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5. From 14 September 2004 to 25 May 2005, the Appellant was on fully paid sick leave. When her entitlement of paid sick leave expired on 25 May 2005, extended sick leave was approved at the discretion of the Commissioner-General.

6. On 1 November 2004, the Appellant addressed a letter to the Secretary-General, in which she raised a series of allegations against her supervisor (we redact his name also), including allegations of harassment and threat to life, sexual harassment, discrimination, and abuse of authority. In December 2004, she travelled to New York and submitted a complaint to the Secretary-General regarding the supervisor's conduct. In February 2005, the Secretary-General requested the UNRWA Commissioner-General to initiate an investigation into the allegations. Also in February 2005, the supervisor requested an investigation to clear himself of the charges made by the Appellant.

7. On 20 February 2005, UNRWA commenced its investigation. In July 2005, the Commissioner-General informed the Appellant that the investigation had found that her charges were unsubstantiated.

8. On 21 March 2005, the Assistant Secretary-General for Human Resources Management of the United Nations received the report of the investigation conducted by UNRWA. Because there were "certain problems" with the investigation, it was decided to refer the matter to the Office of Internal Oversight Services (OIOS) of the United Nations for a fresh investigation. But OIOS had no jurisdiction over UNRWA.

10. Beginning 1 August 2005, the Appellant undertook work with the United Nations Alliance of Civilizations Office in New York under an inter-agency loan agreement.

11. In December 2005, the Appellant was informed orally by OIOS of its findings. The written OIOS report dated 26 February 2006, which she did not receive at the time, stated that evidence “tend[ed] to support a finding” that the Appellant had been sexually harassed by her supervisor, but that it did not support a finding that the supervisor had engaged in workplace harassment.

12. In October 2006, the Appellant wrote to the Secretary-General requesting a review of the administrative decision rejecting her claim of sexual harassment by her former supervisor “leading to [her] loss of employment”.

13. In November 2006, the Appellant was advised that administrative decisions taken by

16. On 9 November 2008, the Appellant filed an appeal with the UNRWA JAB. On 30 June 2009, UNRWA, under Article 7(1) of the former Administrative Tribunal's Statute and pursuant to a request by the Appellant's counsel, agreed to submit the case directly to the former Administrative Tribunal.

17. The Appellant filed an application with the former Administrative Tribunal on 25 August 2009. On 1 September 2009, the Executive Secretary of the former Administrative Tribunal returned her appeal, asking that she make corrections and resubmit it by 30 October 2009. The Appellant resubmitted her appeal on 30 September 2009. The Respondent named was the Secretary-General of the United Nations, not the Commissioner-General of UNRWA.

18. The case was transferred to the United Nations Appeals Tribunal following the abolition of the former Administrative Tribunal at the end of 2009. The Appellant and UNWRA submitted the case directly to the former Administrative Tribunal under Article 7(1) of the latter's Statute without a hearing. The case could have been transferred for a hearing under Article 7(1) of the latter's Statute without a hearing.

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Judgment No. 2010-UNAT-068

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28. The failure to provide the investigation report to the Appellant is compounded by the active misrepresentation by the OIOS investigators to her about the conclusion reached in their report. This misrepresentation resulted in serious harm to the Appellant as the alleged perpetrator was allowed to retire as a result of this conclusion. To prevent this outcome, the Appellant's supervisor wrote to the Chef de Cabinet to inform him that the alleged perpetrator would retire in December 2005. The Appellant herself wrote to UNRWA demanding that the alleged perpetrator not be allowed to retire pending the completion of the OIOS investigation. The OIOS investigation, which had been stalled since May 2005, was restarted in response to those letters. The investigation was hurriedly concluded and the Appellant was deliberately misinformed of the conclusion with a view to allowing the alleged perpetrator to retire without having been held accountable for his actions.



to the agreement, which can therefore not be extended to him. Finally, should the Appeals Tribunal find that the late submission of the Appellant's appeal to the former Administrative Tribunal was justified, the case should be transmitted to the UNDT for a determination of the facts.

#### **UNRWA's Submission**

32. As a preliminary matter, UNRWA points out that the Appellant names, as the Respondent, the Secretary-General of the United Nations. UNRWA, as an organ of the United Nations, reports directly to the General Assembly. It is accountable solely to the General Assembly in accordance with its foundation document, United Nations General Assembly resolution 302 (IV). UNRWA is therefore not competent to respond on behalf of the Secretary-General of the United Nations. UNRWA stresses that "notwithstanding [the] unfortunate framing" of the appeal, it provides submissions to the extent that the appeal relates to appealable decisions regarding the Appellant's employment with UNRWA.

33. UNRWA claims that the appeal is not receivable. The Appellant failed to request administrative review of the decisions that are the subject of the appeal, as required by UNRWA Staff Rule 111.3(a). Furthermore, the appeal is time-barred. Even if the Appellant's faulty submission to the Secretary-General were to be considered as a proper request for administrative review or if the Secretary-General's decision of 20 February 2008 were considered as a decision for the purpose of initiating an appeal before the UNRWA JAB—assumptions which UNRWA rejects—the Appellant's appeal dated 9 November 2008 would be out of time. UNRWA submits that prior to the Appellant's appeal of 9 November 2008, the Secretariat of the UNRWA JAB had not been contacted nor had there been any submission warranting the waiver of the time limits. Similarly, had the Appellant chosen to directly submit her case to the former Administrative Tribunal, her application would have been out of time. The Appellant did not demonstrate any exceptional circumstances that would have formed the basis for an extension in her case. The appeal is therefore not receivable.

34. UNRWA requests that the Appeals Tribunal reject the Appellant's requests to rescind the Secretary-General's decision to take no action in the case, and to find that the New York JAB erred in law in finding that it had no jurisdiction. Both requests were not part of the

appeal filed with the UNRWA JAB. Because this appeal is a direct submission to the Tribunal, it “should be in respect of a first instance review of the claims originally asserted by the [Appellant] before the UNRWA Joint Appeals Board relating to matters arising during her period of employment with UNRWA and not as second instance review of the earlier UN/NY JAB recommendation and resulting Secretary-General decision”. In the alternative, UNRWA submits that neither the New York JAB nor the Secretary-General erred in finding that they had no jurisdiction in relation to UNRWA employment matters.

35. UNRWA rejects the Appellant’s allegations that her due process rights were violated by the failure to conduct a thorough investigation into her allegations; as well as by OIOS’s refusal to release the finding of its investigation report, and by deliberately misleading her into believing that her allegations were not sustained when they were. UNRWA submits that the Appellant did not file any formal complaint of sexual harassment and retaliation with UNRWA; that, as soon as UNRWA was formally made aware of such allegations by the United Nations Secretariat, it took immediate action to investigate the allegations; that the Appellant, by her own admission, refused to cooperate with the investigation; and that she was promptly provided with the information regarding the outcome of the investigation. UNRWA further rejects the Appellant’s assertion that UNRWA had no established procedures for dealing with sexual harassment or a confidential focal point for reporting complaints. UNRWA adopted and implemented the United Nations standards at the time. The UNRWA investigation concluded that none of the Appellant’s claims could be substantiated and that she systematically refused to cooperate with the investigation.

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Administrative Tribunal. Under Article 7(4) of the former Administrative Tribunal's Statute, an appeal was due 90 days from the date of the notification of the decision. Her appeal was therefore due by 20 May 2008. She filed her application only on 25 August 2009, more than 15 months after the applicable time limit.

42. The UNRWA appeal is also out of time. The Appellant appealed to the UNRWA JAB on 9 November 2008. UNRWA submits that prior to that, the Secretariat of the UNRWA JAB had not been contacted nor had there been any submission warranting the waiver of the time limits.

43. As to the ABCC's non-implemented decision, that body had no jurisdiction either, so its decision was a nullity.

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