



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

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Judgment No. 2020-UNAT-1060

**Turki Salem Abu Rabei  
(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 Graeme Colgan, Presiding Judge Martha Halfeld Judge John Raymond Murphy
Case No.:	2020-1381
Date:	30 October 2020
Registrar:	Weicheng Lin

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Counsel for Appellant: Self-represented

Counsel for Respondent: Rachel Evers

**JUDGE GRAEME COLGAN, PRESIDING.**

1. Turki Salem Abu Rabei appeals against the Judgment of 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) dated 17 February 2020 (UNRWA/DT/2020/007) finding for the Respondent (the Commissioner-General). The UNRWA DT determined that, although reiterated subsequently, the Agency's decision which Mr. Abu Rabei sought to challenge, was made and communicated to him in November 1994. His proceedings challenging the Agency's reiteration of this decision were filed with the UNRWA Dispute Tribunal on 25 September 2018, some 24 years after his first request, almost 21 years after his second request had been refused and more than the absolute statutory maximum period of three years within which such proceedings must be brought.<sup>1</sup> The UNRWA DT determined that his proceedings were not receivable because of their lateness.

2. In his Reply to the appeal, the Commissioner-General sought costs against Mr. Abu Rabei. In Order No. 375 (2020) issued on 22 July 2020, we gave the Appellant an opportunity to respond to this fresh issue and Mr. Abu Rabei did so in short submissions dated 10 August 2020. He emphasised his unrepresented status as a litigant and emphasised the disparity between his and the Respondent's financial positions.

3. For the following reasons, we dismiss Mr. Abu Rabei's appeal and do not allow the Commissioner-General's claim to costs.

**Facts and Procedure**

4. Mr. Abu Rabei was an Assistant Head Teacher of a school in the Balqa Sub Area of the Jordan Field Office of UNRWA. At the time he commenced employment with the Agency in 1981, UNRWA recorded his year of birth simply as "1958".<sup>2</sup> No more precise date, including month and day were recorded. This record appears to have been created in reliance on two documents then supplied to UNRWA by Mr. Abu Rabei, a Jordanian passport which had been issued only days before he applied for the position with UNRWA and a UNESCO document confirming his completion of a programme run by that organisation. We note, also,

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<sup>1</sup> Article 8(4) of the Statute of the UNRWA DT.

<sup>2</sup> To ensure consistency, references in this Judgment to the date of the Appellant's birth will be to the Gregorian Calendar rather than to the Islamic Calendar which nevertheless features occasionally in documents.

that the nominated place of his birth was also different to that subsequently recorded in other documents. Later UNRWA documentation in relation to his employment (including records sent to Mr. Abu Rabei himself) recorded his date of birth as 30 September 1958 and this was not objected to or otherwise commented on by him at those times. Mr. Abu Rabei asserts that 30 September were indeed the day and month of his birth, but says that the year (1959) was one later than that appearing erroneously in UNRWA's records. He claims that the latter date was confirmed by "his original birth certificate and other official documents". The exhibits produced to the UNRWA DT contain references to both years of birth, 1958 and 1959.

5. On 23 October 1994 Mr. Abu Rabei requested officially that his date of birth on Agency records be changed to 30 September 1959. This request was denied, with reasons, on 2 November 1994. Mr. Abu Rabei did not contest that decision, whether within the 60 days allowed for doing so, or as it transpired, for many years afterwards during which time he received communications from UNRWA showing his year of birth as 1958 and, at times, the day and month as being 30 September.

6. In May 2018 Mr. Abu Rabie was advised that he would be separated from service on the grounds of age (60 years), on 30 September 2018. This date was calculated by reference to a date of birth of 30 September 1958. In June 2018, Mr. Abu Rabie again requested of UNRWA that his date of birth be changed to 1959. This was again refused, also with reasons. Following an unsuccessful request for decision review of that response (his claim was confirmed to have been time-barred and the original record to be unalterable), Mr. Abu Rabei filed his proceedings with the UNRWA DT.

7. Decision of the appeal turns first on the question whether the Agency's 2018 decision not to change Mr. Abu Rabei's date of birth in its records was simply a reiteration of its 1994 identical decision made in response to the same request by him, or whether it is regarded as a separate administrative decision entitling him to challenge it within three years of its making.

### **Submissions**

#### **The Appellant's Grounds of Appeal**

8. Mr. Abu Rabei's grounds of appeal are stated succinctly. First, he says (correctly) that his letter of original appointment, a document prepared by the Agency in 1981, does not include any reference to his date of birth.

9. Next, he says that there is no reference to his date of birth in respect of his promotion from the position of teacher to that of assistant head teacher. That, too, may well be correct.

10. Third, he says that the earliest document (in Arabic language) on his personnel file supplied by him to the Agency was ignored by the UNRWA DT. We accept that official documents appearing to show 1959 as the year of his birth are not referred to in the UNRWA DT's Judgment.

11. Fourth, Mr. Abu Rabei says that after refusing his application to amend its records in 1994, the Agency did not provide him advice about his appeal rights. He says it was unfair for the Agency and the UNRWA DT to have relied upon this failure to appeal. He says that it is unfair for the Agency and the UNRWA DT to have later held against him this failure to appeal in 1994.

12. Fifth, he says that procedural steps leading to the UNRWA Dispute Tribunal's decision of the case were undertaken in coordination with a named legal officer. We do not understand the import of this submission and can take it no further.

13. Sixth, Mr. Abu Rabei says that the UNRWA Dispute Tribunal relied on and applied case law that differed in its circumstances from the facts of his case. We understand this to relate to the principles of law concerning repetition of administrative decisions and when time to appeal is triggered. His appeal turns on this point, at least initially.

14. Finally, it is said that the UNRWA DT neglected to consider and apply some documentation issued by the Agency itself, including its "Family Registration Card", which attributes to the Appellant, a date of birth of September 1959, and a Certificate issued by UNRWA confirming Mr. Abu Rabei's graduation from its Field Education Programme in Jordan with the degree of Bachelor of Education. This official document issued in 1998 records his year of birth as 1959.

### **The Respondent's Answer**

15. First, the Commissioner-General submits that Mr. Abu Rabei has not established any of the grounds set out in Article 2(1) of the Statute of the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) whereby a judgment of the UNRWA DT can be impeached. The

Appellant's case is rather an attempt to relitigate on the same grounds those issues which the UNRWA DT determined against him.

16. Second, the Respondent says that the UNRWA DT did, contrary to Mr. Abu Rabei's submission, examine properly and professionally the facts of the case.

17. Third, the Respondent reiterates that the Appellant's case is in essence an attempt to re-run the arguments that did not avail his proceedings at first instance. An alleged error of fact must not only be an error, but that this can only be established if the UNAT is satisfied that the UNRWA DT's conclusion was not supported by evidence, or that it was an unreasonable finding. Furthermore, such errors must also meet the test of creating a manifestly unreasonable result. The Respondent says that these standards have not been met by the Appellant.

18. If the Appellant's case is that the UNRWA DT erred in law by declining to hold an oral hearing (it is not entirely clear whether this is a separate ground of appeal), the Respondent says that Mr. Abu Rabei elected to file written submissions as an alternative to an oral hearing and the Judgment appealed from shows that all matters advanced by the Appellant were considered by the UNRWA Dispute Tribunal.

19. As to the ground that, in 1994, Mr. Abu Rabei was not advised of his right to appeal against the decision that the Agency had made, the Respondent submits that this was not a ground relied on by Mr. Abu Rabei before the UNRWA DT and is thus inadmissible on this appeal.

20. The Respondent says that, for the foregoing reasons, Mr. Abu Rabei's appeal should be dismissed and the Judgment of the UNRWA DT affirmed.

21. The Respondent goes further and says that, as a manifest abuse of the appeal process, costs should be awarded against Mr. Abu Rabei pursuant to Article 9(2) of the UNAT Statute. The Respondent reiterates his submissions about this only being an attempt to relitigate a failed case. Further, he says that having become aware of his recorded date of birth in the Agency's records in 1983, it took him until 1994 to seek a correction of that. Despite being given a reasoned explanation for this refusal later in 1994, he again waited until 2018 to reiterate that request. Having been then provided with detailed reasons why the Agency was unprepared to revise its 1994 decision, he was also advised that any challenge to this decision would be substantially out of time. The Respondent describes this appeal as frivolous and

vexatious. Costs of USD 250 are sought from Mr. Abu Rabei, against a cost to the Agency of having the UNAT decide this case of USD 9,600.

### Considerations

22. We begin by making the observation that it is nowhere suggested that the issues in this case have arisen as a result of confusion or other relationships between the Gregorian and Arabic calendars which ascribe different numeric chronological dates to the same events. We make this point because both calendars affect the lives of both human persons and organisations where UNRWA operates. UNRWA uses the Gregorian calendar but Mr. Abu Rabei's case too is based on this calendar.

23. The first question for decision is whether the UNRWA DT erred in dismissing Mr. Abu Rabei's application as having been made too late. Mr. Abu Rabei's request to UNRWA to change his date of birth was made on 23 October 1994 and declined on 2 November 1994. The maximum (three-year) period during which the Appellant was entitled to challenge that administrative decision expired, therefore, on 3 November 1997.<sup>3</sup> Mr. Abu Rabei's next request to change this date was made on 7 June 2018 following advice to him of his impending compulsory retirement on 30 September 2018. This request was refused on 20 June 2018. The 1994 and 2018 requests made by Mr. Abu Rabei were essentially the same request. On each occasion he sought an administrative decision that his recorded 1958 date of birth was incorrect and a change of this to 30 September 1959. However, the statutory period in which the Appellant had to file a challenge to the same 1994 application made by Mr. Abu Rabei, and the decision as was made by UNRWA in 2018, expired 21 or so years previously, in 1997.

24. Well-settled and recent case law confirms that the repetition of the same request for an administrative decision, as was previously refused, cannot 're-set the clock', as it has been expressed, to produce thereby a further three-year period for such refusal to be challenged in the UNRWA DT. These cases on this point, which apply equally to UNRWA as they do to United Nations-engaged staff, include *Abu Nqairah*,<sup>4</sup> where the principle is encapsulated at paragraph 17 as follows: "[t]he Appeals Tribunal has consistently held that the reiteration of an original administrative decision, if repeatedly questioned by a staff member, does not reset

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<sup>3</sup> Article 8(4) of the UNRWA DT Statute.

<sup>4</sup> *Abu Nqairah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-854.

the clock with respect to statutory timelines; rather time starts to run from the date on which the original decision was made”. This principle has also been stated in such earlier judgments as *Kazazi*.<sup>5</sup>

25. The UNWA Dispute Tribunal did not err in dismissing Mr. Abu Rabei’s case on this ground and his appeal must be dismissed accordingly.

26. In deference to the parties, we will comment on the substantive submissions they made affecting the merits of Mr. Abu Rabei’s case.

27. We accept the Respondent’s argument that the next consideration was not put in issue by Mr. Abu Rabei in the UNRWA DT and so cannot be said to have been erroneously decided by that Tribunal. However, even if that were not so, we do not agree with Mr. Abu Rabei’s argument that, in 1994 when UNRWA declined to adjust his date of birth in its records, it had an affirmative duty to advise him of his right to appeal after declining his request, so that its failure to do so means that he was entitled to challenge the same decision made in 2018 as, in effect, the first administrative decision made by UNRWA on this question. While UNRWA may have chosen to have so informed Mr. Abu Rabei as an unrepresented potential litigant, there was no obligation at law upon it to do so. There is no suggestion that Mr. Abu Rabei was under any disability or subject to any other condition that would have made him less knowledgeable about how such a decision could be challenged, or less able to find out how to do so, than others working for the Organisation. This conclusion, too, is in line with recent case law. In *Mbok*, this Tribunal said: “The Appeals Tribunal has consistently held that staff members have to ensure that they are aware of the Staff Regulations and Rules and the applicable procedures in the context of the administration of justice in the United Nations’ internal justice system. Ignorance cannot be invoked as an excuse for missing deadlines.”<sup>6</sup> This principle was also stated in such earlier cases as *Amany*.<sup>7</sup>

28. Next, we would not have concluded that the UNRWA DT acted in error by not holding a hearing on the merits of Mr. Abu Rabei’s case once it had concluded, correctly, that his claim was not receivable because it was made well out of time. This threshold issue, which went against the Appellant, was so determinative of his case that it would have been permissible for

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<sup>5</sup> *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557.

<sup>6</sup> *Mbok v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-824, para. 45.

<sup>7</sup> *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-521.

the UNRWA DT to have not proceeded to consider the merits of his claim, although it did so. Put another way, even if the UNRWA DT had held a full hearing in person on the merits of his claims, this would have made no difference to the result.

29. There is one aspect of the case on which we wish to comment for the assistance of UNRWA and its staff. The following are general observations, not made in reliance on the facts of this case but rather in response to a statement of principle espoused by UNRWA and apparently endorsed by the UNRWA DT. We understand and accept the administrative convenience and efficacy of adhering strictly to a date of birth (or any other material detail about an employee) that appears in the originating employment and other records of the Agency, more particularly if this information has come from the staff member and is supported by official documentation. However, experience shows that errors are made by the most assiduous organisations and by the most conscientious staff they employ, and that sometimes these errors are repeated and not identified, at least in a timely manner. In cases of genuine errors made in good faith, even long ago, these should be able to be corrected where there is reliable and convincing evidence of such errors.

30. We deal finally with the Commissioner-General's application for costs against Mr. Abu Rabei. The Appellant was given, and took, an opportunity to make submissions about this in view of its application having been first made in the Respondent's Answer to the appeal. Under Article 9(2) of the UNAT Statute, costs may be awarded by this Tribunal if it considers that a party has "manifestly abused the appeals process". That is a high threshold for an applicant party to attain and recent case law illustrates that such an order will be rarely made, and usually after the party has been fairly warned of that consequence if the party's abuse of process continues.

31. We take into account that Mr. Abu Rabei is not professionally represented and that the question of his date of birth was not entirely clear-cut, there having been several documents produced that referred to this as having been in 1959 being the year in which Mr. Abu Rabei claims to have been born.

32. All litigants in this jurisdiction have a right of appeal to this Tribunal, subject to limitations of time and the like which are not in issue in this case. That the exercise of this right might, in retrospect, appear to have been unwise or its failure inevitable, should not alone be a reason to penalise by costs the exercise of that right. Mr. Abu Rabei is now a former



member of the UNRWA staff, but having served in a senior and responsible role for many years. We infer that he was an unwilling retiree, but was compelled to do so irrespective of his abilities to continue, because of an arbitrary age of compulsory retirement.

33. In all the circumstances, we are not satisfied that the pursuit of this appeal by Mr. Abu Rabei was a clear abuse of the appeal process and the Respondent's claim to costs is also dismissed.

**Judgment**

34. Mr. Abu Rabei's appeal and the Commissioner-General's claim for costs are both dismissed. Judgment No. UNRWA/DT/2020/007 is hereby affirmed.

Original and Authoritative Version: English

Dated this 30<sup>th</sup> day of October 2020.

*(Signed)*

Judge Colgan, Presiding  
Auckland, New Zealand

*(Signed)*

Judge Martha Halfeld  
Juiz de Fora, Brazil

*(Signed)*

Judge John Murphy  
Cape Town, South Africa

Entered in the Register on this 16<sup>th</sup> day of December 2020 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar