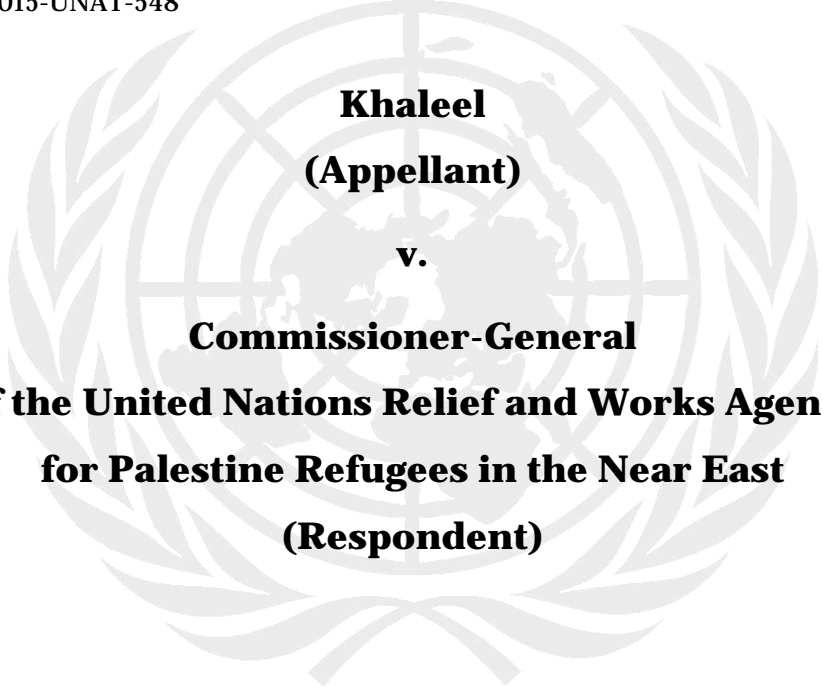




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2015-UNAT-548



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

JUDGMENT

Before:	Judge Mary Faherty, Presiding Judge Richard Lussick Judge Sophia Adinyira
Case No.:	2014-632
Date:	2 July 2015
Registrar:	Weicheng Lin

Counsel for Mr. Khaleel:	Self-represented
Counsel for Commissioner-General:	Lance Bartholomeusz

JUDGE MARY FAHERTY, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal by Mr. Mohammad Ibrahim Khaleel against Judgment No. UNRWA/DT/2014/016, 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 5 June 2014 in the case of *Khaleel v. Commissioner-General of UNRWA*. Mr. Khaleel sought to file his appeal on 1 August 2014, which, at the Registry's request, he perfected on 13 August 2014. After being granted an extension of time in which to file his answer,¹ the Commissioner-General of UNRWA answered on 12 November 2014.

Facts and Procedure

2. On 27 March 2007, the Appellant entered the service of UNRWA as a teacher at Wadi Seer Preparatory Boys School, Jordan, on a fixed-term appointment to expire on 26 March 2010, which was subsequently extended for an additional three years, until 26 March 2013.

3. On 21 September 2011, after a series of unauthorized absences from work, the Director of UNRWA Operations, Jordan (DUO/J) wrote to the Appellant and warned him that he would be separated from service on the basis of abandonment of post if he did not return to work by 25 September 2011.

4. On 24 September 2011, the Appellant informed Human Resources in the Jordan Field Office (HR/JFO) that he would return to Jordan by 15 October 2011.

5. On 25 September 2011, the Appellant was separated from service pursuant to UNRWA Area Staff Rule 109.4 by means of a letter dated the same day and sent to him by e-mail on 28 September 2011.

6. On 29 September 2011, the Appellant responded and repeated that he would be in Jordan by mid-October.

7. On 12 March 2012, the Appellant submitted a request to the DUO/J for review of the decision to separate him.

¹ Order No. 205 (2014) of 7 November 2014.

8. On 3 May 2012, the Appellant filed an application with the UNRWA DT, in which he submitted that UNRWA did not consider his medical condition or that he had requested leave, and requested the full amount of his Provident Fund and reinstatement to his prior position.

9. On 5 June 2014, the UNRWA DT issued its Judgment in the matter and dismissed the application. The UNRWA DT found that the Appellant had failed to file a timely request for decision review with the DUO/J in accordance with the time limits prescribed in Area Staff Rule 111.2 and, consequently, his application with the UNRWA DT was not receivable.

Submissions

Mr. Khaleel's Appeal

10. The Appellant contests the UNRWA DT Judgment and the Agency's letter of 25 September 2011 by which he was separated, claiming they deprived him of his right to the whole amount from his Provident Fund. He requests the whole amount from his Provident Fund and reinstatement to his former position. He submits that "they" neglected his bad health situation and his request for special leave without pay, to which he had still not received a response.

The Agency's Answer

11. The Agency submits that the Appellant has not indicated upon which of the five grounds of appeal provided in Article 2(1) of the Appeals Tribunal's Statute he seeks to rely, nor has he identified any errors on the part of the UNRWA Dispute Tribunal that would require a reversal of its Judgment. The UNRWA DT referenced the relevant parts of the legal framework in effect at the time and correctly reviewed the chronology of the events. The impugned Judgment was, as a matter of law and fact, free of error and is consistent with the jurisprudence of the Appeals Tribunal concerning a Tribunal's lack of discretion to waive deadlines for administrative review. The Agency requests that this Tribunal dismiss the Appellant's appeal in its entirety.

Considerations

12. The issue for determination is whether the UNRWA DT erred in dismissing Mr. Khaleel's application as not receivable. The issue falls to be determined having regard to the relevant

regulatory framework, being the former UNRWA Area Staff Rules that were in operation at the time of the application² and the provisions of the Statute of the UNRWA Dispute Tribunal.

13. Area Staff Rule 111.2 of the former UNRWA Area Staff Rules then in effect provided:

1. A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her terms of appointment or the contract of employment, including all pertinent regulations and rules and all relevant administrative issuances pursuant to Staff Regulation 11.1 (A), shall, as a first step, submit a written request for a decision review:

(A) In the case of staff members of Field Offices, to the UNRWA Field Office Director in charge of the Field Office; and

(B) In the case of staff members of Headquarters, to the Director of Human Resources.

...

3. A staff member shall submit a request for a decision review within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

14. Article 8 of the UNRWA Dispute Tribunal's Statute sets out the basis of that Tribunal's jurisdiction to receive applications, as follows:

1. An application shall be receivable if:

(a) The Dispute Tribunal is competent to hear and pass judgement on the application, pursuant to article 2 of the present statute;

(b) An applicant is eligible to file an application, pursuant to article 3 of the present statute;

(c) An applicant has previously submitted the contested administrative decision for decision review; and

(d) The application is filed within the following deadlines:

(i) Within 90 calendar days of the applicant's receipt of the response by management to his or her submission; or

(ii) Within 90 calendar days of the expiry of the relevant response period for the decision review if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to decision review;

...

² Cod./A/59/Rev.25/Amend.120, in effect as of 1 June 2010.

3. The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend, waive or extend the deadlines for a limited period of time and only in exceptional cases. The Dispute Tribunal shall not suspend, waive or extend the deadlines for decision review.

15. At paragraph 20 of its Judgment, the UNRWA DT stated:

The Applicant admits that only on 12 March 2012 he sent to the DUO/J for the first time a request for decision review of the decision to separate him from the Agency's service. If he alleges that he previously sent, by mistake, the same request to the Tribunal, no copy of this request is attached to his application. The Tribunal notes that the documents in the file show that in response to an email from the Applicant on 7 November 2011, a Registry staff member informed him that the Registrar was not involved at that stage and that he should direct his letter to the DUO/J. Rather than follow the proper procedures, however, the Applicant proceeded to submit his application to the Tribunal several months later.

16. In view of the factual sequence outlined in the UNRWA DT Judgment, the Appeals Tribunal is satisfied that the rejection of the application as not receivable was correct. Decision review is a mandatory first step in the appeals process. As a matter of fact, Mr. Khaleel did not seek decision review of the decision to separate him until 12 March 2012. Nonetheless, he was aware of the separation decision at least from 29 September 2011, on which date he responded to the sender of the separation letter. We also take into consideration that in response to an e-mail sent by him to the UNRWA DT on 7 November 2011, he was informed by the UNRWA DT Registry that a letter apparently then being directed by Mr. Khaleel to the UNRWA DT should be directed to the DUO/J. It is common cause that he requested decision review of his separation from service only on 12 March 2012, several months beyond the expiration of the prescribed time period.

17. As Mr. Khaleel did not seek decision review within the mandatory time period as set out in the former Area Staff Rules, the UNRWA DT was precluded in law from considering the merits of his application.

18. In *Ajdini et al.* we stated:³

... [Citing Article 8(3) of UNDT Statute] This issue should now be considered as settled because the Appeals Tribunal in *Costa*, and other judgments such as *Mezoui*,

³ *Ajdini et al. v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-108, paras. 27-28.

Samardzic, and *Trajanovska* has consistently held that the UNDT has no jurisdiction to waive deadlines for management evaluation or administrative review.

... The Appeals Tribunal in paragraph 23 of *Trajanovska* held:

Therefore, the legal position which emerges is that time limits prescribed for administrative review (and management evaluation under the new system), which could be waived under the previous system, cannot be waived under Article 8(3) of the UNDT Statute, due to a specific prohibition in this respect contained in Article 8(3). We are aware that under Article 8(4) of the UNDT Statute, an application is not receivable if it is filed more than three years after the receipt of the contested administrative decision. But this provision will not help *Trajanovska*. This is a general provision which must yield to the specific provision under Article 8(3) of the UNDT Statute as interpreted by the UNDT in *Costa* and affirmed by this Tribunal.

19. In his appeal to this Tribunal, Mr. Khaleel does not take issue with the findings of the UNRWA Dispute Tribunal; rather he makes a plea which goes to the merits of the decision to separate him from service and seeks reinstatement to his post.

20. Pursuant to Article 2(1) of the Special Agreement between the United Nations and UNRWA, by virtue of which the Appeals Tribunal has jurisdiction to hear appeals emanating from UNRWA and Article 2(1) of the Statute of the Appeals Tribunal, an appellant must show 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 in procedure, such as to affect the decision of the case; or
- (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

21. Mr. Khaleel does not identify in his appeal how the Judgment of the UNRWA Dispute Tribunal was in any way defective. He has not demonstrated that the UNRWA DT erred in relation to its jurisdiction or committed an error of fact or law or procedure such as would warrant intervention by the Appeals Tribunal.⁴

⁴ Cf. *Hassan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-504, citing *Dannan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-340 and cites therein.

Judgment

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

Original and Authoritative Version: English

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

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Adinyira

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

(Signed)

Weicheng Lin, Registrar