



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

Judgment No. 2018-UNAT-854

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

JUDGMENT

Before:	Judge Martha Halfeld, Presiding Judge John Murphy Judge Dimitrios Raikos
Case No.:	2018-1143
Date:	29 June 2018
Registrar:	Weicheng Lin

Counsel for Mr. Abu Nqairah:	Self-represented
Counsel for Commissioner-General:	Rachel Evers

JUDGE MARTHA HALFELD, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2017/043, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or UNRWA Dispute Tribunal and UNRWA or Agency, respectively) on 7 December 2017, in the case of *Abu Nqairah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Khaled Ahmad Abu Nqairah¹ filed the appeal on 21 January 2018, and the Commissioner-General filed an answer on 23 March 2018.

Facts and Procedure

2. The following facts are taken from the UNRWA DT Judgment:²

... Effective 2 February 1991, the Applicant was employed by the Agency on a temporary indefinite appointment as a Cleaner at the Amman Training Centre, Grade 1, Step 1. At the time material to the events in [the] application [before the UNRWA DT], the Applicant was a Messenger at the Faculty of Educational Sciences and Arts (“FESA”).

... On 2 August 2012, the Agency promulgated Area Staff Personnel Directive A/3 Rev.1/Part XI/Amend. 4, introducing a new allowance. This new allowance concerns the “Additional Assignment Allowance – Parallel Education & Development Programmes”, which is payable to eligible Area staff members. Area Staff Personnel Directive A/3 Rev.1/Part XI/Amend. 4 was further amended with the issuance of Area Staff Personnel Directive A/3 Rev.1/Part XI/Amend. 5, dated 1 October 2012 (“ASPD A/3”). The provisions concerning the “Additional Assignment Allowance – Parallel Education & Development Programmes” remained unchanged. Annex E attached to ASPD A/3 defines the categories of staff entitled to the allowance and includes Appendix A, which lists eligible UNRWA Area staff members. The list does not include Messengers.

... By Area Staff Circular No. 03/2012, dated 2 August 2012, the Agency published the remuneration rates for teaching and non-teaching senior management staff at the FESA who are involved in the Parallel Education Programme (“PEP”).

... Following the Inter-Staff Union Conference which was held on 18 and 19 February 2013, Area staff members from Grade 1 were upgraded to Grade 2.

... On 26 June 2013, the Applicant’s transfer to the post of Messenger at the FESA was approved.

¹ The Appeals Tribunal adopts the spelling of the Appellant’s name used by the UNRWA DT.

² Impugned Judgment, paras. 3-11.

... By requests submitted through the “Staff gateway - Have your say” on 8 October and 3 November 2013, the Applicant and other staff members requested to be paid the parallel education allowance similar to the teaching staff at FESA. In response to these requests, the Head, Field Human Resources Office informed the Applicant, by letter [dated] 29 June 2014, that the parallel education allowance “was not applicable in his case”.

... On 4 May 2017, the Director of UNRWA Operations, Jordan (“DUO/J”) received the Applicant’s request for review of the decision not to pay him the parallel education allowance.

... On 1 June 2017, the DUO/J rejected the request for decision review claiming that the request was time-barred.

... On 19 June 2017, the DUO/J received another decision review request from the Applicant in English.

... On 2 August 2017, [Mr. Abu Nqairah filed an] application (...) with the UNRWA Dispute Tribunal (...) [contesting the Agency’s decision not to pay him the parallel education allowance]. (...)

3. The UNRWA DT rendered its Judgment on 7 December 2017 dismissing the application in its entirety. It considered that since Mr. Abu Nqairah had failed to comply with the time limit set forth in Area Staff Rule 111.2 and as it did not have jurisdiction to waive the deadline for decision review, his application was not receivable. The UNRWA DT found that the Agency had informed Mr. Abu Nqairah by letter dated 29 June 2014, at the latest, that he was not entitled to the parallel education allowance and his requests for decision review received on 4 May 2017 in Arabic and on 19 June 2017 in English were thus submitted much later than the 60-calendar day time limit which started to run when he was notified of the contested decision on 29 June 2014. The UNRWA DT further considered that the DUO/J’s decision dated 1 June 2017 was not an appealable administrative decision as it was the response to Mr. Abu Nqairah’s request for decision review dated 4 May 2017 and, as such, not subject to judicial review in accordance with established Appeals Tribunal jurisprudence.

Submissions

Mr. Abu Nqairah’s Appeal

4. Mr. Abu Nqairah submits that he complied with the time limits. He claims that he never received a response to his requests for parallel education allowance. Mr. Abu Nqairah states that he submitted a request for decision review to the DUO/J on 14 May 2017 and the DUO/J rejected

his request on 1 June 2017 as time-barred. He further asserts that on 19 June 2017, he submitted another request for decision review which remained unanswered.

5. Mr. Abu Nqairah maintains that he did not receive a letter dated 29 June 2014 informing him that he was not entitled to the parallel education allowance. Usually when a confidential private letter is sent to the person involved, he or she would sign for receipt of such letter, which he never did. He further argues that he had sent a message and applied for the allowance after 29 June 2014 and had not received a reply and that he would have been informed in the course of this correspondence had a letter indeed been sent on 29 June 2014.

6. Mr. Abu Nqairah asserts that he received an administrative decision from the DUO/J on 31 May 2017.

7. In view of the foregoing, Mr. Abu Nqairah requests the Appeals Tribunal to vacate the UNRWA DT Judgment.

The Commissioner-General's Answer

8. The Commissioner-General submits that the appeal is not founded on any of the grounds of appeal provided for under the Appeals Tribunal Statute. As such, the appeal is defective as the Appeals Tribunal has consistently held that it is not sufficient for an appellant to simply state his or her disagreement with the outcome of a case or repeat the arguments submitted before the Dispute Tribunal. By simply asserting that he complied with the time limits rather than criticizing the UNRWA DT's reasons for dismissing the application, Mr. Abu Nqairah is in effect simply rearguing his case before the Appeals Tribunal.

9. The Commissioner-General asserts that the UNRWA DT did not err as a matter of fact, law or procedure when it dismissed Mr. Abu Nqairah's application. The UNRWA DT was cognizant of the applicable legal framework and jurisprudence and correctly dismissed the application as not receivable. Contrary to Mr. Abu Nqairah's narrative of the facts, he first submitted a decision review request in Arabic which was received by the DUO/J on 4 May 2017. The Commissioner-General argues that Mr. Abu Nqairah conceded in his first request for decision review and in his application to the UNRWA DT that he had known of the non-payment of (and thus lack of entitlement to) the parallel education allowance by 2009 and that since then he and others had been demanding payment.

10. Even assuming, *arguendo*, that Mr. Abu Nqairah did not receive the letter dated 29 June 2014 (which the Commissioner-General refutes), it remains that by his own admission, he was aware of the decision not to pay him the allowance since 2009 and at the latest, he knew or ought to have known that he was not entitled to receive it when Area Staff Circular No. 03/2012 dated 2 August 2012 containing the rates for teaching and non-teaching staff was published. Therefore, his request for decision review was unduly late in any case.

11. Moreover, the Commissioner-General claims that Mr. Abu Nqairah failed to raise the issue of non-receipt of the letter dated 29 June 2014 although the letter had been mentioned in the Commissioner-General's reply before the UNRWA DT and Mr. Abu Nqairah made observations on the reply and therefore had an opportunity to challenge the proposition that he had received the letter. The issue of non-receipt of the letter is therefore a new element which, in accordance with the consistent Appeals Tribunal jurisprudence, may not be introduced for the first time on appeal and is thus inadmissible.

12. In light of the foregoing, the Commissioner-General requests that the Appeals Tribunal dismiss the appeal in its entirety.

Considerations

13. The issue before this Tribunal is whether the UNRWA DT correctly concluded that Mr. Abu Nqairah's application was non-receivable *ratione materiae*.

14. The UNRWA DT found that on 29 June 2014 Mr. Abu Nqairah had received notification of the administrative decision to refuse to pay the parallel education allowance, and that, accordingly, that day, the 60-calendar day time limit to request decision review began to run. Accordingly, the UNRWA DT concluded that both requests (in Arabic and in English), submitted, respectively, on 4 May 2017 and 19 June 2017 were far beyond the time limits prescribed by the relevant provision. The UNRWA DT further determined that, to the extent that Mr. Abu Nqairah was contesting the response to his request for decision review dated 1 June 2017, that response was not an appealable administrative decision.

15. We find that in his appeal, Mr. Abu Nqairah failed to state the grounds of appeal relied upon, in terms of Article 2(1) of the Appeals Tribunal Statute. As noted in *Krioutchkov*³ and *Aliko*,⁴ the Appeals Tribunal is not an instance for a party to reargue the case without identifying the defects and demonstrating on which grounds an impugned Dispute Tribunal judgment is erroneous. For this reason alone, his appeal must fail.

16. In any event, we agree with the UNRWA DT. First, we recall that 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”.⁵ Further, “[t]he date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine”.⁶

17. Moreover, “[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”.⁷ This is why 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.

18. 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.⁸ The Tribunals have no jurisdiction to waive deadlines for requests for management evaluation or decision review.⁹ This jurisprudence is in full accordance with the

³ *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-711, paras. 20-22.

⁴ *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540, paras. 28-29.

⁵ *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.

⁶ *Ibid.*

⁷ *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-546, para. 46.

⁸ *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.

⁹ *Faust v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-695, para. 40, citing *Eggesfield v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-402, para. 23 and citations therein.

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.

19. Second, the evidence in the case file bears out the UNRWA DT's finding that Mr. Abu Nqairah had requested payment of the parallel education allowance in 2009 and that he had reiterated this request in 2013 and received a final decision at the latest on 29 June 2014—in an interpretation most favourable to him.

20. This finding is primary because, by his own admission, Mr. Abu Nqairah acknowledged, in his application to the UNRWA DT, that he was perfectly aware of the fact that he had not received the allowance he had been requesting to be paid since 2009. Not having received a positive answer, Mr. Abu Nqairah knew or should reasonably have known that his request had been refused since 2009. Indeed, in light of our jurisprudence, the *Rosana* test applies insofar as silence from the Agency in response to a request ordinarily constitutes a negative reply, resulting in an implied administrative decision.¹⁰

21. Further, we reject Mr. Abu Nqairah's claim that he did not receive the letter dated 29 June 2014. This issue was not raised before the UNRWA DT and thus cannot be introduced for the first time on appeal,¹¹ in respect of the two-tier principle of administration of justice. We find that Mr. Abu Nqairah's submission in this regard is not receivable.

¹⁰ *Rosana v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-273, para. 25, which states: "The date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine" (emphasis added). More recently, *Fitsum v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-804, para. 19.

¹¹ *Ho v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-791, para. 37; *Haimour and Al Mohammad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-688, para. 38; *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-547, para. 25; *Simmons v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-221, para. 61.

22. Lastly, there is no merit in Mr. Abu Nqairah's contention that the decision on his request for decision review is challengeable before the internal justice system. The UNRWA DT was perfectly cognizant of the applicable jurisprudence, according to which the response to a request for decision review (or likewise for management evaluation) is not an administrative decision subject to judicial review, as we clearly stated in *Auda*: "[T]he judicially reviewable administrative decision is the underlying decision 'that is alleged to be in non-compliance with the terms of appointment or the contract of employment of the staff member'".¹²

23. Having requested decision review as late as 2017, Mr. Abu Nqairah failed to comply with the time limits set forth in the relevant UNRWA provisions, especially Area Staff Rule 111.2, which provides:¹³

DECISION REVIEW

1. 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: (...)

...

3. 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.

24. The Appeals Tribunal holds that the UNRWA DT properly determined that the application was not receivable. Accordingly, the appeal fails.

¹² *Auda v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-740, para. 22, citing *Nwuke v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-697, para. 22, in turn quoting *Kalashnik v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-661, paras. 25-30.

¹³ Emphasis added.

Judgment

25. The appeal is dismissed and Judgment No. UNRWA/DT/2017/043 is affirmed.

Original and Authoritative Version: English

Dated this 29th day of June 2018 in New York, United States.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Raikos

Entered in the Register on this 10th day of August 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar