



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

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Judgment No. 2021-UNAT-1149

**Lara Sahyoun  
(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 Kanwaldeep Sandhu, Presiding Judge Graeme Colgan Judge John Raymond Murphy
Case No.:	2020-1490
Date:	29 October 2021
Registrar:	Weicheng Lin

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Counsel for Appellant:	Amer Abu-Khalaf, LOSA
Counsel for Respondent:	Rachel Evers

**JUDGE KANWALDEEP SANDHU, PRESIDING.**

1. The Appellant serves as a Training and Performance Management Officer at the Lebanon Field Office (LFO) of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency). She contested the Agency's decision not to select her for the posts of Field Investigator and Senior Field Investigator. On 19 October 2020, the UNRWA Dispute Tribunal (Dispute Tribunal or UNRWA DT) issued Judgment No. UNRWA/DT/2020/059,<sup>1</sup> dismissing her application as not receivable *ratione materiae* because she had failed to file a timely request for decision review of the contested decision.
2. For the reasons set out below, we dismiss the appeal.

**Facts and Procedure**

3. The Appellant began service with UNRWA on 4 December 2007. She was appointed to the post of Training and Performance Management Officer at the LFO on 3 May 2018.
4. In February 2019, she applied to the post of Senior Field Investigator. The Agency received a total of 120 applications, including the Appellant's, but she was not shortlisted for a written test.
5. During the same month, the Appellant also applied to the post of Field Investigator. The Agency received a total of 184 applications, including the Appellant's, but again she was not shortlisted for a written test.
6. On 21 March 2019, the Appellant, upon becoming aware that she had not been invited to participate in the written tests for the above posts, sent an inquiry to the Head, Field Human Resources Office of the LFO (Head HR/LFO). On the same day, the Head HR/LFO responded:<sup>2</sup>

[W]e appreciate your concerns and sympathize [sic] with your anxiety after your application was not short-listed for the test. We would like to assure you that applications of all candidates have been thoroughly assessed and due consideration has been given to their qualifications required for the posts of Field Investigator and Senior Field Investigator. [ ... ]

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<sup>1</sup> *Sahyoun v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2020/059 dated 19 October 2020 (Impugned Judgment).

<sup>2</sup> *Ibid.*, para. 6.

While your application was unsuccessful this time, we appreciate your interest in the vacancies and encourage you to continue participating in the recruitment processes that meet your interest and qualifications.

7. On 22 March 2019, the Appellant met with the Deputy Director of UNRWA Operations (D/DUO) and the Head HR/LFO to inquire about her unsuccessful candidacy.
8. On 8 April 2019, the Appellant received an e-mail from the Head HR/LFO setting out the reasons why she was not shortlisted for the relevant posts.
9. On 24 May 2019, the Appellant filed a request for decision review of the Agency's decision not to shortlist her for the posts of Field Investigator and Senior Field Investigator.
10. On 25 June 2019, the Appellant subsequently filed an application with the Dispute Tribunal challenging the Agency's decision not to shortlist her for the above posts.

*The UNRWA DT Judgment*

11. In the Impugned Judgment, the UNRWA DT dismissed the Appellant's application as not receivable *ratione materiae*. The tribunal explained:<sup>3</sup>

... The Applicant claims that she was notified of the contested decision on 8 April 2019, when the [Head HR/LFO] informed her about the reasons for the decision not to shortlist her for the posts of Field Investigator and Senior Field Investigator. The Respondent submits that the Applicant was notified on 21 March 2019. Therefore, the Tribunal needs to determine the date when the Applicant became aware of the contested decision.

... The UNAT has consistently held that the date of a contested administrative decision is based on objective elements that both parties can accurately determine (*Rosana* 2012-UNAT-273, paragraph 25). In the present case, the email of the [Head HR/LFO] dated 8 April 2019 is merely a reiteration of the contested decision. The Applicant herself indicated in her request for decision review that she became aware of the impugned decision once she was not invited for a written test on 21 March 2019. Therefore, it is clear from the case file that the Applicant was notified of the impugned decision on 21 March 2019 via email of the [Head HR/LFO] informing the Applicant that her applications were not successful. Consequently, the 60-day limitation period to request the review of the decision began to run on that date, and the Applicant had until 20 May 2019 to submit her request for decision review.

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<sup>3</sup> *Ibid.*, paras. 36 – 38.

.... The Applicant only filed her request for decision review on 24 May 2019.

12. The UNRWA DT thus concluded that the Appellant's application was not receivable *ratione materiae* as she did not file a timely request for decision review, which is a mandatory first step in the appeals process and a prerequisite to invoke the tribunal's jurisdiction.

### **Submissions**

#### **The Appellant's Appeal**

13. The Appellant first submits the UNRWA DT erred on a question of fact, resulting in a manifestly unreasonable decision. She says that she was informed of the reason behind the Agency's decision not to shortlist her on 8 April 2019 by the D/DUO. She further submits the Head HR/LFO who communicated with her on 21 March 2019 did not have the authority to do so. As such, the relevant date in determining if she submitted a timely request for decision review was 8 April 2019.

14. Second, the Appellant submits that the D/DUO e-mail of 8 April 2019 about following up with Headquarters concerning the reasons behind her non-selection effectively re-set the clock for appeal purposes.

15. Third, the Appellant submits the UNRWA DT erred on a question of law when it erroneously considered the e-mail of 21 March 2019 as the date when she allegedly became aware of the Agency's decision not to shortlist her. She submits pursuant to UNRWA Area Staff Rule 111.2 (1) (A), the HR Head/LFO lacked the authority to inform her of the administrative decision not to shortlist her. It is the Appellant's contention that only the D/DUO possessed such authority.

16. The Appellant thus requests the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) to vacate the Impugned Judgment and remand the matter to the UNRWA DT for a review on the merits.

#### **The Commissioner-General's Answer**

17. The Commissioner-General or Respondent submits the UNRWA DT did not err as a matter of fact or law that would require reversal of the Impugned Judgment. The Respondent argues that the UNRWA DT correctly held that the Appellant became aware of the contested decision on

21 March 2019 and that the subsequent communication of 8 April 2019 was a mere reiteration of the contested decision. Further, the Appellant herself submitted in the request for decision review that she became aware of her not being shortlisted on 21 March 2019.

18. Regarding the Appellant's contention that the Head HR/LFO had no authority to provide the Appellant with the information of 21 March 2019, the Respondent argues that this is a new plea that was not proffered before the UNRWA DT and therefore should not be considered by this Tribunal. In addition, such contention is baseless as the Head HR/LFO is the most senior Human Resources official in the LFO and as such has authority over recruitment of all area staff and is competent to communicate with candidates about their non-shortlisting.

19. Third, the Respondent argues that the subsequent e-mail to follow up with Headquarters did not constitute a new decision but was a reiteration of the contested decision. The Respondent also submits this argument was already submitted to the UNRWA DT and the Appellant is merely attempting to reargue her case without demonstrating how the first instance tribunal committed an error of fact or law, warranting intervention of the Appeals Tribunal.

20. Regarding the Appellant's argument that consistent with the holding in *Faraj*,<sup>4</sup> she was entitled to a re-set of the clock for appeal purposes following the 8 April 2019 e-mail, the Commissioner-General submits such reliance is misguided. The Respondent argues that in *Faraj*, the Tribunal held that when the management response to a decision review request is received after the deadline for such response but before the expiration of the deadline for seeking judicial review, the receipt of the management evaluation will result in setting a new deadline for seeking judicial review before the UNRWA DT, which is not the case here.

21. Finally, regarding the allegation that the UNRWA DT did not consider the authority of the personnel who communicated with the Appellant on 21 March 2019 and as such erred on a matter of law, the Respondent submits that that is also a novel submission by the Appellant, which was not proffered before the UNRWA DT, and as such should not be considered by this Tribunal.

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<sup>4</sup> *Faraj v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-331.

### Considerations

22. An application to the UNRWA DT is only receivable when a staff member has first submitted the impugned administrative decision for management evaluation or decision review pursuant to UNRWA Staff Rules.

23. UNRWA Staff Rule 111.2 (1) provides:

... A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her terms of appointment or the contract of employment, including all pertinent regulations and rules and all relevant administrative issuances pursuant to Staff Regulation 11.1 (A), shall, as a first step, submit a written request for a decision review:

(A) in the case of staff members of Field Offices, to the UNRWA Field Office Director in charge of the Field Office; and

(B) in the case of staff members of Headquarters, to the Director of Human Resources.

24. The deadline for filing the request for decision review is set out in UNRWA Staff Rule 111.2 (3) which in turn provides: “A staff member shall submit a request for a decision review within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.”

25. The issue here is when did the Appellant receive notification of the contested administrative decision to not shortlist her for the relevant posts. The Appellant claims she was notified on 8 April 2019 when the Head HR/LFO informed her about the reasons for the decision not to shortlist her for the posts.

26. The jurisprudence in this area is clear and well summarized in *Abu Nqairah*.<sup>5</sup> First, an appealable administrative decision is a decision whose key characteristic is the capacity to “produce [] direct legal consequences affecting a staff member’s terms and conditions of appointment”.<sup>6</sup> Second, “[t]he date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine”.<sup>7</sup>

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<sup>5</sup> *Abu Nqairah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the leg*, Judgment No. 2018-UNAT-854, para. 17.

<sup>6</sup> *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 28 citing *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, in turn citing former Administrative Tribunal Judgment No. 1157, Andronov (2003), para. V.

<sup>7</sup> *Rosana v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-273, para. 25.

27. Further, “[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 the clock with respect to statutory timelines; rather time starts to run from the date on which the original decision was made”.<sup>8</sup> Therefore, a staff member cannot reset the time limit to request decision review by asking for confirmation of an administrative decision that has been previously communicated to him or her. Otherwise, it would be easy to continuously restart the time limit to submit a request for decision review, simply by repeatedly submitting the same request.

28. Also, our jurisprudence is clear that, being a mandatory first step before coming to the internal justice system, the request for management evaluation or decision review provides the Administration with the opportunity to reassess the situation and correct possible mistakes or errors with efficiency.<sup>9</sup> The tribunals have no jurisdiction to waive deadlines for requests for management evaluation or decision review. This jurisprudence is in full accordance with the applicable legal framework set out in the UNRWA DT Statute, particularly Article 8, which states as follows:

1. An application shall be receivable if:
  - ...
  - (c) An applicant has previously submitted the contested administrative decision for decision review; (...)
  - ...
3. (...) The Dispute Tribunal shall not suspend, waive, or extend the deadlines for decision review.

29. Based on these legal requirements and given the evidence supports the UNRWA DT finding that the Appellant did not file a timely request for decision review, therefore the tribunal was correct to determine that the application was not receivable *ratione materiae*.

30. The e-mail of 21 March 2019 from the Head HR/LFO to the Appellant clearly indicates that her application was “unsuccessful”. She also met with the D/DUO and the Head HR/LFO about her unsuccessful candidacy on 22 March 2019. In her request for decision review, she states

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<sup>8</sup> *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-546, para. 46 (internal footnotes omitted).

<sup>9</sup> *Vukasović v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-699, para. 13; *Faye v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-654, para. 31; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-293, para. 27.

that she became “aware of the decision not to include [her] once [she] was not invited for the test, which was held on Mar. 21, 2019 at 9:00 AM ...”. Therefore, on 21 March 2019, it had become clear to the Appellant that the Agency had made the administrative decision to not shortlist her for the posts that she applied for. She was further advised in writing of her not being shortlisted and about her “unsuccessful” application in the 21 March 2019 e-mail from the Head HR/LFO. Therefore, on 21 March 2019, we find, on the balance of probabilities from the evidence, that she knew or should reasonably have known of the administrative decision not to shortlist her for the posts and the consequences of that decision. There is nothing in subsequent communications that indicates that the contested administrative decision was or could be revisited or reconsidered.

31. As a result, the UNRWA DT made no error of fact in finding that the date of the contested administrative decision was 21 March 2019 and therefore, the Appellant’s request for decision review was filed beyond the 60-day deadline provided for in UNRWA Staff Rule 111.2.

32. The UNRWA DT also correctly held that the 8 April 2019 e-mail, which the Appellant relies on, was not a notification of the contested administrative decision but rather a reiteration of the administrative decision. As stated in *Staedtler*:<sup>10</sup> “[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 the clock with respect to statutory timelines; rather time starts to run from the date on which the original decision was made”. For this reason, a staff member cannot reset the time for management evaluation by asking for a confirmation of an administration decision that has been communicated to her earlier. Neither can a staff member unilaterally determine the date of an administrative decision. The Appellant continued to question the administrative decision to not shortlist her and this is evident in the e-mail of 29 March 2019 that she sent to communicate her “hope” to still be given an opportunity for the posts. This alone is not enough to reset the original administrative decision.

33. The Appellant relies on *Faraj*, but the facts of that case are entirely distinguishable to the present case.<sup>11</sup> In *Faraj*, the staff member had filed the request for administrative review regarding the termination of his contract, four days after first being notified, but he did not receive a timely response from the Agency. After this initial request, the staff member in *Faraj*

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<sup>10</sup> *Staedtler* Judgment, *op. cit.*

<sup>11</sup> *Faraj* Judgment, *op. cit.*



and the Agency continued to engage on the subject of the termination, and he again requested a decision review to which the Agency responded by confirming the contested decision and advising him to file a request for decision review within 30 days. These facts are not present in the instant case. Here, the Appellant did not even comply with the threshold requirement of submitting the initial and timely request for management review.

34. Further, we find no merit in the Appellant's other submissions that the Head HR/LFO did not have the authority to communicate the contested administrative decision in the 21 March 2019 e-mail. This issue was not raised before the UNRWA DT and thus cannot be introduced for the first time on appeal. Regardless, there is no evidence to support the Appellant's submission that the Head HR/LFO did not have the authority to communicate the decision. The Head HR/LFO is a senior human resource official and communicated the decision to the Appellant in that capacity.

35. Having requested decision review on 24 May 2019, the Appellant was out of the time limit prescribed in UNRWA Staff Rule 111.2, which requires that the request be submitted within 60 calendar days from the date on which the Appellant was notified of the contested decision; in the present case, the time limit for filing was 21 March 2019.

36. Therefore, we find the UNRWA DT properly determined that the application was not receivable *ratione materiae*. Accordingly, the appeal fails.

**Judgment**

37. The appeal is dismissed, and the UNRWA DT Judgment is upheld.

Original and Authoritative Version: English

Dated this 29<sup>th</sup> day of October 2021.

*(Signed)*

Judge Sandhu, Presiding  
Vancouver, Canada

*(Signed)*

Judge Colgan  
Auckland, New Zealand

*(Signed)*

Judge Murphy  
Cape Town, South Africa

Entered in the Register on this 24<sup>th</sup> day of November 2021 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar