



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

Judgment No. 2020-UNAT-1056

Waleed Mustafa Madhoun

(Appellant)

v.

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

JUDGMENT

Before:	Judge John Raymond Murphy, Presiding Judge Graeme Colgan Judge Kanwaldeep Sandhu
Case No.:	2020-1390
Date:	30 October 2020
Registrar:	Weicheng Lin

Counsel for Mr. Madhoun: Amer Abu-Khalaf, LOSA

Counsel for Commissioner-General: Rachel Evers

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. Mr. Madhoun appeals against the Judgment of the UNRWA Dispute Tribunal that his application was time-barred. We find that Mr. Madhoun's application to the UNRWA Dispute Tribunal was 8 days late and not receivable and accordingly dismiss the appeal.

Facts and Procedure

2. Mr. Madhoun joined UNRWA on 10 September 2005 as an Assistant Pharmacist at the Kraymeh Health Point. At the material time in November 2016, he was employed as a Pharmacist at the Amman New Camp Health Centre.

3. On 4 December 2016, there was a report of possible misconduct against Mr. Madhoun, alleging that he had worked at a private pharmacy without the Agency's authorisation during his sick leave on 19 and 20 November 2016.

4. An investigation ensued. In August 2017, the investigation was concluded which determined that the allegations against Mr. Madhoun were substantiated and that he had acted in violation of the Agency's regulatory framework. After receiving submissions from Mr. Madhoun, the Director of UNRWA Operations, Jordan (DUO/J), informed him, in a letter dated 17 April 2018, that he had reviewed all the relevant evidence and concluded that Mr. Madhoun had engaged in the misconduct of entitlement fraud and unauthorized outside activity. Consequently, he decided to impose on Mr. Madhoun the disciplinary measures of i) a written censure and ii) a fine equivalent to one month's salary.

5. The Director advised Mr. Madhoun of his right to request a decision review within 60 calendar days from the date of receipt of the decision letter.

6. Mr. Madhoun submitted a request for decision review to the UNRWA Field Office Director/Director of Human Resources, HQ Amman. There was no response to Mr. Madhoun's decision review request.

7. On 18 September 2018, Mr. Madhoun filed an application with the UNRWA Dispute Tribunal to contest the Agency's decision to impose on him the disciplinary measures of a written censure and a fine equivalent to one month's salary. In paragraph 17 of the application he recorded that he had requested a decision review of the impugned decision

on 13 May 2018 and had not received a response. He attached the request as Annex 11 to his application which is recorded in the schedule of supporting documents as: “Request for decision review” and is dated “13/05/2018”.

8. On 23 November 2018, the Commissioner-General of UNRWA filed his reply. He maintained, as a preliminary issue, that Mr. Madhoun’s application before the UNRWA Dispute Tribunal was time-barred and not receivable because it had not been filed within 90 days after the expiry of the 30-day decision review period, i.e. by 10 September 2018.

9. Mr. Madhoun sought permission to submit his observations on the Respondent’s reply. By Order No. 54 dated 14 March 2019, the UNRWA Dispute Tribunal granted Mr. Madhoun’s request. On 29 March 2019, Mr. Madhoun submitted his observations, with attachments. Included in the attachments was an e-mail dated 22 May 2018. The addressor of the e-mail was Mr. Yazan Abu Haija, a staff member of UNRWA, and the addressee was Ms. Samah Sulaiman of the Human Resources Office in the Jordan Field Office (JFO). The e-mail’s subject line read “Request for Decision Review”. In the e-mail, Mr. Haija stated that he was attaching “a request for decision review from pharmacist Walid Al-Madhoun from Al-Wihdat Clinic”. However, no signed request for decision review by Mr. Madhoun was attached to the e-mail.

10. In Judgment on Receivability No. UNRWA/DT/2020/008, the UNRWA Dispute Tribunal agreed with the Commissioner-General of UNRWA and dismissed Mr. Madhoun’s application as not receivable *ratione temporis*. Article 8(1)(d) of the Statute of the UNRWA Dispute Tribunal and Article 3(1) of its Rules of Procedure require an application to be filed within 90 days of the expiry of the relevant response period for the decision review if no response to the request was provided. The response period is defined to be 30 calendar days after the submission of the request for decision review, meaning that where there is no response to a request for decision review, the application must be filed no later than 120 days from the date of the request. The UNRWA Dispute Tribunal noted in paragraph 30 of the Judgment it was “not contested” that Mr. Madhoun had submitted his request for decision review on 13 May 2018, and had filed his application 128 days later on 18 September 2018, just over a week after the time period had expired. The UNRWA Dispute Tribunal made no reference in the Judgment to Mr. Madhoun’s observations of 29 March 2019 or the e-mail of 22 May 2018 titled “Request for Decision Review”.

11. Mr. Madhoun filed an appeal on 3 May 2020. The Commissioner-General filed an answer on 3 July 2020.

Submissions

Mr. Madhoun's Appeal

12. Mr. Madhoun requests the Appeals Tribunal to set aside the impugned Judgment and order that his UNRWA DT application “be entertained de novo”.

13. Mr. Madhoun submits that the UNRWA Dispute Tribunal erred in finding that his application was not receivable. He maintains that he only filed the request for decision review on 22 May 2018, as evidenced by the e-mail of 22 May 2018 with attachments addressed to JFO-HR. Since the Agency did not respond to his request, he had until 20 September 2018 to file his application with the UNRWA Dispute Tribunal. His application filed on 18 September 2018 was thus within the time limit.

The Commissioner-General's Answer

14. The Commissioner-General requests that the Appeals Tribunal dismiss Mr. Madhoun's appeal in its entirety.

15. The Commissioner-General submits that the UNRWA Dispute Tribunal did not err in fact or law when it dismissed Mr. Madhoun's applications as not receivable *ratione temporis*. The UNRWA Dispute Tribunal was correct in its determination that the uncontested fact was that Mr. Madhoun had submitted his request for decision review on 13 May 2018. Indeed, in Part IV of his UNRWA DT application, Mr. Madhoun asserted that he had requested a decision review on 13 May 2018 and reiterated that point in paragraph 17 of his application.

16. The Commissioner-General further submits that Mr. Madhoun's reference to the e-mail of 22 May 2018 and any argument based on 22 May 2018 as the date for computing the period for a timeout application to the UNRWA Dispute Tribunal should be rejected, because this is an attempt to introduce “new elements” that were not put forward before the UNRWA Dispute Tribunal.

Considerations

17. Article 8 of the UNRWA Dispute Tribunal Statute in relevant part reads:

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.

18. Article 3(1) of the UNRWA DT Rules of Procedure in relevant part reads:

An application shall be filed with the Tribunal through the Registrar within:

...

(b) 90 calendar days after the expiry of the relevant response period for the decision review, i.e., 30 calendar days.

19. In two places in his application to the UNRWA Dispute Tribunal, Mr. Madhoun stated that he had submitted his request for decision review on 13 May 2018. The e-mail of 22 May 2018 is seemingly contradictory, but is insufficient evidence that the request was submitted on that date. The e-mail refers to an attached request, but that does not form part of the record.

20. Moreover, the e-mail by Mr. Haija is itself not enough to show that the request was submitted on that date. Firstly, there is no evidence that Mr. Haija had any apparent right or authority to make a request on behalf of Mr. Madhoun. Mr. Madhoun offers no explanation for why Mr. Haija acted on his behalf, nor does he describe the circumstances of how it came to be that his request dated 13 May 2018 was filed (if ever) with the UNRWA Field Office Director on 22 May 2018. Secondly, the e-mail sent by a Mr. Haija to a Ms. Sulaiman of Human Resources Office, JFO, cannot be regarded as a proper request for decision review. UNRWA Area Staff Rule 111.2(1) requires a staff member to submit a written request for a decision review to the UNRWA Field Office Director in charge of the Field Office. Ms. Sulaiman was not the UNRWA Field Office Director and there is no evidence that Ms. Sulaiman was authorised to receive a request for decision review. Even if she were, there

is still no evidence showing that the request for decision review attached to the e-mail (but not included in the record of evidence) was submitted by Mr. Madhoun on 22 May 2018 and not on 13 May 2018, as he twice said it had been in his application. On the face of it, the e-mail of 22 May 2018 merely referred the attached request to JFO-HR. The attached request was most likely the one dated 13 May 2018, included by Mr. Madhoun in his Schedule of supporting documents, and confirmed by him in paragraph 17 of his application as having been submitted on that date.

21. In the absence of compelling evidence to the contrary, the UNRWA Dispute Tribunal accordingly did not err in accepting (on the basis of Mr. Madhoun's averments in his application) that the date of the request was 13 May 2018. Mr. Madhoun accordingly failed to discharge his evidentiary burden to establish that his application was filed timeously. That being the case, the application was 8 days late and, hence, as the UNRWA Dispute Tribunal correctly found, not receivable.

Judgment

22. The appeal is dismissed and Judgment No. UNRWA/DT/2020/008 is affirmed.

Original and Authoritative Version: English

Dated this 30th day of October 2020.

(Signed)

Judge Murphy, Presiding
Cape Town, South Africa

(Signed)

Judge Colgan
Auckland, New Zealand

(Signed)

Judge Sandhu
Vancouver, Canada

Entered in the Register on this 9th day of December 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar