



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

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Judgment No. 2014-UNAT-452

**Audeh  
(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 Luis María Simón, Presiding  
Judge Sophia Adinyira  
Judge Rosalyn Chapman

**Case No.:** 2013-522

**Date:** 27 June 2014

**Registrar:** Weicheng Lin

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**Counsel for Appellant:** Diab Khalil Tabari

**Counsel for Respondent:** Lance Bartholomeusz

**JUDGE LUIS MARÍA SIMÓN, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Mirna Audeh against Judgment No. UNRWA/DT/2013/024, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA Dispute Tribunal or UNRWA DT and UNRWA or the Agency, respectively) on 10 June 2013, in the case of *Audeh v. Commissioner-General of UNRWA*. Ms. Audeh submitted her appeal on 28 August 2013, and the Commissioner-General filed his answer on 11 October 2013.

**Facts and Procedure**

2. The UNRWA DT made the following findings of fact, which are not contested by the parties:<sup>1</sup>

... With effect from 14 October 1996 until her resignation on 5 November 2011[,] the Applicant was employed as a teacher. At the time of her resignation the Applicant held the post of teacher in English at Beit Jala Preparatory School on a fixed-term appointment that had been extended until 30 June 2014.

... On 18 October 2011, the Applicant submitted her resignation for no other reason than that of her personal circumstances at the time. Her resignation was accepted and took effect on 5 November 2011.

... Events had not worked out as the Applicant had anticipated in the United Arab Emirates. On 14 June 2012, she made an enquiry by e-mail about the possibility of returning to her job in UNRWA.

... By an e-mail letter dated 27 June 2012, Natalie Burton, the Field Human Resources Officer, Lebanon ..., informed the Applicant of the relevant Personnel Directive No. A/4 in accordance with which re-employment was not automatic and that [she] would have had to take part in a competitive recruitment exercise[,] adding that the recruitment exercise for the post of English teacher had just been concluded. In the circumstances[,] she should consider applying for vacancies in the future.

... On 8 November 2012, the Applicant requested a review of the decision. She also raised for the first time an objection to the fact that her name was removed from the promotion roster following her resignation.

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<sup>1</sup> The following text is taken from Judgment No. UNRWA/DT/2013/024, paras. 3 – 10.

... By e-mail dated 14 November 2012, Ann Dismorr, the Director of UNRWA Affairs, Lebanon, upheld the decision not to re-employ her and informed her that re-employment was not an entitlement.

... She was encouraged to apply for any future vacancy. She was also informed that since she was no longer employed by the Agency it was not possible to maintain her name on the list of internal staff eligible for promotion.

... On 14 December 2012, the [UNRWA Dispute] Tribunal received her application.

3. In its Judgment No. UNRWA/DT/2013/024, the UNRWA DT indicated that it was issuing “a judgment on the preliminary question of receivability”, specifying:

The first question for the [UNRWA Dispute] Tribunal to consider is whether or not it has jurisdiction to consider the application of Mirna Audeh ..., a former staff member [of UNRWA], regarding the failure on the part of the Agency to reinstate her to her former position from which she had resigned a year previously and whether the removal of her name from a promotion roster was a lawful exercise of power and discretion vested in the management concerned.<sup>[2]</sup>

4. The UNRWA Dispute Tribunal dismissed the application, concluding that it lacked jurisdiction in the case, as Ms. Audeh had failed to submit the required request for review of the decision not to reinstate her within 60 days, as required by Area Staff Rule 111.2.

5. With respect to the substance of the Appellant’s contention concerning the roster, the UNRWA DT found “[t]he complaint regarding the removal of [Ms. Audeh’s] name from the list of candidates approved for promotion lacks merit. In the first place her name was removed upon her resignation which took effect on 5 November 2011. Accordingly, she lost any entitlement to be considered as an internal candidate when a post as English teacher became vacant at her previous school.” In any event, the UNRWA DT continued, “[e]ven if [Ms. Audeh] was eligible for consideration she did not ask for a review of the decision within the 60 day time limit as required”.<sup>3</sup>

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<sup>[2]</sup> *Ibid.*, para. 2.

<sup>3</sup> *Ibid.*, para. 15.

### **Submissions**

#### **Ms. Audeh's Appeal**

6. Ms. Audeh submits that the UNRWA DT erred, having considered "the wrong argument by the Agency".

7. She requests reinstatement, payment of "1/2 salary in lieu of employment (half post) effective date 1.9.2102 had I been offered the vacant Job at Beit Jala School until the day I receive a job", as well as USD 10,000 in moral damages.

#### **The Commissioner-General's Answer**

8. The Commissioner-General submits that the appeal is time-barred, having been filed beyond the statutory deadline of 60 calendar days from receipt of the first instance Judgment.

9. In the alternative, the Commissioner-General submits that the UNRWA DT did not err, either in fact or in law, in finding that the application was not receivable or in its findings on the merits that the Appellant could not remain on the internal roster for promotion once she had resigned.

10. He asks the Appeals Tribunal to dismiss the appeal in its entirety.

### **Considerations**

11. In a majority of judicial systems, the official date of service or communication from the Registry of a court would be the date of placement of the communication at the disposal of the recipient, which will generally be the same date of issuance of an e-mail if the common Internet servers are used.

12. Notwithstanding that fact, the need to preserve due process and the access to justice requires certainty about the date of service, which can be difficult to establish in places where the Internet or other kinds of communications may take more time or may be less than reliable, such as at Ms. Audeh's former place of duty.

13. It is the parties' or their counsel's responsibility to be aware of the content of the official communications once they are at their disposal, for multiple reasons, so as to protect the general and personal interests. Among other circumstances, it can be noted that usually the dates of important deadlines will be involved and each person must be aware of the need to protect his or her own rights and interests, and to act diligently.

14. The Appeals Tribunal is satisfied that the Appellant and her counsel were provided with an adequate opportunity to file an application in a timely manner, but failed to do so, causing her application before the UNRWA DT to be non-receivable.

15. Even if this Tribunal were to disregard the untimely submission of Ms. Audeh's application before the UNRWA DT, her application would remain non-receivable for another reason, duly established by the UNRWA Dispute Tribunal. Ms. Audeh did not timely seek the required review of the contested administrative decision she intended to overturn.

16. As no error can be found in the Judgment under appeal, which could warrant its reversal, it must be affirmed.

### **Judgment**

17. The application before the UNRWA Dispute Tribunal not being receivable, the Judgment from that Tribunal is affirmed and the appeal before the Appeals Tribunal is dismissed in its entirety.

Original and Authoritative Version: English

Dated this 27<sup>th</sup> day of June 2014 in Vienna, Austria.

*(Signed)*

Judge Simón, Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Chapman

Entered in the Register on 29<sup>th</sup> day of August 2014 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar