



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

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Judgment No. 2023-UNAT-1360

**Moner Ahmed Nasser  
(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 Gao Xiaoli, Presiding Judge Kanwaldeep Sandhu Judge Graeme Colgan
Case No.:	2022-1741
Date of Decision:	30 June 2023
Date of Publication:	24 July 2023
Registrar:	Juliet Johnson

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Counsel for Appellant: Self-represented  
Counsel for Respondent: Natalie Boucly

**JUDGE GAO XIAOLI, PRESIDING.**

1. Mr. Moner Ahmed Nasser<sup>1</sup> (Mr. Nasser) contested the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) to impose on him the disciplinary measure of separation from service (contested decision).

2. By Summary Judgment No. UNRWA/DT/2022/038<sup>2</sup> (impugned Judgment), the Dispute Tribunal of UNRWA (UNRWA DT or UNRWA Dispute Tribunal) concluded that Mr. Nasser filed his application with the UNRWA DT more than three years after his receipt of the contested decision and therefore rejected his application as not receivable *ratione temporis* pursuant to Article 8(4) of the UNRWA Dispute Tribunal Statute.

3. Mr. Nasser lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).

4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

**Facts and Procedure**

5. At the time of his separation from service, Mr. Nasser was employed as an Assistant Packing Supervisor on a fixed-term appointment in the Emergency Programme in the Gaza Field Office (GFO). He had been employed by the Agency since October 2008.<sup>3</sup>

6. On 23 June 2009, the Director of UNRWA Operations in Gaza informed Mr. Nasser by letter that an investigation had been opened following allegations of serious misconduct made against him and that he was therefore being placed on administrative leave without pay pending the outcome of the investigation in accordance with UNRWA Area Staff Rule 110.2.<sup>4</sup>

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<sup>1</sup>The UNRWA DT spelled the Appellant's name as "Munir Nasr". However, we adopt the English spelling "Moner Ahmed Nasser" as it appears on the appeal form.

<sup>2</sup>*Nasr v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2022/038.

<sup>3</sup> Letter of appointment of October 2008.

<sup>4</sup> Letter of suspension of 23 June 2009.

7. By letter dated 3 November 2009, the Officer-in-Charge of UNRWA Operations in Gaza informed Mr. Nasser that it had been established that he had committed serious misconduct in respect of which the disciplinary measure of separation from service with compensation in lieu of notice was imposed pursuant to UNRWA Area Staff Regulations 9.1 and 9.3.<sup>5</sup>
8. On 12 June 2022, Mr. Nasser requested a decision review of the decision of the Officer-in-Charge of UNRWA Operations in Gaza to impose on him the disciplinary measure of separation from service.
9. The Agency did not inform Mr. Nasser of the outcome of the decision review.<sup>6</sup>
10. On 12 August 2022, Mr. Nasser filed an application with the UNRWA Dispute Tribunal contesting the decision to impose on him the disciplinary measure of separation from service.

#### *Impugned Judgment*

11. On 22 August 2022, the UNRWA Dispute Tribunal issued the impugned Judgment by way of summary judgment pursuant to Article 5 of the UNRWA Dispute Tribunal Rules of Procedure.<sup>7</sup> It concluded that Mr. Nasser was informed of the contested decision on 3 November 2009 and filed his application with the UNRWA Dispute Tribunal on 12 August 2022. Therefore, it rejected his application as not receivable *ratione temporis* pursuant to Article 8(4) of the UNRWA DT Statute because he filed it more than three years after his receipt of the contested decision.<sup>8</sup>

#### *Procedures before the Appeals Tribunal*

12. On 14 October 2022, Mr. Nasser filed an appeal of the impugned Judgment with the Appeals Tribunal, to which the Commissioner-General responded on 16 December 2022.

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<sup>5</sup> Letter of termination of appointment of 3 November 2009.

<sup>6</sup> The Agency, on behalf of the Deputy Commissioner-General of UNRWA, wrote two e-mails to Mr. Nasser following his request for a decision review. In a first e-mail, the Agency acknowledged receipt of his request for a decision review. On 12 July 2022, in a second e-mail, the Agency informed Mr. Nasser that he may proceed with filing his application to the UNRWA Dispute Tribunal, should he wish to do so.

<sup>7</sup> Impugned Judgment, paras. 10-11.

<sup>8</sup> *Ibid.*, para. 12.

13. On 4 January 2023, Mr. Nasser filed a motion requesting permission to file additional pleadings, to which the Commissioner-General did not respond.

### **Submissions**

#### **Mr. Nasser's Appeal**

14. Mr. Nasser requests that the Appeals Tribunal “cancel the decision (dismissal from service) and the legal consequences thereof, as well as [award] compensation for the psychological and moral impact” to him.

15. With respect to the impugned Judgment, Mr. Nasser submits that the UNRWA DT erred in fact and law in dismissing his application. He also submits that the UNRWA Dispute Tribunal committed errors in procedure, such as to affect the impugned Judgment.

16. Mr. Nasser argues that the UNRWA DT failed to clarify the content of the evidence on which it relied. He notes that the UNRWA Dispute Tribunal failed to appreciate all the facts and evidence regarding his alleged serious misconduct. To this end, he also contends that the contested decision contained some discrepancies, and that the Agency must rectify it.

17. He submits that, on 12 July 2022, the Agency gave him by e-mail the approval to submit an appeal to the UNRWA DT. Therefore, he argues that his application was receivable pursuant to UNRWA Area Staff Rule 111.2(4)(A) and Article 8 of the UNRWA DT Statute.

18. Last, Mr. Nasser notes that the UNRWA Dispute Tribunal may extend a time limit when the interests of justice so require pursuant to Article 30 of the UNRWA DT Rules of Procedure.

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

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

20. The Commissioner-General submits that the UNRWA Dispute Tribunal did not err in fact, law or procedure when it dismissed Mr. Nasser's application as not receivable *ratione temporis* because it was filed more than three years after his receipt of the contested decision. Moreover, the Commissioner-General notes that the UNRWA Dispute Tribunal had

no discretion to suspend, waive or extend this deadline pursuant to Article 8(4) of the UNRWA DT Statute.

21. The Commissioner-General submits that Mr. Nasser failed to establish any of the five grounds of appeal set out in Article 2(1) of the Appeals Tribunal Statute. The Commissioner-General observes that Mr. Nasser's arguments are largely a repetition of the ones that he made before the UNRWA DT. Relying on Appeals Tribunal jurisprudence, the Commissioner-General recalls that it is not sufficient for Mr. Nasser to indicate that he disagrees with the impugned Judgment and that the appeals procedure is not an opportunity for a party to reargue the case.<sup>9</sup>

22. The Commissioner-General notes that Mr. Nasser relied on an e-mail of the Agency of 12 July 2022 informing him that he may proceed with the filing of his application to the UNRWA DT. The Commissioner-General submits that it is a new element that was not put forward before the UNRWA DT and cannot be introduced for the first time on appeal. Therefore, the Commissioner-General requests the Appeals Tribunal to find this aspect inadmissible.

23. In any event, the Commissioner-General further contends that even if the UNAT were to find this e-mail admissible, it would not override the absolute restriction on judicial discretion established by Article 8(4) of the UNRWA DT Statute.

24. The Commissioner-General also notes the context in which the Agency sent this e-mail to Mr. Nasser. Indeed, the Commissioner-General mentions that UNRWA is realigning its rules with the United Nations Secretariat to remove the requirement for staff members to require a decision review with respect to administrative decisions imposing disciplinary measures. Therefore, as the amendments are being processed, the Agency has implemented a practice to inform staff members contesting such administrative decisions to proceed with the filing of their application if they wish to do so.

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<sup>9</sup>*Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540, para. 28; *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035, para. 30.

25. The Commissioner-General argues that Mr. Nasser failed to identify reversible errors and that the UNRWA Dispute Tribunal did not err on a question of fact, as a matter of law or in procedure in dismissing his application as not receivable *ratione temporis*.

26. Finally, the Commissioner-General submits that the reliefs sought by Mr. Nasser have no legal basis and requests that the Appeals Tribunal dismisses the appeal.

### **Mr. Nasser's Motion to file additional pleadings**

27. In his Motion to file additional pleadings, Mr. Nasser contends that the e-mail of the Agency of 12 July 2022 is an element that was annexed to his application and thus put forward before the UNRWA DT.

### **Considerations**

#### *Motion to file additional pleadings*

28. We have considered Mr. Nasser's Motion requesting permission to file additional pleadings and, in accordance with Article 31(1) of the Appeals Tribunal Rules of Procedure and Section II.A.3 of Practice Direction No. 1 of the Appeals Tribunal, we reject it since these additional pleadings are of no consequences to the outcome of the present case. Indeed, we find that even if the additional pleadings were to be admitted, they could not assist Mr. Nasser as he wishes, and his appeal would still fail for the reasons set out below.

#### *Appeal*

29. The issues to be considered in this case are: i) Did the UNRWA DT err in finding that Mr. Nasser's application was not receivable *ratione temporis*, as he filed it more than three years after his receipt of the contested decision? ii) Did the UNRWA DT err in issuing a summary judgment?

*Did the UNRWA DT err in finding that Mr. Nasser's application was not receivable ratione temporis, as he filed it more than three years after his receipt of the contested decision?*

30. Article 8 of the UNRWA DT Statute provides:

...

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.

4. Notwithstanding paragraph 3 of the present article, an application shall not be receivable if it is filed more than three years after the applicant's receipt of the contested administrative decision.

31. With regard to the time limits for filing applications, Article 3 of the UNRWA DT Rules of Procedure establishes:

...

5. In accordance with Article 8.4 of the Statute of the Dispute Tribunal, no application shall be receivable if filed more than three years after the Applicant's receipt of the contested administrative decision.

32. Mr. Nasser received the contested administrative decision on 3 November 2009 and filed his application with the UNRWA DT on 12 August 2022. It is obvious that he filed his application more than three years after his receipt of the contested decision. Therefore, his application is not receivable *ratione temporis*. The response given by the Agency to Mr. Nasser on 12 July 2022 by e-mail is immaterial to the fact that he exceeded the statutory time limit.

33. In our jurisprudence, the Appeals Tribunal has consistently held that Article 8(4) is an "absolute restriction" to the UNRWA Dispute Tribunal's judicial discretion. In *Hayek*, we stated:<sup>10</sup>

... Article 8(4) of the UNRWA DT Statute, which Area Staff Regulation 11.3 encompasses into the Area Staff Regulations, provides that '[n]otwithstanding paragraph 3 of the present article, an application shall not be received if it is filed more than three years after the applicant's receipt of the contested administrative decision'. Article 3(5) of the UNRWA DT's Rules of Procedure, integrated into the Area Staff Regulations through Area Staff Rule 11.4, provides the same.

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<sup>10</sup> *Hayek v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-606, paras. 22-24.

... The UNRWA Dispute Tribunal found that Mr. Hayek's application of 3 August 2014 was not receivable *ratione temporis* because it was filed more than three years after Mr. Hayek's receipt of the 2002 administrative decision terminating his services and the UNRWA Dispute Tribunal 'has no discretion to waive the regulatory time limit of three years'. These legal conclusions are unassailable.

... When considering Article 8(4) of the United Nations Dispute Tribunal (UNDT [or Dispute Tribunal]) Statute, which is identical to Article 8(4) of the UNRWA DT Statute, we have held that 'the UNDT cannot waive the time limit to file an appeal, more than three years after the applicant's receipt of the contested administrative decision'. In other words, Article 8(4) of the UNDT Statute is an 'absolute restriction on [...] judicial discretion', which precludes the UNDT from 'enter[ing] into a review of the possible existence of exceptional circumstances justifying an extension of the time limit'. The same rationale applies to Article 8(4) of the UNRWA DT Statute, as the UNRWA Dispute Tribunal correctly found.

34. Article 30 of the UNRWA DT Rules of Procedure provides the following in relation to waiver of time limits:

Subject to the Statute of the Dispute Tribunal, including in particular articles 8.3 and 8.4, the Judge hearing a case may shorten or extend a time limit fixed by these Rules or waive any rule when the interests of justice so require.

35. According to this Article, the UNRWA DT cannot waive time limits arbitrarily.

36. Article 35 of the Dispute Tribunal Rules of Procedure, besides one exception not relevant to the present case, provides an almost identical text as Article 30 of the UNRWA DT Rules of Procedure. Therefore, the Appeals Tribunal's interpretation of Article 35 of the UNDT Rules of Procedure is applicable to this case.<sup>11</sup> In this regard, in *Cooke*, we found:<sup>12</sup>

... Article 35 cannot be considered separately from Article 8(3) of the UNDT Statute, to which it is '[s]ubject'. This means compliance with Article 8(3) is a prerequisite to the application of Article 35. Since Mr. Cooke did not submit a written request for waiver as required by Article 8(3) of the UNDT Statute, Article 35 a fortiori cannot be the basis to waive the filing deadline for Mr. Cooke's application.

<sup>11</sup> *Cooke v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-275, paras. 31-34.

<sup>12</sup> *Ibid.*, para. 33.



37. Strict adherence to filing deadlines is one of the goals of our internal system of the administration of justice as this ensures the timely hearing of cases and prompt rendering of judgments.<sup>13</sup> Accordingly, in the present case, the UNRWA Dispute Tribunal had no power to extend the time limit.

38. Therefore, we agree with the UNRWA DT that Mr. Nasser failed to file his application within the time limit and that it was not receivable *ratione temporis*.

39. *Did the UNRWA DT err in issuing a summary judgment?*

40. Article 5 of the UNRWA DT Rules of Procedure provides:

A party may move for summary judgment when there is no dispute as to the material facts of the case and a party is entitled to judgment as a matter of law. The Tribunal may determine, on its own initiative, that summary judgment is appropriate.

41. Applying this rule to the present case, the UNRWA Dispute Tribunal correctly concluded that Mr. Nasser failed to file his application with the UNRWA DT within the statutory time limit. The issue of receivability was to be determined as a matter of law and, therefore, it was open to the UNRWA DT to move on its own initiative to a summary judgment without examining the merits of Mr. Nasser's case. As we found in *Koumoin*, "[i]n this way, the [UNRWA DT] acted not only in accordance with the principles of judicial economy and efficiency, but also in the interest of expeditious disposal of the case".<sup>14</sup>

42. Therefore, we hold that the UNRWA DT's issuance of a summary judgment was appropriate.

43. Because Mr. Nasser's application was not receivable *ratione temporis*, the reliefs sought by him cannot be provided.

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<sup>13</sup> *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-005, para. 8.

<sup>14</sup> *Koumoin v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-833, para. 24.

**Judgment**

44. Mr. Nasser's appeal is dismissed, and Judgment No. UNRWA/DT/2022/038 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 30<sup>th</sup> day of June 2023 in New York, United States.

*(Signed)*

Judge Xiaoli, Presiding

*(Signed)*

Judge Sandhu

*(Signed)*

Judge Colgan

Judgment published and entered into the Register on this 24<sup>th</sup> day of July 2023 in New York, United States.

*(Signed)*

Juliet Johnson, Registrar