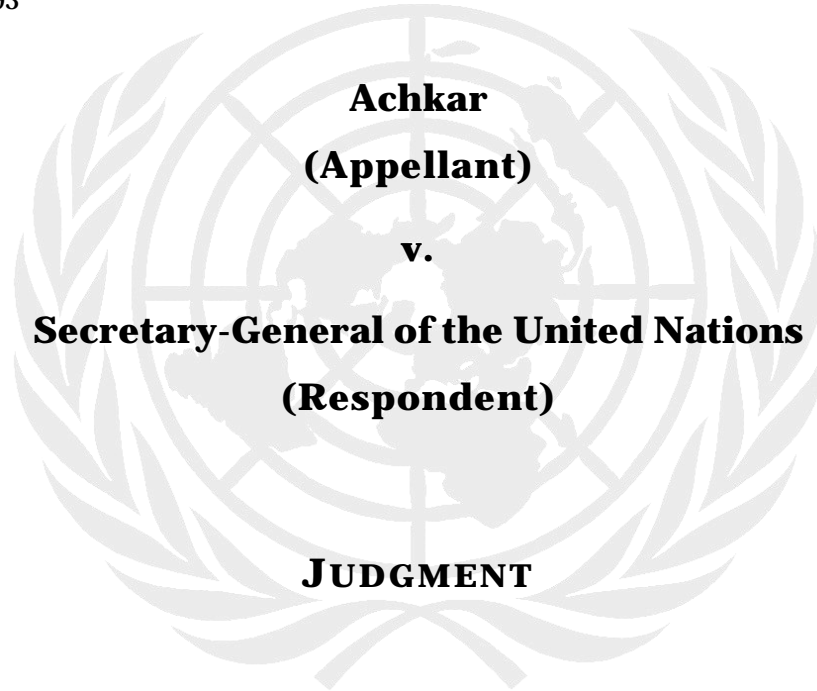




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2012-293



Before:	Judge Rosalyn Chapman, Presiding Judge Sophia Adinyira Judge Richard Lussick
Judgment No.:	2012-UNAT-267
Date:	1 November 2012
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Zarqaa Chohan

JUDGE ROSALYN CHAPMAN, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Roger Achkar (Appellant) against Judgment No. UNDT/2011/194, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 15 November 2011 in the case of *Achkar v. Secretary-General of the United Nations*.

Synopsis

2. Appellant was employed by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in Jordan from 1 March 2002 until his resignation on 31 January 2003. On 19 October 2011, he brought an application against the Secretary-General of the United Nations in the Dispute Tribunal seeking damages for alleged threats against him when he traveled to and from Gaza in 2002. In Judgment No. UNDT/2011/194, the Dispute Tribunal concluded that Mr. Achkar's application was not receivable because the UNDT lacked subject matter jurisdiction and it was untimely, and dismissed the application. This Tribunal affirms the Judgment on the grounds the UNDT lacked subject matter jurisdiction to receive the application, which should have been brought against the Commissioner-General of UNRWA before the UNRWA Dispute Tribunal (UNRWA DT), rather than against the Secretary-General of the United Nations before the UNDT, and vacates the obiter dictum portion of the Judgment concluding the application was not receivable because it was untimely.

Facts and Procedure¹

3. Mr. Achkar was employed by UNRWA in Amman, Jordan, from 1 March 2002 until his resignation on 31 January 2003.

4. Before and during his employment by UNRWA, Mr. Achkar expressed objections to traveling to Gaza, stating it would be dangerous for him as a Lebanese citizen. In 2002, Mr. Achkar was ordered in writing by an UNRWA official to travel to Gaza, and he did so. When crossing into Gaza on 18-19 October 2002, Mr. Achkar was asked by an Israeli soldier to sign a paper stating "I have no information that threatens the security of the State of

¹ The facts set forth herein reflect Mr. Achkar's version of events as presented by him in documents he created and submitted.

Israel”. Mr. Achkar signed the statement but later complained to UNRWA he felt threatened by the incident.

5. Since resigning from UNRWA, Mr. Achkar claims he has been unable to obtain regular employment with the United Nations, for which he had worked prior to his UNRWA employment, except for occasional or short-term jobs and has suffered considerable financial damage.

6. On 19 October 2011, Mr. Achkar brought an application against the Secretary-General of the United Nations before the UNDT, seeking monetary damages for the alleged threats against him when he traveled to and from Gaza in 2002.

7. In Judgment No. UNDT/2011/194, the UNDT found Mr. Achkar’s application was not receivable. The UNDT determined it lacked subject matter jurisdiction to hear Mr. Achkar’s claims because: (a) Mr. Achkar was a UNRWA staff member at the time of the impugned decision and UNRWA does not “fall under the jurisdiction of the UNDT”; and, (b) Mr. Achkar’s application was brought against the wrong respondent. The UNDT also determined Mr. Achkar’s application was not receivable because it was filed after a considerable delay and was “time-barred”.

8. On 9 January 2012, Mr. Achkar filed an appeal against the UNDT Judgment, seeking “compensation of US\$3,000,000”. The appeal does not identify the statutory grounds for appeal; rather, it repeats Mr. Achkar’s claims.

9. On 8 March 2012, the Secretary-General filed his answer.

Submissions

Mr. Achkar’s Appeal

10. The Appeals Tribunal has jurisdiction to hear his appeal under Articles 2(1), 2(5) and 2(10) of the Appeals Tribunal Statute (Statute).

11. Mr. Achkar requests this Tribunal suspend, waive or extend the time limits on his appeal under Article 7 of the Appeals Tribunal Rules of Procedure (Rules of Procedure), due to the Secretary-General of the United Nations losing his 2007 letter complaining about the alleged 2002 incidents in Gaza.

Secretary-General's Answer

12. The UNDT correctly concluded Mr. Achkar's application was not receivable, *ratione materiae*.

13. The Secretary-General is not the proper respondent in this case. Rather, the proper respondent is the Commissioner-General of UNRWA, who is that Agency's chief executive officer. Since Mr. Achkar's application was brought against the wrong respondent, it was not receivable, *ratione materiae*.

14. Mr. Achkar's appeal does not identify any errors in the UNDT Judgment and is legally deficient. Therefore, the appeal is not receivable, *ratione materiae*.

15. Article 2(10) of the Statute does not provide jurisdiction for this Tribunal to hear Mr. Achkar's appeal. Under Article 2(10), the Appeals Tribunal has jurisdiction to hear appeals against entities on the basis of Special Agreements between those entities and the Secretary-General. As of 1 December 2009, a Special Agreement between the Secretary-General and UNRWA provides UNAT with jurisdiction to hear appeals of judgments issued by the UNRWA DT. However, the UNRWA DT did not hear Mr. Achkar's application and did not render a judgment in his case. Thus, Article 2(10) is not a basis for this Tribunal to exercise jurisdiction over Mr. Achkar's appeal.

16. Mr. Achkar's application was not receivable, *ratione temporis*. Under Article 8(4) of the UNDT Statute and Article 7(6) of the UNDT Rules of Procedure, an application is not receivable if it is filed more than three years after the applicant's receipt of the impugned administrative decision. Since Mr. Achkar did not file a timely request for review of the impugned decision, which occurred in 2002, his application is now time-barred.

17. There is no merit to Mr. Achkar's request this Tribunal suspend, waive or extend the time deadlines under Article 7 of the Rules of Procedure, due to the Secretary-General losing a letter he wrote in 2007 complaining about his situation, because the 2007 letter is not relevant.

18. Mr. Achkar's reliance on Article 2(5) of the Statute to present additional evidence to explain why the loss of the 2007 letter is an "exceptional circumstance" warranting the suspension, waiver or extension of the deadlines under Article 7(2) of the Rules of Procedure has no merit because the 2007 letter is not relevant.

Considerations

19. As a preliminary matter, this Tribunal denies Mr. Achkar's request for an oral hearing, finding there is no need for further clarification of the issues arising from his appeal, pursuant to Articles 2(5) and 8(3) of the Statute.

20. Mr. Achkar has not complied with Article 8(2) of the Rules of Procedure in that he has not identified the grounds for his appeal under Article 2(1) of the Statute. As the Secretary-General notes, Mr. Achkar's appeal is defective.² Nevertheless, since the UNDT's Judgment addresses only the issue of the receivability of Mr. Achkar's application, this Tribunal reasonably infers Mr. Achkar is claiming the UNDT "[f]ailed to exercise jurisdiction vested in it" under Article 2(1)(b). Thus, this Tribunal finds it has subject matter jurisdiction to hear Mr. Achkar's appeal and the appeal is receivable. In light of this determination, it is not necessary to address the parties' other claims regarding this Tribunal's exercise of jurisdiction over Mr. Achkar's appeal.

21. A new two-tier formal system of administration of justice was established for UNRWA staff members, effective 1 June 2010. Under the new system, present and former UNRWA staff members can appeal or seek review of administrative decisions alleging non-compliance with the terms of their employment contracts or disciplinary measures by filing an application seeking review before the UNRWA Dispute Tribunal, as the first step, and then appealing an adverse judgment to the Appeals Tribunal, as the second step.³ The UNDT is specifically prohibited from hearing applications from UNRWA staff members.⁴

22. Prior to the establishment of the new system of administration of justice, an UNRWA staff member could seek review of an administrative decision alleging non-compliance with the terms of his or her employment contract by filing an appeal before the UNRWA Area Staff Joint Appeals Board (UNRWA JAB), and then appealing an adverse judgment to the former United Nations Administrative Tribunal.⁵ As of 1 July 2009, the UNRWA JAB was abolished

² *Vangelova v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-046.

³ UNRWA International Staff Regulation 11.1; UNRWA DT Statute, Articles 1 and 2, as set forth in Area Staff Regulation 11.3.

⁴ UNRWA International Staff Regulation 11.2.

⁵ *Appellant v. Secretary-General of the United Nations and Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-068; *Mahdi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-018.

and the former Administrative Tribunal stopped taking new cases.⁶ On 31 December 2009, the former Administrative Tribunal was abolished.⁷

23. The UNDT correctly concluded it had no subject matter jurisdiction to receive Mr. Achkar's application because the application was brought before the wrong tribunal. Under the recently established system of administration of justice for current and former UNRWA staff members, which was in place when Mr. Achkar filed his application on 19 October 2011, an application alleging non-compliance with an UNRWA employment contract must be brought before the UNRWA DT.⁸ It cannot be brought before the UNDT, which is specifically barred from hearing such applications.⁹

24. It is unclear from Mr. Achkar's appeal whether he is claiming Article 2(10) of the Statute is a ground for the UNDT to receive his application or for this Tribunal to hear his appeal. Erring on the side of caution, this Tribunal will consider whether Article 2(10) affects the jurisdiction of the UNDT to hear applications by UNRWA staff members. It does not. The clear language of Article 2(10) of the Statute of this Tribunal addresses whether the Appeals Tribunal has jurisdiction pursuant to a Special Agreement between the Secretary-General and another entity to hear cases on appeal. On 11 December 2009, a Special Agreement was entered into between the Secretary-General and UNRWA's Commissioner-General by which UNRWA accepted the jurisdiction of the UNAT to hear appeals from the judgments by the UNRWA DT, pursuant to Article 2(10) of the Statute.¹⁰ This Special Agreement does not contain any provision for UNRWA staff members to bring applications before the UNDT as the first step of the administration of justice.

25. The UNDT also correctly concluded it lacked subject matter jurisdiction to receive Mr. Achkar's application because the application was brought against the wrong respondent. This Tribunal has previously concluded the Secretary-General is not the proper respondent in

⁶ General Assembly resolution 63/253.

⁷ *Ibid.*

⁸ See UNRWA Area Staff Regulation 11.3 (Statute of the UNRWA Dispute Tribunal); UNRWA Area Staff Regulation 11.4 (Rules of Procedure of the UNRWA Dispute Tribunal).

⁹ UNRWA International Staff Regulation 11.2.

¹⁰ *El Khatib v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2011-UNAT-142.

an application arising out of UNRWA employment.¹¹ Rather, the Commissioner-General of UNRWA must be named as respondent.¹²

26. This Tribunal concludes that the UNDT exceeded its jurisdiction in determining Mr. Achkar's application was untimely and not receivable, *ratione temporis*.¹³ Since the UNDT lacked subject matter jurisdiction to receive Mr. Achkar's application, which could only have been brought before the UNRWA DT, the question of the timeliness of the application was **not** properly before the Dispute Tribunal and its discussion of timeliness was mere obiter dictum. Accordingly, this Tribunal **vacates** the portion of Judgment No. UNDT/2011/194 dismissing the application as untimely and not receivable, *ratione temporis*.

¹¹ *Appellant*, 2010-UNAT-068.

¹² *Ibid.*

¹³ In discussing timeliness, the UNDT applied its own statute and rules of procedure to determine Mr. Achkar's application was untimely. If Mr. Achkar had filed his application on 19 October 2011 before the UNRWA DT, as he should have under the new system of administration of justice, UNRWA DT's Rules of Procedure would have applied. Article 3(1) of UNRWA DT's Rules of Procedure requires that an application by a current or former UNRWA staff member must be filed within 90 calendar days after the staff member receives the administrative decision, and Article 3(5) requires that no application "shall be receivable if filed more than three years after the Applicant's receipt of the contested administrative decision." (UNRWA Area Staff Regulation 11.4 establishing UNRWA DT's Rules of Procedure). This latter rule is identical to Article 8(4) of the UNDT Statute and Article 7(6) of the UNDT Rules of Procedure.

Judgment

27. The Judgment of the Dispute Tribunal concluding the application was not receivable for lack of subject matter jurisdiction is affirmed.

Original and Authoritative Version: English

Dated this 1st day of November 2012 in New York, United States.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Lussick

Entered in the Register on this 18th day of January 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar