



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

Judgment No. 2013-UNAT-331

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

JUDGMENT

Before: Judge Sophia Adinyira, Presiding
Judge Luis María Simón
Judge Inés Weinberg de Roca

Case No.: 2012-360

Date: 21 June 2013

Registrar: Weicheng Lin

Counsel for Appellant: Hala Abu-Hijleh
Ghada A. Yasin

Counsel for Respondent: Anna Segall

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Mohammad Yousef Faraj against Judgment No. UNRWA/DT/2012/028, rendered by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) Dispute Tribunal (UNRWA DT) on 27 June 2012 in the case of *Faraj v. Commissioner-General of UNRWA*. Mr. Faraj appealed on 6 August 2012, and the Commissioner-General answered on 20 September 2012.

Facts and Procedure

2. Mr. Faraj entered the service of UNRWA as an Area Staff member effective 26 March 1990. At the time of the events which led to his appeal, he was serving as Chief, Field Relief and Social Services, based in Jerusalem.

3. It is apparent from correspondence that, in the summer of 2009, the Director of UNRWA Operations, West Bank (DUO/WB), had serious concerns about Mr. Faraj's management of his staff and that the latter was aware of these concerns and was attempting to improve his leadership skills. On 12 August 2009, they met to discuss the situation and, on 14 August 2009, the DUO/WB wrote to Mr. Faraj as follows: "This letter is to confirm our understanding of August 12 that in your interests and in the interests of the Agency, your contract with UNRWA will terminate effective October 31, 2009."

4. Mr. Faraj e-mailed a request for review of this decision on 18 August 2009. After continued correspondence, and a request for assistance from the Area Staff Union, he again requested review on 9 September 2009 and, in the absence of a response, he re-sent his request on 19 October 2009. The DUO/WB responded on 22 October 2009, confirming her decision to terminate Mr. Faraj's employment in the interests of the Agency and providing the following information as to how to file an appeal:

As you are well aware, you are free to appeal this decision. Should you wish to file an appeal, as is your right under Area Staff Rule 111.3, you must file a written request with my office within thirty days of the receipt of this letter. You will receive a reply within thirty days; should no reply be received, or should you wish to further appeal the decision, you must submit a written appeal to the Secretary of the Joint Appeals Board [(JAB)] within the prescribed timeframe.

5. Accordingly, on 1 November 2009, Mr. Faraj again requested review of the contested decision. On 22 December 2009, the DUO/WB replied, asserting that his termination had been “mutually agreed”; Mr. Faraj denied this in a memorandum dated 27 December 2009.

6. Mr. Faraj appealed to the UNRWA Area Staff JAB on 5 and 13 January 2010. His case was subsequently transferred to the UNRWA DT to which, on 20 May 2012, the Respondent submitted his reply.

7. On 27 June 2012, the UNRWA DT issued Judgment No. UNRWA/DT/2012/028, dismissing the appeal as time-barred. It found that Mr. Faraj first requested administrative review of the impugned decision on 18 August 2009 and, in the absence of a response, ought to have filed his appeal by 17 October 2009, pursuant to former UNRWA Area Staff Rule 111.3. The UNRWA Dispute Tribunal rejected his argument that the DUO/WB had misled him as to the appeals procedure, finding that whilst the latter’s lack of knowledge of the “Agency’s Regulations and Rules, which she is required and expected to observe and implement”, was dismaying, Mr. Faraj was a senior manager, with significant UNRWA work experience, who should have known the applicable legal framework and filed his appeal on time. The UNRWA DT declined to find “exceptional circumstances” justifying waiver of the time limits.

8. Mr. Faraj had objected to the Respondent’s arguments on receivability, given that the reply was submitted to the UNRWA DT over two years late. The UNRWA DT found:

While the Tribunal acknowledges that the Respondent is indeed late in his filing, this does not change the fact that the Applicant filed his appeal beyond the statutory deadline. Simply stated, the Applicant failed to meet the deadlines as prescribed by the Area Staff Regulations and Rules, irrespective of the Respondent’s tardy reply.

Submissions

Mr. Faraj’s Appeal

9. Mr. Faraj requests the Appeals Tribunal to reverse the decision of the UNRWA DT and either remand the case or adjudicate it on its merits.

10. Mr. Faraj submits that the UNRWA DT erred on a matter of law when it found his appeal to be time-barred. He asserts that he “acted diligently and in good faith, did not abandon his rights nor is attempting to abuse the process”. To the extent that his appeal to the Area Staff JAB may have been a few days late, Mr. Faraj asks that the exceptional circumstances of his case be taken into account.

11. Mr. Faraj contends that he was given “incorrect, conflicting and misleading information” with respect to the appeals process, upon which he relied to his detriment. He further contends that the relevant Rules and Regulations were not available in Arabic, but published only in English.

12. Mr. Faraj asserts that the UNRWA DT erred in law and procedure when it treated the parties unequally with respect to time limits. He points out that UNRWA filed its answer more than two years late and without leave to do so.

The Commissioner-General’s Answer

13. The Commissioner-General submits that the UNRWA DT did not err on questions of fact, law or procedure in reaching its decision, and that its decision was not manifestly unreasonable.

14. He contends that the Appellant is attempting to litigate matters which are not properly before the Appeals Tribunal.

15. The Commissioner-General also contends that the UNRWA DT correctly distinguished the Respondent’s delay in filing his reply from the Appellant’s delay in filing his appeal with the Area Staff JAB.

Considerations

16. In its Judgment No. UNRWA/DT/2012/028, the UNRWA Dispute Tribunal dismissed Mr. Faraj’s appeal as not receivable, *ratione temporis*. Mr. Faraj now appeals that decision to this Tribunal.

17. Mr. Faraj was notified on 14 August 2009 that his contract would be terminated effective 31 October. He first requested administrative review on 18 August 2009, but did not receive a timely response. The UNRWA DT found that he ought to have filed his appeal

with the UNRWA Area Staff JAB by 17 October 2009, pursuant to former Area Staff Rule 111.3 which provided, in relevant part:

A staff member who wishes to appeal under the terms of staff regulation 11.1, after having sent a letter to the Agency's administration in accordance with the foregoing provisions of this rule, shall submit a written appeal, specifying his/her allegations, to the Secretary of the Joint Appeals Board within the following time limits:

...

(B) in the case of staff members of Field Offices, within thirty days from the date of the receipt of a reply from the UNRWA Field Office Director, or, if no reply has been received from the latter within thirty days of the date of the staff member's letter, then within the next thirty days.

Whilst, under normal circumstances, Mr. Faraj should indeed have filed his appeal within 60 days of his unanswered request for review, the circumstances of his case and, in particular, the actions of UNRWA do not support such a conclusion.

18. After sending his request for review, Mr. Faraj and the Administration continued to engage on the subject of his termination and he again requested review on 9 September and 19 October 2009. UNRWA responded to him on 22 October 2009, confirming the impugned decision and advising him:

As you are well aware, you are free to appeal this decision. Should you wish to file an appeal, as is your right under Area Staff Rule 111.3, you must file a written request ... within thirty days of the receipt of this letter. You will receive a reply within thirty days; should no reply be received, or should you wish to further appeal the decision, you must submit a written appeal to the Secretary of the [JAB] within the prescribed timeframe. [Emphasis added.]

19. Given these instructions, the Appeals Tribunal finds it completely understandable that Mr. Faraj proceeded to again request review of the contested decision, on 1 November 2009. The UNRWA DT erred when it found that he ought not to have done so and could not claim to have been legitimately misled as to the appeals procedure.

20. The UNRWA Dispute Tribunal held that, whilst the lack of knowledge of the DUO/WB of the "Agency's Regulations and Rules, which she is required and expected to observe and implement", was dismaying, Mr. Faraj was a senior manager who should have known the applicable legal framework and filed his appeal on time. This is not sustainable. The DUO/WB provided explicit legal instructions on the filing of an appeal, upon which

Mr. Faraj was fully entitled to rely. Moreover, the Appeals Tribunal notes that UNRWA does not dispute Mr. Faraj's claim that the UNRWA Area Staff Rules and Regulations and the UNRWA JAB Rules of Procedure were not disseminated in Arabic. The Appeals Tribunal trusts that UNRWA has rectified this situation and that it appreciates the importance of disseminating such texts in the official, and operational, languages used.

21. Having filed his final request for review on 1 November 2009, then, in the absence of a response, Mr. Faraj ought to have filed his appeal with the UNRWA Area Staff JAB by 1 January 2010 (the 60 day time limit set out in the above-referenced Area Staff Rule 111.3). However, UNRWA *did* respond, albeit late, on 22 December 2009. In choosing to do so, the Commissioner-General effectively re-set the clock under Area Staff Rule 111.3 for Mr. Faraj to file his appeal.¹ Mr. Faraj had, thus, 30 days to appeal to the UNRWA Area Staff JAB. In view of the fact that he filed his appeal on 5 and 13 January 2010, the appeal was timely.

Judgment

22. The decision of the UNRWA Dispute Tribunal is vacated. The case is remanded to the UNRWA Dispute Tribunal for a decision on its merits.

¹ See also Judgment No. 2013-UNAT-345, *Neault v. Secretary-General of the United Nations*.

Original and Authoritative Version: English

Done in New York, United States.

(Signed)

Judge Adinyira, Presiding

21 June 2013

(Signed)

Judge Simón

28 June 2013

(Signed)

Judge Weinberg de Roca

21 June 2013

Entered in the Register on this 26th day of August 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar