retirement under coercion. The UNRWA DT found: "The Applicant's decision to request early retirement was a voluntary action performed of his own volition which superseded the Respondent's decision to terminate his appointment. Therefore, the Applicant's decision rendered his own application moot."<sup>4</sup>

19. Mr. Azzouz has failed to establish that the UNRWA DT was wrong in law or fact in reaching these decisions, either of which was fatal to his application.

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<sup>2</sup> *Ibid.*, para. 35.

<sup>3</sup> *Dannan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-340, para. 14, quoting *Chrichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035.

<sup>4</sup> *Azzouz v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2013/013, para. 37.

20. Mr. Azzouz' claim that he was denied legal representation was not made in the UNRWA DT, although it was a circumstance which was known to Mr. Azzouz at that time. We will not permit the issue to be raised for the first time on appeal.<sup>5</sup>

**Judgment**

21. Mr. Azzouz' appeal is dismissed in its entirety and the Judgment of the UNRWA DT is affirmed.

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<sup>5</sup> Cf. *Shakir v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-056, para. 12.

Original and Authoritative Version: English

Dated this 27<sup>th</sup> June 2014 in Vienna, Austria.

*(Signed)*

Judge Lussick, Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Simón

Entered in the Register on 29<sup>th</sup> day of August 2014 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar