



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

Judgment No. 2024-UNAT-1426

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

JUDGMENT

Before:	Judge Kanwaldeep Sandhu, Presiding Judge Nassib G. Ziadé Judge Leslie F. Forbang
Case No.:	2023-1798
Date of Decision:	22 March 2024
Date of Publication:	1 May 2024
Registrar:	Juliet E. Johnson

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

JUDGE KANWALDEEP SANDHU, PRESIDING.

1. Mr. Qasem Abdelilah Mohammed Qasem, by two applications, contested the decisions of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency): i) to place him on administrative leave with pay (ALWP) until further notice pending an investigation (First Contested Decision); and ii) to conduct various investigations of Mr. Qasem (Second Contested Decision).

2. By Summary Judgment No. UNRWA/DT/2023/010 (the impugned Judgment), the Dispute Tribunal of UNRWA (UNRWA DT or UNRWA Dispute Tribunal) consolidated the applications. As to the first application, the UNRWA Dispute Tribunal found that it was not receivable because Mr. Qasem had failed to file his application within 90 days from receipt of the response to his request for decision review. As to the second application, the UNRWA Dispute Tribunal held that Mr. Qasem had not submitted a request for decision review in relation to the alleged contested decisions, and therefore rejected it as not receivable *ratione materiae*.

3. Mr. Qasem appeals the impugned Judgment to 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 ALWP, Mr. Qasem was employed by the Agency on a fixed-term appointment as Head Health Centre, Grade HLA7, Step 7, at Suf Camp Health Centre, Jordan Field Office (JFO).¹

6. By letter of 6 December 2021, the Director of UNRWA Affairs in Jordan informed Mr. Qasem that he was placed on ALWP effectively immediately and until further notice pending an investigation into Mr. Qasem's alleged misconduct and his alleged conflict with another UNRWA staff member, in accordance with UNRWA Area Staff Rule 110.2, Area Staff Regulation 10.4 and Area Staff Personnel Directive A/10.²

¹ Impugned Judgment, para. 3.

² First Contested Decision (appeal, annex 2).

7. On 10 January 2022, Mr. Qasem requested decision review of the Agency’s decision to place him on ALWP.³

8. By letter of 1 March 2022, the Director of Human Resources informed Mr. Qasem of the outcome of his request for decision review, finding that “there was *prima facie* evidence in support of allegations of misconduct”, and that Mr. Qasem’s continuance in his post “would be contrary to the interest of the Agency”. Therefore, the Director of Human Resources found no reason to rescind the contested decision.⁴

9. On 18 February 2023, Mr. Qasem filed an application with the UNRWA Dispute Tribunal contesting the decision to place him on ALWP.⁵

10. That same day, Mr. Qasem filed a second application with the UNRWA Dispute Tribunal in relation to “various investigations” conducted into him.⁶

Impugned Judgment

11. On 28 February 2023, the UNRWA Dispute Tribunal issued the impugned Judgment by way of Summary Judgment pursuant to Article 5 of the UNRWA DT Rules of Procedure.⁷ It further consolidated the applications in the interest of judicial economy.⁸

12. As to the first application concerning the ALWP decision, the UNRWA Dispute Tribunal noted that Mr. Qasem had been informed of the outcome of his request for decision review on 1 March 2022. Since he only filed his application on 18 February 2023, more than 90 days after his receipt of the response to his request for decision review, the UNRWA DT rejected his application as not receivable *ratione temporis*.⁹

13. As to the second application with respect to various investigations, the UNRWA Dispute Tribunal found that Mr. Qasem had not submitted a request for decision review – a mandatory first step – and, therefore, that application was not receivable *ratione materiae*.¹⁰

³ Request for decision review (appeal, annex 3).

⁴ Response to request for decision review (appeal, annex 4).

⁵ Impugned Judgment, para. 6.

⁶ *Ibid.*, paras. 14-16.

⁷ *Ibid.*, paras. 20 and 22.

⁸ *Ibid.*, para. 2.

⁹ *Ibid.*, para. 21.

¹⁰ *Ibid.*, para. 24.

Procedure before the Appeals Tribunal

14. On 27 April 2023, Mr. Qasem filed an appeal of the impugned Judgment with the Appeals Tribunal.

15. On 11 May 2023, Mr. Qasem received a letter from the Acting Director of UNRWA Affairs informing him that his ALWP was no longer considered necessary and that he would be transferred to the post of Head Health Centre at Sukneh Health Centre.¹¹

16. That same day, Mr. Qasem filed a motion for interim measures for temporary relief. By Order No. 519 (2023) dated 12 June 2023, the Appeals Tribunal found that the requested temporary relief was not consistent with the impugned Judgment and contained new administrative decisions, namely the ending of Mr. Qasem's ALWP status and his transfer to a new duty station. Therefore, the Appeals Tribunal denied the motion on grounds that it did not fulfill the conditions of Article 9(4) of the Appeals Tribunal Statute.¹²

17. On 11 June 2023, Mr. Qasem received another letter as a follow-up to the Agency's 11 May 2023 letter. That same day, he filed a second motion for interim measures, which the Appeals Tribunal denied by Order No. 524 (2023) with the same reasoning.¹³

Submissions

Mr. Qasem's Appeal

18. Mr. Qasem argues that the UNRWA Dispute Tribunal failed to exercise jurisdiction vested in it when it dismissed his applications as not receivable. Mr. Qasem argues that the UNRWA Dispute Tribunal did not take into consideration the circumstances which justified his failure to meet the 90-day statutory deadline. He contends that he "had no sufficient grounds to file a case with the [UNRWA Dispute Tribunal] within 90 days of the Agency response as the Agency would have requested dismissing the case from the [UNRWA Dispute Tribunal] as the process was still pending".

¹¹ *Qasem Abdelilah Mohammed Qasem v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Order No. 519 (2023), para. 3.

¹² *Ibid.*, paras. 9 and 10.

¹³ *Qasem Abdelilah Mohammed Qasem v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Order No. 524 (2023), para. 11.

19. Further, Mr. Qasem argues that the First Contested Decision caused him 16 months of suffering. In particular, he criticizes the flawed response to his request for decision review, accuses UNRWA of prioritizing its own interests over his right to work in a safe work environment, highlights UNRWA's inability to solve conflicts among staff members, and notes the Agency's failure to transfer him to a suitable position.

The Commissioner-General's Answer

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

21. The Commissioner-General submits that the UNRWA Dispute Tribunal did not err in fact, law, or procedure when it dismissed Mr. Qasem's application as not receivable *ratione temporis* and *ratione materiae*.

22. The Commissioner-General submits that it was clear that the UNRWA Dispute Tribunal was cognizant of the applicable provisions of the UNRWA legal framework as well as the Appeals Tribunal's established jurisprudence on the time limits for filing applications and the requirement for decision review as a formal first step in the process.

23. To the extent that Mr. Qasem suggests that the UNRWA Dispute Tribunal failed to consider the circumstances for the delay in submitting his application, the Commissioner-General submits that the alleged circumstances for the delay are new elements that were not put forward before the UNRWA DT and as such, according to the Appeals Tribunal's jurisprudence, cannot be introduced for the first time on appeal.

Considerations

The First Application

24. Article 8(1)(d) of the UNRWA Dispute Tribunal Statute provides that an application shall be receivable if the application is filed "[w]ithin 90 calendar days of the applicant's receipt of the response by management to his or her submission".

25. There is no dispute that Mr. Qasem was informed of the First Contested Decision on 6 December 2021 and duly submitted his request for decision review on 10 January 2022, and that the Agency responded to the request for decision review on 1 March 2022.

26. Therefore, the application to the UNRWA Dispute Tribunal challenging the contested decision should have been filed no later than 90 calendar days after the date that the Agency responded to the request for decision review, *i.e.* 90 calendar days after 1 March 2022, which would be 30 May 2022.¹⁴ However, Mr. Qasem submitted his application on 18 February 2023, well beyond the 90-calendar day deadline.

27. Consequently, the UNRWA Dispute Tribunal did not err when it held that the first application was out of time and not receivable *ratione temporis*.

28. This Tribunal has consistently and strictly enforced the time limits for filing applications and appeals. Strict adherence to filing deadlines assures one of the goals of our system of administration of justice: the timely hearing of cases and rendering of judgments.¹⁵

29. However, there may be exceptional cases where the deadlines need to be suspended or waived or extended. Article 8(3) of the UNRWA DT Statute provides that “(t)he Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend, waive or extend the deadlines for a limited period and only in exceptional cases. The Dispute Tribunal shall not suspend, waive or extend the deadlines for decision review.”

30. In the present case Mr. Qasem argues that he could not have filed an application “within 90 days of the Agency response as the Agency would have requested dismissing the case ... as the process was still pending”. Also, to date, he has not received any information on the investigation that was the cause to place him on ALWP.

31. First, Mr. Qasem did not apply for an extension or waiver of the time limit. As stated by the Appeals Tribunal in prior decisions, an applicant’s submission of a written request for waiver is a prerequisite, or condition precedent, under Article 8(3) to the UNRWA Dispute Tribunal being competent to waive the filing deadline in Article 8(1)(d).¹⁶

¹⁴ The UNDT erroneously referred to 29 June 2022.

¹⁵ *Cooke v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-275, para. 26, citing *Mezoui v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-043; *Thiam v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-144; *Ibrahim v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-069, and *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-005.

¹⁶ *Cooke, op. cit.*, para. 29.

32. Even so, Mr. Qasem's submissions do not amount to "exceptional circumstances" as defined by our jurisprudence. There was no need for him to wait for the "process" (which we assume refers to the investigations) to conclude as the contested decision was the decision to place him on ALWP pending the investigations. This is a separate administrative decision from the investigations themselves.

The Second Application

33. As for the second application, we also find that the UNRWA Dispute Tribunal did not err in finding that application not receivable *ratione materiae* as Mr. Qasem failed to specify the contested decision(s) he was challenging and admitted that he had not filed a request for decision review before applying to the UNRWA Dispute Tribunal.

34. Area Staff Rule 111.2(3)¹⁷ provides in relevant part that "[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". Further, Article 8(1) of the UNRWA DT Statute provides that "[a]n application shall be receivable if ... [a]n applicant has previously submitted the contested administrative decision for decision review".

35. In the second application, Mr. Qasem did not identify what decision(s) he contests (in the second application he notes "several investigations") or the date(s) of the decision(s) (noted in the application as "unknown").

36. Further, it is well settled that a request for decision review (similar to a management evaluation) is a mandatory first step in the internal justice system because it provides the Agency with the opportunity to reassess the situation and correct possible mistakes or errors with efficiency.¹⁸ As such, the legal framework is clear that the tribunals cannot waive deadlines for requests for decision review as set out in Article 8(3) of the UNRWA DT Statute.¹⁹

¹⁷ UNRWA Area Staff Rules, cod.a/59/rev.25, 1 January 2018.

¹⁸ *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.

¹⁹ *Lars Sahyoun v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1149, para. 28.

37. As there was no request for decision review in the circumstances pertaining to the second application, the UNRWA Dispute Tribunal did not err in finding that it had no jurisdiction to receive the second application.

38. The appeal fails on both counts.

Judgment

39. Mr. Qasem's appeal is dismissed, and Judgment No. UNRWA/DT/2023/010 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 22nd day of March 2024 in New York, United States.

(Signed)

Judge Sandhu, Presiding

(Signed)

Judge Ziadé

(Signed)

Judge Forbang

Judgment published and entered into the Register on this 1st day of May 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar