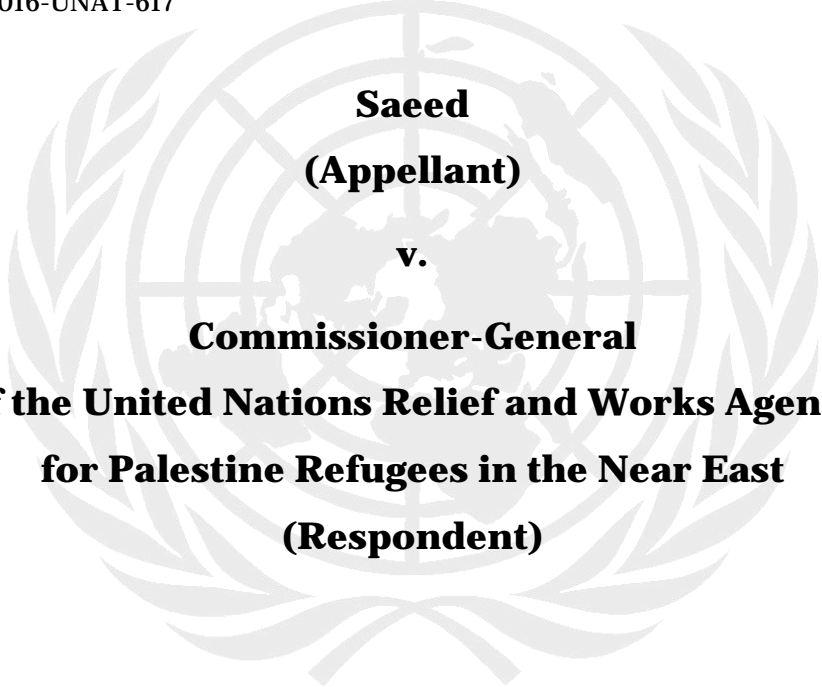




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2016-UNAT-617



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

JUDGMENT

Before:	Judge Luis María Simón, Presiding Judge Deborah Thomas-Felix Judge Inés Weinberg de Roca
Case No.:	2015-717
Date:	24 March 2016
Registrar:	Weicheng Lin

Counsel for Mr. Saeed: Self-represented

Counsel for Commissioner-General: Lance Bartholomeusz

JUDGE LUIS MARÍA SIMÓN, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2015/008/Corr.01, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or UNRWA Dispute Tribunal and UNRWA or Agency, respectively) on 17 February 2015, in the case of *Saeed v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Wissam Jeries Saeed filed his appeal on 27 May 2015,¹ and the Commissioner-General filed his answer on 31 July 2015.

Facts and Procedure

1. The following facts are uncontested:²

... Effective 14 September 2005, [Mr. Saeed] joined the Agency as Microfinance and Accounts Officer [...] at the Microenterprise and Microfinance Department on a fixed-term appointment. Effective 1 September 2009, he was promoted to the post of Chief of Finance (“CoF”)[.] Grade 20, Step 4.

... [On] 1 May 2012, the Chief, Microfinance Operations (“CMO”) informed [Mr. Saeed] that an informal [Opportunity to Improve (OTI)] process had been initiated in order to monitor his performance, improvement and development in performing his functions.

... In [Mr. Saeed]’s Performance Evaluation Report (“PER”) dated 19 December 2012, his overall performance was assessed as a “performance [that] falls short of expectations”.

... On 19 December 2012, the Director, Microfinance Department (“DMD”) recommended the extension of [Mr. Saeed]’s contract for six months in order to give [Mr. Saeed] “additional time to improve his performance”.

... By note dated 21 December 2012, [Mr. Saeed] expressed his disagreement with his performance evaluation and declined to sign his PER.

... On 17 May 2013, an interim evaluation was conducted with [Mr. Saeed] in order to review his performance during the first quarter of 2013 and consider a further extension of his contract. The interim evaluation report included various examples of [Mr. Saeed]’s underperformance.

¹ The Appeals Tribunal granted Mr. Saeed an extension of time on 20 May 2015 by Order No. 220 (2015).

² Impugned Judgment, paras. 2-21.

... By memorandum dated 17 May 2013 to the Personnel Department, the CMO requested the renewal of [Mr. Saeed]'s contract for a further period of six months, i.e. up to 31 December 2013.

... [Mr. Saeed] was on sick leave from 3 June to 21 June 2013 [during which time he underwent surgery].

... By email dated 7 June 2013, the CMO approved a new workflow for the Finance Division. [Mr. Saeed claims that upon enquiring about the new workflow during his sick leave, he was informed the workflow was temporary.]

... On 24 June 2013, [Mr. Saeed] returned to duty after his sick leave [and was informed that he should comply with the new workflow].

... By email dated 24 June 2013 to the DMD copied to the Director of Human Resources ("DHR"), [Mr. Saeed] refused to accept the tasks assigned to him in the new workflow. He requested that an investigation be conducted in relation to the new workflow of the Finance Division and asked for leave pending the investigation.

... From 26 June 2013 to 30 August 2013, [Mr. Saeed] was on leave. He returned to duty on 2 September 2013. [Mr. Saeed claims that on this day, during a meeting with the DMD and the CMO, the CMO informed him that she had instructed staff to no longer follow Mr. Saeed's instructions.]

... [On] 3 September 2013, the Officer-in-Charge, Human Resources Department ("OiC, HRD") replied to [Mr. Saeed]'s email of 24 June 2013. In his letter, the OiC, HRD outlined [Mr. Saeed]'s underperformance leading up to the redistribution of duties to meet the operational needs of the Department. He found no grounds to conduct an investigation and encouraged [Mr. Saeed] to embrace the opportunity to improve his performance through the OTI process.

... [On] 4 September 2013, [Mr. Saeed] was invited for a meeting in order to initiate a formal OTI process. [Mr. Saeed] did not attend the meeting. Another meeting was scheduled on 5 September 2013, which [Mr. Saeed] refused to attend.

... [On] 6 September 2013, the OiC, HRD informed [Mr. Saeed] that a formal OTI process had been initiated the same day, and he encouraged [Mr. Saeed] to participate positively in the OTI process.

... [On] 6 September 2013, the DMD invited [Mr. Saeed] for a meeting to discuss the plan, objectives, deliverables, reporting format and timelines for the formal OTI process. [Mr. Saeed] refused to attend.

... [On] 6 September 2013, the DMD informed [Mr. Saeed] that the OTI process would move forward and submitted to him a signed copy of the formal OTI working plan. [Mr. Saeed] was required to submit a short monthly report on his progress in relation to the objectives of the plan.

... [On] 11 September 2013, [Mr. Saeed] was invited to the first joint meeting with the DMD and CMO, scheduled for 13 September 2013, to discuss his progress on the objectives set out in the plan. [Mr. Saeed] was also reminded that his refusal to attend that meeting would be taken as an indication of his continuing refusal to participate in the OTI process.

... On 19 September 2013, [Mr. Saeed] requested review of the following: 1) the CMO's decision to approve a new workflow for the Finance Division, 2) the CMO's directions given to staff in the Finance Department not to take instructions from [Mr. Saeed], and 3) the OiC, HRD's decision to refer him to a formal OTI process.

... [On] 24 October 2013, the Deputy Commissioner-General ("DCG") replied to [Mr. Saeed]'s request. The letter states, in relevant part, as follows:

... (i) concerns about the level of your performance are well-documented and substantiated through an informal OTI process, the results of which led to the initiation of a formal OTI process on 6 September 2013; (ii) ... the OTI process was initiated to afford you the opportunity to improve your overall performance[:]; (iii) ... your rights have not been breached by any substantive or procedural irregularity or improper motive or abuse of discretion by the restructuring of the Microfinance Department.

2. On 26 November 2013, Mr. Saeed filed an application with the UNRWA Dispute Tribunal challenging the decisions: 1) to approve a new workflow for the Finance Division; 2) to direct staff in the Finance Department not to take instructions from him; and 3) to refer Mr. Saeed to a formal OTI process.

3. On 17 February 2015, the UNRWA Dispute Tribunal rendered its Judgment, rejecting Mr. Saeed's application. The UNRWA DT found that Mr. Saeed's challenge to the CMO's decision to approve a new workflow for the Finance Division was not receivable in that Mr. Saeed had not requested decision review thereof within 60 days of 7 June 2013, when the workflow was first introduced.³ The UNRWA DT also found that Mr. Saeed's challenge to the CMO's directions to Finance Department staff not to take instructions from Mr. Saeed was not receivable insofar as that instruction was an immediate consequence of the 7 June 2013 decision to approve a new workflow, of which Mr. Saeed was aware, yet had failed to request timely decision review.⁴ Last, the UNRWA DT found that Mr. Saeed's challenge to the OiC, HRD's decision to initiate a formal OTI process for Mr. Saeed was not an

³ Impugned Judgment, para. 33.

⁴ *Ibid.*, paras. 34-35.

“administrative decision” which could be contested before the UNRWA DT, but rather only an intermediate decision giving a staff member the opportunity to improve his or her level of performance.⁵ Accordingly, the UNRWA DT found the entire application not receivable and dismissed the application.

Submissions

Mr. Saeed’s Appeal

4. Mr. Saeed’s submissions reiterate the salient facts giving rise to his application to the UNRWA Dispute Tribunal, claiming further that the change in workflow essentially deprived him of his functions and had him reporting to more junior staff. He does not make any submissions asserting error on the part of the UNRWA DT in addressing his application.

The Commissioner-General’s Answer

5. The appeal is not founded on any of the grounds provided for under the Appeals Tribunal Statute. Rather than demonstrating how the UNRWA DT erred in dismissing all the three elements of his application as not receivable, Mr. Saeed essentially re-argues the merits of his case, which is not permissible on appeal. The Commissioner-General submits that the UNRWA DT did not err as a matter of fact or law when it dismissed each of Mr. Saeed’s three claims and found his application not receivable. The Commissioner-General requests that the Appeals Tribunal dismiss the appeal.

Considerations

Request for an oral hearing

6. As a preliminary matter, this Tribunal denies Mr. Saeed’s request for an oral hearing finding that the parties’ applications have adequately clarified the issues submitted to the Appeals Tribunal for its decision.

⁵ *Ibid.*, para. 41.

Appeal against Judgment on the merits

7. As stated in *El Saleh*,⁶

The Appeals Tribunal emphasizes that the appeals procedure is of a corrective nature and, thus, 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 before the lower court. The function of the Appeals Tribunal is to determine if the UNRWA Dispute Tribunal has made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as prescribed in Article 2(1) of the Appeals Tribunal Statute. The appellant has the burden of satisfying the Appeals Tribunal that the judgment he or she seeks to challenge is defective. It follows that the appellant must identify the alleged defects in the judgment and state the grounds relied upon in asserting that the judgment is defective.

8. The Appellant did not base his appeal on any grounds for appeal in accordance to those established in our Statute. Nonetheless, after examining the impugned Judgment, we cannot find any error of law or fact on the face of it.

9. We agree with the UNRWA Dispute Tribunal's conclusions about the untimely submission for review of the purported administrative decision approving a new workflow, the non-receivability of the challenge against the directive to the staff of the Finance Department not to take instructions from the Appellant (because it was a mere consequence of the first decision), as well as the intermediate nature of the decision to refer the Appellant to a formal OTI process.

10. With regard to the approval of a new workflow, even if it were to be considered an administrative decision subject to appeal, the request for decision review was submitted after the expiry of the deadline provided for in Area Staff Rule 111.2, as correctly pointed out by the UNRWA Dispute Tribunal, whose finding of its own inability to waive the deadline for decision review is consistent with this Tribunal's jurisprudence.⁷

11. The challenge to the UNDT's finding with respect to the directive to staff members of Mr. Saeed's department not to take instructions from him also cannot succeed, insofar

⁶ *El Saleh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-594, para. 30, citing *Achkar v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-579, para. 15 and cites therein.

⁷ *Nianda-Lusakueno v. Secretary General of the International Civil Aviation Organization*, Judgment No. 2014-UNAT-472, para. 29, citing *Williams v. Secretary General of the International Civil Aviation Organization*, Judgment No. 2013-UNAT-376, para. 31 and cites therein.

as this directive was merely a consequence, confirmation and execution of the earlier decision establishing the new workflow. Thus, this directive cannot be impugned independently. As the basis of the Appellant's grievance arose from the original decision to approve a new workflow, which he had failed to impugn on time through decision review, Mr. Saeed was prevented from challenging the subsequent execution of the first decision in respect of the workflow.

12. Lastly, the decision to refer the Appellant to a formal OTI process was not a final decision; it was only an intermediate step, which we consider is incapable of affecting Mr. Saeed's terms of employment or conditions of service. Hence, the UNRWA Dispute Tribunal rightly considered the challenge non receivable, which accords with our jurisprudence.⁸

13. Therefore, we find that the appeal has no prospect of success on any of the grounds set forth in Article 2 of our Statute and must be dismissed in its entirety.

Judgment

14. The appeal is dismissed and the Judgment of the UNRWA Dispute Tribunal is affirmed.

⁸ *Nguyen-Kropp & Postica v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-509, para. 33 and footnotes 4-6.

Original and Authoritative Version: English

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

(Signed)

Judge Simón, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Weinberg de Roca

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

(Signed)

Weicheng Lin, Registrar