



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

Judgment No. 2015-UNAT-554

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

JUDGMENT

Before: Judge Richard Lussick, Presiding
Judge Inés Weinberg de Roca
Judge Sophia Adinyira

Case No.: 2014-639

Date: 2 July 2015

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Lance Bartholomeusz

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Houssam Mustapha Chaaban against Judgment No. UNRWA/DT/2014/017, 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 June 2014 in the case of *Chaaban v. Commissioner-General of UNRWA*. Mr. Chaaban appealed on 21 August 2014 and the Commissioner-General answered on 24 October 2014.

Facts and Procedure

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 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 time 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 with the UNRWA DT, 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. On 21 August 2012, the UNRWA Dispute Tribunal issued Judgment No. UNRWA/DT/2012/038/Corr.01, rejecting Mr. Chaaban's claim as non-receivable *ratione temporis*.

4. Mr. Chaaban appealed to the Appeals Tribunal on 15 November 2012. On 17 October 2013, the Appeals Tribunal issued Judgment No. 2013-UNAT-363, in which it dismissed Mr. Chaaban's appeal and affirmed the UNRWA DT's time-bar finding.

5. On 17 May 2014, Mr. Chaaban filed an application before the UNRWA DT, contesting Judgment No. UNRWA/DT/2012/038/Corr. 1 and Appeals Tribunal Judgment No. 2013-UNAT-363.¹

6. On 22 June 2014, the UNRWA DT issued Judgment No. UNRWA/DT/2014/017, summarily dismissing Mr. Chaaban's application as manifestly inadmissible.

Submissions

Mr. Chaaban's Appeal

7. Mr. Chaaban submits that the UNRWA DT failed to exercise the jurisdiction vested in it when it dismissed his application as not receivable. Both Judgment No. UNRWA/DT/2012/038/Corr.1 and Judgment No. 2013-UNAT-363 wrongfully dismissed his applications as not receivable. The Agency should have looked at the merits of his case regardless of the Tribunals' rulings on receivability. By refusing to do so, the Administration has created a new dispute which the UNRWA DT is competent to hear and pass judgment on.

8. The UNRWA DT erred in fact when it considered his application as an application against Appeals Tribunal Judgment No. 2013-UNAT-363, when in reality he was contesting the decisions taken by the Director of UNRWA Affairs, Lebanon and the UNRWA DT. The UNRWA DT should have dealt with the merits of the application.

9. Mr. Chaaban contends that the UNRWA DT erred in law by *sua sponte* adjudicating the case by summary judgment. The UNRWA DT had the initial burden of showing that a summary judgment was proper in his case, i.e., of showing that there was no dispute as to the material facts of the case. The UNRWA DT, however, failed to discuss the facts Mr. Chaaban presented in his application.

10. The UNRWA DT erred in procedure by failing to transmit his application to the Agency.

¹ On 21 January 2014, Mr. Chaaban also submitted an application for correction and revision of Appeals Tribunal Judgment No. 2013-UNAT-363. The Appeals Tribunal issued Judgment No. 2015-UNAT-497 on 26 February 2015, rejecting Mr. Chaaban's applications.

11. Mr. Chaaban requests that the Appeals Tribunal remand the case to the UNRWA DT for a judgment on the merits.

The Commissioner-General's Answer

12. A review of a final judgment can only be conducted on the limited grounds enumerated in Article 11 of the Statute of the Appeals Tribunal. While Mr. Chaaban is in fact seeking a review of a final Appeals Tribunal judgment, he has failed to justify his request under Article 11. The Appeals Tribunal has therefore no basis to review the matter. Mr. Chaaban has exhausted all remedies available to him.

13. The UNRWA DT did not err in fact when it considered Mr. Chaaban's application as an application against Judgment No. 2013-UNAT-363.

14. The UNRWA did not err in law when it issued a summary judgment. The UNRWA DT has broad discretionary authority to determine whether a summary judgment is appropriate and this authority is not limited to Article 5 of the UNRWA DT Rules of Procedure, i.e. cases where there is no dispute as to the material facts of the case.

15. The UNRWA DT did not err in procedure by failing to transmit the application to the Commissioner-General. The decision not to transmit the application was a proper exercise of power under Article 14 of the UNRWA DT Rules of Procedure. Furthermore, Mr. Chaaban suffered no prejudice as, in any event, the Commissioner-General would not have filed a reply since the application was clearly not receivable.

16. The Commissioner-General asks that the Appeals Tribunal dismiss Mr. Chaaban's appeal in its entirety. The Commissioner-General further asks that the Appeals Tribunal award costs against Mr. Chaaban in the amount of USD 9,600 – the costs that UNRWA incurs for this appeal – for manifestly abusing the appeals process.

Considerations

Mr. Chaaban's appeal

17. Mr. Chaaban asks the Appeals Tribunal to reverse the decision of the UNRWA DT and remand his case to the UNRWA DT for a determination on the merits. Mr. Chaaban claims that the UNRWA Dispute Tribunal erred in fact when it considered that his application was

an application against Judgment No. 2013-UNAT-363. He submits that the UNRWA DT should have dealt with the merits of the application.

18. The Commissioner-General submits that Mr. Chaaban is in fact seeking a review of a final judgment rendered by the Appeals Tribunal in Judgment No. 2013-UNAT-363 and that the authority of a final judgment – *res judicata* – cannot be so readily set aside. He contends that Mr. Chaaban’s arguments are irrelevant and that the Appeals Tribunal has no basis to review the matter. Further, the Commissioner-General asks for an order for costs against Mr. Chaaban on the ground that it should have been clear to him that his case was *res judicata* and that by appealing the UNRWA DT decision he has manifestly abused the appeals process.

19. A concise history of Mr. Chaaban’s case leading up to the present appeal begins with the Judgment of the UNRWA DT dated 21 August 2012, in which the UNRWA DT held that Mr. Chaaban’s case was not receivable.²

20. Mr. Chaaban appealed that decision to the Appeals Tribunal, which in its Judgment dated 17 October 2013 affirmed the UNRWA DT’s decision that Mr. Chaaban’s case was not receivable.³ That Judgment was a final judgment, since it was a judgment of the highest tribunal in the United Nations’ internal justice system. Mr. Chaaban’s case was henceforth *res judicata*, which meant that it was no longer subject to appeal and could not be raised again, either in the Dispute Tribunal or in the Appeals Tribunal.

21. This Tribunal stressed in *Shanks* and *Costa* that the authority of a final judgment – *res judicata* – cannot be readily set aside.⁴ There must be an end to litigation and the stability of the judicial process requires that final judgments by an appellate court not be set aside other than for the gravest of reasons.⁵ There are only limited grounds, as enumerated in Article 11 of the Statute of the Appeals Tribunal, for review of a final judgment.

² *Chaaban v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2012/038/Corr.01.

³ *Chaaban v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-363.

⁴ *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-063, para. 4, citing *Shanks v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-026bis, para. 4.

⁵ *Meron v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-198, para. 26.

22. After the Appeals Tribunal had delivered its Judgment of 17 October 2013, Mr. Chaaban submitted two applications to the Appeals Tribunal pursuant to Article 11 of the Appeals Tribunal Statute, one for correction of its calculation of the time limit and the other for revision of the method for calculating time limits. These applications were in fact a thinly veiled challenge to the Appeals Tribunal's previous decision on receivability.⁶

23. On 18 February 2014, Mr. Chaaban submitted a request for decision review to the Director of UNRWA Affairs, claiming that both the UNRWA DT and the Appeals Tribunal had erred in dismissing his case on the basis of non-receivability. On 10 March 2014, the Director advised Mr. Chaaban: "Please note that UNRWA DT and UNAT have both considered your case and have dismissed it. The decision of the Appeals Tribunal is final and cannot be appealed further."

24. Mr. Chaaban ignored this advice and continued his defiance of the judgments of the UNRWA DT and the Appeals Tribunal. Without awaiting the outcome of his applications for correction and revision to the Appeals Tribunal, he filed another application with the UNRWA DT in respect of which the UNRWA DT delivered the Judgment now under appeal.

25. Pursuant to the doctrine of *res judicata*, Mr. Chaaban was precluded from raising his claim again. Consequently, we find that the UNRWA DT made no error in finding Mr. Chaaban's application manifestly inadmissible and dismissing it without referring it to the Commissioner-General.

26. There is one matter on which we wish to comment with regard to that application. Mr. Chaaban claims that the UNRWA DT erred in fact when it considered his application was an application against Judgment No. 2013-UNAT-363. An examination of Mr. Chaaban's application renders that claim unsustainable.

27. In his application under the heading "Grounds for contesting the administrative decision", Mr. Chaaban alleged the following:

- "UNRWA DT and UNAT had erred in judgments";⁷

⁶ The Appeals Tribunal dismissed both applications in Judgment No. 2015-UNAT-497 dated 26 February 2015.

⁷ Application to the UNRWA DT, para. 2.

- “It is clear that UNRWA had erred in claiming that I ‘failed to comply with the time limits’. Also, UNRWA DT erred in accepting this claim and not discussing the merits of my case. Again, UNAT erred in confirming UNRWA DT judgment, although it had clearly demonstrated the correct method for time limit calculation in other cases”.⁸

28. In paragraph 9 of the application Mr. Chaaban, referring to other Appeals Tribunal decisions, submitted that “[if] the judges had implemented the correct method for time limit calculation, which they themselves used in mentioned cases, judges had to judge differently on my case. This means that they had erred in calculation, or more precisely, they did no calculation and [relied] on what was claimed by UNRWA.”

29. In paragraph 14, Mr. Chaaban claimed:⁹

In her receipt acknowledgement [...], [the Director of UNRWA Affairs, Lebanon] also noted that “UNRWA DT and UNAT have both considered your case and have dismissed it. The decision of the UN Appeals Tribunal is final and cannot be appealed f[u]rther.” Although this note is true in form, [... the Director of UNRWA Affairs, Lebanon] did not note that both UNRWA DT and UNAT did not consider the merits of my case, i.e. there was no decision on the case in its merits to be considered as final. [...] Also, in my request, I made it clear how both tribunals had erred in their judgments about the form (the receivability) of my case.

30. Further, the Appeals Tribunal upheld the decision of the UNRWA DT that Mr. Chaaban’s claim was not receivable. By asking the UNRWA DT to consider the merits of his case, Mr. Chaaban was in fact asking the UNRWA DT to reconsider the issue of receivability, which had already been decided by both the UNRWA DT and the Appeals Tribunal.

31. Thus, Mr. Chaaban’s application very clearly challenged Appeals Tribunal Judgment No. 2013-UNAT-363. The UNRWA DT made no error in so deciding. We cannot see any credible basis on which Mr. Chaaban made his submission to the contrary and must conclude that it was not made in good faith.

32. Having had his claim declared to be not receivable in two UNRWA DT Judgments and one final Appeals Tribunal Judgment, Mr. Chaaban now brings the present appeal.

⁸ *Ibid.*, para. 7.

⁹ Original emphasis omitted.

33. Mr. Chaaban draws the distinction between the non-receivability of his claim and its merits. His argument clearly implies that a finding of non-receivability does not preclude a Tribunal from considering the merits. We have no doubt that Mr. Chaaban is aware of the illogicality of this argument.

34. In its earlier judgment dated 21 August 2012, the UNRWA Dispute Tribunal explained the effects of a possible outcome of a decision on the question of receivability as follows:¹⁰

This Judgment deals solely with the question of receivability of the claim. The question for decision is whether the Applicant launched his appeal with the Joint Appeals Board (the "JAB") within the statutory time limits. If the Tribunal finds that he did, the Respondent will be given leave to file a reply to the substantive merits of the claim. On the other hand if the Tribunal finds that the claim is not receivable the appeal will be dismissed.

35. Thus at that early stage of the history of his case, it was made abundantly clear to Mr. Chaaban that if the UNRWA DT found that his claim was not receivable, the merits of the case could not be considered.

36. For the reasons mentioned above, Mr. Chaaban had no *locus standi* to bring this appeal and it is dismissed in its entirety.

The Commissioner-General's application for costs

37. Article 9(2) of the Statute of the Appeals Tribunal provides: "Where the Appeals Tribunal determines that a party has manifestly abused the appeals process, it may award costs against that party."

38. The only issue now to be decided is the Commissioner-General's application for an award of costs of USD 9,600 against Mr. Chaaban.

39. The Commissioner-General's case on the question of costs is that the doctrine of *res judicata* applies to Mr. Chaaban's claim and that this should have been clear to him. By letter dated 10 March 2014, the Director of UNRWA Affairs, Lebanon, informed him that both the UNRWA DT and the Appeals Tribunal had dismissed his case and that a

¹⁰ *Chaaban v. UNRWA*, Judgment No. UNRWA/DT/2012/038/Corr.01, para. 1.

decision of the Appeals Tribunal was final and could not be appealed further. By appealing the UNRWA DT Summary Judgment, Mr. Chaaban manifestly abused the appeals process.

40. The Commissioner-General further submits that:

[Mr. Chaaban's] application to the UNRWA DT was preceded by the filing of applications for revision and correction of judgment No. 2013-UNAT-363, which were trying to reargue his case and which were rejected by the Tribunal on 17 October 2014. The fact that [Mr. Chaaban] did not even await the outcome of these applications but filed another application with the UNRWA DT demonstrates that he is abusing different procedures in order to obtain review of a final judgment he does not agree with.

41. The Commissioner-General claims costs of USD 9,600 on the basis that that amount is the cost of the present appeal and that the Agency had already incurred costs of USD 9,600 for Mr. Chaaban's first appeal. The Commissioner-General points out that

UNRWA is almost entirely funded by voluntary contributions. As of end of August 2014, the General Fund deficit for the end of the year stands at USD 55.9 million. UNRWA's operations are chronically underfunded and the Agency is constantly struggling to keep pace with an increased demand for services caused by growing numbers of registered refugees, expanding need, and deepening poverty. In accordance with[...] Article 4.3 of the Special Agreement between the United Nations and UNRWA dated 1 July 2009, this Appeal costs UNRWA USD 9,600 after the Agency already incurred USD 9,600 for the Applicant's first appeal. These costs divert human and financial resources from assisting vulnerable Palestine refugees; it is literally taking food away from the mouths of refugee children who have had to endure the devastating effect of armed conflict in Syria and the Gaza Strip. UNRWA cannot be asked to keep on paying for the Appellant's misguided attempts to seek review of a judgment that is final. The Appellant has manifestly abused the appeals process by filing an appeal that is blatantly frivolous.

42. Since the Appeals Tribunal decision dated 17 October 2013 affirming the decision of the UNRWA DT that Mr. Chaaban's claim is not receivable, Mr. Chaaban has filed two applications with the Appeals Tribunal for correction and revision, a request for decision review with the Administration, another application to the UNRWA DT and another appeal to the Appeals Tribunal. His actions have resulted in an unnecessary waste of the resources of the court system.

43. We do not doubt that Mr. Chaaban fully understands the legal effect of the previous decision of the Appeals Tribunal. Yet he continues to defy the judgments of both the UNRWA DT and the Appeals Tribunal that his claim is not receivable. We find that he has manifestly abused the appeals process by deliberately filing an appeal that is blatantly frivolous and vexatious.

44. We find that the Commissioner-General has made his case for an order for costs against Mr. Chaaban.

Judgment

45. For the reasons set out above, the Appeals Tribunal orders as follows:

(a) Mr. Chaaban's appeal is dismissed in its entirety and the Judgment of the UNRWA DT is affirmed.

(b) Mr. Chaaban is ordered to pay costs of USD 9,600.00 to the Commissioner-General within 60 days of the publication of this Judgment. Such costs may be paid directly to the Agency or to the Appeals Tribunal for payment out to the Agency.

(c) The Registrar is directed not to accept any filing from Mr. Chaaban until such costs have been paid.

Original and Authoritative Version: English

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

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Adinyira

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

(Signed)

Weicheng Lin, Registrar