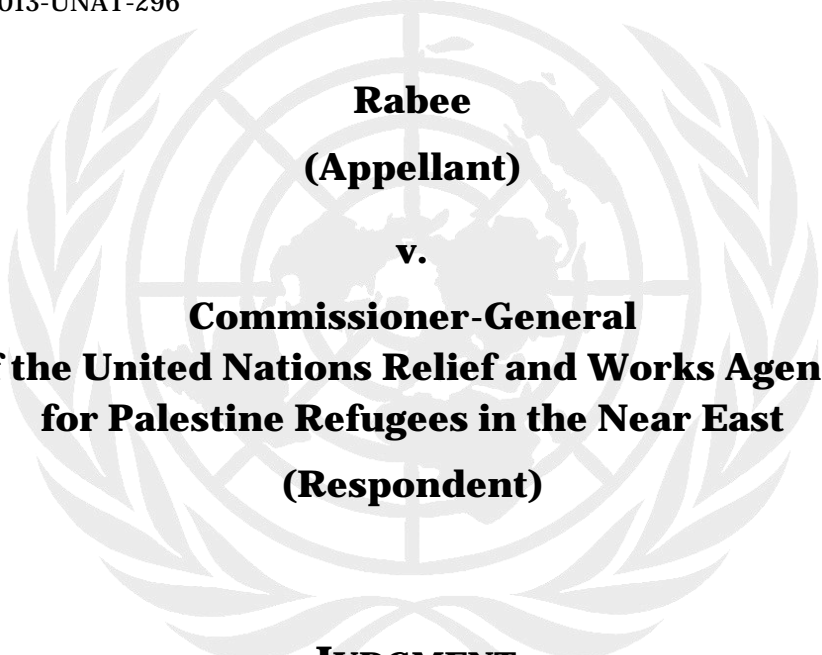




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2013-UNAT-296



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

JUDGMENT

Before:	Judge Luis María Simón, Presiding Judge Sophia Adinyira Judge Richard Lussick
Case No.:	2012-328
Date:	28 March 2013
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Anna Segall

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Jamal Mohammed Joudeh Rabee against Judgment No. UNRWA/DT/2012/021, rendered 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 23 April 2012. Mr. Rabee appealed on 29 May 2012, and the Commissioner-General of UNRWA answered on 30 July 2012.

Facts and Procedure

2. Mr. Rabee joined UNRWA in November 1995 as Technical Instructor at the Ramallah Men's Training Centre (RMTC). At the material time, he was a Senior Vocational Technical Instructor.

3. In January 2007, Mr. Rabee informed the Dean/Principal of the Education Science Facility and Ramallah Men's Training Centre (ESF & RMTC) that he had been granted a fellowship for training at the University of Pennsylvania, United States, for four months from 3 February to 2 June 2007. Mr. Rabee requested that the Dean/Principal of ESF & RMTC approve his absence on the basis of special leave with full pay (SLWFP). However, the Dean/Principal informed Mr. Rabee, sometime before 31 January 2007, that his training request could be considered only on the basis of special leave without pay (SLWOP). The Dean/Principal memorialized this discussion between him and Mr. Rabee in a memorandum dated 31 January 2007.

4. Mr. Rabee went to the United States for training and returned to work as of 26 May 2007. The Agency stopped payment of Mr. Rabee's salary for the period from 3 February through 25 May 2007.

5. In a memorandum received on 21 January 2009 by the Office of the Chief of Field Education Programme, West Bank (FEP/WB), through the Dean/Principal of ESF & RMTC, Mr. Rabee requested that his absence in 2007 for training in the United States be reconsidered as SLWFP, and that he be paid his back salary for four months. Mr. Rabee stated that he was making such a request because he had learnt that two of his UNRWA colleagues were attending the same training programme in the United States on the same fellowship grant for the same duration of four months, but on a SLWFP basis.

6. According to Mr. Rabee, on 28 January 2009, the Dean/Principal of ESF & RMTC verbally conveyed the decision taken by the Chief of FEP/WB, rejecting his request for reconsideration of the 2007 SLWOP decision, on the ground that UNRWA “[could not] go back after actions” and that to give Mr. Rabee an SLWFP would “result in cost implications”. In the view of the Chief of FEP/WB, Mr. Rabee’s two colleagues “were given [SLWFP] as no cost implications were to emerge”.

7. On 31 January 2009, Mr. Rabee sent a follow-up memorandum to the Chief of FEP/WB. In the absence of any response, he wrote on 10 March 2009 to the Director of UNRWA Operations, West Bank, with the same request. On 19 April 2009, he re-sent his 10 March 2009 memorandum to the Director, but did not receive a reply.

8. On 26 May 2009, Mr. Rabee filed an appeal with the Area Staff Joint Appeals Board (AJAB). His case was subsequently transferred to the UNRWA DT, which was established effective 1 June 2010. The Agency filed a reply on 23 March 2011.

9. In Judgment No. UNRWA/DT/2012/021, the UNRWA DT dismissed Mr. Rabee’s application as not receivable. In its view, the decision to place Mr. Rabee on SLWOP during his 2007 training in the United States was communicated to him by the memorandum of 31 January 2007, but Mr. Rabee did not request review of the SLWOP decision until 21 January 2009, nearly two years late. Moreover, his appeal with the AJAB was filed late.

Submissions

Mr. Rabee’s Appeal

10. Mr. Rabee maintains that, contrary to the findings of the UNRWA DT, he was contesting the administrative decision of discrimination which took place in January 2009 and he was requesting review on that basis. The facts giving rise to his case occurred in 2009, and not in 2007.

11. Mr. Rabee submits that he did not challenge the SLWOP decision in 2007, because there was no discrimination of treatment, as he was the only one at RMTC who had asked for a training leave in the United States. The discrimination occurred when his two colleagues were granted SLWFP for their training from February 2009 to May 2009 on the same fellowship grant.

12. When the Chief of FEP/WB failed to respond to his reconsideration request, Mr. Rabee had a 60-day time limit, i.e., until 31 March 2009, within which to request administrative review. He wrote to the Director of UNRWA Operations in West Bank on 10 March 2009, within the time limit.

13. When the Director of UNRWA Operations failed to respond to his follow-up memorandum of 19 April 2009, he had another 60-day time limit, i.e., until 19 June 2009, within which to appeal. He filed an appeal with the AJAB on 26 May 2009, again within the time limit.

Commissioner-General's Answer

14. The Commissioner-General submits that the UNWRA DT correctly characterized the administrative decision as one taken on 31 January 2007, and it correctly found that Mr. Rabee first raised the issue of his SLWOP in his letter received on 21 January 2009, nearly two years after the SLWOP decision.

15. The Commissioner-General maintains that Mr. Rabee was wrong in asserting that there was an administrative decision taken in 2009 for purpose of his appeal. The Commissioner-General stresses that the administrative decision concerning Mr. Rabee's colleagues was not of individual application in respect of Mr. Rabee.

16. The Commissioner-General further submits that the UNRWA DT was correct in concluding that Mr. Rabee's appeal to the AJAB was likewise time-barred, because even if the period for appeal were to be computed from 10 March 2009 when he wrote to the Director of UNRWA Operations, West Bank, his appeal was due by 10 May 2009. However, he only submitted his appeal on 26 May 2009, beyond the time limit.

Considerations

17. The Appellant's claims before the UNDT and his grounds of appeal before this Tribunal arise from the main fact that in 2007, his request to be paid salary during a special leave on a scholarship for training overseas was denied, whereas in 2009, other teachers like him were paid salaries during their special leave for training. Mr. Rabee moved for reconsideration of the 2007 decision rejecting his SLWFP request, on the ground of discrimination.

18. Without examining the merits of the peculiar allegation of the so-called “retrospective discrimination”, the Tribunal holds that the staff member cannot create a platform to re-open the possibilities of challenging an administrative decision not impugned at the time when it was issued, for reasons that did not exist at that time.

19. As stated by this Court in a similar case, “[a]n appellant may not unilaterally determine the date of the administrative decision” for the purpose of challenging it.¹ “The date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine.”²

20. The reconsideration sought by the Appellant was based on the analysis of administrative decisions that had no direct or particular effects on him, but on other staff members. The administrative decision that was in fact related to his petition for SLWFP had been issued and not impugned at the time. It had exhausted its effects long before the decisions related to the other staff members and the submission of reconsideration took place.

21. While it was alleged that a second administrative decision was taken in 2009 to deny Mr. Rabee’s request for reconsideration of the 2007 decision, what happened in 2009 is nothing more than a consequence of the earlier decision, which had already been implemented and executed by both parties. Thus, it is not independent nor can it re-create for the staff member the right to challenge it through management evaluation or before the UNRWA DT.

22. We thus conclude that the UNRWA DT did not err when it considered that the request for administrative review was time-barred and the appeal not receivable due to that reason.

Judgment

23. The UNRWA DT Judgment is affirmed, and the appeal is dismissed in its entirety.

¹ *Rosana v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-273, para. 24.

² *Ibid*, para. 25.

Original and Authoritative Version: English

Dated this 28th day of March 2013 in New York, United States.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Lussick

Entered in the Register on this 24th day of May 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar