



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

Judgment No. 2021-UNAT-1116

**Ashraf Ismail abed allah Zaqqout
(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 Kanwaldeep Sandhu Judge Sabine Knierim
Case No.:	2020-1452
Date:	25 June 2021
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Rachel Evers

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it the interlocutory appeal by Mr. Zaqqout against Order No. 123 (Case Management) (UNRWA/DT/2020), issued by the UNRWA Dispute Tribunal (UNRWA DT) on 4 August 2020, in the matter of *Zaqqout v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. We dismiss this appeal, finding that the Appellant has not demonstrated that the UNRWA Dispute Tribunal clearly exceeded its jurisdiction or competence.

Facts and Procedure

2. Mr. Zaqqout started work for UNRWA as a social worker in the Gaza Field Office under a limited duration contract (LDC) in April 2015. His LDC was last extended through 31 December 2018.

3. In a letter dated 30 December 2018, the Director of UNRWA Operations, Gaza, imposed on Mr. Zaqqout the disciplinary measures of a letter of censure and two months' suspension without pay for falsifying work experience in his UNRWA job application, among other things.

4. Mr. Zaqqout appealed the disciplinary decision by first requesting a decision review in March 2019 and then filing an application with the UNRWA Dispute Tribunal in July 2019.

5. During the ensuing pleading phase, the parties filed a number of procedural motions and the UNRWA Dispute Tribunal issued several orders in respect of those motions. *Inter alia*, in 2019, it issued Order No. 172 to grant the Commissioner-General's motion for a time limit extension to file his reply, and Order No. 196 to grant the Commissioner-General's motion for a time limit extension to translate his reply from English to Arabic. In 2020, the UNRWA Dispute Tribunal issued Order No. 077 to partially grant Mr. Zaqqout's motion for production of documents by the Agency, and to order the Agency to submit to the UNRWA DT *ex parte* any preliminary and/or final investigation reports. But in Order No. 093, the UNRWA DT denied Mr. Zaqqout's motion for production of documents. In Order No. 103, the UNRWA Dispute Tribunal granted Mr. Zaqqout's motion to file his observations on the Agency's reply, but ordered that his observations be limited to five pages and to the issue of receivability.

6. Mr. Zaqqout filed a motion on 21 July 2020 requesting that the UNRWA DT order the Commissioner-General to translate some annexes to his reply from English to Arabic. And on 27 July 2020, he filed a motion for leave to file his observations in 12 pages. Also, on 27 July 2020, he submitted his observations in 16 pages.

7. On 4 August 2020, the UNRWA Dispute Tribunal issued Order No. 123 on Case Management. Recalling its Order No. 103, the UNRWA DT denied Mr. Zaqqout's motion for leave to file his observations in 12 pages and ordered that his 16-page observations be expunged from the records.

8. However, noting that English is not Mr. Zaqqout's mother tongue, and stressing that it was important for him to fully understand the evidence that the Commissioner-General was relying on, the UNRWA DT granted Mr. Zaqqout's motion for translation of some annexes to the Commissioner-General's reply. The UNRWA DT stated that it would not entertain any further extension request from the Commissioner-General in respect of annex translation.

9. In the same Order, the UNRWA DT directed that Mr. Zaqqout's observations on the Agency's reply, after receipt of the translated annexes, be limited to five pages and to the issues of receivability. The UNRWA DT stated that it would not entertain any further extension request from Mr. Zaqqout in respect of the submission of his observations.

10. Lastly, in the same Order, the UNRWA DT emphasized that Order No. 123 would be the last order issued at that stage of the proceedings and that no further motion and submission would be accepted.

11. Mr. Zaqqout appealed Order No. 123 to the Appeals Tribunal on 22 August 2020. The Commissioner-General filed an answer on 14 October 2020.

Submissions

Mr. Zaqqout's Appeal

12. Mr. Zaqqout requests that the Appeals Tribunal rescind paragraphs 24, 27 and 28 of UNRWA DT Order No. 123, issue an order that he may file a motion for the production of evidence in the possession of the Agency and file additional motions "when receivability is

being examined”, grant him an extension for filing his observations “until a time after the convening of an oral hearing”, and permit him to file his observations in 12 pages.

13. Mr. Zaqqout submits that the UNRWA DT erred in fact, in law and in procedure and failed to exercise the jurisdiction vested in it by issuing Order No. 123, especially paragraphs 24, 27 and 28.

14. Mr. Zaqqout contends that the UNRWA DT did not give reasons, in paragraph 24 of Order No. 123, for denying his request to file his observations in 12 pages. It did not make a sound finding. It is difficult to see how he could rebut the Respondent’s reply in both fact and law in only five pages.

15. Mr. Zaqqout maintains that, by limiting his observations to five pages, the UNRWA Dispute Tribunal prevented him from mounting a proper defense. A number of disputed facts and considerations require a reply in more than 12 pages. The order in paragraph 27 shows that the UNRWA DT only believed in the facts presented by the Agency as uncontested.

16. Mr. Zaqqout argues that the UNRWA DT failed to exercise the jurisdiction vested in it when it decided not to accept any further motion. The UNRWA DT’s internal regulations allow Mr. Zaqqout to submit motions requesting an oral hearing, the calling of an expert witness, and requesting the assistance of the Staff Union as a friend-of-the-court, which could be necessary even for the issue of receivability. This demonstrates bias and prejudice against Mr. Zaqqout, as the UNRWA DT has granted numerous motions filed by the Agency. Such unsound procedure will lead to an unfair judgment.

The Commissioner-General’s Answer

17. The Commissioner-General requests that the Appeals Tribunal dismiss the present appeal in its entirety.

18. He submits that Mr. Zaqqout's appeal from UNRWA DT Order No. 123 is not receivable, as it is against an interlocutory order and does not fall within the exception enunciated by the Appeals Tribunal in *Tadonki, Onana* and *Kasmani*.¹

19. The Commissioner-General also submits that the Appeals Tribunal has noted a large discretion afforded to the Dispute Tribunals in relation to case management matters, and its consistent position is that the Appeals Tribunal will not lightly interfere with the broad discretion of the first instance tribunals in the management of cases. In the present case, the UNRWA DT did not exceed its jurisdiction or competence in issuing Order No. 123.

20. The Commissioner-General maintains that no purpose will be served to review the various reasons that Mr. Zaqqout has advanced, because some of them are speculative or false, and the others will be decided by the UNRWA DT on the merits.

Considerations

21. Article 2(1) of the Appeals Tribunal's Statute provides, *inter alia*, that "[t]he Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has ... [e]xceeded its jurisdiction or competence".

22. As per our jurisprudence,² interlocutory appeals on matters of evidence, procedure, and trial conduct are not receivable.

23. Nevertheless, the Appeals Tribunal has received interlocutory appeals arising from preliminary proceedings "in those exceptional cases where the Dispute Tribunal has clearly exceeded its jurisdiction or competence".³ The Appellant has the onus of proving the Dispute Tribunal "clearly" exceeded its jurisdiction or competence. This will not be the case in every interlocutory decision by the UNDT, even when the UNDT makes an error of law: "[i]f the UNDT errs in law in making this decision and the issue can be properly raised later

¹ *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-005; *Onana v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-008; *Kasmani v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-011.

² *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-560, para. 25; *Tadonki*, *supra* note, para. 11.

³ *Staedtler*, *supra* note, para. 27; *Bastet v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-423, para. 13, citing *Villamorán v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-160; *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062; and *Tadonki*, *supra* note.

in an appeal against the final judgment on the merits, there is no need to allow an appeal against the interlocutory decision”.⁴

24. Mr. Zaqqout contends that the Appeals Tribunal should receive his appeal because this is an exceptional case in which the UNRWA DT exceeded its jurisdiction or competence when it erred on a question of fact and/or failed to exercise its discretion by issuing Order No. 123 and, in particular, paragraphs 24, 27 and 28 thereof, as the Order clearly appears to be unreasonable and illogical. Specifically, Mr. Zaqqout submits that the UNRWA DT a) erred in law when it rejected his request to submit observations in 12 pages; b) erred in procedure when it decided to allow him to submit his observations in five pages; and c) erred in law when it held that no other requests would be allowed.

25. There is no merit in these contentions. The impugned Order clearly comes within the UNRWA DT’s competence to issue appropriate case management orders. Pursuant to Article 14 of the UNRWA DT Rules of Procedure, “The Tribunal may, at any time, either on application of a party or of its own initiative make any order or give any direction which appears to the judge to be appropriate for a fair and expeditious disposal of the case and to do justice to the parties”. The Appeals Tribunal has held that we “will not lightly interfere with the broad discretion of the first instance tribunal in the management of its cases”.⁵ The manner in which the Dispute Tribunal directs the parties to file their submissions and observations and conduct themselves during the proceedings is a routine topic for a case management order. Thus, the UNRWA DT did not exceed its competence or jurisdiction in issuing paragraphs 24, 27 and 28 of Order No. 123 (UNRWA/DT/2020), and the appeal of that order in this respect is not receivable. In any case, as already noted, Mr. Zaqqout is not prevented from attacking this interlocutory order later if he appeals against the final judgment of the UNRWA DT on the merits.

⁴ *Nadeau v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1058, para. 27; *Chemingui v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-641, para. 18; *Wasserstrom v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-060, para. 19.

⁵ *Barakat v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2017-UNAT-789, para. 23; *Namrouti v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-593, para. 33; *Staedtler*, *supra* note 2, para. 30; *Leboeuf et al. v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-354, para. 9.

Judgment

26. The interlocutory appeal is not receivable.

Original and Authoritative Version: English

Dated this 25th day of June 2021.

(Signed)

Judge Raikos, Presiding
Athens, Greece

(Signed)

Judge Sandhu
Vancouver, Canada

(Signed)

Judge Knierim
Hamburg, Germany

Entered in the Register on this 6th day of July 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar