



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

Judgment No. 2022-UNAT-1243

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

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge John Raymond Murphy Judge Martha Halfeld
Case No.:	2021-1603
Date:	1 July 2022
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Hannah Tonkin

JUDGE GRAEME COLGAN, PRESIDING.

1. Mohammed Faour (Appellant) appeals against the judgment of the United Nations Relief and Works Agency for Palestine Refugees in the Near East Dispute Tribunal (respectively UNRWA or Respondent, and UNRWA DT) dismissing his appeal as not receivable. His appeal turns on the question whether Mr. Faour requested management evaluation of the impugned decision within the time allowed for doing so and which was a necessary precondition of the receivability by the UNRWA DT of his challenge to the non-extension of his fixed term appointment (FTA). For the reasons set out in this Judgment, we dismiss the appeal and affirm the UNRWA DT's Judgment No. UNRWA/DT/2021/030.

Facts and Procedure

2. With effect from 1 April 2017, Mr. Faour had been employed by UNRWA as a School Counsellor and then an Employment Outreach Counsellor at UNRWA's Lebanon Field Office (LFO). He had a FTA and was at Grade 11. Following a period of administrative leave on pay while allegations of serious misconduct against him were investigated, on 1 November 2018 Mr. Faour was advised that while his FTA would be extended to 30 November 2018, there would be no further extensions and he should regard that as the date of his severance from service. Mr. Faour acknowledged receipt of this decision on 5 November 2018. It is this administrative decision that Mr. Faour challenges.

3. The UNRWA DT concluded that it was not until 17 December 2019 that Mr. Faour requested a review of the decision not to renew his contract. Mr. Faour says, however, that this step had been taken by him a year earlier, on 17 December 2018.

4. On 31 January 2019, Mr. Faour sent an e-mail to the Grievances Officer, LFO asking for clarification on why he did not receive his salary for the months of December 2018 and January 2019. By e-mail dated 8 February 2019, the Grievances Officer explained that Mr. Faour had stopped receiving his salary because his contract with the Agency had expired. There is no evidence as to what then occurred, or did not occur, over the following 11 months.

5. On 17 December 2019, Mr. Faour sent an e-mail to the Director of UNRWA Affairs, Lebanon (DUA/L) attaching a request for review of the decision not to renew his appointment. Mr. Faour claimed before the UNRWA DT that he had submitted his request for

decision review on 17 December 2018. The Commissioner-General, however, asserted that Mr. Faour submitted the request on 17 December 2019.

6. If Mr. Faour is correct that he requested a decision review before the expiry of the 60-day period allowed for doing so, the UNRWA DT would have erred in fact or in law by finding his claims unreceivable. If the Respondent is correct and, as the UNRWA DT concluded, this request was not made until December 2019, then the UNRWA DT can only have been correct to have decided that Mr. Faour's failure to make that request within the time allowed was fatal to his claims.

UNRWA DT Judgment

7. On 30 June 2021, the UNRWA DT issued the impugned Judgment dismissing Mr. Faour's application as not receivable. The UNRWA DT noted the communication Mr. Faour contended was his decision review request was an e-mail dated 17 December 2018 addressed to the Chief, Field Education Programme, LFO (C/FEP/LFO) but held that the request should have been submitted to the Director of LFO in accordance with Area Staff Rule 111.2(1)(A). The UNRWA DT held that in the e-mail, Mr. Faour only criticized the investigation, the allegations against him, and the non-renewal of his contract, as well as his performance evaluation. The e-mail requested reconsideration of his performance evaluation but did not contain a request to review the contested decision. The response to Mr. Faour's e-mail indicates that his e-mail was not perceived as a decision review application. The UNRWA DT thus concluded that the e-mail did not meet the standard of an "unambiguous written request which should clearly identify the staff member and the contested decision" and concluded that this cannot be considered a request for decision review.

8. Mr. Faour did submit an e-mail dated 17 December 2019 (a year to the day later) which is addressed to the DUA/L and enclosed in this e-mail was a decision review request form. The UNRWA DT thus considered this 2019 e-mail and the attached decision review form to be the decision review request. Mr. Faour had a maximum of 60 calendar days to file a request for review of the decision taken on 5 November 2018 and received by him two days later, not to renew his FTA. He thus had until 6 January 2019 to file a decision review request.

Procedure Before the Appeals Tribunal

9. On 22 August 2021, Mr. Faour filed an appeal against the impugned Judgment and on 5 November 2021, the Commissioner-General filed his Answer.

Submissions

Mr. Faour's Appeal

10. Mr. Faour is unrepresented on this appeal. His appeal form and accompanying brief comprise three identical paragraphs. He indicates that he was not aware of the need to submit a specific form within a specific process as relates to his decision review. He also asserted that the Administration should have directed him in this regard. Numerous senior officials had not replied to his communications pertaining to the contested administrative decision and instead should have advised him of the relevant procedures. Mr. Faour requests the UNAT to take into account his lack of knowledge of the procedures. Mr. Faour further requests in his appeal that the issues of his paid administrative leave pending an investigation that he presented before the UNRWA DT be addressed by the UNAT.

Commissioner-General's Answer

11. The Judgment was as a matter of law free of error. The UNRWA DT correctly determined the e-mail of 17 December 2018 did not contain a request for decision review of the contested decision and did not go to the correct official recipient of such requests. The response to the e-mail made it clear it was not perceived as a request for decision review. The UNRWA DT thus correctly concluded it did not meet the requisite standard of being an unambiguous written request. The UNRWA DT also correctly considered the e-mail of 17 December 2019 which included an attached decision review request form as the relevant submission and in turn correctly determined this submission was filed out of time, as the deadline to file a request for decision review was 4 or 6 January 2019 and the e-mail submitting the decision review form was dated 17 December 2019, nearly a year late. Any argument Mr. Faour makes that he was ignorant of the rules is not a lawful defence to filing out of time. In light of this the Commissioner-General requests the appeal be dismissed in its entirety.

Considerations

12. UNRWA's Area Staff Rule 111.2 provides that a staff member wishing to formally contest an administrative decision shall first submit a written request for decision review to the UNRWA Field Office Director of the particular Field Office in which the staff serves. The Rule's time limit for submitting such a request is 60 calendar days from the date on which the staff member received notification of the contested administrative decision.

13. Article 8(3) of the UNRWA DT's Statute allows the Tribunal to extend, suspend or waive some temporal deadlines but not those for decision review.

14. The case therefore turns on whether the UNRWA DT erred in fact or in law in determining that Mr. Faour did not request decision review on 17 December 2018 as he now claims he did, or at least no more than 60 days after 31 January 2019 being the date of his last e-mail to the Organisation expressing his dissatisfaction with, and appealing, the administrative decision conveyed to him.

15. The UNRWA DT acknowledged, correctly, that while such a request may be made relatively informally, it must nevertheless be an unambiguous written request which clearly identifies the staff member and the contested decision (see *Lemonnier* 2016-UNAT-679).

16. Mr. Faour's e-mail of 17 December 2018 was addressed to Salem Deeb, the C/FEP/LFO and Mr. Faour's superior in the Field Office. It was an omnibus letter criticising the allegations that had been made against him, the investigation of the alleged misconduct committed by him, his performance evaluation, as well as the decision to not renew his contract. Although the letter did contain a request for a review, this was of his performance review, and it did not contain a request to review the now contested decision.

17. As the UNRWA DT also found, the response to Mr. Faour's letter of 17 December 2018 did not interpret it as a request to review the contested decision. That was in contrast to Mr. Faour's 17 December 2019 letter which was clearly a request to review the contested decision, and the Agency's recognition of it as such, albeit that it was also well out of time.

18. However, we consider that Mr. Faour's correspondence about this matter warrants closer examination than the UNRWA DT gave it in its summary of its content. The 17 December 2018 letter is headed "Grievance Letter 'Seeking Justice'" and while it does indeed address several complaints by Mr. Faour, the following is also set out:

Most importantly, I thought that my dismissal and separation from work was the result of the mentioned complaint [alleging his misconduct]. When I asked the complaints department staff, how my contract was terminated and the investigation still ongoing, they replied they had nothing to do with my contract and did not know anything about the matter.

After inquiring, I came to know that my contract had been terminated on the basis of a bad performance evaluation and assessment of my work "which I did not know about, and this is my right" presented by my officials, who they are a part of this complaint "as I explained in the grievance letter" which is based on personal matters, nothing more.

19. There is no evidence of any response to Mr. Faour's 17 December 2018 letter to Mr. Deeb. Although not referred to by the UNRWA DT in its Judgment, there is a further e-mail letter from Mr. Faour to Mr. Deeb dated 28 December 2018 headed "Gentle Reminder" in which Mr. Faour referred to his previous e-mail "about my separation from work and seeking your justice..." and in which he asks for a reply. Its content is consistent with the absence of any response to his 17 December 2018 letter. This second communication was sent by him within the statutory 60 days that Mr. Faour had to request a decision review.

20. On 4 January 2019, Mr. Deeb replied briefly: "Your case is under investigation and no intervention from my side till concluded by concerned officers".

21. The 17 December 2018 letter upon which the UNRWA DT relied must be read in context, and that context includes the foregoing correspondence which was exchanged still within the 60-day time limit for decision review but which the Tribunal did not refer to.

22. We consider that there is an argument for Mr. Faour that all his relevant correspondence sent within the requisite period (and not merely his 17 December 2018 letter) did fulfill the minimum criteria required by judgments such as *Lemonnier*: it identified the staff member and the decision complained about (that is his severance from service), and, albeit by a narrow margin, it requested unambiguously a review of that decision. We note that the issue in *Lemonnier* involved the request for management review made by OSLA, the staff

legal representation organisation, upon which there was an arguably high expectation of knowledge and compliance, and not by a litigant in person as in this case.

23. There is nothing in principle that requires it to be a stand-alone grievance that is identified in a management review request, although combining it with a number of other grievances runs the risk that it may be overlooked. But it is arguable for Mr. Faour if its multi-grievance nature could have negated the effectiveness of the 17 December 2018 letter as a request for decision review, that was clarified by the follow-up e-mail. By 4 January 2019, still within time for requesting decision review, Mr. Faour's request had become one relating to what the Organisation described as his severance from service.

24. When read objectively with Mr. Faour's follow-up e-mail of 28 December 2018, we consider it is arguable that he was challenging the decision not to renew or extend his FTA and, thereby and as the Organisation described it, his effective severance from service. By his account, that decision was taken on the basis of a performance review that he says he never saw and in the midst of a formal investigation of alleged misconduct against him. His severance meant that neither of these other complaints made by him could be, or was then, taken further.

25. We have expressed the foregoing as being "arguable cases" for Mr. Faour on this issue, because there is a further jurisdictional impediment to his success on appeal. Even though this was not raised by the Commissioner-General in response to the appeal, that is understandable in light of Mr. Faour's unrepresented status and his consequent unfocussed pleadings. However, jurisdictional questions are so fundamental that we must be satisfied that the case was properly filed that it is open to this Tribunal to identify and decide the issue even if it was not flagged by the parties.

26. Even if the challenge to the decision had been effected in law by taking account of all of the relevant correspondence and decision review had been thereby requested, there is a further time limit applicable in the event of management evaluation not being undertaken, which limit Mr. Faour breached by a very wide margin. Article 8 of the UNRWA Area Staff Regulations provides materially:

Article 8

1. An application shall be receivable if:

...

(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;

27. If it is assumed in his favour that Mr. Faour's application for decision review was lodged on 31 January 2019 and was not responded to by the Agency, Mr. Faour then had the period of 120 days from 31 January 2019 to file his challenge to the administrative decision with the UNRWA DT, that is until 31 May 2019. He did not do so until 27 February 2020, some 9 months out of time.

28. So even at best for Mr. Faour assuming that he did seek decision review within time, his claim must fail because his proceedings in the UNRWA DT were filed out of time. The UNRWA DT so decided correctly.

29. In these circumstances, it is unnecessary for us to go on and decide the second issue raised on the appeal, whether the request for decision review made to the wrong person in the Agency was nevertheless also a valid exercise of that jurisdictional prerequisite step.

Judgment

30. We dismiss the appeal and affirm UNRWA DT's Judgment No. UNRWA/DT/2021/030.

Original and Authoritative Version: English

Decision dated this 1st day of July 2022 in New York, United States.

(Signed)

Judge Colgan, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Halfeld

Judgment published and entered into the Registry on this 21st day of July 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar