



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

Judgment No. 2017-UNAT-773

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

JUDGMENT

Before:	Judge Dimitrios Raikos, Presiding Judge Richard Lussick Judge Martha Halfeld
Case No.:	2017-1054
Date:	14 July 2017
Registrar:	Weicheng Lin

Counsel for Mr. Ali:	Self-represented
Counsel for Commissioner-General:	Rachel Evers

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2016/032/Corr.01, 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 10 November 2016, in the case of *Ali v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Saber Daoud Abd-Alkareem Ali filed the appeal on 9 January 2017, and the Commissioner-General filed an answer on 3 March 2017.

Facts and Procedure

2. The following facts are uncontested:¹

... On 19 September 1978, the Applicant entered the service of UNRWA as a Teacher “D” in the Amman Area, Jordan, at Grade 6. Following several promotions and upgrades over the years, the Applicant was appointed Area Education Officer, Grade 17, in July 2012. For two years, from August 2012 to August 2014, the Applicant was appointed Officer-in-Charge, Deputy, Education Programme, Jordan.

... On 6 August 2014, the newly created post of Deputy, Chief Field Education Programme, Administration (“D/CFEP/A”) was advertised. The deadline for applications was 26 August 2014.

... The Agency received a total of 200 applications, including the Applicant’s. All applications were jointly reviewed by the Education Programme and the Human Resources Department for the essential post requirements outlined in the Post Description and Vacancy Announcement. Nine candidates (including the Applicant) were short-listed and invited to [...] take a written test on 6 November 2014. Three candidates (including the Applicant) who scored 50 or above out of 100 were invited to a personal interview.

... On 30 November 2014, an interview panel of four members interviewed the three candidates including the Applicant. The panel did not recommend the Applicant for the appointment and unanimously recommended another (internal) candidate for the post.

... Following approvals by the Human Resources Department, the Director of UNRWA Operations, Jordan and the Advisory Committee on Human Resources, the recommendation for the appointment of the successful candidate was approved on

¹ Impugned Judgment, paras. 2-13.

23 March 2015 by the Commissioner-General. On 24 March 2015, the Applicant was notified of the decision not to select him for the post of D/CFEP/A.

... On 28 April 2015, the Applicant submitted a request for review of the decision not to select him for the post of D/CFEP/A.

... By letter dated 27 May 2015, the Deputy Commissioner-General affirmed the decision.

... On 27 August 2015, the Applicant filed his application with the UNRWA Dispute Tribunal The application was transmitted to the Respondent on 31 August 2015.

... On 30 September 2015, the Respondent filed his reply.

... On 29 September 2016, the [UNRWA Dispute] Tribunal issued Order No. 076 (UNRWA/DT/2016) requesting the parties to produce documentary evidence of the date on which the 27 May 201[5] letter was sent from the Deputy Commissioner-General to the Applicant and the date on which the Applicant received the letter.

... On 4 October 2016, the Applicant responded by sending - again - the Deputy Commissioner-General's letter dated 27 May 2015. He made no comments.

... On 18 October 2016, the Respondent responded by submitting a copy of an email from the Special Assistant to the Deputy Commissioner-General to the Applicant, to which she attached the 27 May 2015 response to his request for decision review. The email is dated 28 May 2015.

3. On 10 November 2016, the UNRWA DT issued its Judgment dismissing Mr. Ali's application as non-receivable *ratione temporis*, for not being filed within 90 days of receipt of the response of the Deputy Commissioner-General to his request for decision review.

Submissions

Mr. Ali's Appeal

4. Mr. Ali submits that the UNRWA DT erred on matters of fact and law when it determined that he had failed to comply with the time limits. Mr. Ali points out that the UNRWA DT Judge raised the issue of receivability, not the Commissioner-General. He insists that his application was timely filed, "within 90 days from 28 May 2015".

5. Mr. Ali respectfully requests that the Appeals Tribunal reverse the impugned Judgment.

6. The Appeals Tribunal notes that Mr. Ali's appeal brief is two pages in length, in which four sentences are dedicated to his legal arguments challenging the impugned Judgment.

The Commissioner-General's Answer

7. Mr. Ali has failed to identify the grounds of his appeal; accordingly, his appeal is defective. Mr. Ali's contention that it was an error by the UNRWA DT to raise the issue of receivability *sua sponte* is without merit. There was no dispute as to the date Mr. Ali received the response (28 May 2015), and there was no error of fact or law by the UNRWA DT in dismissing his application on the grounds that it was filed outside of the prescribed time-limit, by one day.

8. The Commissioner-General respectfully requests that the appeal be dismissed.

Considerations

9. Article 8 of the UNRWA DT Statute, encompassed in Area Staff Regulation 11.3, provides that:

1. An application shall be receivable if:

...

(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; ...

...

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.

10. Article 29 of the Rules of Procedure of the UNRWA Dispute Tribunal which is entitled, "Calculation of time limits" and is encompassed in Area Staff Regulation 11.4, reads as follows:

The time limits prescribed in these Rules:

- (a) Refer to calendar days and shall not include the day of the event from which the period runs;
- (b) Shall include the next working day of the Registry when the last day of the period is not a working day; and
- (c) Shall be deemed to have been met if the documents in question were dispatched by reasonable means on the last day of the period, except if the time limit runs from the time of receipt.

11. The UNRWA DT found that Mr. Ali's application of 27 August 2015 was not receivable *ratione temporis* because it was filed outside the regulatory time limit by one day. Specifically, on 28 May 2015 at 9:09 a.m., the Special Assistant to the Deputy Commissioner-General sent to Mr. Ali an e-mail to which he attached the response dated 27 May 2015 of the Deputy Commissioner-General to Mr. Ali's request for decision review. Taking that date of 28 May 2015, the UNRWA DT concluded that Mr. Ali had ninety (90) calendar days from the receipt of the response of the Deputy Commissioner-General to file his application with the Registry of the Tribunal, to wit, 26 August 2015. However, he filed it on 27 August 2015. Accordingly, the UNRWA DT dismissed Mr. Ali's application as non-receivable.

12. The Appeals Tribunal finds no error in that finding. Mr. Ali's application was time-barred in so far as it was filed one day after the permissible deadline, as provided in Article 8 of the UNRWA DT Statute.

13. This Tribunal has repeatedly and consistently strictly enforced the time limits for filing applications and appeals. Strict adherence to filing deadlines assures one of the goals of the current system of administration of justice established in 2009: the timely hearing of cases and rendering of judgments.² It is irrelevant whether a deadline is missed by several minutes, several hours or several days.³

² *El Rush v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-627, para. 22; *Kissila v. Secretary-General of*

14. Mr. Ali admits that he received the aforementioned response on 28 May 2015, but he submits that he filed his application timely on 27 August 2015 within the statutory time limit of 90 days. We do not agree. Having reviewed the UNRWA DT's Judgment, we can discern no error in the computation of the applicable time limits. Pursuant to Article 29(a) of the Rules of Procedure of the UNRWA Dispute Tribunal, the prescribed deadline for filing the application began on 29 May 2015 (i.e., the next calendar day after the date of receipt of the response) and, computed consecutively on all of the calendar days that followed, expired on 26 August 2015.

15. Besides, as correctly found by the UNRWA DT, the last date for filing the application (26 August 2015) was neither a weekend nor a holiday on which the Registry was closed, which would have extended the time to the next working day pursuant to Article 29(b) of the UNRWA DT's Rules of Procedure, as set forth in Area Staff Regulation 11.4.

16. Further, Mr. Ali contends that the UNRWA DT erred in that it examined the timeliness of his application *sua sponte*, without it having been raised by the Respondent.

17. We reject this contention. In our view, the competence of the UNRWA DT to review the observance of the statutory deadlines for filing an application can be exercised even if the parties or the administrative authorities do not raise the issue, because it constitutes a matter of law and the UNRWA DT Statute prevents the UNRWA DT from receiving a case which is non-receivable *ratione temporis* or *ratione materiae*. To hold otherwise would allow the parties, either deliberately or by negligence, to empower the UNRWA DT with jurisdiction in excess of the parameters established for it. Thus, there is no merit in Mr. Ali's claim that the UNRWA DT exceeded its competence or jurisdiction in addressing *sua sponte* the issue of receivability of his application when the Commissioner-General did not raise that issue in his reply.⁴

the United Nations, Judgment No. 2014-UNAT-470, para. 23, citing *Cooke v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-275, para. 26 and citations therein; *Thiam v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-144; *Ibrahim v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-069; and *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-005.

³ *Rüger v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-693, para. 18.

⁴ *Chahrour v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-406, para. 28, citing *Christensen v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-335, para. 20; *Kapsou v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-170, para. 26.

18. 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 Mr. Ali's application was not receivable as it was time-barred.

Judgment

20. The appeal is dismissed and Judgment UNRWA/DT/2016/032/Corr.01 is hereby affirmed.

Original and Authoritative Version: English

Dated this 14th day of July 2017 in Vienna, Austria.

(Signed)

Judge Raikos, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Halfeld

Entered in the Register on this 5th day of September 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar