



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

Judgment No. 2016-UNAT-689

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

JUDGMENT

Before:	Judge Deborah Thomas-Felix, Presiding Judge Dimitrios Raikos Judge Martha Halfeld
Case No.:	2016-919
Date:	28 October 2016
Registrar:	Weicheng Lin

Counsel for Mr. Shehadeh: Self-represented

Counsel for Commissioner-General: Lance Bartholomeusz

JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Fouad Yousef Shehadeh against Judgment No. UNRWA/DT/2016/006, 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 11 February 2016 in the case of *Shehadeh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees*. Mr. Shehadeh filed his appeal on 12 April 2016, and the Commissioner-General of UNRWA filed his answer on 9 June 2016.

Facts and Procedure

2. Before the UNRWA Dispute Tribunal, Mr. Shehadeh challenged the decision not to select him for two positions with the Agency.

3. The following facts and procedural history are taken from the UNRWA DT Judgment:¹

... On 4 May 1987, the Applicant was appointed Head Storekeeper “B”, Grade 8, Step 1 in Lebanon. After several promotions and transfers, on 1 December 2005, the Applicant was appointed Area Officer “C” Beqaa, Grade 12, in Lebanon.

... On 22 January 2010, the Applicant’s request for six months of Special Leave Without Pay (“SLWOP”) from 1 February 2010 to 31 July 2010 to join a UN operation in Darfur, Sudan, was approved.

... By email dated 30 June 2011, the Applicant’s request for additional SLWOP was approved until 31 January 2012.

... At the time material to the events of this application, the Applicant occupied the post of Stock Material Inspection Officer, Lebanon Field Office, Grade 12.

... On 8 September 2014, the Agency internally circulated vacancy announcements for two posts: Chief Area Office Beqaa (“CAO/B”) and Chief Area Office North Lebanon Area (“CAO/NLA”). The two posts were classified at Grade 20. The “Personal and Professional Competencies” for the posts provided:

(A) Academic and Professional

Advanced university degree in business, public administration, political science, sociology or other related discipline.

¹ Impugned Judgment, paras. 2-19.

(B) Experience

At least ten years of relevant experience of which five years should have been in a large governmental or international organization at a senior level.

... The Applicant applied for the two posts. The Agency received 14 applications for the CAO/B post and 19 applications for the CAO/NLA post. All the applications were jointly reviewed by the Lebanon Front Office and the Human Resources Department against the essential post requirements and competencies outlined in the post descriptions and vacancy announcements. The Applicant was listed as a Tranche 2 candidate for both posts.

... All ten Tranche 1 candidates were invited for an interview on 24 October 2014. As the Applicant was short-listed as a Tranche 2 candidate, he was not invited to the interview.

... By email dated 20 September 2014, the Applicant enquired why he had been excluded from the interviews since he had “worked as an Area Officer Beqaa in the period Dec 2005 & July 2011”.

... By email dated 28 October 2014, the Human Resources Associate A (Recruitment) Officer explained to the Applicant that:

[...] you were not invited to the Chief Area Office Beqaa interviews because you were short-listed as T2 and not T1 since you lack the advanced degree (Masters). In other words, only candidates who fully meet the requirements (T1) were invited for the interview.

... By letter dated 6 November 2014, the Applicant requested decision review.

... By letter dated 15 December 2014, the Deputy Director UNRWA Affairs in Lebanon (“D/DUA/L”) replied to the Applicant’s request for decision review and upheld the impugned decision.

... On 27 January 2015, the Commissioner-General approved the recommendations of the interview panel for the posts of CAO/B and CAO/NLA.

... On 13 March 2015, the Applicant filed his application with the UNRWA Dispute Tribunal

... On 14 April 2015, the Respondent filed a motion for extension of time to file a reply.

... By Order No. 051 (UNRWA/DT/2015) dated 12 May 2015, the [UNRWA Dispute] Tribunal granted the Respondent’s request to file a late reply.

... On 15 May 2015, the Respondent filed his reply. The Respondent submitted Annexes 15 and 16 on an *ex parte* basis.

... By Order No. 121 (UNRWA/DT/2015) dated 22 November 2015, the [UNRWA Dispute] Tribunal disclosed Annex 15 to the Applicant, however redacting the names of the other candidates. The [UNRWA Dispute] Tribunal did not disclose Annex 16 to the Applicant and removed it from evidence.

... On 4 January 2016, the Applicant filed a motion to submit new evidence. By Order No. 001 (UNRWA/DT/2016) dated 10 January 2016, the [UNRWA Dispute] Tribunal received the new document into evidence.

4. The UNRWA Dispute Tribunal issued its Judgment on 11 February 2016. On the same day, the Registry of the UNRWA Dispute Tribunal sent a copy of the Judgment to the parties by e-mail.

5. The UNRWA Dispute Tribunal dismissed Mr. Shehadeh's application finding that the decision not to select him for the two positions was lawful as Mr. Shehadeh did not fulfill the education requirements for the positions. The vacancy announcements for the positions both stipulated that an advanced university degree was required; however, Mr. Shehadeh only held an undergraduate degree. The UNRWA Dispute Tribunal also found that there was no prejudice or improper motivation on the part of the Agency.

6. The UNRWA Dispute Tribunal rejected Mr. Shehadeh's claim that a Master's degree was not needed for the positions. The UNRWA Dispute Tribunal stated that it was not the UNRWA Dispute Tribunal's role to substitute its own criteria for those of the Agency in selection processes. The UNRWA Dispute Tribunal also held that a number of Mr. Shehadeh's claims were irrelevant, including his claims regarding the performance and capacities of other candidates, and that he had the experience required for the two advertised posts.

7. On 12 April 2016, Mr. Shehadeh filed an incomplete appeal, which he perfected on 15 April 2016. On 9 June 2016, the Commissioner-General of UNRWA filed his answer to the appeal.

8. On 19 October 2016, during the Fall session of the Appeals Tribunal, Mr. Shehadeh filed a motion seeking leave to file an additional submission. On 20 October 2016, in accordance with the directions of the President of the Appeals Tribunal, the Commissioner-General filed a response to the motion.

Submissions

Mr. Shehadeh's Appeal

9. Mr. Shehadeh contends that the UNRWA Dispute Tribunal erred by failing to take into consideration his submissions concerning the criteria used during the selection process and the suitability of some of the candidates who were short-listed for the positions.

10. In his submissions before the UNRWA Dispute Tribunal, Mr. Shehadeh argued that the education requirement of a Master's degree was illogical and irrelevant. Second, a number of the candidates included in the short list ought to have been disqualified for various reasons including place of residence, previous performance, decisions regarding the schooling of their children, and career choices.

11. Third, he had previously applied for the position of Chief Area Officer, Beqaa. However, the former Director cancelled the selection process and re-advertized it at the Grade 16 level. There was no basis to upgrade the post to the Grade 20 level. Fourth, he has a good record of performance as an Area Officer, Beqaa.

12. Mr. Shehadeh requests the Appeals Tribunal to "confirm [his] status as Chief Area Officer, Beqaa" and to award him compensation for his lost salary and entitlements and moral damages.

The Commissioner-General's Answer

13. The Commissioner-General contends that Mr. Shehadeh fails to identify any grounds of appeal that fall within those set out in Article 2(1) of the Appeals Tribunal Statute. Mr. Shehadeh does not identify any errors made by the UNRWA Dispute Tribunal and merely repeats the arguments that he made before that Tribunal.

14. The Commissioner-General maintains that the Judgment is free from error. The UNRWA Dispute Tribunal took into account Mr. Shehadeh's submissions regarding the selection process and issued a reasoned judgment, which correctly applied the law and reflected Mr. Shehadeh's arguments.

15. The Commissioner-General requests the Appeals Tribunal to dismiss the appeal in its entirety.

Motion Seeking Leave to Submit Additional Evidence

16. In his motion, Mr. Shehadeh requests leave to submit additional evidence of the Agency's recent efforts to restructure the Area Office in Beqaa. The Commissioner-General argues there are no exceptional circumstances justifying the admission of additional evidence that was not before the UNRWA Dispute Tribunal.

Considerations

17. The Appeals Tribunal raises *sua sponte* the issue of whether Mr. Shehadeh filed his appeal against the UNRWA DT Judgment within the applicable time limit. We note that Mr. Shehadeh did not request a waiver or extension of the time limit for filing his appeal, and the Commissioner-General has not raised the issue of the receivability of the appeal in his answer. Nevertheless, the Appeals Tribunal is competent to review its own competence or jurisdiction to hear any appeal in accordance with Articles 2(1) and (8) of the Appeals Tribunal Statute (Statute).

18. Article 7(1)(c) of the Statute provides that an appeal must be filed "within 60 calendar days of the receipt of the judgement of the Dispute Tribunal or, where the Appeals Tribunal has decided to waive or suspend that deadline in accordance with paragraph 3 of the present article, within the period specified by the Appeals Tribunal". Article 7(3) of the Statute provides that "[t]he Appeals Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases".

19. The Appeals Tribunal has repeatedly and consistently held that it "will continue to strictly enforce ... the various time limits".² The Appeals Tribunal has also established that "only circumstances 'beyond his or her control that prevented the applicant from exercising the right of appeal in a timely manner' may be considered 'exceptional circumstances' justifying a waiver of a time limit or deadline".³ Further, any request for an exception

² *Choi v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-651, para. 22 citing *Bofill v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-478, para. 19 and cites therein.

³ *Bofill v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-478, para. 19, citing *El-Khatib v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-029, para. 14.

or waiver of the time limit to appeal must be made to the Appeals Tribunal prior to the filing of an appeal.⁴

20. On 11 February 2016, the UNRWA Dispute Tribunal issued its Judgment. Also on 11 February 2016, the Registry of the UNRWA Dispute Tribunal sent the Judgment to the parties by e-mail. We note that Mr. Shehadeh filed his application in English and the Judgment was drawn up in English.⁵ Later, on 3 March 2016, the Registry of the UNRWA Dispute Tribunal provided Mr. Shehadeh with the Arabic translation of the Judgment.

21. The 60-day time limit to file an appeal expired on Monday, 11 April 2016. In accordance with Section I.A.4 of the Appeals Tribunal's Practice Direction No. 1, the deadline for Mr. Shehadeh to file his appeal electronically through the eFiling system was 11:59 p.m., New York time. According to the records obtained from the eFiling system, Mr. Shehadeh filed his appeal on 12 April 2016, at 4:42 a.m., New York time. Therefore, Mr. Shehadeh missed the deadline for filing his appeal by more than 4.5 hours.

22. Based on the foregoing, this appeal is time-barred and Mr. Shehadeh has not requested a waiver or extension of the deadline from the Appeals Tribunal. As the appeal is not receivable, we need not address Mr. Shehadeh's motion to submit additional evidence.

23. Moreover, we can find no fault with the reasoning of the UNWRA Dispute Tribunal. It is clear that Mr. Shehadeh did not meet the set criteria for selection and we agree that it is not the UNWRA Dispute Tribunal's role to substitute its own criteria for those of the Agency in selection processes.

Judgment

24. The appeal is dismissed and Judgment No. UNRWA/DT/2016/006 is affirmed.

⁴ *Harrich v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-576, para. 25, citing *Thiam v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-144, para. 18. See also *Czaran v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-373, para. 26; *Cooke v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-275, paras. 29 and 30.

⁵ See Article 11(4) and (5) of the UNRWA Dispute Tribunal Statute.

Original and Authoritative Version: English

Dated this 28th day of October 2016 in New York, United States.

(Signed)

(Signed)

(Signed)

Judge Thomas-Felix,
Presiding

Judge Raikos

Judge Halfeld

Entered in the Register on this 20th day of December 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar