

2022-UNAT-1246, Ashraf Ismail abed allah Zaqqout

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by Mr. Zaqqout. As regards an oral hearing, UNAT found that since the application was dismissed on grounds of receivability, Mr. Zaqqout's arguments were not persuasive enough so as to justify an oral hearing at this stage. Some of the issues raised in the appeal were connected to the merits of Mr. Zaqqout's application and did not meet the threshold of the receivability assessment. Since Mr. Zaqqout was made aware at the very early stage of the proceedings of the UNRWA's allegation that he had been notified of the impugned decision on 30 December 2018, he should have requested to submit additional evidence, indicating that his e-mail was disabled once the disciplinary decision was taken on 30 December 2018, to UNRWA DT at the trial level, rather than to UNAT. UNAT refused Mr. Zaqqout's motion to file additional evidence. It found there were no exceptional circumstances under Article 2(5) of the UNAT Statute which could justify such filing. Moreover, his motion could not serve as a means to reargue his case, nor to add any arguments to his appeal as a response to the Commissioner-General's answer to his appeal. As regards UNRWA DT's finding that Mr. Zaqqout's application was not receivable *ratione materiae* because he did not submit a request for a decision review of the contested administrative decision in a timely manner, UNAT found that the UNRWA DT was not biased against him, nor did it violate his due process rights. It has long been established in the Appeals Tribunal's jurisprudence that a request for decision review/management evaluation is a mandatory first step in the appeal process. The tribunals have no jurisdiction to waive deadlines for requests for management evaluation or decision review. In addition, UNAT found that the UNRWA DT had correctly assessed the evidence before it and found that the date when Mr. Zaqqout was informed of the contested decision was 30 December 2018, and that his request for a decision review was beyond the prescribed window of opportunity to challenge it. There was no room for Mr. Zaqqout's contention that the starting date for the time window to request a decision review was 10 January 2019, when he eventually collected the hard copy of the letter at the Gaza Field Office, after himself making an appointment to receive it. The date when an administrative decision is communicated cannot depend on the willingness of the staff member to receive it. Nor does it depend on his or her personal beliefs of procedures, or his or her commitments. Nor can a staff member unilaterally determine the date of an administrative decision. This is because the date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine. The appeal was dismissed, and Judgment No. UNRWA/DT/2021/020 was upheld.

Decision Contested or Judgment/Order Appealed

Mr. Zaqqout contested the UNRWA decision to impose on him the disciplinary measures of a written censure and a two-month suspension without pay. UNRWA DT in its Judgment No. UNRWA/DT/2021/020, dismissed his application as not receivable on the basis that he had failed to file a request for a decision review.

Legal Principle(s)

Oral hearing: The Statute provides that UNAT shall decide whether the personal appearance of the appellant or any other person is required at oral proceedings and if such hearings would assist in the expeditious and fair disposal of the case. The oral hearing before the UNAT does not aim to provide any further oral evidence or otherwise, but to discuss elements of fact and of law which are already on the record. Request to accept additional evidence: According to Article 2(5) of the UNAT Statute and Article 10.1 of the UNAT Rules of Procedure, only in exceptional circumstances can additional evidence be submitted at the appellate level, "provided that the Appeals Tribunal shall not receive additional written evidence if it was known to the party seeking to submit the evidence and should have been presented to the Dispute Tribunal". It has long been

established in the Appeals Tribunal’s jurisprudence that a request for decision review/management evaluation is a mandatory first step in the appeal process. The tribunals have no jurisdiction to waive deadlines for requests for management evaluation or decision review. This jurisprudence is in full accordance with the applicable legal framework set out in the UNRWA DT Statute, particularly Article 8.1. The date when an administrative decision is communicated cannot depend on the willingness of the staff member to receive it. Nor does it depend on his or her personal beliefs of procedures, or his or her commitments. Nor can a staff member unilaterally determine the date of an administrative decision. This is because “[t]he date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine”.

Outcome

Appeal dismissed on receivability

Full judgment

[Full judgment](#)

Applicants/Appellants

Ashraf Ismail abed allah Zaqqout

Entity

UNRWA

Case Number(s)

2021-1590

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Jul 2022

President Judge

Judge Halfeld

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Subject matter (ratione materiae)

Oral hearings

Jurisdiction / receivability (UNDT or first instance)

Procedure (first instance and UNAT)

Applicable Law

UNAT RoP

- Article 18.1
- Article 10.1

UNRWA DT Statute

- Article 8.3

UNAT Statute

- Article 8.2
- Article 10.1

- Article 2.5

UNRWA Area Staff Rules

UNRWA DT RoP

Related Judgments and Orders

2022-UNAT-1234

2016-UNAT-654

2013-UNAT-293

2016-UNAT-699

2015-UNAT-521

2013-UNAT-349

2016-UNAT-695

2014-UNAT-402

2021-UNAT-1149

2015-UNAT-557

2014-UNAT-406

2012-UNAT-273

2013-UNAT-296

2017-UNAT-791

2016-UNAT-688

2015-UNAT-547

2012-UNAT-221