



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Mohammed Bustanji
(Appellant)

v.

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

JUDGMENT

[No. 2010-UNAT-027]

Before:	Judge Mark P. Painter, Presiding Judge Inés Weinberg de Roca Judge Jean Courtial
Case No.:	2010-032
Date:	30 March 2010
Registrar:	Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: W. Thomas Markushewski

JUDGE MARK P. PAINTER, Presiding.

Synopsis

1. This appeal is time-barred. On 30 July 2008, the Appellant, Mohammed Bustanji (Bustanji), received the decision of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) upholding his demotion and transfer. He should have appealed to the former United Nations Administrative Tribunal within 90 days, or about 28 October 2008. But the former Administrative Tribunal Secretariat did not receive his application until 3 June 2009, more than seven months beyond the deadline. His previous appeal to the UNRWA Area Staff Joint Appeals Board (UNRWA JAB) was likewise time-barred, as he had filed it 88 days after the deadline prescribed in Area Staff Rule 111.3. Thus Bustanji has filed a time-barred appeal of a time-barred appeal. He has provided no explanation for either delay; he does not comment on UNRWA's argument that the case must be dismissed. It must, and we do.

Facts and Procedure

2. Bustanji commenced employment with UNRWA in 2003 as a maintenance supervisor at the Amman Training Center (ATC), where he and his family resided.

3. Though the underlying facts are irrelevant because the appeal is time-barred, suffice it to say that Bustanji was accused of making grossly improper advances to the wife of another UN employee.

4. A fact-finding committee (FFC) was established to investigate the complaint. The FFC interviewed seven individuals, including the complainant and Bustanji. In October 2006 the FFC recommended to the Principal, ATC, that Bustanji be immediately removed from the ATC residential area for a transfer to any other part outside ATC, and that a final warning be issued to him.

5. Both the ATC Principal and the Field Personnel Officer, Jordan, supported those recommendations. In the view of the ATC Principal, Bustanji should also be demoted and transferred to any other place in UNRWA, as he proved to be inefficient in his work and was the subject of many complaints. The Director, UNRWA Operations, Jordan (DUO/J) subsequently decided to impose two disciplinary measures of censure and suspension for two weeks. In addition, he decided to transfer Bustanji to Wadi Seer Training Center

(WSTC) as a precautionary measure for the security of staff and their families, effective 1 March 2007. The DUO/J's decision was communicated to Bustanji on 26 February 2007.

6. On 16 May 2007, upon learning that Bustanji continued to stay at ATC beyond 30 April, DUO/J warned Bustanji that his service with UNRWA would be terminated effective 25 May 2007 unless he moved out of the ATC premises by 24 May.

7. On 16 July 2007, Bustanji appealed to the UNRWA JAB against the decision of 26 February 2007 to censure and suspend him, and the decision of 16 May 2007 to terminate his contract if he failed to leave the ATC premises.

8. On 2 July 2008, the UNRWA JAB adopted its report, concluding that the appeal was not receivable because it was made 88 days after the deadline prescribed in Area Staff Rule 111.3. On 30 July 2008, Bustanji received the decision of the UNRWA Commissioner-General to approve the JAB recommendation.

9. As noted above, on 3 June 2009, the Secretariat of the former Administrative Tribunal received an application from Bustanji against the above decision taken by the UNRWA Commissioner-General. The case was transferred to this Court upon the abolition of the former Administrative Tribunal at the end of 2009.

Considerations

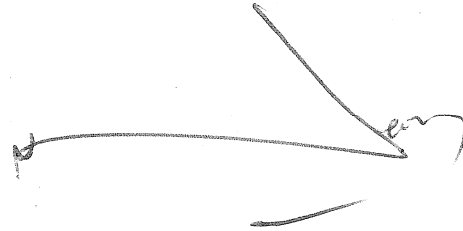
10. Though the appeal is time-barred, we do note that UNRWA reacted to sexual harassment allegations in a timely and proper fashion. Even were the appeal not out of time, we would have upheld UNRWA's actions.

Judgment

11. The appeal is time-barred, and is dismissed.



Judge Painter, Presiding



Judge Weinberg de Roca



Judge Courtial

Dated this 30th day of March 2010 in Geneva, Switzerland.

Original: English

Entered in the Register on this 26th day of April 2010 in New York, United States.



Weicheng Lin, Registrar, UNAT