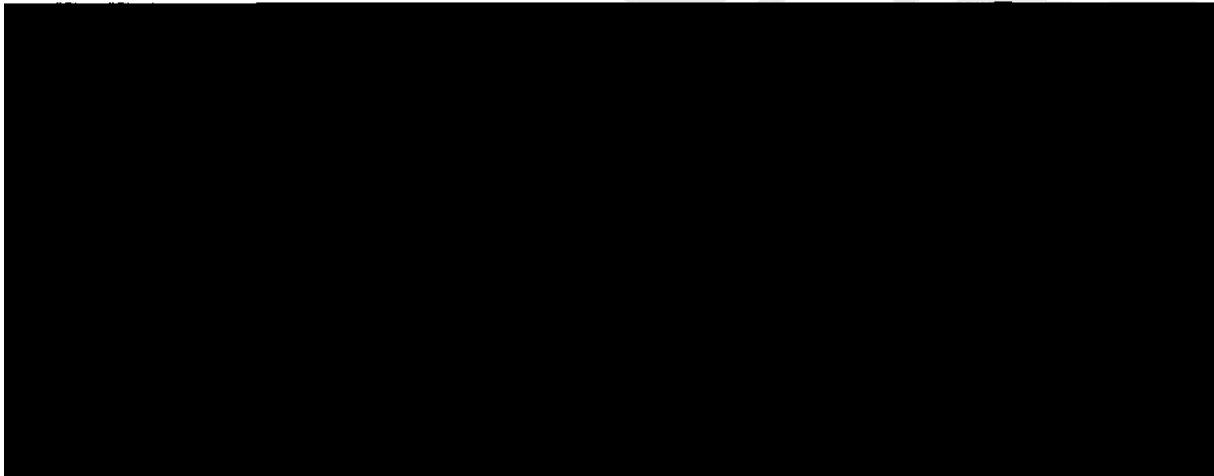




Judgment No. 2015-UNAT-594



Counsel for Mr. El Saleh:

Self-represented

Counsel for Commissioner-General:

Lance Bartholomeusz

**JUDGE LUIS MARÍA SIMÓN, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2014/026 (on the merits) and Judgment No. UNRWA/DT/2014/051 (on revision), rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or UNRWA Dispute Tribunal and UNRWA or Agency, respectively) on 7 September 2014 and 7 December 2014, respectively, in the case of *El Saleh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Zaki Moussa El Saleh filed his appeal on 28 January 2015, which he perfected on 4 February 2015, and the Commissioner-General of UNRWA filed his answer on 30 March 2015.

**Facts and Procedure**

2. Mr. El Saleh entered the service of UNRWA in 1992 as a Dental Surgeon, Grade 14, at Mahr El Bared Camp Health Centre in the North Lebanon Area. In May 2008, he was promoted to the post of Senior Dental Surgeon, Grade 15.
3. From mid-2008 to 2011, ongoing discussions took place within UNRWA concerning the reclassification of certain posts, including that of Senior Dental Surgeon, which Mr. El Saleh encumbered. However, the reclassification exercise was repeatedly postponed due to budget constraints. E-mail exchanges during this time show that discussions concerned, inter alia, the classification level of the post of Senior Dental Surgeon.
4. On 1 November 2011, UNRWA's Director of Health and the Director of Human Resources





17. The UNRWA DT failed to exercise its jurisdiction by ignoring his request for compensation of benefits and not awarding him compensation for the delay in implementing the reclassification exercise since 2008.

18. Mr. El Saleh makes submissions concerning the discussions that took place between 2008 and 2011 relating to the classification of, inter alia, his post and the delay in implementing the classification exercise. He claims that the review exercise that resulted in the upgrading of his post by only one level, rather than two levels as all other health posts were upgraded, was discriminatory, biased and marred by procedural irregularities.

19. Mr. El Saleh requests that the Appeals Tribunal: award him compensation “for the benefits of grade 16” for the period from 1 June 2008 to 31 December 2012, and for the delay in implementing the 2008 reclassification exercise; or der the Director of Health to officially request the reclassification of his post to Grade 17; award him compensation for emotional suffering as a result of humiliating, frustrating and unfair treatment by the Agency; and “[r]etroactively reconstitute the FOHSO post to grade 17” as of 1 January 2013.

#### The Commissioner-General’s Answer

20. The UNRWA DT correctly concluded that Mr. El Saleh’s application was not receivable *ratione materiae* and Mr. El Saleh did not discharge the burden of proving how either Judgment was defective. He failed to establish any errors warranting a reversal of either of the UNRWA DT Judgments, as required by Article 1 of the Special Agreement between the United Nations and UNRWA and Article 2 of the Appeals Tribunal Statute. Rather, Mr. El Saleh impermissibly seeks to reargue the merits of his case.

21. The UNRWA DT did not err in law or procedure in dismissing Mr. El Saleh’s application given that it had found that there was no administrative decision to contest.

22. The Commissioner-General requests that this Tribunal dismiss Mr. El Saleh’s appeal in its entirety.

### Considerations

#### *Request for an oral hearing*

23. As a preliminary matter, this Tribunal denies Mr. El Saleh's request for an oral hearing finding that the parties' applications adequately clarified the issues submitted to the Appeals Tribunal for its decision.

#### *Appeal against the Judgment on the merits*

24. Mr. El Saleh filed his appeal on 28 January 2015. His appeal challenged both the UNRWA DT's Judgment on the merits, issued on 7 September 2014, and a subsequent Judgment dismissing his application for revision, issued on 7 December 2014.

25. Pursuant to Article 7(1)(c) of the Appeals Tribunal Statute, "[a]n appeal shall be receivable if [...] [t]he appeal is filed within 60 calendar days *of the receipt of the judgement* of the Dispute Tribunal or, where the Appeals Tribunal has decided to waive or suspend that deadline in accordance with paragraph 3 of the present article, within the period specified by the Appeals Tribunal".<sup>2</sup> Article 2(4)(a) of the Special Agreement between the United Nations and UNRWA provides that "[f]or the purposes of the Appeals Tribunal's exercise of jurisdiction over appeals under this special agreement: [...] all references to the United Nations Dispute Tribunal in the Statute of the Appeals Tribunal shall be deemed to refer to the UNRWA Dispute Tribunal".

26. This Tribunal has repeatedly held that it "has been strictly enforcing, and will continue to strictly enforce, the various time limits".<sup>3</sup> The Appeals Tribunal has also consistently held that "[i]t is the staff member's responsibility to ensure that he or she is aware of the applicable procedure in the context of the administration of justice at the United Nations" and that "[i]gnorance cannot be invoked as an excuse".<sup>4</sup>

27. In view of Article 7(1)(c) of the Appeals Tribunal Statute, we find that Mr. El Saleh's appeal against the Judgment on the merits is filed out of time. Mr. El Saleh was represented before the UNRWA Dispute Tribunal by UNRWA's Legal Office for Staff Assistance. That office was notified of the issuance of the Judgment on 7 September 2014 and confirmed receipt on the

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<sup>2</sup> Emphasis added.

<sup>3</sup> *Dawas v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees*

same day. Consequently, Mr. El Saleh should have filed his appeal by 6 November 2014. It was, however, not filed until 28 January 2015, approximately two and a half months after the expiration of the filing deadline. Further, given that Mr. El Saleh never requested an extension or waiver of the time limits for the purpose of filing his appeal against the Judgment on the merits, we are precluded from considering whether an extension or waiver of the time limit may have been warranted.<sup>5</sup> Accordingly, Mr. El Saleh's appeal against the Judgment on the merits is not receivable.

*Appeal against the Judgment on revision*

28. In contrast, Mr. El Saleh's appeal against the Judgment on revision was timely filed.

29. Turning to the merits, Mr. El Saleh's appeal brief altogether fails to identify which of the grounds of appeal set out in Article 2(1) of the Appeals Tribunal Statute he relies upon in challenging the Judgment on revision. Mr. El Saleh's appeal brief solely expresses disagreement with the Judgment on the merits and repeats arguments already thoroughly considered and rejected by the UNRWA DT. The appeal thus constitutes an impermissible attempt to reargue the merits of his case.

30. The Appeals Tribunal emphasizes that the appeals procedure is of a corrective nature and, thus, is not an opportunity for a dissatisfied party to reargue his or her case. A party cannot merely repeat on appeal arguments that did not succeed before the lower court.<sup>6</sup> The function of the Appeals Tribunal is to determine if the UNRWA Dispute Tribunal has made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as prescribed in Article 2(1) of the Appeals Tribunal Statute. The appellant has the burden of satisfying the Appeals Tribunal that the judgment he or she seeks to challenge is defective. It follows that the appellant must identify the alleged defects in the judgment and state the grounds relied upon in asserting that the judgment is defective.<sup>7</sup>

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<sup>5</sup> *Gallo v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-552, para. 16, citing *Cooke v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-275, paras. 29-30 (with reference to a written request for waiver pursuant to Article 8(3) of the UNDT Statute).

<sup>6</sup> *Hassan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-504, para. 18 and cites therein.

<sup>7</sup> *Achkar v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*

**THE UNITED NATIONS APPEALS TRIBUNAL**

Judgment No. 2015-UNAT-594



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