



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

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Judgment No. 2016-UNAT-610

**Abdel Rahman  
(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 Rosalyn Chapman, Presiding  
Judge Sophia Adinyira  
Judge Luis María Simón

Case No.: 2012-419

Date: 24 March 2016

Registrar: Weicheng Lin

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Counsel for Mr. Rahman: Diab Khalil Tabari  
Counsel for Commissioner-General: Lance Bartholomeusz

**JUDGE ROSALYN CHAPMAN, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal by Mr. Ali Durgham Abdel Rahman<sup>1</sup> of Judgment No. UNRWA/DT/2012/050, 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) in Amman on 24 September 2012, in the case of *Abdul Rahman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. On 20 November 2012, Mr. Abdel Rahman filed an appeal form and annexes; he filed his appeal brief on 1 August 2013. On 10 November 2015, the UNRWA Commissioner-General filed his answer to the appeal.

**Facts and Procedure**

2. The UNRWA Dispute Tribunal found the following facts, which are not disputed by the Appellant:<sup>2</sup>

... The [Appellant] was employed by the Agency on 11 October 1972 as a Teacher ...

...

On 8 February 2010, the Head Teacher at Tiberias School where the [Appellant] was teaching ... received a complaint of sexual exploitation and abuse of a student against the [Appellant].

... On 9 February 2010, the [Appellant] was placed on special leave with pay.

... On 11 February 2010, a Board of Inquiry (the “Board”) was set up to investigate the allegations.

... On 15 February 2010, the [Appellant] was interviewed by members of the Board. He denied the allegations in full.

... By letter dated 18 March 2010, the Director of UNRWA Affairs, Lebanon (“DUA/L”) informed the [Appellant] that the Board had completed its investigation, concluding that the allegations against the [Appellant] were founded and that [his] denial of these allegations was not credible. ...

... By letter dated 24 March 2010, the [Appellant] responded to the DUA/L’s letter of 18 March 2010, again denying the allegations against him.

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<sup>1</sup> The Appeals Tribunal uses the spelling of the Appellant’s name set forth on his appeal form, rather than the spelling used by the UNRWA Dispute Tribunal.

<sup>2</sup> Impugned Judgment, paras. 2, 4-13.

... By letter dated 16 April 2010, the DUA/L informed the [Appellant] that his response of 24 March 2010 did not ... justify a change in the findings of the Board, and that consequently, his service was terminated for misconduct, with immediate effect.

... On 28 April 2010, the [Appellant] requested administrative review of the decision to terminate his employment.

... By letter dated 11 May 2010, the DUA/L responded that the decision remained unchanged.

... On 15 June 2010, the [Appellant] submitted an appeal to the Joint Appeals Board ...

3. Pursuant to a request from the Registrar of the UNRWA DT, on 19 April 2011, the Appellant completed and submitted a new application to the Registry, which served that application on the Commissioner-General. The Commissioner-General filed his reply on 14 September 2012.

4. On 24 September 2012, the UNWRA DT issued Judgment No. UNRWA/DT/2012/050, finding the application was not receivable *ratione temporis*.

5. On 20 November 2012, the Appellant, who at all times has been represented, submitted to the Registry of the Appeals Tribunal an appeal form, dated 14 November 2012, as well as supporting annexes. However, the Appellant did not submit an appeal brief with the appeal form.

6. On 30 November 2012, the Registry requested the Appellant to file his appeal through the Tribunal's electronic filing system and to submit an appeal brief within five working days.

7. On 7 December 2012, the Registry again advised the Appellant that he had yet to file his appeal brief. Finally, on 15 July 2013, the Registry advised the Appellant that unless he filed his appeal brief by 1 August 2013, the Appeals Tribunal would consider the appeal to have been abandoned.

8. On 1 August 2013, the Appellant filed his appeal brief. On 8 October 2013, at the Registry's request, the Appellant filed a motion requesting this Tribunal to waive the time limit for filing his appeal brief on the ground of exceptional circumstances.

9. On 31 August 2015, the Registry served the appeal form, appeal brief, supporting annexes and motion to waive the time limits for filing his appeal brief on the Commissioner-General and requested comments solely with respect to the motion.

10. On 9 September 2015, the Commissioner-General filed his comments and opposed the Appellant's request for a waiver of time to file his brief.

11. On 14 September 2015, this Tribunal issued Order No. 236 (2015), granting the Appellant's motion for a waiver of time to file his appeal brief "based on the extraordinary circumstances of this particular case, including the Registry's ongoing communications with Mr. Abdel Rahman which may have been interpreted by him as permitting the late filing of his appeal brief".<sup>3</sup>

12. On 10 November 2015, the Commissioner-General timely filed his answer.

### **Submissions**

#### **Mr. Abdel Rahman's Appeal**

13. The UNRWA DT was prejudiced against Mr. Abdel Rahman as he "complied with the time limits and sent [his] appeal on time. The date of [the] appeal was 10 June 2010 while the deadline was 11 June 2010. The Agency's mail could have caused delay to 15 June 2010. ... The Agency simply did not want to address the case..."

14. Mr. Abdel Rahman requests prompt reconsideration of his case, and a fair decision based on comprehensive and just investigations. He seeks to resume his duties as a teacher for the remaining one and a half years until his retirement or to be paid in full; and to receive all retirement benefits due him, including the termination deductions. Further, for his family's honor, he requests a public announcement of his innocence at Agency installations; and further seeks to penalize those who conspired against him. Finally, Mr. Abdel Rahman prays for moral damages in the amount of USD 50,000. He also requests that the Appeals Tribunal hold an oral hearing in his case.

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<sup>3</sup> *Abdel Rahman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Order No. 236 (2015), para. 14.

**The Commissioner-General's Answer**

15. The Appellant has failed to set forth any grounds of appeal under Article 2 of the Appeals Tribunal Statute (Statute). Rather, he merely repeats arguments he made before the UNRWA DT. Thus, the Appellant has not met his burden to show the UNRWA Dispute Tribunal committed any error requiring the reversal of the Judgment.

16. The UNRWA DT did not err in fact or law. The Appellant did not submit his application to the UNWRA Area Staff Joint Appeals Board “within thirty days from the date of the receipt of a reply”, as required by Area Staff Rule 111.3. The UNRWA Dispute Tribunal examined the evidence, including the date on which the Appellant received the letter denying his request for decision review, and concluded it was late. As such, the UNRWA Dispute Tribunal reaffirmed the importance of strictly complying with time limits, in accordance with the Appeals Tribunal jurisprudence.

17. The Appellant failed to make a written request for the UNRWA Dispute Tribunal to find exceptional circumstances to waive the time limit, as required by Article 8(3) of the UNRWA DT Statute. Thus, the UNRWA DT correctly found the application was filed late and the Appellant failed to show exceptional circumstances which would have warranted a waiver.

18. The Commissioner-General requests that the Appeals Tribunal affirm the UNRWA DT Judgment and dismiss the appeal.

**Considerations**

*Preliminary matter*

19. The Appeals Tribunal denies the Appellant's request for an oral hearing, finding there is no need for further clarification of the issues, pursuant to Article 8(3) of the Statute and Article 18(1) of the Appeals Tribunal Rules of Procedure.

*The Appeal*

20. The Commissioner-General properly notes that the Appellant has failed to identify, by citation to any provision in Article 2(1) of the Statute, the grounds for his appeal, as he must; thus, his appeal is defective.<sup>4</sup> Nevertheless, in a similar situation, the Appeals Tribunal recognized that when the lower tribunal's judgment solely addresses the issue of receivability, the ground for appeal may reasonably be inferred:<sup>5</sup>

... [S]ince the UNDT's Judgment addresses only the issue of the receivability of [the staff member's] application, this Tribunal reasonably infers [the staff member] is claiming the UNDT '[f]ailed to exercise jurisdiction vested in it' under Article 2(1)(b). Thus, this Tribunal finds it has subject matter jurisdiction to hear [the staff member's] appeal and the appeal is receivable.

21. This rationale applies equally to the situation in which the UNRWA DT Judgment addresses only the issue of receivability.

22. The *Achkar* case is further instructive in its explication of the history of the establishment of the UNRWA DT and the Commissioner-General's acceptance of the jurisdiction of the Appeals Tribunal:<sup>6</sup>

... On 11 December 2009, a Special Agreement was entered into between the Secretary-General and UNRWA's Commissioner-General by which UNRWA accepted the jurisdiction of the [Appeals Tribunal] to hear appeals from the judgments of the UNRWA DT, pursuant to Article 2(10) of the Statute. ...

... A new two-tier formal system of administrative justice was established for UNRWA staff members, effective 1 June 2010. Under the new system, present or former UNRWA staff members can appeal or seek review of administrative decisions alleging non-compliance with the terms of their employment contracts or disciplinary measures by filing an application seeking review before the UNRWA Dispute Tribunal ... , as the first step, and then appealing an adverse judgment to the Appeals Tribunal, as the second step. [UNRWA International Staff Regulation 11.1, UNRWA DT Statute, Articles 1 and 2, as set forth in Area Staff Regulation 11.3]. ...

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<sup>4</sup> *Kovacevic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-071, paras. 17-20; *Vangelova v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-046, paras. 19 and 20; *Tsoneva v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-045, paras. 10 and 11.

<sup>5</sup> *Achkar v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-267, para. 20 (footnote omitted).

<sup>6</sup> *Ibid.*, paras. 24, 21 and 22 (footnotes omitted)

... Prior to the establishment of the new system of administration of justice, an UNRWA staff member could seek review of an administrative decision alleging non-compliance with the terms of his or her employment contract by filing an appeal before the UNRWA Area Staff Joint Appeals Board (UNRWA JAB), and then appealing an adverse judgment to the United Nations Administrative Tribunal. As of 1 July 2009, the UNRWA JAB was abolished and the former Administrative Tribunal stopped taking new cases [A/RES/63/253]. On 31 December 2009, the former Administrative Tribunal was abolished [A/RES/63/253].

23. Under former Area Staff Rule 111.3, which was in effect on 11 May 2010, when the Appellant received the Agency's reply to his request for decision review, an UNRWA staff member such as the Appellant was required to appeal to the JAB within thirty days:

3. A staff member who wishes to appeal under the terms of staff regulation 11.1, after having sent a letter to the Agency's administration in accordance with ... this rule, shall submit a written appeal, specifying his/her allegations, to the Secretary of the Joint Appeals Board within the following time limits:

...

(B) in the case of staff members of Field Offices, within thirty days from the date of the receipt of a reply from the UNRWA Field Office Director, or, if no reply has been received from the latter within thirty days of the date of the staff member's letter, then within the next thirty days.

4. An 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.

24. The UNRWA Dispute Tribunal found that the Appellant had not complied with former Area Staff Rule 111.3, stating:<sup>7</sup>

... Looking at the record, it appears to the Tribunal that the [Appellant] has not complied with the mandatory procedures of former Area Staff Rule 111.3. Indeed, the [Appellant] sought administrative review of his termination for misconduct on 28 April 2010. The DUA/L responded to the [Appellant's] request for review on 11 May 2010. As per former Area Staff Rule 111.3, the [Appellant] had thirty days to file his appeal, i.e. no later than 11 June 2010.

... The Tribunal examined with scrutiny the evidence in the record in order to calculate whether the [Appellant] filed his appeal within thirty days from the date of the receipt of a reply from the Agency.

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<sup>7</sup> Impugned Judgment, paras. 22-24 (emphasis in original).

... The Tribunal notes that the Appellant stated, in Area Staff JAB appeal form as well as in the Dispute Tribunal application form, that he received a reply to his request for decision review on 11 May 2010. The case record shows that the [Appellant] filed his appeal to the JAB by a letter dated 10 June 2010. Nevertheless, such letter was only received by the Officer-in Charge of the JAB Secretariat on 15 June 2010, that is outside the mandatory time limit.

25. Additionally, the UNRWA DT found that Appellant “has not made any request to suspend, waive or extend the deadline [to file an application][and] the [Appellant] has not provided any evidence – convincing or otherwise – that he was prevented from complying with the deadlines set out in former Area Staff Rule 111.3 due to ‘circumstances beyond [his] control’”.<sup>8</sup>

26. Based on its findings, the UNRWA DT concluded that the application is not receivable and dismissed it. The Appeals Tribunal finds the UNRWA Dispute Tribunal made no errors of fact or law in reaching its conclusion. Moreover, the UNRWA Dispute Tribunal correctly applied the Agency’s law and Appeals Tribunal jurisprudence, and reached the same conclusion this Tribunal reached in an almost identical case, *Chaaban v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-363.

### **Judgment**

27. The appeal is dismissed and Judgment No. UNRWA/DT/2012/050 is affirmed.

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<sup>8</sup> *Ibid.*, para. 27.

Original and Authoritative Version: English

Dated this 24<sup>th</sup> day of March 2016 in New York, United States.

*(Signed)*

Judge Chapman, Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Simón

Entered in the Register on 13<sup>th</sup> day of May 2016 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar