



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

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)

Date: 27 June 2014

Registrar: Weicheng Lin

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:¹

... 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 w2on, th0ba(1wi)56w [(...)-1 -ec9(e-6e)6(No.(f.o.(f.o.Crke)43(ntTD -. J

... 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.

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 27th day of June 2014 in Vienna, Austria.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Chapman

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

(Signed)

Weicheng Lin, Registrar