



1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2021/020, 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) on 6 May 2021, which dismissed the application of Mr. Ashraf Ismail abed allah Zaqqout, as not receivable. Mr. Zaqqout contested the decision to impose on him the disciplinary measures of a written censure and a two-month suspension without pay.
2. The UNRWA DT dismissed the application on grounds of receivability. For the reasons set out below, the Appeals Tribunal affirms the UNRWA DT Judgment.
3. Mr. Zaqqout commenced service with UNRWA in 2015 under a Limited Duration Contract, which was extended several times, with the last extension expiring on 31 December 2018.
4. On 2 April 2018, the Director of UNRWA Operations, Gaza authorized an investigation into allegations that Mr. Zaqqout had provided misleading information on his job application in 2015.
5. On 29 April 2018, Mr. Zaqqout was interviewed as part of the investigation.
6. By letter dated 21 May 2018, Mr. Zaqqout was provided with the first due process letter, informing him of the findings of the investigation and inviting him to respond to the allegations.
7. On 21 June 2018, Mr. Zaqqout responded to the first due process letter.
8. Following new allegations relating to the subject matter of the investigation, Mr. Zaqqout was interviewed again on 17 July and 4 December 2018.
9. By letter dated 5 December 2018, Mr. Zaqqout was provided with the second due process letter, informing him of the new findings of the investigation and inviting him to respond to the allegations.

the evidence was unrefuted that Mr. Zaqqout had actually received the contested decision, at the latest, by 31 December 2018.

19. The UNRWA DT found that Mr. Zaqqout was notified of the contested decision on 30 December 2018 and therefore he had until 28 February 2019 to submit his request for decision review. By filing a request for decision review on 11 March 2019, Mr. Zaqqout failed to submit a timely request for decision review. The UNRWA DT held that it had no jurisdiction to waive this requirement and therefore dismissed the application as not receivable *ratione materiae*.

20. Therefore, the UNRWA DT dismissed Mr. Zaqqout's application.

Procedure before the Appeals Tribunal

21. On 2 September 2021, Mr. Zaqqout filed an appeal against Judgment No. UNRWA/DT/2021/020, and the appeal was registered with the Appeals Tribunal as Case No. 2021-1590. On 2 November 2021, the Commissioner-General of UNRWA filed his answer.

22. On 16 June 2022, Mr. Zaqqout submitted a motion to file additional evidence.

23. Mr. Zaqqout submits that the UNRWA DT did not respect his due process rights by rejecting his evidence and not translating certain documentary

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decision letter was issued in his name and therefore the contested letter was invalid and UNRWA committed misconduct in the form of deception.

26. Mr. Zaqqout submits that notifying him of the contested decision via e-mail was unlawful for the following reasons:

- (a) There is no letter from the Director of UNRWA Operations, Gaza instructing a staff member from the Field Legal Office to send the contested decision via e-mail;
- (b) The contested decision did not provide that he be informed of the decision by electronic notice, text messages, and/or telephone calls;
- (c) The e-mail notification of the contested decision is contrary to the UNRWA's standard practice as during the investigation and disciplinary process, he was requested to receive relevant letters by hand and sign and date to confirm receipt of these letters. This practice further created a legitimate expectation on his part that the contested decision would be notified in a similar manner;
- (d) The e-mail message sent to him on 30 December 2018 was written in English only, which is a procedural error;
- (e) Paragraphs 20, 32 and 35 of Area Personnel Directive A/10/rev.3, taken together, provide that he be notified of a disciplinary decision in writing rather than electronically;
- (f) It should be taken into account that he was denied access to UNRWA buildings and access to communications and information technology infrastructure as he was imposed suspension without pay. The disciplinary measure entered into force on the day the decision was made, and his e-mail was disabled as of 30 December 2018, contrary to the Respondent's argument that his e-mail was disabled after 1500 hours on 31 December 2018;
- (g) He was on authorized leave from 26 to 31 December 2018 and therefore was entitled not to access e-mail, answer phone calls, or respond to text messages in accordance with Area Staff Rule 109.1(2), which provides that "[s]taff members shall continue to perform their duties ... unless they are on authorized leave of absence";

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33. Third, the Commissioner-General submits that the UNRWA DT did not err on a question of law and fact when it held that the application was not receivable *ratione materiae*. In response to Mr. Zaqqout's claim that he was on authorized annual leave at the material time and had no obligation to open his e-mail or reply to calls, ato9w 0.355 [(ma)-5.3(-)Tj-1.2 Tc 0.005 Tw 0.23.3 (his)8.2j-1aC4 (i)-o

oral hearings on the written application of a party or on their own initiative if such hearings would assist in the expeditious and fair disposal of the case.³

37. Under these provisions, the oral hearing before the UNAT, however, does not aim to provide any further oral evidence or otherwise, but to discuss elements of fact and of law which are already on the record.⁴ In this sense, Mr. Zaqqout's arguments for a hearing are that he wishes to question witnesses and the translator who prepared the letter, in order to determine whether the disciplinary decision should have been communicated in writing and not via e-mail. Mr. Zaqqout would also like to comment on the Respondent's annexes attached to the answer to the appeal, of which the translation was made available only after the issuance of Order 123 (UNRWA/DT/2020), denying Mr. Zaqqout leave to file any motion and preventing him from producing oral evidence.

38. Mr. Zaqqou5.2 (q)0 Tc () (o)-3 (mme)-4.npp2.2 (e)T238n -0.005(8)-034 (mo)A78t/TT2/5(mr.q914

to certain evidence due to the fact that his e-mail access had been disabled; iii) he was working more than 13 hours per day from 25 Aug 2020 as a psychologist due to the Covid pandemic which prevented him from writing the response and providing all the evidence and facts.

48. -

give any direction which is appropriate for a fair and expeditious disposal of the case and to do justice to the parties.⁹ Our jurisprudence has consistently held that the Appeals Tribunal will not lightly interfere with the broad discretion conferred on the first instance tribunal in the management of its cases to enable cases to be judged fairly and expeditiously and for dispensation of justice. We will intervene only in clear cases of denial of due process of law affecting a party's right to produce evidence. In the instant case, we do not accept Mr. Zaqqout's argument that this threshold has been met. Furthermore, if the application was dismissed on grounds of receivability, the UNRWA DT did not have to order the translation of documents which were not relevant to such a determination.

53. The legal framework specifically applicable to the present case provides that a staff member wishing to formally contest an administrative decision alleging non-compliance with his or her terms of appointment or the contract of employment, including all pertinent regulations and rules and all relevant administrative issuances, shall, as a first step, submit a written request for a decision review: (a) in the case of staff members of Field Offices, to the UNRWA Field Office Director in charge of the Field Office; and (b) in the case of staff members of Headquarters, to the Director of Human Resources.¹⁰

54. In the same sense, Article 8.1(c) of the UNRWA DT Statute stipulates that an application shall be receivable if an applicant has previously submitted the contested administrative decision for a decision review. Furthermore, Article 8.3 bars the UNRWA Dispute Tribunal from suspending, waiving, or extending the deadlines for decision review.

55. It has long been established in the Appeals Tribunal's jurisprudence that a request for decision review/management evaluation is a mandatory first step in the appeal process.¹¹ Being a mandatory first step before coming to the internal justice system, the request for management evaluation or decision review provides the Administration with the opportunity to reassess the situation and correct possible mistakes or errors with efficiency without the

⁹ Article 14 of the Rules of Procedure of the UNRWA Dispute Tribunal.

¹⁰ UNRWA Area Staff Rule 111.2(1).

¹¹ *Faye v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-654, para. 31; *Gehr v. Secretary-*

around that time due to funding issues, he was later reinstated, and his contract was restored with the end date of 31 December 2018, upon expiry of his LDC.¹⁵

59. Having considered the circumstances of the case, the Appeals Tribunal finds that the UNRWA DT was correct when it found that: i) the e-mail communicating the contested decision and its reasons (both in Arabic and in English) was sent to Mr. Zaqqout on 30 December 2018 informing him of the date of the decision that day and the suspension was effective starting the following day; and ii) Mr. Zaqqout's argument that he was not made aware of the content of the letter until the 10 January 2019, when he collected the hard copy of the decision and signed acknowledgment of receipt, is not convincing.¹⁶

60. In this regard, Mr. Zaqqout asserts that all the previous letters to him had been sent on a paper version, even though some had also been sent via e-mail and that some deadlines during the investigation phase had been extended based on the date of receipt of the paper copy. For Mr. Zaqqout, this electronic notification should not be authorised in accordance with UNRWA's standard practice. However, UNRWA General Staff Circular 5/2016 dated 18 December 2016 "recognises email as an official communication medium" within the Agency. It also establishes that reading e-mail messages and taking necessary actions are among the responsibilities of the user (Section 2.1) and that English is the official language used to address staff (Section 5). Mr. Zaqqout's reliance on Area Personnel Directive A/10/rev 3 that a disciplinary decision should be notified in writing "rather than electronically" is misplaced, as an e-mail is considered to be a *written* communication, as opposed to an *oral* communication.

based solely on his role as a staff member with no decision power or authority. Likewise, Mr. Zaqqout's claim that this same information had been influenced by the Head of the Field Legal Office is unsubstantiated.

62. These pieces of evidence reveal that, on 30 December 2018, the Administrative Assistant of the UNRWA Field Legal Office, Gaza, sent to Mr. Zaqqout an e-mail forwarding the contested decision itself at 2:53 p.m. and a mobile phone text message at 3:00 p.m. to call

72. Mr. Zaqqout's appeal is dismissed, and Judgment No. UNRWA/DT/2021/020 is upheld.

Original and Authoritative Version: English

Decision dated this 1st day of July 2022.