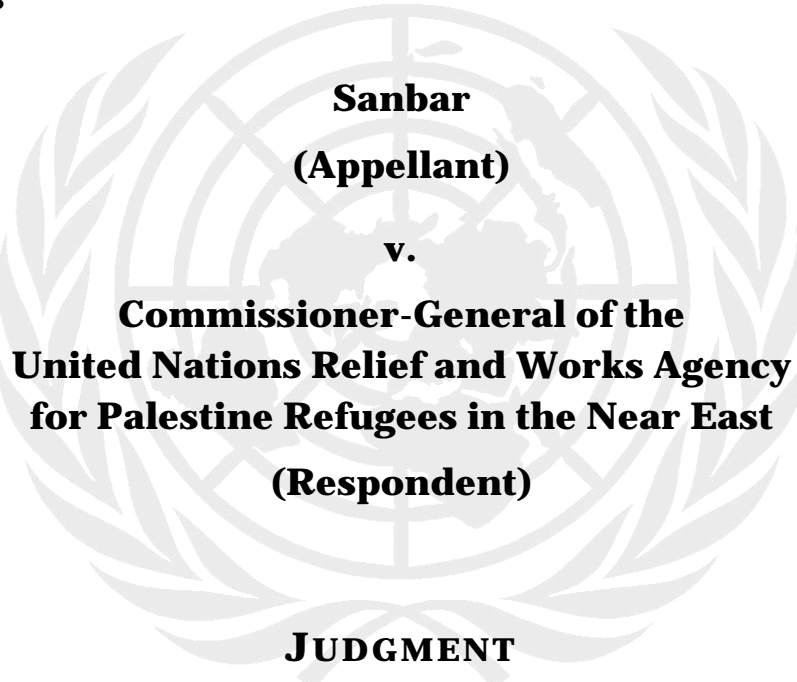




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2012-308



Before: Judge Inés Weinberg de Roca, Presiding
Judge Luis María Simón
Judge Rosalyn Chapman

Judgment No.: 2012-UNAT-279

Date: 1 November 2012

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Anna Segall

JUDGE INÉS WEINBERG DE ROCA, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Jubran David Sanbar against Judgment No. UNRWA/DT/2012/009, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT and UNRWA or Agency, respectively) on 22 February 2012. Mr. Sanbar filed his appeal on 23 March 2012, and the Commissioner-General filed his answer on 18 May 2012.

Synopsis

2. The former Administrative Tribunal established a procedure for staff members wishing to challenge the non-execution of a judgment. According to the former Administrative Tribunal, the implementation by the Administration of a Tribunal's order is in itself an administrative decision subject to review. Accordingly, Mr. Sanbar needed to make a request for review of the administrative decision not to execute a judgment and, if denied, appeal to the former Area Joint Appeals Board (AJAB); and thereafter to the Administrative Tribunal.

3. The UNRWA DT correctly found that Mr. Sanbar's application was not receivable *ratione materiae* and *ratione temporis*. Mr. Sanbar did not contest an administrative decision and filed his appeal with the International Joint Appeals Board, which had no jurisdiction since the appeal concerned a dispute between UNRWA and Mr. Sanbar in his capacity as a former Area staff member. The application was time-barred since Mr. Sanbar initiated the formal appeal process without complying with the time limits under former Area Staff Rule 111.3, which was applicable at the time for administrative review and filing an appeal.

Facts and Procedure

4. Mr. Sanbar joined UNRWA on 18 March 1968 as an Area staff member at its former Headquarters in Beirut, Lebanon, and he remained with the Agency until his separation on 31 January 1995. On 1 February 1995, Mr. Sanbar rejoined the Agency as an international staff member in the capacity of a Senior Auditor at Headquarters, Amman, Jordan, and he remained with the Agency until his retirement on 4 February 2008.

5. Mr. Sanbar brought an application before the AJAB challenging the nature of his 1995 separation from the Agency, and AJAB determined that the separation was a retirement. On 30 September 1996, Mr. Sanbar received a retirement benefit for his service with the Agency as an area staff member in the amount of USD 162,118.02.

6. By letter dated 28 March 2006 to the Director of Administration and Human Resources (DAHR), Mr. Sanbar requested to be paid interest on the retirement benefit for the 20-month period between his 1995 retirement and the 1996 payment. By letter dated 7 May 2006, the DAHR rejected Mr. Sanbar's request.

7. By letter dated 1 June 2006 to the Commissioner-General, Mr. Sanbar requested payment of interest at eight percent for the 20-month delay in the payment of his retirement benefit. By letter dated 28 June 2006, the Commissioner-General rejected the request.

8. On 17 July 2006, Mr. Sanbar filed an appeal before the International Joint Appeals Board which was subsequently transferred to the UNRWA DT. On 22 February 2012, the UNRWA DT issued Judgment No. UNRWA/DT/2012/009, rejecting Mr. Sanbar's application as not receivable.

9. The UNRWA DT found that Mr. Sanbar's application was not receivable *ratione materiae*, since there was no administrative decision that Mr. Sanbar could appeal. Further, the International Staff Joint Appeals Board had no jurisdiction over his application because it related to his employment relationship with the Agency as an area staff member. Mr. Sanbar's application was also not receivable because it was time-barred, as both the request for administrative review and the appeal to the AJAB were filed more than nine years late.

Submissions

Mr. Sanbar's Appeal

10. Mr. Sanbar contends that, when he discovered that the former Administrative Tribunal had ordered payment of interest in respect of payments it had approved for applicants, he requested payment of interest for the 20-month period between his separation and payment of his retirement benefit.

11. Mr. Sanbar submits that it took the Commissioner-General six years to reply to his appeal before the AJAB.

12. Mr. Sanbar submits that the UNRWA DT should not have made a ruling if it did not understand which administrative decision he was appealing. He submits that the UNRWA DT should have addressed the merits of the case instead of addressing receivability issues.

13. Mr. Sanbar contends that he found it “very strange” that the Commissioner-General and the UNRWA DT did not find that the DAHR acted improperly and in violation of the Staff Regulations and Rules; and that the Commissioner-General and the UNRWA DT did not find it unethical for UNRWA to retain the interest on his retirement benefit.

Commissioner-General’s Answer

14. The Commissioner-General submits that in making the impugned findings, the UNRWA DT did not commit any error in law, fact or procedure. Mr. Sandbar attempts to re-litigate the case, but has not demonstrated any basis to find that the UNRWA DT committed any errors.

15. Regarding Mr. Sanbar’s comments on the Commissioner-General’s delay in replying to his appeal, the Commissioner-General submits that Mr. Sanbar cannot raise matters before the Appeals Tribunal that were not raised before the UNRWA DT.

16. The Commissioner-General requests that the Appeals Tribunal dismiss the appeal in its entirety.

Considerations

17. Mr. Sanbar submits that on 19 August 1996, when the Agency agreed to pay his retirement benefit, it erroneously failed to award interest for any delay in making the payment, and there was a 20-month delay. Ten years later, in 2006, Mr. Sanbar discovered that the former Administrative Tribunal, in two judgments where it had ordered payment, also ordered payment of interest of eight percent per annum. On 1 June 2006, Mr. Sanbar wrote to the Commissioner-General requesting a review. He received a negative answer on 28 June 2006.

18. The former Administrative Tribunal established a procedure for staff members wishing to challenge the non-execution of a judgment. It found that the implementation by the Administration of a Tribunal's order constituted in itself an administrative decision. Accordingly, Mr. Sanbar needed to make a request for review of the administrative decision not to award interest, and, if his request was denied, appeal to the AJAB; and thereafter to the Administrative Tribunal.

19. Mr. Sanbar filed both his request for administrative review and his appeal with the International Joint Appeals Board nine and a half years after the respective deadlines provided for by former Area Staff Rule 111.3, which was applicable at the time. This Tribunal has held that a Dispute Tribunal is competent to rule on issues of appeal only if the appeal to the former joint appeals board was timely.¹ The Appeals Tribunal has also held that it has been strictly enforcing and will continue to strictly enforce the various time limits.² The UNRWA DT therefore correctly held that the application was time-barred.

20. Similarly, the UNRWA DT correctly held that the application was not receivable *ratione materiae* because Mr. Sanbar did not contest an administrative decision and because he had erroneously filed his appeal with the International Joint Appeals Board, which lacked jurisdiction to hear his appeal because it concerned Mr. Sanbar's employment with UNRWA as a former Area staff member.

¹ *Ishak v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-050.

² *Mezoui v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-043.

Judgment

21. For the foregoing reasons, the appeal is dismissed.

Original and Authoritative Version: English

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

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Simón

(Signed)

Judge Chapman

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

(Signed)

Weicheng Lin, Registrar