



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

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Judgment No. 2015-UNAT-579

**Achkar  
(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 Rosalyn Chapman, Presiding  
Judge Sophia Adinyira  
Judge Richard Lussick

**Case No.:** 2014-673

**Date:** 30 October 2015

**Registrar:** Weicheng Lin

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**Counsel for Mr. Achkar:** Self-represented

**Counsel for Commissioner-General:** Lance Bartholomeusz

**JUDGE ROSALYN CHAPMAN, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal by Mr. Roger Achkar of Judgment No. UNRWA/DT/2014/031, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East in Amman on 9 October 2014, in the case of *Achkar v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. On 28 October 2014, Mr. Achkar filed his appeal, which he perfected on 31 October 2014, and the Commissioner-General filed his answer to the appeal on 19 December 2014.

**Facts and Procedure**

2. The following facts are uncontested:<sup>1</sup>

... Mr. Achkar was employed by [the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency)] in Amman, Jordan, from 1 March 2002 until his resignation on 31 January 2003.

... Before and during his employment by UNRWA, Mr. Achkar expressed objections to traveling to Gaza, stating it would be dangerous for him as a Lebanese citizen. In 2002, Mr. Achkar was ordered in writing by an UNRWA official to travel to Gaza [the impugned decision], and he did so. When crossing into Gaza on 18-19 October 2002, Mr. Achkar was asked by an Israeli soldier to sign a paper stating "I have no information that threatens the security of the State of Israel". Mr. Achkar signed the statement but later complained to UNRWA he felt threatened by the incident.

... Since resigning from UNRWA, Mr. Achkar claims he has been unable to obtain regular employment with the United Nations, for which he had worked prior to his UNRWA employment, except for occasional or short-term jobs and has suffered considerable financial damage.

... On 19 October 2011, Mr. Achkar brought an application against the Secretary-General of the United Nations before the [United Nations Dispute Tribunal (UNDT)], seeking monetary damages for the alleged threats against him when he traveled to and from Gaza in 2002.

... [On 15 November 2011, the UNDT issued] Judgment No. UNDT/2011/194, [finding] Mr. Achkar's application was not receivable. The UNDT determined it lacked subject matter jurisdiction to hear Mr. Achkar's claims because: (a) Mr. Achkar was a UNRWA staff member at the time of the impugned decision and UNRWA does not

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<sup>1</sup> *Achkar v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-267, paras. 3-7.

“fall under the jurisdiction of the UNDT”; and, (b) Mr. Achkar’s application was brought against the wrong respondent. The UNDT also determined Mr. Achkar’s application was not receivable because it was filed after a considerable delay and was “time-barred”.

3. On 1 November 2012, the Appeals Tribunal issued Judgment No. 2012-UNAT-267 (*Achkar I*), which affirmed that the UNDT lacked subject matter jurisdiction to receive Mr. Achkar’s application, which could only be brought before the UNRWA Dispute Tribunal (UNRWA DT). The Appeals Tribunal thus vacated the UNDT’s conclusions that the application was untimely and not receivable *ratione temporis*, finding that the UNDT exceeded its jurisdiction or competence in reaching these legal conclusions since the application was not properly before the UNDT.

4. On 25 January 2013, Mr. Achkar filed an application before the UNRWA DT seeking monetary damages in the amount of USD three million for having been denied employment for the preceding ten years and for the alleged threats made against him when he traveled to and from Gaza in 2002.

5. On 9 October 2014, the UNRWA DT issued Judgment No. UNRWA/DT/2014/031, summarily dismissing Mr. Achkar’s application on the ground that it was not timely filed and was not receivable.

6. On 31 October 2014, Mr. Achkar appealed Judgment No. UNRWA/DT/2014/031, and on 19 December 2014, the Commissioner-General filed his answer to the appeal.

### **Submissions**

#### **Mr. Achkar’s Appeal**

7. Mr. Achkar requests that the Appeals Tribunal consider his appeal of the Judgment, which found that his “application was not receivable due to the fact that it was received after a considerable delay”.

8. Mr. Achkar claims that his repeated written complaints since 2002, the loss of his letter of 3 May 2007 to the Secretary-General, and UNRWA’s refusal to receive mail he sent on 30 July 2010, should be considered “exceptional circumstances” justifying his request for “suspension, waiver or extension of the time limits” so that justice can be dispensed.

9. Mr. Achkar also addresses the merits of his claims before the UNRWA Dispute Tribunal and seeks monetary compensation in the amount of USD seven million for the danger that he and his family have faced since 2002 as a result of the United Nations' actions.

**The Commissioner-General's Answer**

10. The Respondent submits that the appeal is not founded on any of the grounds set forth in Article 2(1) of the Appeals Tribunal Statute; the Appellant does not explain how the UNRWA Dispute Tribunal, in judging the application was not receivable, erred on a question of law or fact resulting in a manifestly unreasonable decision, exceeded its competence or failed to exercise its jurisdiction. The Appellant merely recites the claims he made before the UNRWA Dispute Tribunal.

11. The UNRWA Dispute Tribunal did not err when it dismissed the application as untimely and not receivable, given the application was filed in 2013, more than ten years after the impugned decision of 2002. In view of Article 8(4) of the UNRWA DT Statute, which provides an absolute restriction on judicial discretion to receive an application contesting a decision more than three years old, the UNRWA DT correctly dismissed the application.

12. The Appellant cannot for the first time assert on appeal that "exceptional circumstances" justified waiving the filing time limits; he failed to request that the UNRWA Dispute Tribunal consider such "exceptional circumstances" to waive the time limits. Even assuming *arguendo* that he had made such a request before the UNRWA Dispute Tribunal, the UNRWA DT would have been precluded from considering it in light of Article 8(4) of the UNRWA DT Statute.

13. The Respondent requests that the appeal be dismissed in its entirety.

**Considerations**

*Preliminary matter*

14. Mr. Achkar requests an oral hearing on his appeal. However, the Appeals Tribunal does not find that an oral hearing "would assist in the expeditious and fair disposal" of the appeal, as required under Article 8(3) of the Appeals Tribunal Statute (Statute) and Article 18(1) of the Appeals Tribunal Rules of Procedure (Rules). Thus, Mr. Achkar's request is denied.

*Merits of the appeal*

15. We have consistently held that the appellant has the burden of satisfying the Appeals Tribunal that the judgment being appealed is defective, and the appellant must identify the alleged defects in the judgment and state the grounds relied upon in asserting that the judgment is defective.<sup>2</sup>

16. Mr. Achkar has not identified the grounds for his appeal under Article 2(1) of the Statute; thus, the appeal is defective. Nevertheless, as we held in *Achkar I*, since the UNRWA DT's Judgment "addresses only the issue of the receivability of Mr. Achkar's application, this Tribunal reasonably infers Mr. Achkar is claiming the [UNRWA] DT '[f]ailed to exercise jurisdiction vested in it' under Article 2(1)(b)".<sup>3</sup>

17. Article 8(4) of the UNRWA DT Statute, which Area Staff Regulation 11.3 encompasses into the Area Staff Regulations, provides that "[n]otwithstanding paragraph 3 of the present article, an application shall not be received if it is filed more than three years after the applicant's receipt of the contested administrative decision".

18. Article 8(3) of the UNRWA DT Statute provides, in part, that "[t]he 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".

19. In his application before the UNRWA DT, Mr. Achkar quoted Article 8(3) of the UNRWA DT Statute, but he did not state whether he was requesting that the UNRWA Dispute Tribunal suspend, waive or extend the deadline for him to file his application. He also failed to set forth any reasons why the UNRWA Dispute Tribunal should find his case to be an exceptional case warranting suspension, waiver or extension of the time limit.

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<sup>2</sup> *Hassan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-504, paras. 18-19; *Al-Moued v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-458, paras. 18 and 23; *El-Khalek v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-442, para. 21. See also *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-547, para. 30; *Balinge v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-377, paras. 16-17; *Charles v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-284, para. 26.

<sup>3</sup> *Achkar v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-267, para. 20.

20. The UNRWA Dispute Tribunal, relying on Article 8(4) of the UNRWA DT Statute, found that Mr. Achkar's application was not receivable, stating that "[t]he record is clear that the contested administrative decision was taken in 2002 and that it was not until 2013 that [Mr. Achkar] filed his application before the [Dispute] Tribunal. Accordingly, the present Application is not receivable."<sup>4</sup>

21. This legal conclusion is unassailable.

22. Moreover, as the Commissioner-General aptly notes, the Appeals Tribunal has determined that under Article 8(4) of the UNDT Statute, which is identical to Article 8(4) of the UNRWA DT Statute, the UNDT "cannot waive the time limit to file an appeal, more than three years after the applicant's receipt of the contested administrative decision".<sup>5</sup> In other words, Article 8(4) is an "absolute restriction on [...] judicial discretion," which precludes the UNRWA Dispute Tribunal, as well as the United Nations Dispute Tribunal, from "enter[ing] into a review of the possible existence of exceptional circumstances justifying an extension of the time limit".<sup>6</sup>

23. Thus, the UNRWA Dispute Tribunal did not err when it did not discuss whether the case was an "exceptional case" for extending, waiving or suspending the deadline for the filing of the application.

### **Judgment**

24. The appeal is dismissed and Judgment No. UNRWA/DT/2014/031 is affirmed.

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<sup>4</sup> Impugned Judgment, para. 8.

<sup>5</sup> *Reid v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-389, para. 14. See also *Kouadio v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-558, para. 19 and *Ibom v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-551, paras. 19-20.

<sup>6</sup> *Reid, ibid.*, para. 14.

Original and Authoritative Version: English

Dated this 30<sup>th</sup> day of October 2015 in New York, United States.

*(Signed)*

Judge Chapman, Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Lussick

Entered in the Register on this 18<sup>th</sup> day of December 2015 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar