



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

Judgment No. 2015-UNAT-543

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

JUDGMENT

Before: Judge Deborah Thomas-Felix, Presiding
Judge Rosalyn Chapman
Judge Inés Weinberg de Roca

Case No.: 2014-624

Date: 2 July 2015

Registrar: Weicheng Lin

Counsel for Mr. Abu Ayyash: Self-represented

Counsel for Commissioner-General: Lance Bartholomeusz

JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2014/011, 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) on 14 May 2014 in the case of *Abu Ayyash v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East* (UNRWA or Agency, respectively). Mr. Adnan Abu Ayyash filed his appeal on 25 June 2014 and the Commissioner-General of UNRWA filed his answer on 27 August 2014.

Facts and Procedure

2. On 27 August 1983, the Appellant entered the service of UNRWA as an Academic Instructor in the West Bank.

3. On 1 July 2008, the Appellant applied for early retirement, which was granted on 3 July 2008, to take effect as of 31 July 2008.

4. On 3 August 2008, the Appellant requested the payment of USD 75,000 from his Provident Fund, and deferred the payment of the balance of his credits. He received that sum by cheque on 7 August 2008.

5. On 4 February 2009, the Appellant requested to withdraw the balance of all credits accrued on his Provident Fund and, on 17 February 2009, he received a lump-sum payment.

6. On 26 February 2009, the Appellant requested that the Field Administration Officer and Field Finance Officer review the calculation of his remaining Provident Fund benefits since, according to the Appellant's calculations, he was still owed a shortfall of USD 4,816.03.

7. On 12 April 2009, the Appellant requested that the Director of UNRWA Operations review the calculation of his benefits.

8. On 15 May 2009, the Director of UNRWA Operations informed the Appellant that she had forwarded the Appellant's request to the appropriate people to look into his matter, and that she would follow-up on her previous e-mail to them. The Appellant received no further response.

9. On 30 December 2011, the Appellant e-mailed the Officer-in-Charge of UNRWA Operations setting out the facts of his case and again requesting that his matter be followed up. As at the date of his appeal in June 2014, he claims he had still received no answer.

10. On 4 January 2012, the Appellant filed an application with the UNRWA Dispute Tribunal challenging the miscalculation of his benefits and seeking payment of USD 4,816.03.

11. On 14 May 2014, the UNRWA Dispute Tribunal rendered its Judgment. The UNRWA DT held that the Appellant's challenge was not receivable as it did not challenge a discretionary administrative decision that breached the terms of his appointment, but rather the rule providing for the manner in which separation benefits would be calculated. The UNRWA DT also found that the Appellant's application was time-barred insofar as he filed his application for review two and a half years after the permissible filing deadline provided in Area Staff Rule 111.3, and failed to demonstrate that any exceptional circumstances existed which may have prevented him from filing his review application on time. The UNRWA DT dismissed the application.

Submissions

The Appellant's Appeal

12. The Appellant submits to the Appeals Tribunal that the UNRWA DT erred on a question of fact, resulting in a manifestly unreasonable decision, insofar as it failed to recognize the failure of UNRWA to respond to his requests concerning the miscalculation of his benefits. While he expected to receive a delayed response from UNRWA, he did not expect that they would altogether not reply to him after 24 years of service. The Appellant also makes submissions concerning the manner in which interest is calculated on benefits of the Provident Fund.

The Agency's Answer

13. The Agency submits that the Appellant has not indicated which of the five grounds of appeal set out in Article 2(1) of the Appeals Tribunal Statute he seeks to rely upon, or identified any errors on the part of the UNRWA Dispute Tribunal that would require a reversal of its Judgment. The UNRWA DT did not err when it dismissed the Appellant's application on the grounds that it was not receivable and was time-barred. The Judgment set out the applicable administrative framework relevant to the calculation of interest rates as well as filing limits, and correctly applied the jurisprudence of the Appeals Tribunal. The UNRWA DT was also correct to

find that the Appellant's confusion with regard to the relevant legal procedures did not constitute "exceptional circumstances" justifying his delay in filing his application. Furthermore, his repeated requests to the Agency concerning his matter did not suspend the relevant time limits. The Appellant's submissions otherwise repeat the facts of his case before the UNRWA DT and impermissibly seek to re-litigate his case on appeal.

14. The Agency requests that this Tribunal dismiss the Appellant's appeal in its entirety. Should this Tribunal consider the matter to be receivable, the Agency requests that the matter be remanded to the UNRWA Dispute Tribunal for consideration of its merits.

Considerations

15. The first issue for determination is whether the UNRWA Dispute Tribunal erred in dismissing the Appellant's application as not receivable. In this regard, the UNRWA DT decided that the Appellant did not challenge a discretionary administrative decision that breached the terms of his appointment. Rather than he was challenging the rule providing for the manner in which separation benefits should be calculated, as well as the general issuance of the published interest rate which would apply in calculating his benefits. Accordingly, the UNRWA DT dismissed the Appellant's application as not receivable. The Appeals Tribunal finds no error in that finding.

16. The Appeals Tribunal has through its jurisprudence consistently defined an "administrative decision" as:

[...] a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. This type of decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences.¹

17. We agree that the Appellant does not challenge "an appealable administrative decision" in that he does not contest "a unilateral decision taken by the administration in a precise individual case". With regard to the issue of the calculation of his separation benefits, the Provident Fund applied the only applicable interest rate in existence at the time of calculating the

¹ *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481; *Hamad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2012-UNAT-269, citing former Administrative Tribunal Judgment No. 1157, *Andronov* (2003) V.

Appellant's remaining benefits. As we held in *Hamad*, this was not a unilateral decision taken by the UNRWA Administration in a precise individual case but was of general application to all separating participants.² The UNRWA DT also correctly held that the publication of interest rates pursuant to Area Staff Rule 106.1(16)(D)(ii) is also not a unilateral decision, but one of general application. The Appellant has not established any error by the UNRWA Dispute Tribunal in this regard.

18. We are of the view that the UNRWA DT also correctly found that the Appellant's application was time-barred in so far as his application for review was made two and a half years after the permissible filing deadline provided in Area Staff Rule 111.3, and that he had failed to demonstrate that any exceptional circumstances existed that may have prevented him from filing his application on time.

19. In this respect, the Appellant submitted that while he expected to receive a delayed response from UNRWA, he did not expect that they would altogether not reply to him. We recall our jurisprudence to the effect that ignorance of the Staff Rules and procedures related to the filings of applications cannot be invoked as an excuse for failing to comply with deadlines.³ It follows that the UNRWA Dispute Tribunal did not err when it dismissed the Appellant's application on the basis that it was time-barred.

20. As a result of the foregoing, we are satisfied that the UNRWA Dispute Tribunal properly considered the facts and the applicable statutory law and jurisprudence in arriving at its decision that the Appellant's application was not receivable.

Judgment

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

² See *Hamad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2012-UNAT-269.

³ *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-521, citing *Kissila v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-470, para. 24, and cites therein.

Original and Authoritative Version: English

Dated this 2nd day of July 2015 in Geneva, Switzerland.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Chapman

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 20th day of August 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar