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

Judgment No. 2022-UNAT-1219



**Ashraf Zaqqout
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge Graeme Colgan Judge Martha Halfeld
Case No.:	2021-1559
Date:	18 March 2022
Registrar:	Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Ana Peyro-Llopis

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1. Mr. Ashraf Zaqqout (the Appellant) appeals Miscellaneous Order No. 001/2021 (the Impugned Order) dated 20 April 2021, issued by the Disputes Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) on 20 April 2021.

7. Between 23 November 2018 and 23 February 2019, Mr. Zaqqout filed several applications with the UNRWA Dispute Tribunal which remained without success.¹

8. According to Mr. Zaqqout's documents, on 28 November 2020, he submitted a request for decision review of the decision not to re-employ him under the 14 November 2018 emergency agreement. He claimed that while other staff members had been re-employed, he was excluded from such a re-employment. The Director of Human Resources sent a reply by email at the end of November 2020 stating that he understood that Mr. Zaqqout's case was already adjudicated by the UNRWA Dispute Tribunal.

9. By motion dated 23 March 2021, Mr. Zaqqout requested an extension of time limit to file an application to the UNRWA DT. The motion contained nine pages plus annexes and was0 T(x)1.2 (o)-OionTn M8hhhng .5 (c)-

12. Further, relying on the jurisprudence of UNAT in _____, UNRWA DT recalled that the onus of proof was with the applicant to pursue his or her case and, where the applicant fails to do so, to convince the tribunal of the existence of exceptional circumstances justifying a waiver of the applicable time limits. UNRWA DT noted that the Applicant had failed to provide any such exceptional circumstances justifying his request for an extension of time to file his application.

13. UNRWA DT held that the Applicant's contention that he needed to be provided with documents from the Respondent in order to write his application could not be considered exceptional circumstances beyond his control that prevent him from exercising his right of filing an application in a timely manner, and therefore was without merit.

14. On 19 May 2021, Mr. Zaqqout submitted an appeal of the Impugned Order to UNAT and the appeal was registered as Case No. 2021-1559. On 1 July 2021, the Commissioner-General filed his answer.

Submissions

Mr. Zaqqout's Appeal

15. Mr. Zaqqout submits that the UNRWA DT failed to exercise jurisdiction vested in it, erred

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In (No.1), the Appeals Tribunal has emphasized that most interlocutory decisions will not be receivable, for instance, decisions on matters of evidence, procedure, and trial conduct. In , the Appeals Tribunal held that an appeal by the Secretary-General from an interlocutory order of the UNDT for the production of a document was not receivable. It observed that the UNDT had discretionary authority in case management and the production of evidence in the interest of justice and that, should the UNDT have committed an error in ordering the production of a document and have drawn erroneous conclusions in the final judgment resulting from the failure to produce the requested document, it would be for the Secretary-General to appeal that judgment. The Appeals Tribunal has, however, held in (No.1), , and , that an interlocutory appeal is receivable in cases where the UNDT has clearly exceeded its jurisdiction or competence.

19. In , we stated:

As stated in Bertucci, there may be exceptions to the general rule that only appeals against final judgments are receivable. Whether an interlocutory appeal will be receivable depends on the subject-matter and consequences of the impugned decision. As established in Bertucci, an interlocutory appeal is receivable where the UNDT has clearly exceeded its jurisdiction or competence. This will not be the case in every decision by the UNDT concerning its jurisdiction or competence. The general rule that only appeals against final judgments are receivable does not apply where the UNDT dismisses a case on the grounds that it is not receivable under Article 8 of the UNDT statute, as the case cannot proceed any further and there is in effect a final judgment.

The receivability of an interlocutory appeal from a decision of the UNDT allowing a case to proceed on the basis that it falls within its competence under the UNDT Statute is a different matter. If the UNDT errs in law in making this decision and the issue can be properly raised later in an appeal against the final judgment on the merits, there is no need to allow an appeal against the interlocutory decision.

37. In the present case, the Appeals Tribunal sees no reason to depart from the general rule that only appeals against final judgments are receivable. The question of whether the determination made by the Director of the Ethics Office that no retaliation had occurred constitutes an administrative decision goes directly to the merits of the case. It requires adjudication on the merits and can therefore not be subject to an interlocutory appeal. The alleged lack of jurisdiction of the UNDT is not clearly established in this case and the issue cannot be decided before the UNDT has rendered a judgment on the merits of the case.

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48. This argument is without merit. The UNRWA DT had no obligation to translate the full text of the motion into English or to invite the Appellant to hand in an English translation (at the Commissioner-General's cost).

49. Firstly, the Appellant did not respect the formal requirements for motions as laid down in Article 3(4) of the Rules of Procedure of the UNRWA Dispute Tribunal, which provides:

4. In exceptional cases, an Applicant may submit a written request to the Dispute Tribunal seeking suspension, waiver or extension of the time limits referred to in Article 3.1, above. Such written request shall succinctly set out the exceptional reasons that, in the view of Applicant, justify the request. Such written request shall not exceed two pages in length.

50. The Appellant sent a motion of ten pages plus annexes to the UNRWA DT; thus exceeding the maximum page limit by eight pages.

51. Secondly, looking at the Appellant's 23 March 2021 motion, we find the UNRWA DT had no reason to assume that the motion could contain exceptional circumstances for an extension of time limit to file an application other than the production of evidence in the possession of the Commissioner-General.

52. The headline of the Appellant's 23 March 2021 motion reads "Request for extension of time to submit the application, request for production of evidence in the possession of the Respondent (...)". Under "B. The requested relief", the Appellant specified that he needed an extension of 20 calendar days "after receipt of the evidence in possession of the Respondent in order to write the application". He further stated which documents in the possession of the Respondent he requested, annexes of the Commissioner-General's 5 July 2018 decision, annexes of the 1 September 2018 agreement and annexes of the 14 November 2018 Emergency Agreement. For the UNRWA DT, it was clear that the Appellant requested an extension of time limit to file an application (only) because he wanted to receive documents in the possession of the Commissioner-General. There was no reason for the UNRWA DT to assume that Mr. Zaqqout would present other exceptional circumstances for his request for an extension of time limit in later parts of the motion.

53. Finally, even his appeal brief does not show that the Appellant did indeed present additional exceptional circumstances in later parts of the motion.

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57. We deal finally with the Commissioner-General's application for costs against Mr. Zaqqout. The Commissioner-General requests an award of USD 9,600 against the Appellant being the cost for appeals filed against UNRWA.

58. Under Article 9(2) of the UNAT Statute, costs may be awarded by this Tribunal if it considers that a party has "manifestly abused the appeals process".

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Judgment

61. Mr. Zaqqout's appeal is hereby dismissed.

62. The Commissioner-General's application to award costs against the Appellant is also dismissed.

Original and Authoritative Version: English

Dated this 18th day of March 2022.

Judge Knierim, Presiding
Hamburg, Germany

Judge Colgan
Auckland, New Zealand

Judge Halfeld, Presiding
Juiz de Fora, Brazil

Entered in the Register on this 6th day of May 2022 in New York, United States.

Weicheng Lin, Registrar