

*Translated from French*

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

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**El-Khatib**

**(Appellant)**

**v.**

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

**(Respondent)**

**JUDGMENT**

**[No. 2010-UNAT-029]**

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Before:	Judge Jean Courtial, Presiding Judge Inés Weinberg de Roca Judge Mark P. Painter
Case No.:	2010-034
Date:	30 March 2010
Registrar:	Weicheng Lin

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Counsel for Appellant:	Bart Willemsen
Counsel for Respondent:	W. Thomas Markushewski

**Judge Jean Courtial**, Presiding Judge

### Synopsis

1. On 30 June 2009, Ms. Amneh El-Khatib filed an application with the United Nations Administrative Tribunal contesting the decision of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (“the Agency”), dated 16 January 2009, to reject the administrative appeal in which she contested the withdrawal of the offer of appointment for the post of social worker which had been made to her on 28 November 2002. In her application, she also requested that the Agency should be ordered to pay her compensation for the loss of earnings resulting from the abandonment of her previous employment, and for the hardship caused by the delay in the Agency’s consideration of her administrative appeal. Since the Administrative Tribunal did not have time to rule on the case before it was abolished on 31 December 2009, the case was transferred to the United Nations Appeals Tribunal in accordance with General Assembly resolution 63/253 of 17 March 2009. After the Agency’s defence brief was communicated to her, the appellant submitted an application requesting that the brief should be removed from the file because it violated the rules of confidentiality governing information related to mediation. This court rejects all the pleas because the appeal was submitted after the expiration of the time limits for filing appeals and is therefore not receivable.

### Facts and procedure

2. By letter dated 28 May 2002, Ms. El-Khatib was informed that she had been selected for the vacant post of social worker in the Beqa’a area. She commenced work on 5 June 2002. However, by letter dated 6 June 2002, the Director of UNRWA Affairs, Lebanon, indicated to her that there were possible irregularities surrounding her selection process. Consequently, her offer of appointment was frozen. The Director added that no letter of appointment would be sent to her before the case was reviewed thoroughly.

3. The Director appointed a board of inquiry, which submitted its report on 30 September 2002. The report noted that Ms. El-Khatib had been selected in violation of the provisions of the staff rules which forbid the recruitment of persons to posts where they would be under the direct line of authority of a close relative, in this case her husband. The report also noted that there had been manoeuvring to facilitate the recruitment of the appellant for the post of social worker in the Beqa’a area.

4. By letter dated 6 May 2003, the Field Administration Officer, Lebanon, informed Ms. El-Khatib that the offer of appointment made to her on 28 November 2002 had been withdrawn because it violated staff rule 18.3, which states that a staff member cannot be assigned to serve in a post which is superior or subordinate in the direct line of authority to his or her spouse.

5. On 16 June 2003, Ms. El-Khatib filed an appeal with the Joint Appeals Board against that decision. On 29 March 2007, the Joint Appeals Board submitted a report to the Commissioner-General recommending that the contested decision to withdraw the offer of appointment should be reviewed. However, by letter dated 31 August 2007, the Commissioner-General informed Ms. El-Khatib that he had no intention of

rescinding the decision. Nonetheless, considering the fact that Ms. El-Khatib might have suffered some hardship by leaving her previous employment, the Commissioner-General also informed her that he had authorized the Department of Human Resources to enter into discussions with her in order to resolve the matter informally. He added that, in any event, she could still apply for any other post, provided it was in compliance with the relevant rules, particularly those dealing with family ties between staff members. The decision on the appeal was thus deferred. After efforts to achieve an informal resolution failed, the Commissioner-General decided on 16 January 2009 to reject the administrative appeal of Ms. El-Khatib, who acknowledged receipt of that decision on 9 February 2009.

### **Submissions**

#### **Appellant**

6. The appellant's principal contention is that the withdrawal of the offer of appointment is not valid because by the date when it was made she had already returned her acceptance of the offer to the Agency, and a work contract had therefore been established and entered into force. She asserts in this regard that the Agency's internal rules of procedure providing for notification by an official letter of appointment, which had not been brought to her attention, are not enforceable against her and have no effect on the validity of the contract.

7. Alternatively, the appellant contends that by taking the contested decision the Agency abused its authority, as she could not be held accountable for errors committed by the Administration in applying the rules relating to the employment of close relatives.

8. Still alternatively, the appellant argues that the Agency did not act as a good-faith employer by failing to make her a job offer that complied with the rules relating to the employment of close relatives.

9. Lastly, she contends that the Agency's delay in considering her administrative appeal is unreasonable, violates her rights of appeal, and caused her hardship for which she should be paid compensation in accordance with the jurisprudence of the former United Nations Administrative Tribunal.

#### **Respondent**

10. The Agency contends that the application is late and therefore not receivable. It was entered in the register of the registry of the former United Nations Administrative Tribunal on 6 July 2009, more than 90 days after the appellant was notified of the contested decision on 9 February 2009. The time limit for filing appeals set forth in article 7 of the statute of the former Administrative Tribunal was exceeded by 56 days. The appellant has not demonstrated that there were any exceptional circumstances to justify this non-compliance.

11. Alternatively, the respondent contends that, even if the appeal is found receivable, the decision to withdraw the appellant's offer of appointment is valid based on the staff rules related to the employment of close relatives and the findings of the board of inquiry that Ms. El-Khatib's recruitment process was marred by irregularities. The Agency nevertheless sought an amicable solution by proposing to pay the appellant compensation for the hardship which might have resulted from her

resignation from the job which she held before receiving the offer of appointment in question. However, Ms. El-Khatib did not take up the proposed offer. The Agency concludes that the appellant has not demonstrated that the decision she is contesting was taken arbitrarily, for reasons that could not be justified legally, or following a flawed procedure.

### **Other briefs**

12. On 8 January 2010, the appellant submitted a new brief to request that the Agency's defence brief should be removed from the file, as it contains confidential information relating to the negotiations between the parties for an informal resolution of the dispute. That document portrayed the Agency as acting in good faith and the appellant as allegedly acting in an unreasonable manner, and therefore as being responsible for the failure of the informal process. The appellant maintains that the content of the defence brief violates article 15, paragraph 1, of the Appeals Tribunal's rules of procedure establishing the rules of confidentiality governing information relating to mediation.

### **Considerations**

13. The first question before the Appeals Tribunal is that of the receivability of Ms. El-Khatib's application.

14. With regard to the time limits for filing an appeal, the provisions applicable *ratione temporis* are those of the former United Nations Administrative Tribunal which, until 31 December 2009, had jurisdiction to consider the action brought by Ms. El-Khatib. Pursuant to article 7, paragraph 4, of the statute of the former Tribunal, which was in effect at the time, to be receivable the application should have been submitted within 90 days of the date when the competent authority rejected the recommendations of the Joint Appeals Board on the applicant's appeal. According to the jurisprudence of the former Tribunal, applications submitted after the expiration of the time limits for filing appeals were time-barred, except in cases where the applicant set out "exceptional circumstances" beyond his or her control that prevented the applicant from exercising the right to appeal in a timely manner (for example: Judgements No. 913 *Midaya* (1999) and No. 1155 *Thiam* (2004)). Article 7, paragraph 2, of the rules of procedure of the present Appeals Tribunal replicates this jurisprudence by providing that: "In exceptional cases, an appellant may submit a written request to the Appeals Tribunal seeking suspension, waiver or extension of the time limits referred to in article 7.1. The written request shall succinctly set out the exceptional reasons that, in the view of the appellant, justify the request."

15. In the present case, the evidence shows that the decision by the Commissioner-General to reject outright the recommendation of the Joint Appeals Board and to uphold the withdrawal of the offer of appointment is contained in a letter dated 16 January 2009, which the applicant acknowledged having received on 9 February 2009. The 90-day period had therefore expired by 6 July 2009, when the appeal application was registered in the registry of the former United Nations Administrative Tribunal. Ms. El-Khatib did not request the former Tribunal in 2009 to extend the time limits for filing appeals. Moreover, after 1 January 2010, even though she had been made aware through the defence brief that her application could be time-barred, she did not request a waiver from the new Appeals Tribunal

pursuant to article 7, paragraph 2, of the rules of procedure. Under these circumstances, the respondent has grounds to maintain that the appeal should be time-barred and to request that it should be rejected accordingly.

16. Even if we assume that the appellant's arguments are correct, we can nonetheless add, first of all, that in any event there do not appear to be valid grounds for contesting the decision to withdraw the offer of appointment or for requesting compensation for loss of earnings. On the one hand, the contract whereby the Agency recruited a staff member who would be governed by the staff rules is not a common-law contract. According to the staff rules, the contract can only be concluded validly on the date when the Commissioner-General or an official of the Agency duly empowered to act on his behalf signs the staff member's letter of notification. Moreover, the candidates for a public post are presumed to know the rules applicable to the employing public corporation. Ms. El-Khatib therefore has no grounds to claim any work contract was in force on the date when the decision to withdraw the offer of appointment was made. On the other hand, even without considering the regularity of Ms. El-Khatib's selection process, it appears that her recruitment for the post of social worker in the Beqa'a area violated the provisions of the staff rules concerning the recruitment of close relatives. The appellant would indeed have been placed in a position of a subordinate to her husband, who would have been her superior in the same line of authority. Having been unable to legally obtain a post which had been erroneously offered to her, Ms. El-Khatib cannot claim any loss of earnings resulting directly from the withdrawal of the offer.

17. Secondly, however, still assuming that the appellant's arguments are correct, had the appeal been receivable, the request for removal from the file of the defence brief because it contains information relating to the informal dispute resolution process could have been taken into consideration. Article 15 of the Appeals Tribunal's rules of procedure provides that such information shall remain confidential and shall therefore never be disclosed to the Tribunal. No mention shall be made thereof in briefs submitted to the Tribunal.

### Conclusion

18. Having determined that the appeal was submitted late and is therefore not receivable, this court rejects all the appellant's requests.

*(Signed)* Judge Courtial  
Presiding

*(Signed)* Judge Weinberg de Roca

*(Signed)* Judge Painter

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

Original: French

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

*(Signed)* Weicheng Lin, Registrar, UNAT