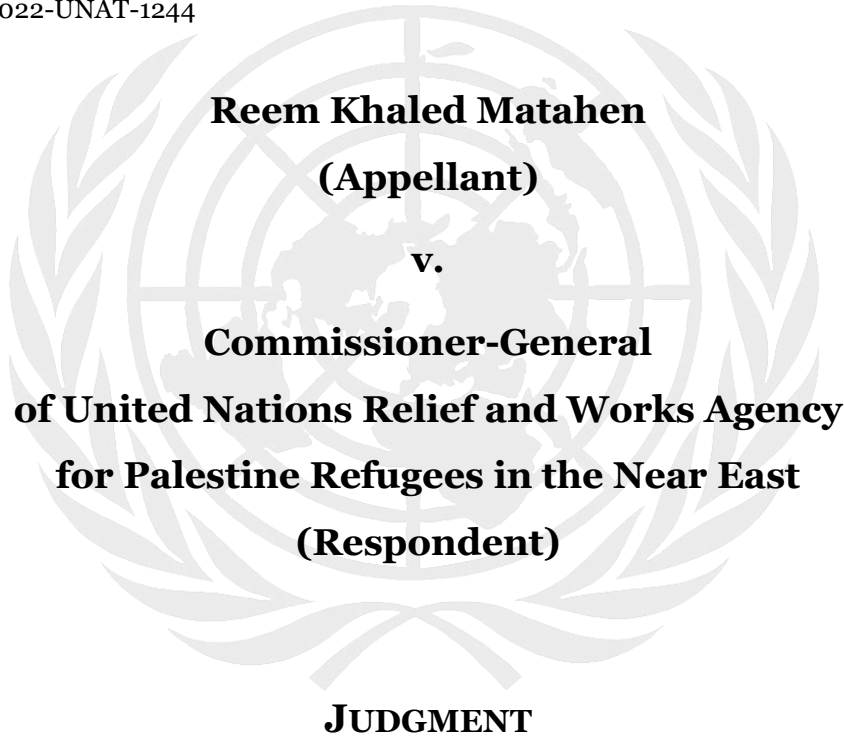




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2022-UNAT-1244

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

JUDGMENT

Before:	Judge Dimitrios Raikos, Presiding Judge Kanwaldeep Sandhu Judge Martha Halfeld
Case No.:	2021-1570
Date of Decision:	1 July 2022
Date of Publication:	25 July 2022
Registrar:	Weicheng Lin

Counsel for Appellant: Rula Khaled Matahen
Counsel for Respondent: Ana Peyro-Llopis

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal or UNAT) has before it an appeal against Judgment No. UNRWA/DT/2021/019 by which the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees (UNRWA DT or UNRWA Dispute Tribunal, and UNRWA or Agency, respectively) dismissed as non-receivable *ratione materiae* Ms. Reem Khaled Matahen's application challenging the decision of UNRWA not to grant her request for Early Voluntary Retirement (EVR).
2. Ms. Matahen filed an appeal on 23 June 2021, which was forwarded to the Commissioner-General of UNRWA for an answer by 31 August 2021. But the Commissioner-General did not submit an answer before the deadline. His motion for a waiver of the time limit and for leave to file an answer was rejected.
3. For the reasons set out below, we dismiss the appeal.

Facts and Procedure

4. Effective 2 April 2000, Ms. Matahen joined the Agency. She held the post of Technical Instructor on a temporary indefinite appointment, Grade 12, Step 8, at the Education Department, Amman Training Centre, Jordan Field Office (JFO).
5. In 2018, Ms. Matahen requested Special Leave Without Pay (SLWOP) in order to work as Assistant Professor/Accounting at Iman Abdulrahman Bin Faisal University, in Damman, Saudi Arabia. The Agency granted her request. Ms. Matahen's SLWOP was extended several times at her own request, lastly until 20 January 2020.
6. Towards the end of her SLWOP, Ms. Matahen was informed that her SLWOP could not be extended and therefore she was requested either to resign or to return to duty.
7. In an e-mail dated 8 January 2020 addressed to the Staff Services Officer (SSO), JFO, Ms. Matahen requested to be granted an EVR.
8. In a response e-mail dated 13 January 2020, the SSO informed Ms. Matahen that her request for EVR could not be processed since the Agency was not accepting EVR applications.

9. In an e-mail also dated 13 January 2020 addressed to the Director of Human Resources (DHR), UNRWA, Ms. Matahen reiterated her request to be granted an EVR on the grounds that she did not have a residence in Amman and therefore she needed to stay in Saudi Arabia to secure a decent residence as she had no other source of support than her current salary. She stated that the Agency's suggestion for her to resign was not desirable as she would lose a lot by resignation. Ms. Matahen followed up with a reminder e-mail on 15 January 2020, but did not receive any response.

10. Ms. Matahen resigned on 19 January 2020.

11. In an e-mail dated 20 January 2020 addressed to the Acting Commissioner-General (A/CG) copying *inter alia* the DHR, Ms. Matahen sought the A/CG's intervention in support of her request for EVR.

12. In an e-mail also dated 20 January 2020, the A/CG informed Ms. Matahen that "the Agency is in very dire financial circumstances at present so I am afraid I cannot countenance EVR at this time". The A/CG encouraged her to remain at Al Imam Abdulrahman Bin Faisal University.

13. The DHR responded on 21 January 2020. Echoing the A/CG, the DHR advised Ms. Matahen that granting an EVR was not within the financial resources of the Agency, and that the Agency could not support her EVR request. The DHR added that the Agency was considering very few EVR requests on the basis of compelling humanitarian circumstances, without knowing if there were resources to approve them.

14. In two e-mails both dated 17 August 2020, Ms. Matahen asked the DHR for a reconsideration of her EVR request, claiming that an EVR request had been approved for a staff member in circumstances "almost similar" to hers.

15. In an e-mail dated 20 August 2020, the DHR confirmed to Ms. Matahen that the rejection of her EVR request was consistent and in accordance with the guidelines governing all EVR requests, and denied her request for a reconsideration of the original negative decision.

16. On 23 September 2020, Ms. Matahen filed an application with the UNRWA Dispute Tribunal against the decision not to grant her request for EVR. She recounted the history of her appeals, starting with her e-mails to the DHR on 13 January 2020 and her e-mail to the A/CG on 20 January 2020. According to Ms. Matahen, after the A/CG and the DHR had

responded, she did not pursue the matter until nearly seven months later. On 17 August 2020, she wrote to the DHR requesting a reconsideration of her EVR request on the ground of discriminatory and inconsistent treatment of staff in similar situations. She decided to pursue the matter by applying to the UNRWA DT against the DHR's negative response on 17 August 2020, "hoping to receive some answers and [fair] treatment similar to the one that [her] colleagues [had] received".

17. Also on 23 September 2020, Ms. Matahen filed a separate request for extension of time to file an application, in which she asked the UNRWA DT to accept her late application.

18. On 2 October 2020, the Commissioner-General submitted a response, objecting to Ms. Matahen's motion for time limit extension, as there was no evidence of exceptional circumstances that she had been prevented from complying with the time limits for appeals. The Commissioner-General noted that Ms. Matahen had been clearly advised on 21 January 2020 that the Agency had denied her EVR request, but while it was open to her to appeal that decision, she chose not to do so. The Commissioner-General argued that gaining further information at a later date was no exceptional circumstance.

19. The Commissioner-General's response was transmitted to Ms. Matahen on 4 October 2020. Two days later, in a submission dated 6 October 2020 under the caption of "motion to extend time to submit application", Ms. Matahen made comments on the Commissioner-General's objection, asking the UNRWA DT to grant her motion of 23 September 2020 for time limit extension.

20. It appears that the Commissioner-General did not file a reply to Ms. Matahen's application before the UNRWA Dispute Tribunal.

21. In Judgment on Receivability No. UNRWA/DT/2021/019 dated 29 April 2021, the UNRWA DT disposed of both Ms. Matahen's request for an extension of time to file an application and her application on the merits, in one judgment. It found that she had failed to present evidence of an exceptional circumstance that had prevented her from exercising her right of appeal within the time-limits. In the view of the UNRWA DT, the knowledge that she acquired on 17 August 2020 about the Agency's approval of a similar EVR request, even if truthful, "cannot be considered as an exceptional circumstance that prevented her from

exercising her right of appeal”.¹ On merits, the UNRWA DT concluded that Ms. Matahen’s application was not receivable *ratione materiae*, because the two e-mails that she had sent to the DHR and the A/CG were “informal attempts to resolve her issue”, and they were not “an unambiguous written request”² for decision review, and neither of them made any reference to a request for decision review, or was perceived as such. Furthermore, her request for decision review should have been submitted to the Director of the JFO since Ms. Matahen was a JFO staff member. Since the 60-day time limit for submitting her request for decision review began to run on 13 January 2020, and Ms. Matahen did not submit such a request before or on 13 March 2020, the UNRWA DT concluded that her application was not receivable *ratione materiae*.

22. On 23 June 2021, Ms. Matahen appealed the UNRWA DT Judgment to the Appeals Tribunal. But as noted above, the Commissioner-General did not file an answer to the appeal before the deadline.

23. On 3 September 2021, the Commissioner-General filed a motion requesting a waiver of the time limit and for leave to file an answer to the appeal. In support of this request, he explained that the Counsel assigned to this case had been on leave and resumed work only after the 60-day time-limit to submit an answer had elapsed, and that the case could not be reassigned to another Counsel due to the limited human resources. In Order No. 422 (2021) dated 9 September 2021, this Tribunal denied the Commissioner-General’s motion.

Submissions

Ms. Matahen’s Appeal

24. Ms. Matahen submits that the UNRWA DT was not fair and consistent when it failed to give her application a “chance”. She also submits that, by denying her request for extension of time to file her application, the UNRWA DT had failed to consider the constraints due to COVID-19.

¹ Impugned Judgment, para. 22.

² *Ibid.*, para. 29.

25. Ms. Matahen refers to “a similar case”, in which the UNRWA DT found for the staff member.³ Furthermore, she claims that the Agency was biased in dealing with EVR requests from local staff and was inconsistent based on management preferences in contravention of Area Staff Circular A/2/2017 where only humanitarian cases receive priority for the approval of EVR.

26. Ms. Matahen submits that the Agency erred in law by disregarding Area Staff Rules Cod. a/59/rev.25, Paragraph 8 (c), and Area Staff Circular A/2/2017 on EVR.

27. Ms. Matahen claims that the UNRWA Management threatened the staff for using known information or similar cases in their EVR requests.

Considerations

28. Article 2(1) of the UNRWA DT Statute provides, in part:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Commissioner-General as the Chief Executive Officer of UNRWA:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance.

29. Ms. Matahen’s appeal is defective in that it fails to identify any of the five grounds of appeal set out in Article 2(1) of the Statute of the Appeals Tribunal as forming the legal basis of her appeal. Article 2(1) of our Statute provides that:

... The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

- (a) Exceeded its jurisdiction or competence;
- (b) Failed to exercise jurisdiction vested in it;

³ See *Abu Sukainah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2021/002, dated 12 January 2021. In paragraph 45, the UNRWA DT held that “staff members who are eligible for EVR and are facing termination under Staff Regulation 9.1, other than on grounds of health, have an unconditional right to leave the Agency’s service by EVR. Thus, in the present case, the Agency’s decision to terminate the Applicant’s appointment in the interest of the Agency was unlawful and must be rescinded.” There was no appeal from this Judgment.

- (c) Erred on a question of law;
- (d) Committed an error in procedure, such as to affect the decision of the case; or
- (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

30. These provisions are supplemented by Article 8(2) of the Appeals Tribunal Rules of Procedure, which provides, in part, that: “The appeal form shall be accompanied by: (a) A brief that explains the legal basis of any of the five grounds for appeal set out in article 2.1 of the statute of the Appeals Tribunal that is relied upon”.

31. It follows from the above provisions that a party appealing a judgment of the UNRWA DT is unlikely to succeed in having the judgment reversed, modified or the case remanded to the UNRWA DT unless the appeal challenges the impugned judgment on one or more of the grounds referred to in Article 2(1)(a) to (e) of our Statute.

32. In the present case, Ms. Matahen has failed to specifically identify the errors allegedly committed by the UNRWA Dispute Tribunal and therefore, the appeal is defective for that reason alone. Her appeal brief lays out in a generic and vague way, without even mentioning or making any reference to the relevant facts, that the Agency erred by not giving her any chance to be treated in a fair way; was biased in dealing with EVR requests of local staff; and the UNRWA DT released a positive judgment in a similar case, etc. Nowhere in her appeal brief does Ms. Matahen explain how the UNRWA DT, in dismissing her application on receivability grounds, exceeded, or failed to exercise, its jurisdiction or competence, erred on a question of law or procedure, or erred on a question of fact, resulting in a manifestly unreasonable decision.

The UNRWA DT Judgment

33. Even assuming, in Ms. Matahen’s favour, that the allegations in her appeal brief are meant to state that the UNRWA DT committed errors of law, the appeal must fail.

34. Article 8(3) of the UNRWA DT Statute provides: “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.”

35. With regard to Ms. Matahen's written request for an extension of time to file an application, the UNRWA DT did not err in finding that her allegation that she had only found out on 17 August 2020 that another similar request for EVR had been granted by the Agency did not come within the parameters set out in Article 8(3) of the UNRWA DT Statute. Indeed, even assuming *arguendo* that the alleged fact was true, this did not constitute an exceptional circumstance, namely, a fact beyond her control,⁴ which prevented Ms. Matahen from exercising her right of appeal in a timely manner, such as to justify the granting of her request for a waiver of the time limit by the UNRWA DT.

36. As the UNRWA Dispute Tribunal was correct in not extending the time limit, it therefore had no jurisdiction to receive the application. However, it went further to opine on the merits of Ms. Matahen's application for review of the contested decision and it correctly dismissed it for the following reasons.

37. Area Staff Rule 111.2 provides, in relevant parts, as follows:

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:

(A) in the case of staff members of Field Offices, to the UNRWA Field Office Director in charge of the Field Office[.]

.....

3. A staff member shall submit a request for decision review within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

38. The UNRWA DT rejected Ms. Matahen's application, holding that her application was not receivable *ratione materiae* because she had not submitted a request for decision review, which is a mandatory requirement under Area Staff Rule 111.2 for a staff member to bring his/her case to the Tribunal.

⁴ See *Shehadeh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-689, para. 19.

39. As the UNRWA DT found:⁵

... In her application, the Applicant refers to her 13 January 2020 email to the DHR, as well as her 20 January 2020 email to the A/CG as requests for decision review

...

... It is clear that the Applicant's requests to the DHR and to the A/CG were informal attempts to resolve her issue with the Agency and cannot be considered as "an unambiguous written request which clearly identifies the staff member and the contested decision". Furthermore, neither of the two emails makes any reference to a request for decision review. The DHR's and the A/CG's responses also show clearly that the Applicant's emails were not perceived as a request for a decision review. Lastly, since the Applicant was a JFO staff member, her request for decision review should have been submitted to, and decided by, the Director of the Field Office in Jordan in accordance with Area Staff Rule 111.2 (1) (A).

... The Tribunal does not have the power to suspend, waive or extend the deadlines for decision review. Consequently, the 60-calendar-day limitation period to request review of the Agency's decision not to grant Applicant's request for EVR began to run on 13 January 2020, and the Applicant had until 13 March 2020 to submit her request for decision review. It is clear from the case record that the Applicant did not submit a request for decision review. The option to submit such a request is time-barred since 13 March 2020.

40. In her appeal, Ms. Matahen does not attack the UNRWA DT's holding on inadmissibility of her application. She does not even put forward grounds against that holding or show why the findings or reasoning of the UNRWA DT could have been erroneous. The immaterial matters that she submits in her short appeal brief that: the UNRWA DT erred in dismissing her application; the UNRWA DT had released a positive judgment in a similar case; the Agency erred in applying Area Staff Rules and Area Staff Circular A/2/2017 on EVR; the Agency was biased in dealing with EVR requests from local staff and was threatening the staff, etc., attach to the merits of her case and not to the receivability of her application to the UNRWA DT. Be that as it may, under the specific circumstances of the case at bar, the two-pronged reasoning of the UNRWA DT that Ms. Matahen's application was not receivable *ratione materiae* because she had not addressed her "request for decision review" to the competent administrative authority, i. e., the Director of the JFO, and also because eventually no such request had been filed by her, is unassailable.

⁵ Impugned Judgment, paras. 28 to 30.

41. In the light of the foregoing, the appeal falls to be dismissed.

Judgment

42. Ms. Matahen's appeal is dismissed, and Judgment No. UNRWA/DT/2021/019 is affirmed.

Original and Authoritative Version: English

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

(Signed)

Judge Raikos Presiding

(Signed)

Judge Sandhu

(Signed)

Judge Halfeld

Judgment published and entered into the Registry on this 25th day of July 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar