

Translated from French

UNITED NATIONS APPEALS TRIBUNAL

Case No. 2010-034

Ms. El-Khatib

(Appellant)

v.

The Commissioner-General of the United Nations Relief and Works Agency for

Palestine Refugees in the Near East

(Respondent)

JUDGMENT ON SECOND APPLICATION FOR RECONSIDERATION

Before: Judge Jean Courtial, Presiding

Judge Mark P. Painter

Judge Luis María Simón

Judgment No.: 2010-UNAT-066

Date: 29 October 2010

Registrar: Weicheng Lin

Counsel for Appellant: Bart Willemsen

Counsel for Respondent: Thomas Markushewski

UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2010-UNAT-066

Judge Jean Courtial, Presiding.

Synopsis

1. Ms. El-Khatib filed an application requesting the Appeals Tribunal to reconsider

Judgment No. 2010-UNAT-029, corrected by Judgment No. 2010-UNAT-029bis, which it

issued previously in a case between the appellant and the Commissioner-General of the

United Nations Relief and Works Agency for Palestine Refugees in the Near East

(Commissioner-General). The Appeals Tribunal notes that its judgments are final and not

subject to appeal except under article 11 of its Statute relating to the procedures for revision

and correction of material errors. No appeal against res judicata is admissible. Ms. El-

Khatib's application is rejected.

Facts and Procedure

2. On 30 March 2010 the Appeals Tribunal issued Judgment No. 2010-UNAT-029 in which it dismissed an appeal filed by Ms. El-Khatib against a decision of 16 June 2009 by the Commissioner-General rejecting her request for administrative review of the decision to withdraw the offer of appointment as a social worker made to her on 28 November 2002.

The Appeals Tribunal found that the appeal had been filed late and was therefore not receivable. The Court also noted that even if the appeal had been receivable, it was without merit.

3. On 30 April 2010, Ms. El-Khatib filed an application requesting the Appeals Tribunal to reconsider Judgment No. 2010-UNAT-029. On 1 July 2010, the Appeals Tribunal issued Judgment No. 2010-UNAT-029bis. The Appeals Tribunal took note of the error alleged by Ms. El-Khatib, but concluded that “the error committed by the Appeals Tribunal does not alter the essence of the judgment”. The Appeals Tribunal corrected the

error in accordance with article 26 of its rules of procedure, without changing the essence of its judgment.

4. On 23 August 2010, Ms. El-Khatib – represented by the Office of Staff Legal Assistance – filed an application for “reconsideration” of Judgment No. 2010-UNAT-029bis. Ms. El-Khatib argued that the Appeals Tribunal’s conclusion was not in line with the jurisprudence of the former Administrative Tribunal, according to which the relevant date for calculating time limits was not the date on which a submission was physically received by the Registry but rather the date on which it was filed. Ms. El-Khatib argued that the Appeals Tribunal should have followed the jurisprudence of the former Administrative Tribunal and that its failure to do so tainted its decision as a denial of justice.

5. Ms. El-Khatib’s application was conveyed to the Commissioner-General on 26 August 2010. The Commissioner-General filed his answer on 8 October 2010.

Considerations

6. Judgments of the Appeals Tribunal are final and not subject to appeal except under article 11 of its Statute relating to the procedures for revision and correction of material errors. No appeal against res judicata is admissible.

7. Ms. El-Khatib's application for "reconsideration" is an appeal against the res judicata in Judgment No. 2010-UNAT-029 corrected by Judgment No. 2010-UNAT-029bis. It is inadmissible and must be rejected.

8. This Court recalls that Ms. El-Khatib's appeal was dismissed by Judgment No. 2010-UNAT-029 corrected by Judgment No. 2010-UNAT-029bis as both non-receivable and without merit. It finds that the application for "reconsideration" constitutes abuse of the appeals process under article 9, paragraph 2, of its Statute.

Judgment

