



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

Judgment No. 2016-UNAT-664

**Al-Dawoud
(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.:	2015-875
Date:	30 June 2016
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Lance Bartholomeusz

JUDGE ROSALYN CHAPMAN, PRESIDING.

1. The United Nations Appeals Tribunal has before it an appeal by Ms. Heba Abdulkareem Al-Dawoud¹ of Judgment No. UNRWA/DT/2015/049, 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 7 October 2015, in the case of *Al-Dawoud v. Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. On 3 December 2015, Ms. Al-Dawoud filed an appeal and on 2 February 2016, the Commissioner-General of UNRWA filed his answer.

Facts and Procedure

2. As of 1 July 2013, Ms. Al-Dawoud commenced working with the Agency as Assistant Field Relief Services Officer, Grade 11, Step 1. She was given a fixed-term appointment for three years, subject to a twelve-month probationary period, commencing 1 July 2013. On 26 June 2014, Ms. Al-Dawoud was advised in writing that her probationary performance was evaluated as unsatisfactory and the Agency had decided not to confirm her appointment; thus, her fixed-term contract would expire on 30 June 2014, and not be extended.

3. On 3 December 2014, Ms. Al-Dawoud filed an application before the UNRWA Dispute Tribunal contesting the Agency's decision finding her probationary performance to be unsatisfactory and not confirming her appointment. On 7 January 2015, the Commissioner-General filed his reply. On 1 March 2015, Ms. Dawoud filed observations on the reply, and on 10 April 2015, the Commissioner-General filed his response to the observations.

4. On 7 October 2015, the UNRWA DT issued Judgment No. UNRWA/DT/2015/049, dismissing as not receivable *ratione temporis* the application submitted by Ms. Al-Dawoud. On 3 December 2015, Ms. Al-Dawoud filed the pending appeal, and on 2 February 2016, the Commissioner-General filed his answer to the appeal.

¹ Ms. Al-Dawoud apparently spells her first name two ways: Heba and Hiba. The Appeals Tribunal has adopted the spelling used by the UNRWA Dispute Tribunal.

Submissions

Ms. Al-Dawoud's Appeal

5. The UNRWA DT erred on a question of law and fact in deciding that the application was time-barred. Specifically, the UNRWA DT erred when it found the submission of the request for decision review was made on 7 July 2014. Rather, the request was submitted on 18 August 2014, as shown by the date of the e-mail sent to the Deputy Commissioner-General. The date on the form for decision review does not necessarily mean that it was the date that the request was submitted. Ms. Al-Dawoud requests that the Appeals Tribunal void the UNRWA DT's Judgment.

6. In the event the UNRWA DT's Judgment is allowed to stand, Ms. Al-Dawoud nevertheless requests compensation for moral damages, rescission of the decision not to confirm her appointment after the end of the probationary period, and reinstatement to her previous position as Assistant Field Relief Services Officer.

The Commissioner-General's Answer

7. The UNRWA DT did not err in finding that the application was time-barred. The burden is on Ms. Al-Dawoud to prove the date on which she submitted her request for decision review. The UNRWA DT did not err in fact when it found that the request for decision review was made on 7 July 2014; thus, the application was not timely filed.

8. Ms. Al-Dawoud admitted in her observations before the UNRWA DT that her request for decision review was submitted personally on 7 July 2014. And that is the date of receipt stamp from the Office of the Director of UNRWA Operations Jordan (DUO/J). The DUO/J subsequently forwarded the request for decision review to the Staff Relations Office, Department of Human Resources in the Jordan Field Office on 10 July 2014, and to the Deputy Commissioner-General on 16 July 2014. The unilateral correspondence from Ms. Al-Dawoud on 18 August 2014 does not stop the time limit for initiating the application process from running.

9. The remedies Ms. Al-Dawoud seeks if the Judgment stands have no basis as they address the merits of her claims, which are not before the Appeals Tribunal.

Considerations

10. An area staff member of UNRWA who intends to seek judicial review of an Agency decision must comply with both the UNRWA Staff Rules and the Statute of the UNRWA Dispute Tribunal (Statute) (incorporated into the UNRWA Staff Regulations by Regulation 11.3).

11. Staff Rule 111.2, which went into effect on 1 June 2010, requires a staff member, “as a first step, to seek decision review within 60 days of written notice of the impugned decision”.²

12. Article 8(1)(d)(ii) of the Statute provides, in part, that an application for judicial review “shall be receivable if ... [t]he application is filed within ... 90 calendar days of the expiry of the relevant response period for the decision review if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to decision review”.

13. As applied, Article 8(1)(d)(ii) requires that an application must be filed no later than 120 days from the date a request for decision review is submitted when there is no response to the request for decision review within the 30-day response period and the 90-day period following the expiration of the response period.³

14. The parties agree that Ms. Al-Dawoud timely submitted her request for decision review under Staff Rule 111.2 and that the Agency did not respond to Ms. Al-Dawoud’s request within 120 days of its submission. However, they do not agree on the date the request for decision review was submitted. Ms. Al-Dawoud claims she submitted the request for decision review on 18 August 2014; whereas, the Agency claims the request was submitted on 7 July 2014.

15. The sole issue before us on appeal is whether the UNRWA Dispute Tribunal made an error of fact, resulting in an unreasonable decision, when it found that Ms. Al-Dawoud submitted her request for decision review on 7 July 2014. If the UNRWA DT’s finding is

² *Chahrour v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-406, para. 27.

³ See *Lemonnier v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-679, paras. 34-37, discussing *Neault v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-345; *Eng v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-520; and *Gallo v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-552.

correct, the application was not timely filed under Article 8(1)(d)(ii) and the UNRWA DT properly concluded it was not receivable *ratione temporis*. On the other hand, if the UNRWA DT's finding is incorrect, and the request for decision review was submitted as Ms. Al-Dawoud claims on 18 August 2014, the application was timely filed under Article 8(1)(d)(ii) and the UNRWA DT erroneously concluded it was not receivable *ratione temporis*.

16. The evidence before the UNRWA Dispute Tribunal shows that the UNRWA DT did not make a factual error when it found that the request for decision review was made on 7 July 2014. Ms. Al-Dawoud's application for decision review, signed and dated 7 July 2014, was attached to her application for judicial review before the UNRWA DT, and the UNRWA DT did not err in placing considerable weight on this document. Additionally, other evidence presented to the UNRWA DT by the Commissioner-General shows: Ms. Al-Dawoud's request for decision review was received by UNRWA's Director of Operations, Jordan, on the date it was submitted—7 July 2014—and then forwarded to the Deputy Commissioner-General by memorandum dated 14 July 2014; and further forwarded to the Deputy Commissioner-General's Office by e-mail on 16 July 2014.

17. Further, Ms. Al-Dawoud stated in e-mail correspondence to Ms. Kaddoura, UNRWA's Head of the Field Human Resources Office in Jordan, which was contemporaneous with the filing of her application before the UNRWA DT: "[T]hese are legitimate concerns related to my decision review request which was sent in July and due to the problems with the attachment was resent back in August". Ms. Al-Dawoud annexed this e-mail correspondence to her application.

18. Similarly, in the observations she filed before the UNRWA Dispute Tribunal on 1 March 2015, Ms. Al-Dawoud stated: "Regarding the time limits, DDR [sic] was submitted on 7th of July, 2014 personally. Then I was informed that it was addressed to the wrong person and it was resubmitted to the Deputy Commissioner[-]General (correct person) on 18th of August 2014".

19. Resubmitting a request for decision review cannot, and does not, reset the date decision review is sought or the date from which the limitations period commences to run for filing an application for judicial review. Otherwise, the deadline for filing an application would have no certainty. As the Appeals Tribunal has repeatedly stated,

the deadlines for filing applications and appeals, among other things, must be strictly enforced by the Tribunals.⁴

20. As the request for decision review was submitted on 7 July 2014, the time for Ms. Al-Dawoud to file an application for judicial review expired 120 days thereafter, on 4 November 2014. However, her application for judicial review was not filed until 5 December 2014—more than one month late. Thus, the UNRWA DT correctly concluded that the application was not receivable *ratione temporis*.

21. This Tribunal has repeatedly held that it is the staff member's responsibility to ensure that she is "aware of the provisions of the Staff Rules" and "ignorance of the law is no excuse".⁵ Thus, Ms. Al-Dawoud should have been aware that resending her request for decision review did not extend the date on which the request for review was submitted and also did not extend the date by which her application for judicial review was required to be filed in order to be timely.

Judgment

22. Judgment No. UNRWA/DT/2015/049 is affirmed and the appeal is dismissed.

⁴ *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. 26; *Diab v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-495, para. 25.

⁵ *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. 26; *Diagne et al. v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-067, para. 22.

Original and Authoritative Version: English

Dated this 30th day of June 2016 in New York, United States.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Simón

Entered in the Register on this 24th day of August 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar