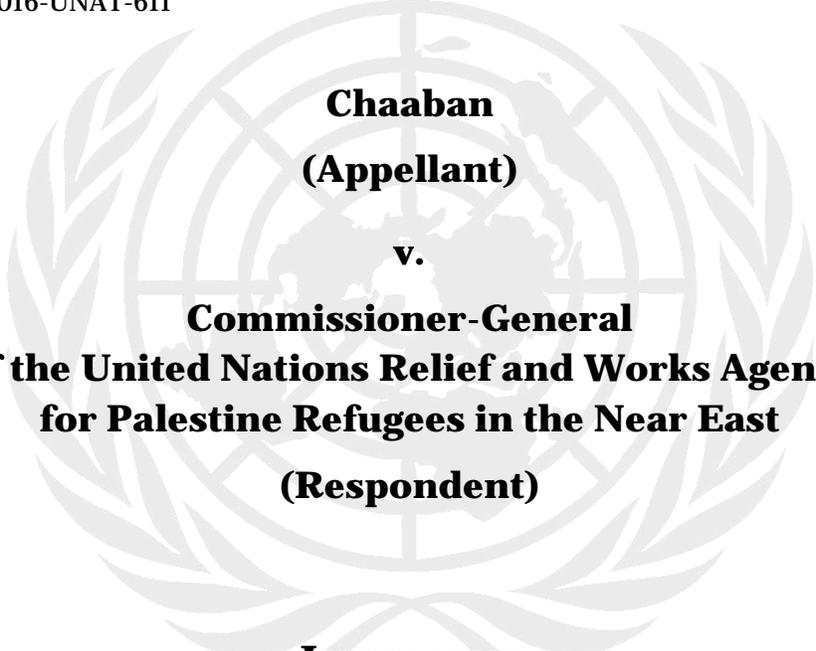




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2016-UNAT-611



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

JUDGMENT

Before:	Judge Rosalyn Chapman, Presiding Judge Sophia Adinyira Judge Luis María Simón
Case No.:	2014-669
Date:	24 March 2016
Registrar:	Weicheng Lin

Counsel for Mr. Chaaban: Self-represented

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. Houssam Mustapha Chaaban of Judgment No. UNRWA/DT/2014/024, 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 28 August 2014, in the case of *Chaaban v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. On 27 October 2014, Mr. Chaaban filed an appeal of Judgment No. UNRWA/DT/2014/024, and on 5 January 2015, the Commissioner-General of UNRWA filed his answer to the appeal.

Facts and Procedure

2. The Appeals Tribunal determined in *Chaaban v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-363:¹

Mr. Chaaban is a former staff member of UNRWA. He joined the Agency on 19 July 2005 as an Information Systems Technical Assistant for the Palestinian Refugees Records Project, grade 12. On 16 November 2006, he was promoted to the post of Scanning Team Supervisor, grade 14. Mr. Chaaban was separated from the Organization upon closure of the project on 28 February 2009.

3. Prior to his separation, Mr. Chaaban applied for three posts with UNRWA.² On 20 February 2009, Mr. Chaaban requested to fill the post of Database Manager. On 24 February 2009, he was advised that he was not eligible to transfer to that post.

4. On 9 October 2012, Mr. Chaaban sought decision review of the decision finding he was not eligible for the post of Database Manager. He did not seek decision review of the decision to separate him from service.

5. On 7 February 2013, Mr. Chaaban filed an application before the UNRWA Dispute Tribunal challenging the decision finding him not eligible for the post of Database Manager.

¹ *Chaaban v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-363 (*Chaaban I*), para. 2.

² Mr. Chaaban's unsuccessful applications for the posts of Information Systems Helpdesk Coordinator and School Information Communications Technology Coordinator were the subject of *Chaaban I*.

6. On 28 August 2014, the UNRWA DT issued Judgment No. UNRWA/DT/2014/024, dismissing the application as not receivable *ratione materiae*.

7. On 27 October 2014, Mr. Chaaban filed an appeal of Judgment No. UNRWA/DT/2014/024, and on 5 January 2015, the Commissioner-General of UNRWA filed his answer to the appeal.

Submissions

Mr. Chaaban's Appeal

8. The UNRWA DT erred on a question of fact, resulting in a manifestly unreasonable decision, when it mischaracterized the impugned decision it was reviewing and determined that the application contested the decisions not to transfer the Appellant and not to renew his appointment. Rather, the application clearly stated that the impugned decision being contested was the general policy decision to halt transfers of staff working in the scanning operation, including the Appellant.

9. The Dispute Tribunal made other errors of fact, as well, including: (a) failing to note that the Appellant made three transfer requests, not merely one; and (b) separately listing the non-renewal of his appointment as an impugned decision, whereas the matter of the Appellant's reappointment was an integral part of the transfer claim. Improperly, the UNRWA Dispute Tribunal recited the facts from the Commissioner-General's reply to the application, rather than the facts set forth in the application.

10. The UNRWA DT failed to exercise the jurisdiction vested in it when it dismissed the application as being time-barred and not receivable. Although the general or policy decision to halt transfers of scanning staff was made earlier, the Appellant did not become aware of it until 6 October 2012. Since the general or policy decision was not known to the Appellant until 6 October 2012, the filing deadline should be calculated to run from that date. Thus, the application was timely.

11. When it identified the contested decision, the UNRWA Dispute Tribunal exceeded its jurisdiction by focusing on the remedies requested in the application, rather than the impugned decision being contested by the Appellant.

12. Mr. Chaaban requests that the Appeals Tribunal reverse the UNRWA DT Judgment and remand the case to the UNRWA DT for determination on the merits.

The Commissioner-General's Answer

13. The UNRWA DT did not err in law or fact when it determined that the application contested the decisions not to transfer Mr. Chaaban and not to renew his appointment. The Appellant cannot claim that the timeline for filing an application should start to run when he discovered there was a general decision or policy to halt all transfer requests. Rather, it should have been clear to him that his transfer requests had been denied as of the date he was separated from service, that is 28 February 2009. Thus, the application, which was filed in 2013, was clearly untimely.

14. The Appellant is manifestly abusing the appeals process. This is his third appeal contesting his unsuccessful transfer requests, all of which were made before he was separated from service in 2009. The UNRWA Dispute Tribunal explicitly warned Mr. Chaaban that his application was an abuse of litigation, and that should have put him on notice that any appeal also would be an abuse of the process.

15. Under Article 9(2) of the Appeals Tribunal Statute, as well as the Appeals Tribunal's jurisprudence, costs should be awarded against Mr. Chaaban in the amount of USD 9,600, which is the cost to the Commissioner-General to defend against the Appellant's frivolous appeal.

Considerations

16. "The role of the Dispute Tribunal includes adequately interpreting and comprehending the application submitted by the moving party, whatever name the party attaches to the document."³ After reviewing Mr. Chaaban's application, as well as the Commissioner-General's reply, the UNRWA DT characterized the decisions contested by Mr. Chaaban as "the decisions a) not to transfer him to another post and b) not to renew his fixed-term appointment upon its expiry on 28 February 2009".⁴

³ *Gakumba v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-591, para. 21, citing *Massabni v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-238, paras. 2-3.

⁴ Impugned Judgment, para. 14.

17. Mr. Chaaban claims that this characterization by the UNRWA Dispute Tribunal was made in excess of its competence or jurisdiction and also constitutes an error of fact, which resulted in a manifestly unreasonable decision within the meaning of Article 2(1) of the Appeals Tribunal Statute. There is no merit to Mr. Chaaban's claims.

18. The UNRWA DT properly and reasonably exercised its duties to interpret and determine the scope and nature of the Appellant's application. The Dispute Tribunal was not limited to the staff member's description of the contested or impugned decision; quite properly, it could consider the application as a whole, including the relief or remedies requested by the staff member, in determining the contested or impugned decisions to be reviewed. As the Appellant's application requested remedies related to both "the decisions not to transfer" him and "not to renew [his] fixed-term appointment", the UNRWA Dispute Tribunal neither exceeded its competence or jurisdiction nor made an error of fact or law in determining the decisions Mr. Chaaban contested.

19. Area Staff Rule 111.3, which was in effect in 2009, requires that a staff member, as a first step, must seek administrative review of a decision he seeks to challenge "within thirty days from the date on which the staff member receives written notification of the decision". The decisions Mr. Chaaban challenged in his application before the UNRWA Dispute Tribunal were made in 2009.

20. It was not until 2012, however, that Mr. Chaaban sought decision review of the decision finding he was not eligible to transfer to the post of Database Manager. Accordingly, the UNRWA Dispute Tribunal correctly determined that Mr. Chaaban "failed to comply with the time limits set forth in former Area Staff Rule 111.3[; thus,] his application is not receivable"⁵ as it pertains to his challenge to the decision denying eligibility for the post of Database Manager.

21. Moreover, Mr. Chaaban never sought decision review of the decision to separate him from service. Thus, the UNRWA Dispute Tribunal also correctly found that Mr. Chaaban had failed to comply with Article 8(1)(c) of the Statute of the UNRWA DT, which requires that an application may be received if the "applicant has previously submitted the contested administrative decision for decision review", as well as Area Staff Rule 111.3.

⁵ Impugned Judgment, para. 17.

Based on these deficiencies, the UNRWA Dispute Tribunal refused to receive *ratione materiae* the application's challenge to Mr. Chaaban's separation from service.

22. On these grounds, the UNRWA Dispute Tribunal Judgment should be affirmed.

Costs

23. Article 9(2) of the Appeals Tribunal Statute provides that "[w]here the Appeals Tribunal determines that a party has manifestly abused the appeals process, it may award costs against that party".

24. The UNRWA Dispute Tribunal did not award costs against Mr. Chaaban under Article 10(6) of its Statute, which is identical to the Appeals Tribunal's costs provision. Nevertheless, it warned Mr. Chaaban that "[t]he submission of applications like the one under examination could be considered by the [Dispute] Tribunal as an abuse of litigation".⁶

25. Mr. Chaaban did not heed the Dispute Tribunal's warning and filed the pending appeal on 27 October 2014. On 2 July 2015, the Appeals Tribunal issued Judgment No. 2015-UNAT-554 in the case of *Chaaban v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (Chaaban II)*, which, in part, awarded substantial costs against Mr. Chaaban on the ground that his appeal "resulted in an unnecessary waste of the resources of the court system".⁷ Additionally, we took the unusual step of directing the Registrar "not to accept any filing from Mr. Chaaban until such costs have been paid".⁸

26. As the pending appeal had already been filed by Mr. Chaaban at the time the Appeals Tribunal issued *Chaaban II*, we determined that our direction to the Registrar did not apply to this appeal. Nevertheless, Mr. Chaaban has had ample opportunity to withdraw the pending appeal since the issuance of *Chaaban II*; however, he has not done so. We, thus, conclude that the pending appeal, which is similar to the appeal in *Chaaban II*, is frivolous and a manifest abuse of the appeals process and that it is appropriate to award costs against Mr. Chaaban.

⁶ Impugned Judgment, para. 22.

⁷ *Chaaban v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-554, para. 42.

⁸ *Ibid.*, para. 45(c).

27. The Commissioner-General requests costs in the amount of USD 9,600, claiming that is the cost of defending against Mr. Chaaban's frivolous appeal. However, in light of the fact that the pending appeal preceded our award of costs in *Chaaban II*, we find that amount to be excessive and instead award costs in the amount of USD 4,800 against Mr. Chaaban.

Judgment

28. The appeal is dismissed and Judgment No. UNRWA/DT/2014/024 is affirmed.

29. Mr. Chaaban is ordered to pay costs in the amount of USD 4,800 within 60 days of the publication of this Judgment. Such costs may be paid directly to the Agency or to the Appeals Tribunal for payment to the Agency.

Original and Authoritative Version: English

Dated this 24th day of March 2016 in New York, United States.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Simón

Entered in the Register on this 13th day of May 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar