

2012-UNAT-267, Achkar

UNAT Held or UNDT Pronouncements

UNAT rejected the request for an oral hearing since there was no need for further clarification of the issues arising from the appeal. UNAT held that it had subject matter jurisdiction to hear the appeal and that the appeal was receivable. UNAT held that UNDT had correctly concluded that it had no subject matter jurisdiction to receive the application because the application was brought before the wrong tribunal and the application should have been brought before UNRWA DT. UNAT held that UNDT had correctly concluded that it lacked subject matter jurisdiction to receive the application because the application was brought against the wrong respondent, the UN Secretary-General, rather than the Commissioner-General of UNRWA. UNAT held that UNDT had exceeded its jurisdiction in determining that the application was untimely and not receivable *ratione temporis* since UNDT lacked subject matter jurisdiction. UNAT vacated the portion of the judgment dismissing the application as untimely and not receivable, *ratione temporis*. UNAT dismissed the appeal and affirmed the UNDT judgment concluding the application was not receivable for lack of subject matter jurisdiction.

Decision Contested or Judgment/Order Appealed

The Applicant filed an application seeking monetary damages for the alleged threats against him when he travelled to and from Gaza in 2002. UNDT found that the application was not receivable. UNDT found that it lacked subject matter jurisdiction to hear the Applicant's claims because: (a) the Applicant was a UNRWA staff member at the time of the impugned decision and UNRWA did not fall under the jurisdiction of UNDT; and (b) the application was brought against the wrong respondent. UNDT found further that the application was not receivable because it was filed after a considerable delay and was time-barred. The Applicant appealed.

Legal Principle(s)

Present and 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 DT, as the first step, and then appealing an adverse judgment to UNAT, as the second step. UNDT is prohibited from hearing applications from UNRWA staff members.

Outcome

Appeal dismissed on receivability

Full judgment

[Full judgment](#)

Applicants/Appellants

Achkar

Entity

UNRWA

Case Number(s)

2012-293

Tribunal

UNAT

Registry

New York

Date of Judgement

1 Nov 2012

President Judge

Judge Chapman

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNAT)

Appeal

Jurisdiction / receivability (UNDT or first instance)

Manifest excess of jurisdiction

Subject matter (ratione materiae)

Temporal (ratione temporis)

Procedure (first instance and UNAT)

Oral hearings

Applicable Law

UNAT Statute

- Article 2.10
- Article 2.5
- Article 8.3

UNDT RoP

UNDT Statute

Related Judgments and Orders

UNDT/2011/194

2010-UNAT-068

2011-UNAT-142

2010-UNAT-046

