



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

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Judgment No. 2015-UNAT-497

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

**JUDGMENT ON CORRECTION AND REVISION**

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**Before:** Judge Sophia Adinyira, Presiding  
Judge Rosalyn Chapman  
Judge Inés Weinberg de Roca

**Case Nos.:** 2014-565 & 2014-566

**Date:** 26 February 2015

**Registrar:** Weicheng Lin

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**Counsel for Applicant:** Amer Badawi Abu Khalaf

**Counsel for Respondent:** Anna Segall

**JUDGE SOPHIA ADINYIRA, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it two applications, one for correction and the other for revision, of Judgment No. 2013-UNAT-363, in the case of *Chaaban v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East* (UNRWA or Agency), which was rendered on 17 October 2013. Mr. Houssam Chaaban filed his applications on 21 January 2014, and the Commissioner-General filed comments on the two applications on 21 February 2014.

**Background**

2. Mr. Chaaban is a former staff member of UNRWA. In September 2007 and July 2008, Mr. Chaaban applied for two posts with UNRWA, but was not invited to sit for the written test for either post. By letter dated 28 January 2009, he requested administrative review of the decision not to invite him for the test in connection with either post. This request was filed within the requisite time limit. The Agency did not respond to Mr. Chaaban's request for administrative review within the statutory 30-day period. However, on 16 March 2009, the Agency responded to Mr. Chaaban's request by providing reasons for not shortlisting him for either post.

3. On 2 April 2009, Mr. Chaaban filed an application, challenging the decision not to invite him to participate in the tests as well as the negative outcome of the administrative review as conveyed to him on 16 March 2009.

4. In Judgment No. UNRWA/DT/2012/038/Corr.01, dated 21 August 2012, the UNRWA Dispute Tribunal rejected Mr. Chaaban's claim as non-receivable. The UNRWA Dispute Tribunal noted that Mr. Chaaban "has mounted a strong challenge to the reasons provided" in the 16 March 2009 communication. However, it concluded that "[t]he time for filing an appeal started running when [Mr. Chaaban] requested administrative review on 28 January 2009. Since the Respondent failed or omitted to reply within 30 days the time for filing the appeal expired on 29 March 2009". Consequently, Mr. Chaaban's application filed on 2 April 2009 was time-barred.

5. Mr. Chaaban appealed to the Appeals Tribunal. He contended that the UNRWA Dispute Tribunal had failed to exercise its jurisdiction in dismissing his application as non-receivable because it was filed four days past the deadline. In his view, the UNRWA Dispute Tribunal should have waived the time limit in his case in the interest of justice. In Judgment No. 2013-UNAT-363, the Appeals Tribunal affirmed the UNRWA DT's time-bar finding. It noted that Mr. Chaaban did not allege any special circumstances that had prevented him from submitting a timely application, but argued that the UNRWA Dispute Tribunal should have waived the time limit for his application given that it had done so, and for a much longer period of time, with respect to the Commissioner-General's late reply.

6. Mr. Chaaban is seeking correction and revision of Judgment No. 2013-UNAT-363.

### **Submissions**

#### *Mr. Chaaban's Applications for Correction and Revision*

##### *Correction*

7. The Appeals Tribunal made an arithmetical error in its calculation of dates for time limit purposes when it found, in paragraph 16 of the Judgment, that Mr. Chaaban filed his UNRWA Dispute Tribunal application after the time limit had lapsed. This error appeared to be the result of the Appeals Tribunal's reliance on the UNRWA Dispute Tribunal's calculation. It should therefore be corrected so that paragraph 16 reads: "Mr. Chaaban filed his application *before* the time limit had lapsed".<sup>1</sup>

##### *Revision*

8. The Appeals Tribunal Judgment is inconsistent with its jurisprudence in *Faraj* and *Neault*.<sup>2</sup> The Presiding Judge for the Judgment at issue also presided over *Faraj*, in which the correct method for calculating time limits was adopted. Mr. Chaaban was "surprised" that his appeal was dismissed, though the Appeals Tribunal had decided differently in other cases.

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<sup>1</sup> Emphasis in original.

<sup>2</sup> *Faraj v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-331; *Neault v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-345.

9. According to *Faraj* and *Neault*, Mr. Chaaban had 30 days after the Agency's response of 16 March 2009 for filing an appeal, i.e., by 15 April 2009. He filed an appeal on 2 April 2009, within the time limit as per *Neault*. Judgment No. 2013-UNAT-363 should therefore be revised.

*The Commissioner-General's Comments*

*Correction*

10. Mr. Chaaban may not use the correction procedure as a vehicle to challenge the receivability findings of the Appeals Tribunal in his case. The correction procedure is available for the purpose of correcting a non-substantive error resulting from a minor mistake or inadvertence, but not from judicial reasoning or determination.

11. Mr. Chaaban cannot raise at this stage a new argument on receivability alleging a substantial error in the UNRWA Dispute Tribunal Judgment on his case which he failed to present before the Appeals Tribunal prior to the issuance of its Judgment.

*Revision*

12. Both the UNRWA Dispute Tribunal and the Appeals Tribunal had knowledge of the Agency's 16 March 2009 response to Mr. Chaaban's request for administrative review and issued their respective judgments accordingly. Mr. Chaaban also had that knowledge. However, he failed to make an argument about the Agency's response re-setting the time limit for filing his appeal. Mr. Chaaban's failure to raise this argument was due to his own negligence and it cannot be considered as the basis for revision of the Judgment.

13. None of the grounds for revision cited by Mr. Chaaban constitute a "decisive fact" within the meaning of Article 11(1) of the Statute of the Appeals Tribunal (Statute) or Article 24 of the Rules of Procedure of the Appeals Tribunal (Rules). Mr. Chaaban merely disagrees with the decision of the Appeals Tribunal and seeks to re-argue his appeal.

14. Mr. Chaaban's applications for correction and revision should be rejected.

**Considerations**

15. Mr. Chaaban applies for both correction and revision of Judgment No. 2013-UNAT-363. In both applications, the subject matter is the same, i.e., that the Appeals Tribunal, in affirming the UNRWA DT, erred in calculating the time limit for his appeal.

16. Article 11 of the Statute, which is applicable here, states, in part:

1. Subject to article 2 of the present statute, either party may apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

2. Clerical or arithmetical mistakes, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Appeals Tribunal, either on its own motion or on the application of any of the parties.

17. Article 24 of the Rules on revision of judgments states:

Either party may apply to the Appeals Tribunal, on a prescribed form, for a revision of a judgement on the basis of the discovery of a decisive fact that was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application for revision will be sent to the other party, who has 30 days to submit comments to the Registrar on a prescribed form. The application for revision must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

18. Article 26 of the Rules on correction of judgments reads:

Clerical or arithmetical mistakes, or errors arising from any accidental slip or omission, may at any time be corrected by the Appeals Tribunal, either on its own initiative or on the application by any of the parties on a prescribed form.

19. An application seeking review of a final judgment rendered by the Appeals Tribunal can only succeed if it fulfils the strict and exceptional criteria established under Article 11 of its Statute.<sup>3</sup>

20. Mr. Chaaban does not show any clerical or arithmetical mistake to justify the correction of Judgment No. 2013-UNAT-363. Nor has he identified any decisive fact unknown at the time of the Appeals Tribunal Judgment to warrant its revision.

### **Judgment**

21. The applications for correction and revision are dismissed.

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<sup>3</sup> *Al-Mulla v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-394, para. 14, citing *Beaudry v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-129.

Original and Authoritative Version: English

Dated this 26<sup>th</sup> day of February 2015 in New York, United States.

*(Signed)*

Judge Adinyira, Presiding

*(Signed)*

Judge Chapman

*(Signed)*

Judge Weinberg de Roca

Entered in the Register on this 17<sup>th</sup> day of April 2015 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar