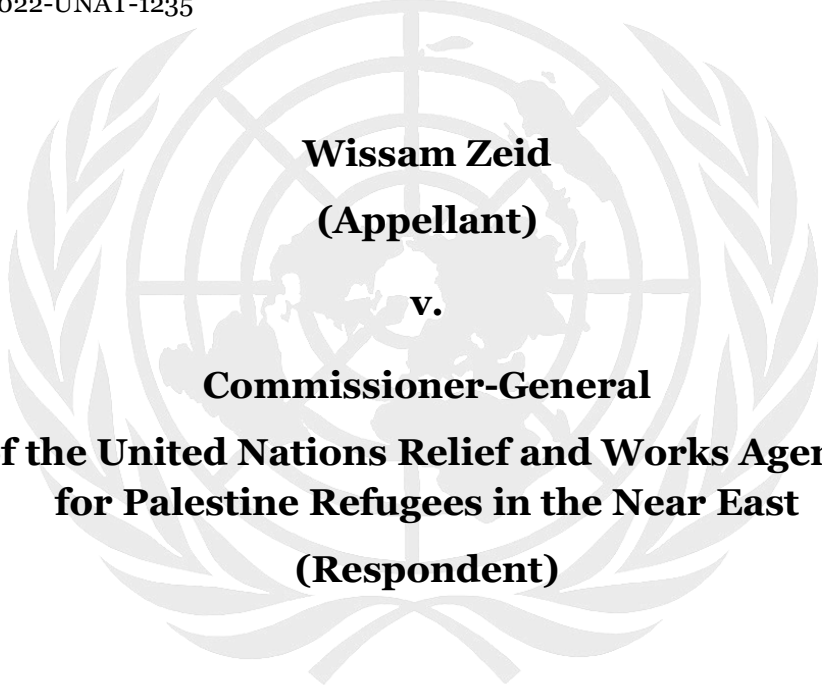




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2022-UNAT-1235



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

JUDGMENT

Before:	Judge Martha Halfeld, Presiding Judge Graeme Colgan Judge Kanwaldeep Sandhu
Case No.:	2021-1581
Date of Decision:	1 July 2022
Date of Publication:	5 July 2022
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Ana Peyro-Llopis

JUDGE MARTHA HALFELD, PRESIDING.

1. Mr. Wissam Zeid, Registrar and Alumni Officer in the Education Department at the Sibliin Training Centre, Lebanon Field Office (LFO), challenged the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) not to shortlist him for the post of Principal, Grade 17. By Judgment No. UNRWA/DT/2021/024, the UNRWA Dispute Tribunal (UNRWA DT) dismissed the application as not receivable *ratione materiae*.
2. Mr. Zeid has appealed the UNRWA DT Judgment to the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
3. For the reasons set out below, we dismiss the appeal.

Facts and Procedure

4. Effective 2 November 1998, Mr. Zeid was employed by the Agency on a fixed-term appointment as Teacher Training Instructor, Education/Psychology, Grade 10, Step 1, in the Education Department at the Sibliin Training Centre, LFO. Effective 1 February 2011, he was appointed to the post of Registrar and Alumni Officer, Grade 12. Effective 1 January 2012, Mr. Zeid's appointment was converted from "X" category fixed-term appointment to "A" category temporary indefinite appointment.
5. From 21 February to 5 March 2020, the Agency advertised, internally and externally, a vacancy notice for the post of Principal, Grade 17, at Sibliin Training Centre, LFO. The Agency received 156 applications for the post, including Mr. Zeid's.
6. On 13 June 2020, the Agency informed Mr. Zeid that he was not shortlisted, as he did not meet the requirements for the post.
7. On 18 June 2020, Mr. Zeid sent an e-mail to several recipients, including the Head, Field Human Resources Office, LFO (H/FHRO/LFO) and the Human Resources Career Management Officer, LFO (HRCMO/LFO), inquiring about the reasons of the decision not to shortlist him, in particular, why he was considered as not meeting the requirements for the post. On 19 June 2020, in response to Mr. Zeid's request for feedback, the HRCMO/LFO informed him that he "lacked the required four years of experience in an administrative/supervisory capacity". That same day,

Mr. Zeid requested further explanations regarding the decision not to shortlist him and some materials related to the recruitment process in order to prepare his “formal complaint”.

8. On 21 June 2020, the HRCMO/LFO provided Mr. Zeid with further explanations, shared with him the “Step-by-Step Guide” of the UNRWA DT and advised him to contact the Legal Officer (Staff Assistance). Following several inquiries and responses, on 3 July 2020, the H/FHRO/LFO again provided Mr. Zeid with a detailed explanation as to why he was not shortlisted for the post and the link to the “Step-by-Step Guide.”

9. On 6 July 2020, after a further exchange of e-mails between Mr. Zeid and the representatives of the Human Resources Department (HRD), the Senior Field Investigator, who was copied on the aforementioned communications, informed Mr. Zeid about the decision review process and provided him with the form for decision review request.

10. On 23 July 2020, Mr. Zeid filed an application with the UNRWA DT. By Order No. 154 (UNRWA/DT/2020) dated 31 August 2020 (Order No. 154), the UNRWA DT ordered Mr. Zeid to submit proof that he had submitted a decision review request. On 17 September 2020, Mr. Zeid filed his response to Order No. 154 together with his request for production of documents. He also provided a decision review request form dated 6 July 2020. By Order No. 194 (UNRWA/DT/2020) dated 4 October 2020, the UNRWA DT denied Mr. Zeid’s request for production of documents.

11. On 17 May 2021, the UNRWA DT issued Judgment No. UNRWA/DT/2021/024 dismissing the application as not receivable *ratione materiae* in the absence of a timely request for decision review.

12. On 16 July 2021, Mr. Zeid filed an appeal, and on 15 September 2021, the Secretary-General filed an answer.

Submissions

Mr. Zeid’s Appeal

13. The UNRWA DT erred in dismissing Mr. Zeid’s application based on UNRWA Staff Regulation 111.2 (1) (*sic.*), which does not apply in this case. The Judge misinterpreted UNRWA Staff Regulation 111.2 (1) (*sic.*) as it does not apply to applications for new vacancies by

internal/external candidates. The UNRWA DT failed to consider that the vacancy announcement was open to internal and external candidates; as such the issue could be dealt with externally. UNRWA Staff Regulation 111.2(1) (*sic.*) applies to matters involving a staff member's current contract and appointment, it does not apply to applications for vacancies open to internal and external candidates. The case at bar is unrelated to Mr. Zeid's position at UNRWA. It relates to a new vacancy and as such UNRWA Staff Regulation 111.2(1) (*sic.*) does not apply. The notion "terms of appointment or contract of employment" are related to Mr. Zeid's current post and do not apply to matters regarding a new vacancy.

14. Moreover, Mr. Zeid did comply with the decision review requirements. He produced e-mails before the UNRWA DT in support of his contention that he submitted a decision review request. The UNRWA DT however failed to review the e-mails he submitted.

15. Mr. Zeid asks that the Appeals Tribunal hold an oral hearing.

The Commissioner-General's Answer

16. As a preliminary matter, the Commissioner-General asks that Mr. Zeid's request for an oral hearing be denied. The factual and legal issues arising from the appeal are clearly defined. An oral hearing would not assist UNAT in resolving the principal issue on appeal.

17. The central issue before UNAT is whether the UNRWA DT correctly concluded that the application was not receivable – for failure to submit a decision review request. While Mr. Zeid first contends that Area Staff Rule 111.2 (1) did not apply to his case, he subsequently contends that he did comply with the decision review requirements. The UNRWA DT was cognizant of the applicable legal framework and the UNAT jurisprudence in relation to decision review requests. Pursuant to UNRWA Area Staff Rule 111.2(1), a staff member wishing to formally contest an administrative decision shall, as a first step, submit a decision review request, in the case of staff members of Field Offices, to the UNRWA Field Office Director in charge of the Field Office. Requesting management evaluation is a mandatory first step in the appeals process. Mr. Zeid's interpretation of the applicability of UNRWA Area Staff Rule 111.2(1) is misconstrued and his contention that the "mandatory rule" did not apply to his case is without merit and goes against the critical role that decision review serves in the justice system.

18. The UNRWA DT correctly and reasonably concluded that Mr. Zeid did not submit a request for decision review. In response to an UNRWA DT order to submit additional evidence establishing that he had submitted a timely request for decision review, Mr. Zeid produced a decision review request form dated 6 July 2020 – which the Commissioner-General denied having received. The UNRWA DT reviewed the various e-mails sent by Mr. Zeid and concluded that none of these e-mails made any reference to a request for decision review. In fact, the responses to these communications showed that his e-mails were not perceived as a request for decision review. The UNRWA DT thus held that these communications were informal attempts to obtain further clarifications with respect to the reasons of the contested decision and did not meet the standard of “an unambiguous written request which clearly identifies the staff member and the contested decision”. There is therefore no merit in Mr. Zeid’s assertion that the UNRWA DT did not review the e-mails he submitted in support of his contention that he filed a decision review request.

19. The Commissioner-General requests that UNAT dismiss the appeal in its entirety.

Considerations

Oral hearing

20. As a preliminary matter, the Appeals Tribunal deals with the request for an oral hearing. Oral hearings are governed by Article 8(2) and (3) of the Appeals Tribunal’s Statute and Article 18(1) of the Appeals Tribunal’s Rules of Procedure (Rules). The Statute provides that the Appeals Tribunal shall decide whether the personal appearance of the appellant or any other person is required at oral proceedings and the appropriate means to achieve that purpose; and that the judges assigned to a case will determine whether to hold oral proceedings.¹ In turn, the Rules stipulate that the judges hearing a case may hold oral hearings on the written application of a party or on their own initiative if such hearings would assist in the expeditious and fair disposal of the case.²

21. Under these provisions, the oral hearing before the UNAT, however, 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.³ In this sense, Mr. Zeid’s argument that a hearing should be required

¹ Article 8, UNAT Statute.

² Article 18(1), UNAT Rules.

³ *Gabriel Vincent Branqlidor v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1234, para. 32.

because there was a misinterpretation of the Staff Regulations and the UNRWA DT disregarded facts for the benefit of the Commissioner-General is not persuasive so as to justify an oral hearing about the issues raised in the appeal. The factual and legal issues arising from the appeal have already been clearly defined by the parties and there is no need for further clarification. All elements for discussion are already on the record. Moreover, we do not find that an oral hearing would “assist in the expeditious and fair disposal of the case”, as required by Article 18(1) of the Rules. Mr. Zeid’s request for an oral hearing is denied.

Merits of the appeal – the receivability of the application

22. The main issue for consideration and determination in the present case is whether the UNRWA DT erred when it found that the application was not receivable *ratione materiae*, because Mr. Zeid did not submit a request for decision review of the contested administrative decision.

23. The legal framework specifically applicable to the present case provides that a staff member wishing to formally contest an administrative decision alleging non-compliance with his or her terms of appointment or the contract of employment, including all pertinent Regulations and Rules and all relevant administrative issuances, shall, as a first step, submit a written request for a decision review: (A) in the case of staff members of Field Offices, to the UNRWA Field Office Director in charge of the Field Office; and (B) in the case of staff members of Headquarters, to the Director of Human Resources.⁴

24. In the same sense, Article 8(1)(c) of the UNRWA DT Statute stipulates that an application shall be receivable if an applicant has previously submitted the contested administrative decision for decision review. Furthermore, Article 8(3) bars the UNRWA DT from suspending, waiving, or extending the deadlines for decision review.

25. 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.⁵ Being a mandatory first step before coming to the internal justice system, the request for management evaluation or decision review provides the Administration with the opportunity to reassess the situation and correct possible mistakes or errors with efficiency without the

⁴ UNRWA Staff Rule 111.2(1).

⁵ *Faye v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-654, para. 31; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-293, para. 27.

need of judicial intervention.⁶ The tribunals have no jurisdiction to waive deadlines for requests for management evaluation or decision review.⁷ This jurisprudence is in full accordance with the applicable legal framework set out in the UNRWA DT Statute, particularly Article 8.⁸

26. In reaching its conclusion, the UNRWA DT firstly found that there was no evidence of the request for decision review in the present case. Although Mr. Zeid claimed to have submitted a decision review request form, the Commissioner-General denied having received it. Therefore, it was incumbent upon Mr. Zeid to provide additional evidence of the forwarding of the form, i.e., an e-mail by which he had submitted it, as prescribed by Staff Rule 111.2(1)(A).⁹

27. Secondly, the UNRWA DT found that the e-mail exchanges whereby Mr. Zeid had made inquiries regarding the reasons for the contested decision were not perceived as a request for a decision review. Rather, they were informal attempts to obtain further clarification with respect to the reasons for the contested decision.¹⁰

28. Mr. Zeid contends that the UNRWA DT Judgment misinterpreted Staff Rule 111.2(1), which, he submits, does not apply to new vacancies, but only to matters arising from the current appointment. He also maintains that he followed the necessary steps to appeal against the administrative decision, by submitting a request for decision review, as can be seen from the chain of e-mails, and that there are missing attachments. Mr. Zeid further claims that, since the post was open to internal and external candidates, he could have been treated as an external candidate.

29. The Appeals Tribunal finds that Mr. Zeid seems to ignore that, while an *external candidate* does not have standing to contest an administrative decision before the internal

⁶ *Vukasović v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-699, para. 13, citing *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-521, para. 17, in turn citing *Servas v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-349, para. 22 and citations therein.

⁷ *Faust v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-695, para. 40, citing *Eggesfield v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-402, para. 23 and citations therein.

⁸ *Lara Sahyoun v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1149, para. 28. Also: *Vukasović, op. cit.*, para. 13; *Faye, op. cit.*, para. 31; *Gehr, op. cit.*, para. 27.

⁹ Impugned Judgment, para. 26.

¹⁰ *Ibid.*, para. 27.

justice system due to lack of competence *ratione personae* of the tribunals, a *staff member* wishing to formally contest the administrative decision should comply with the mandatory requirement to challenge it, first by means of decision review or management evaluation, in order for the Tribunals to have competence *ratione materiae* in the matter.

30. In this sense, Mr. Zeid's request to be treated as an external candidate as a means to avoid having to present a request for decision review before filing his application to the UNRWA DT is disingenuous. He is a staff member and must be treated as such. Thus, the UNRWA DT did not err in finding that Area Staff Rule 111.1(2) applied to Mr. Zeid's case.

31. Having established the applicable legal framework, the Appeals Tribunal will now assess whether the UNRWA DT Judgment erred when it found that the application was not receivable *ratione materiae*. Mr. Zeid contends that the chain of e-mails is evidence to his benefit. In this regard, when the Senior Field Investigator mentioned that a certain point "can be raised at the appeal level" in the 6 July 2020 e-mail annexed by Mr. Zeid to his appeal, she was, however, referring to Chapter XI of the UNRWA Staff Rules, which deals with the "Appeals" process when a staff member considers that his or her contract of employment or terms of appointment have been violated.

32. This Chapter of the UNRWA internal rules encompasses not only the informal resolution (Staff Rule 111.1), but also the process of decision review (Staff Rule 111.2) and the UNRWA DT and UNAT proceedings (Staff Rules 111.3 and 111.4), hence clearly referring to a general way of challenging an administrative decision. These e-mails thus do not support Mr. Zeid's allegation that he had requested a decision review of the contested administrative decision. Nor can they be interpreted as a request for the decision review itself, which needs to be formally submitted to the Director of the LFO, as prescribed by UNRWA Staff Rule 111.2(1)(A). Therefore, the UNRWA DT Judgment correctly assessed the chain of e-mails before it and found that they were informal attempts to obtain further clarifications with respect to the reasons of the contested decision.

33. This reasoning is corroborated by the other e-mail dated 6 July 2020, where the same Senior Field Investigator clarified that the case included two points, one of which was "1. Appeal: You can start the appeal through decision review. Attached is the form for your reference. Kindly note that the decision review [must be submitted] within 60 days after the reception of the decision (regret letter)." This undoubtedly indicates that the UNRWA DT did

not err when it found that Mr. Zeid's e-mails were not perceived as a request for a decision review.¹¹

34. Despite having inappropriately argued that the e-mail exchange constituted his request for decision review, which was not the case as discussed above, Mr. Zeid also alleges that there were "missing attachments" regarding e-mail issues. The Appeals Tribunal could not find any reference to these "missing attachments" on the records. There was no motion on Mr. Zeid's part on the matter. If Mr. Zeid refers to the part of the UNRWA DT Judgment where it mentioned that the form which Mr. Zeid presented was not accompanied by any additional evidence, i.e. an e-mail submitting the form to the Director of the LFO, then it was not for the Agency to provide evidence of any "missing attachments" or e-mails. Rather, as correctly found by the UNRWA DT, since the Agency denied having received the form, it was incumbent upon Mr. Zeid to provide evidence that the form was effectively conveyed to the Agency, via e-mail or otherwise. He failed to do so.

35. It is clear that Mr. Zeid was not satisfied by the reasons provided by the Agency, nor by the UNRWA DT Judgment itself. However, having considered all of Mr. Zeid's submissions, we find that he has failed to persuade the Appeals Tribunal that the UNRWA DT committed any error of law, fact or procedure in reaching its decision. The UNRWA DT did review the e-mail communications produced by Mr. Zeid at trial before determining whether he submitted a request for decision review. Furthermore, the UNRWA DT did not err in finding that Mr. Zeid had failed to submit a request for decision review.

36. The appeal accordingly fails.

¹¹ *Ibid.*

Judgment

37. The appeal is dismissed and Judgment No. UNRWA/DT/2021/024 is affirmed.

Original and Authoritative Version: English

Decision dated this 1st day of July 2022 in New York, United States.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Colgan

(Signed)

Judge Sandhu

Judgment published and entered into the Register on this 5th day of July 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar