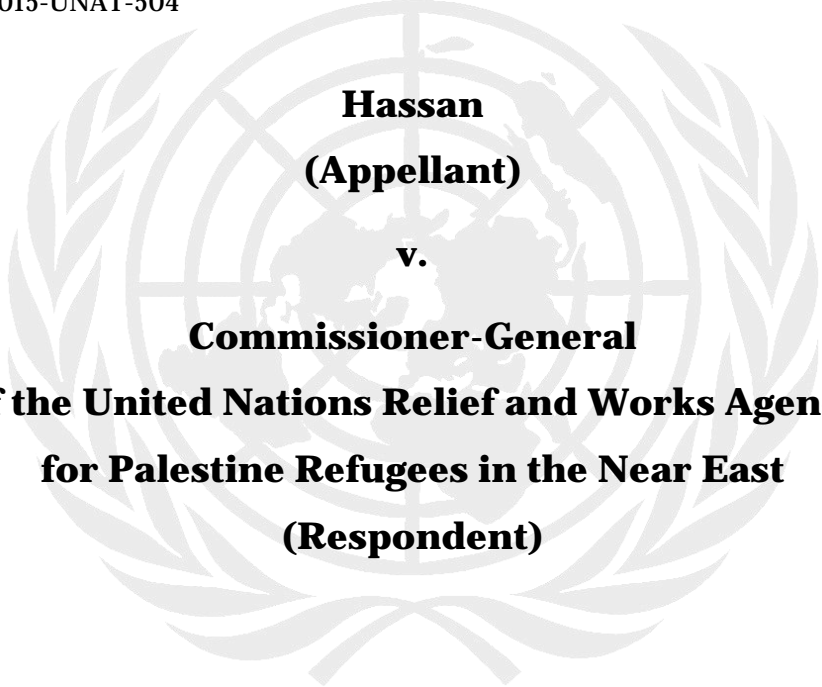




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2015-UNAT-504



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

**JUDGMENT**

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Before:	Judge Richard Lussick, Presiding Judge Sophia Adinyira Judge Mary Faherty
Case No:	2014-574
Date:	26 February 2015
Registrar:	Weicheng Lin

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Counsel for Mr. Hassan: Self-represented

Counsel for Commissioner-General: Lance Bartholomeusz

**JUDGE RICHARD LUSSICK, PRESIDING.**

1. The United Nations Appeals Tribunal has before it an appeal against Judgment No. UNRWA/DT/2013/020, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or UNRWA Dispute Tribunal, and UNRWA or Agency, respectively) on 22 May 2013 in the case of *Hassan v. Commissioner-General of UNRWA*. Mr. Mohammad Saleem Hassan appealed on 3 February 2014 and the Commissioner-General of UNRWA answered on 26 March 2014.

**Facts and Procedure**

2. On 12 August 2008, the Appellant entered the service of UNRWA as Assistant Head Teacher, grade 9, at Madaba Preparatory Boys School, in Jordan.

3. On 1 August 2009, the Appellant was promoted to the post of Head Teacher, grade 9, at Irbid Camp Preparatory Boys School, subject to a one year probationary period. The Appellant claimed he was notified of his transfer on 1 February 2011.

4. Nearly six months later, on 9 August 2011, the Appellant submitted grievances against his transfer to the Director of UNRWA Operations, Jordan (DUO/J) requesting, inter alia, to be reinstated to his original post. He also submitted additional grievances to the DUO/J by several undated letters.

5. On 26 September 2011, the DUO/J informed the Appellant that the decision to transfer him to a smaller school was sound and would stand.

6. On 30 October 2011, the Appellant filed his application with the UNRWA DT. He was instructed by the Registrar of the Tribunal to re-submit his application in compliance with Practice Direction No. 1.

7. Approximately six and a half months later, on 14 May 2012, the Appellant submitted a revised version of his application to the UNRWA Dispute Tribunal.

8. Almost ten months later, on 6 March 2013, the Respondent filed his reply.

9. On 22 May 2013, the UNRWA DT issued its judgment in the matter. The UNRWA DT gave a summary judgment on “a matter of law” and rejected the Appellant’s application finding it to be time-barred. The UNRWA DT noted that the Appellant claimed he received notification of the contested decision on 1 February 2011. Accordingly, in order to comply with the 60-day deadline to request decision review as provided in Area Staff Rule 111.2(3), the Appellant should have requested review of the transfer decision by no later than 2 April 2011.

10. Although the Appellant sent several letters to various section heads expressing his discontent with and complaints against reports of non-satisfactory performance in his earlier post, the letters were undated and did not refer to the contested decision. The UNRWA DT did not find these letters constituted a request for decision review of his transfer pursuant to Area Staff Rule 111.2. The UNRWA DT was satisfied that a memorandum dated 9 August 2011 and duly addressed to the DUO/J as required by Area Staff Rule 111.2 constituted the Appellant’s first request for decision review. As such, his request for administrative review was clearly time-barred. The UNRWA DT found that it had no jurisdiction to waive deadlines for administrative review and consequently found the Appellant’s application not receivable *ratione temporis*.

11. The UNRWA DT went on to note that even if the Appellant had filed a timely request for decision review by 2 April 2011, and the Agency did not respond to his request by 2 May 2011, the Appellant would have had until 31 July 2011 to file his application with the UNRWA DT. As he did not file this application until 30 October 2011, it would have been time-barred. The UNRWA Dispute Tribunal dismissed the case.

12. On 3 February 2014, approximately eight and a half months after the UNRWA DT handed down its Judgment, the Appellant filed his appeal with the Appeals Tribunal. On 6 February 2014, the Appellant submitted a copy of the contested UNRWA DT Judgment in Arabic.

13. On 26 March 2014, the Agency filed an answer.

### **Submissions**

#### **The Appellant’s Appeal**

14. In his Appeal Form, the Appellant states that he received the UNRWA DT Judgment of 22 May 2013 on 22 January 2014 claiming that he did not know why it took so long for him to receive the decision. The Appellant otherwise makes factual submissions concerning his past

low performance reports, his allegedly arbitrary transfer to another school at a significant distance from his home and past discussions with the Chief Area Officer. Moreover, his past attempts to further complain to the Chief of the Education Programme, the human resources manager, and the director of UNRWA operations were met with no response. By appealing, the Appellant hopes “to find Justice and fair treatment”.

### **The Agency’s Answer**

15. The Agency submits that the Appellant has not indicated any errors on the part of the UNRWA Dispute Tribunal that would require a reversal of its Judgment. The impugned Judgment is, as a matter of law, free of error and consistent with the jurisprudence of this Tribunal. The UNRWA Dispute Tribunal did not err when it first considered the preliminary issue of receivability and declined to go into the merits of the case upon determining that the application was time-barred and therefore not receivable. It referenced the relevant parts of the legal framework in effect at the time and reviewed the chronology of the events.

16. The Agency requests that this Tribunal dismiss the Appellant’s appeal in its entirety.

### **Considerations**

17. In his appeal, the Appellant raises the same issues that he raised before the UNRWA Dispute Tribunal. He concludes his appeal by stating: “I write this paper and I fully hope to find Justice and fair treatment”.

18. The Appellant does not identify in his appeal how the Judgment of the UNRWA Dispute Tribunal was in any way defective. The Appeals Tribunal has consistently held that it is not sufficient for an appellant merely to state that he disagrees with the Dispute Tribunal’s decision and to repeat the arguments submitted before the first instance court, as the Dispute Tribunal has a broad discretion to determine the weight it attaches to the evidence with which it is presented.<sup>1</sup> The consistent jurisprudence of the Appeals Tribunal emphasises that the appeals procedure is of a corrective nature and is not an opportunity for a dissatisfied party to reargue his or her case: “A party cannot merely repeat on appeal arguments that did not succeed

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<sup>1</sup> *Mahfouz v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-414; *Dannan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-340; *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123.

in the lower court. Rather, he or she must demonstrate that the court below has committed an error of fact or law warranting intervention by the Appeals Tribunal".<sup>2</sup>

19. The Appellant must bring the appeal within the jurisdiction of the Appeals Tribunal by basing the appeal on any of the grounds set out in Article 2(1) of the Special Agreement between the United Nations and UNRWA, by alleging that the UNRWA DT has:

- (a) exceeded its jurisdiction or competence;
- (b) failed to exercise the jurisdiction vested in it;
- (c) erred on a question of law;
- (d) committed an error of procedure, such as to affect the decision of the case; or
- (e) erred on a question of fact, resulting in a manifestly unreasonable decision.

20. The Appellant did not identify any of these grounds in his appeal and has failed to demonstrate that the UNRWA DT committed any error of fact or law in arriving at its decision.

21. In reaching its decision, the UNRWA Dispute Tribunal was cognizant of the applicable statutory law and jurisprudence. It considered its jurisdiction to hear applications appealing administrative decisions pursuant to Articles 2(1) and 8 of the UNRWA DT Statute. It noted that under Article 8 of the Statute an application is only receivable if the applicant has previously submitted the contested administrative decision for decision review, and that the UNRWA Dispute Tribunal had no power to suspend, waive or extend the deadlines for decision review. It considered Area Staff Rule 111.2 whereby a staff member wishing to formally contest an administrative decision is obliged, as a first step, to submit a written request for a decision review to, in the case of staff members of Field Offices, the UNRWA Field Office Director in charge of the Field Office, within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

22. In the Appellant's case, he received notification of the contested decision on 1 February 2011 but did not submit a request for decision review until 9 August 2011. His claim that he had requested review of the contested decision via several letters and memoranda was considered by the UNRWA Dispute Tribunal. However, the UNRWA DT found that some of those documents were undated and were not addressed in accordance with Area Staff Rule 111.2

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<sup>2</sup> *Dannan, ibid.*, citing *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035.

and, more importantly, that the documents did not refer to the contested decision to transfer him to another school.

23. The UNRWA Dispute Tribunal correctly found that in order to comply with the 60-day deadline, the Appellant should have submitted his request for decision review no later than 2 April 2011. His request for decision review had thus been submitted four months and one week too late and was clearly time-barred.

24. The UNRWA Dispute Tribunal concluded that “since the Applicant failed to comply with the time limits set forth in Area Staff Rule 111.2, and given that it does not have jurisdiction to waive the deadline for administrative review, the application is not receivable *ratione temporis*.”<sup>3</sup>

25. The UNRWA Dispute Tribunal further concluded that the Appellant’s application to the UNRWA Dispute Tribunal was also not receivable *ratione temporis* because he failed to file it within the deadline prescribed in Article 3(1) of the UNRWA DT’s Rules of Procedure, and had not submitted a written request seeking suspension, waiver or extension of that time limit.

26. Having reviewed the UNRWA Dispute Tribunal’s Judgment, we find that the Appellant’s case was fully and fairly considered by the UNRWA Dispute Tribunal. We can find no error of law or fact in its decision. Indeed, the Appellant, in his appeal, did not allege any such error.

27. Accordingly, we find that there is no merit in his appeal and it cannot succeed.

### **Judgment**

28. The appeal is dismissed and the Judgment of the UNRWA Dispute Tribunal is affirmed.

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<sup>3</sup> Impugned Judgment, para. 26.

Original and Authoritative Version: English

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

*(Signed)*

Judge Lussick, Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Faherty

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

*(Signed)*

Weicheng Lin, Registrar