



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

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Judgment No. 2013-UNAT-363

**Chaaban  
(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 Sophia Adinyira, Presiding  
Judge Inés Weinberg de Roca  
Judge Rosalyn Chapman

**Case No.:** 2012-411

**Date:** 17 October 2013

**Registrar:** Weicheng Lin

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**Counsel for Appellant:** Amer Abu Khalaf/Ghada A. Yasin

**Counsel for Respondent:** Anna Segall

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Houssam Mustapha Chaaban against Judgment No. UNRWA/DT/2012/038/Corr.01, issued by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT and UNRWA or Agency, respectively) on 21 August 2012 in the case of *Chaaban v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Chaaban appealed on 15 November 2012 and the Commissioner-General of UNRWA (Commissioner-General) answered on 11 February 2013.

### **Facts and Procedure**

2. Mr. Chaaban is a former staff member of UNRWA. He joined the Agency on 19 July 2005 as an Information Systems Technical Assistant for the Palestinian Refugees Records Project, grade 12. On 16 November 2006, he was promoted to the post of Scanning Team Supervisor, grade 14. Mr. Chaaban was separated from the Organization upon closure of the project on 28 February 2009.

3. Prior to his separation, Mr. Chaaban applied for two posts with UNRWA. By letter dated 28 January 2009 to the Director of UNRWA Affairs, Lebanon, Mr. Chaaban requested administrative review of the decision not to invite him for tests in connection with either post.

4. By letter dated 16 March 2009, the Director of UNRWA Affairs, Lebanon, provided reasons for not shortlisting Mr. Chaaban for either post. Mr. Chaaban appealed the decision to the former Area Joint Appeals Board (AJAB) on 2 April 2009. As of 1 July 2009, the AJAB was abolished and Mr. Chaaban's appeal was transferred to the UNWRA DT.

5. On 21 August 2012, the UNRWA DT issued Judgment No. UNRWA/DT/2012/038/Corr.01. The UNRWA DT recalled that, pursuant to Area Staff Rule 111.3, Mr. Chaaban had "30 days from the date of the receipt of a reply from the UNRWA Field Office Director, or if no reply has been received from the latter within thirty days of the date of the staff member's letter, then within the next thirty days". In the absence of a reply by the Commissioner-General within 30 days from Mr. Chaaban's letter, the time limit for filing an appeal with the AJAB expired 60 days from the filing of Mr. Chaaban's request for administrative review, i.e. 29 March 2009. Since Mr. Chaaban's

appeal was filed on 2 April 2009, the UNRWA DT concluded that the appeal was time-barred and rejected it as such. The UNRWA DT considered that, given the transition between the former and the current internal justice system, it would be “in the interest of justice to allow the Respondent an extension of time to file his reply by 18 August 2012”.<sup>1</sup>

### **Submissions**

#### **Mr. Chaaban’s Appeal**

6. Mr. Chaaban submits that the UNRWA DT failed to exercise its jurisdiction when it dismissed his application as non-receivable. He claims that it is unfair that the UNRWA DT on the one hand dismissed his application as time-barred because it was filed four days past the deadline, whilst on the other hand it waived the time limit to allow the Commissioner-General to file his reply more than three years late. The UNRWA DT has the authority to waive time limits in the interest of justice and it should have done so in Mr. Chaaban’s case.

7. Mr. Chaaban further contends that the UNRWA DT erred in law in granting the Commissioner-General leave to participate in the proceedings on the basis of “transitional measures”. While Article 31(1) of the UNRWA DT Rules of Procedure provides for transitional measures, the AJAB was in existence until 1 July 2009. The Commissioner-General’s reply was due on 1 June 2009, which did not fall into the transitional period. Furthermore, the Commissioner-General did not file a motion seeking leave to file a late reply nor did the UNRWA DT *sua sponte* issue an order for the Commissioner-General to reply.

8. Mr. Chaaban alleges unequal treatment of the staff and the Administration on the ground that “several applications by staff members are often dismissed” as time-barred while the Commissioner-General “enjoys *carte blanche* in replying to applications at its leisure and without reprimand”. In the present case, the Commissioner-General’s delays deprived Mr. Chaaban of timely adjudication of his case.

9. Mr. Chaaban requests that the Appeals Tribunal reverse the UNRWA DT Judgment and remand the case to the UNRWA DT for determination on the merits.

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<sup>1</sup> Impugned Judgment, para. 4.

**The Commissioner-General's Answer**

10. The Commissioner-General contends that the UNRWA DT properly exercised its jurisdiction by deciding to dismiss Mr. Chabaan's application to the AJAB as time-barred.

11. The Commissioner-General further submits that the UNRWA DT properly exercised its discretionary authority to permit the Commissioner-General to participate in the proceedings.

12. The Commissioner-General requests that the Appeals Tribunal affirm the UNRWA DT Judgment and dismiss the appeal in its entirety.

**Considerations**

13. Mr. Chaaban's main contention is that the UNRWA DT exercised its jurisdiction unfairly by, on the one hand, dismissing his case as time-barred because it was filed four days outside the statutory time limit and, on the other hand, permitting the Commissioner-General to file his reply more than three years out of time.

14. Mr. Chaaban does not allege that there were special circumstances that warranted a waiver of time or that the UNRWA DT failed to consider or erred in its appreciation of such circumstances. Mr. Chaaban mainly argues that the UNRWA DT should have waived the time limit for his application since it did so, and for a much longer period of time indeed, with respect to the Commissioner-General's reply.

15. Having considered the record as well as the parties' submissions, we find no error in the UNRWA DT's finding. Under former UNRWA Area Staff Rule 111.3(4), "[a]n appeal shall not be receivable by the Joint Appeals Board unless the above time limits have been met, provided that the Board may waive these time limits in exceptional circumstances". Under Article 8(3) of the UNRWA DT Statute, "[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 of time and only in exceptional cases. ..."

16. Mr. Chaaban filed his application after the time limit had lapsed. He did not ask for a waiver of time before the UNRWA DT or present arguments for the UNRWA DT's consideration of a waiver of time. The UNRWA DT therefore did not err in finding his application time-barred.

17. We are now turning to Mr. Chaaban's contention that the UNRWA DT erred in granting the Commissioner-General leave to participate in the proceedings on the basis of "transitional measures". Mr. Chaaban in particular argues that the UNRWA DT erred in accepting the reply in circumstances where the Commissioner-General did not file a motion seeking leave to file a late reply and the UNRWA DT did not order *sua sponte* that the Commissioner-General file a reply. He also argues that the Commissioner-General's reply was due on 1 June 2009, which did not fall into the transitional period.

18. Article 30 of the UNRWA DT Rules of Procedure provides that "[s]ubject 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". Contrary to Mr. Chaaban's contention, the UNRWA DT has, in principle, the discretion to accept UNRWA's late reply in circumstances where UNRWA has not filed a motion seeking leave to do so and without *proprio motu* ordering UNRWA to file a reply. In the present case, the UNRWA DT accepted the late reply for reasons spelled out in the Judgment and we find no error in the UNDT's approach. We will however need to determine whether the UNRWA DT committed an error by accepting the late reply for the reasons it did.

19. Having noted that UNRWA failed to respond to Mr. Chaaban's application "[d]uring the transition period" from the former to the current internal justice system, the UNRWA DT found "that it would be in the interest of justice to allow the Respondent an extension of time to file its reply by 18 August 2012". However, as Mr. Chaaban rightfully points out, the Administration's reply was due *before* the transitional period even started. The UNRWA DT granted a waiver of time after an excessive period of time had passed and based on inaccurate facts and an invalid reason.

20. We therefore find that the UNRWA DT erred in granting a waiver of time and accepting the Commissioner-General's late reply. In the present case, however, the submission of the Respondent's late reply was not prejudicial to Mr. Chaaban since his appeal to the former AJAB was time-barred in the first place.

21. For the foregoing reasons, Mr. Chaaban's appeal fails.

**Judgment**

22. The appeal is dismissed and the UNRWA DT Judgment is affirmed.

Original and Authoritative Version: English

Dated this 17<sup>th</sup> day of October 2013 in New York, United States.

*(Signed)*

Judge Adinyira, Presiding

*(Signed)*

Judge Weinberg de Roca

*(Signed)*

Judge Chapman

Entered in the Register on this 19<sup>th</sup> day of December 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar