



JUDGE ROSALYN CHAPMAN, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Roger Achkar (Appellant) against Judgment No. UNDT/2011/194, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 15 November 2011 in the case of *Achkar v. Secretary-General of the United Nations*.

Synopsis

2. Appellant was employed by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in Jordan from 1 March 2002 until his resignation on 31 January 2003. On 19 October 2011, he brought an application against the Secretary-General of the United Nations in the Dispute Tribunal seeking damages for alleged threats against him when he traveled to and from Gaza in 2002. In Judgment No. UNDT/2011/194, the Dispute Tribunal concluded that Mr. Achkar's application was not receivable because the UNDT lacked subject matter jurisdiction and it was untimely, and dismissed the application. This Tribunal affirms the Judgment on the grounds the UNDT lacked subject matter jurisdiction to receive the application, which should have been brought against the Commissioner-General of UNRWA before the UNRWA Dispute Tribunal (UNRWA DT), rather than against the Secretary-General of the United Nations before the UNDT, and vacates the obiter dictum portion of the Judgment concluding the application was not receivable because it was untimely.

Facts and Procedure¹

3. Mr. Achkar was employed by UNRWA in Amman, Jordan, from 1 March 2002 until his resignation on 31 January 2003.

4. Before and during his employment by UNRWA, Mr. Achkar expressed objections to traveling to Gaza, stating it would be dangerous for him as a Lebanese citizen. In 2002, Mr. Achkar was ordered in writing by an UNRWA official to travel to Gaza, and he did so. When crossing into Gaza on 18-19 October 2002, Mr. Achkar was asked by an Israeli soldier to sign a paper stating "I have no information that threatens the security of the State of

¹ The facts set forth herein reflect Mr. Achkar's version of events as presented by him in documents he created and submitted.

Israel". Mr. Achkar signed the statement but later complained to UNRWA he felt threatened by the incident.

5. Since resigning from UNRWA, Mr. Achkar claims he has been unable to obtain regular employment with the United Nations, for which he had worked prior to his UNRWA employment, except for occasional or short-term jobs and has suffered considerable financial damage.

6. On 19 October 2011, Mr. Achkar brought an application against the Secretary-General of the United Nations before the UNDT, seeking monetary damages for the alleged threats against him when he traveled to and from Gaza in 2002.

7. In Judgment No. UNDT/2011/194, the UNDT found Mr. Achkar's application was not

Secretary-General's Answer

12. The UNDT correctly concluded Mr. Achkar's application was not receivable, *ratione materiae*.

13. The Secretary-General is not the proper respondent in this case. Rather, the proper respondent is the Commissioner-General of UNRWA, who is that Agency's chief executive officer. Since Mr. Achkar's application was brought against the wrong respondent, it was not receivable, *ratione materiae*. (ica)5(tion)5()-5(wa)ncevabn BT7hi(e pr U) Td (13.)Tj EMC /P 6/MCID 4 BDC

Considerations

19. As a preliminary matter, this Tribunal denies Mr. Achkar's request for an oral hearing, finding there is no need for further clarification of the issues arising from his appeal, pursuant to Articles 2(5) and 8(3) of the Statute.

20. Mr. Achkar has not complied with Article 8(2) of the Rules of Procedure in that he has not identified the grounds for his appeal under Article 2(1) of the Statute. As the Secretary-General notes, Mr. Achkar's appeal is defective.² Nevertheless, since the UNDT's Judgment addresses only the issue of the receivability of Mr. Achkar's application, this Tribunal reasonably infers Mr. Achkar is claiming the UNDT "[f]ailed to exercise jurisdiction vested in it" under Article 2(1)(b). Thus, this Tribunal finds it has subject matter jurisdiction to hear Mr. Achkar's appeal and the appeal is receivable. In light of this determination, it is not necessary to address the parties' other claims regarding this Tribunal's exercise of jurisdiction over Mr. Achkar's appeal.

21. A new two-tier formal system of administration of justice was established for UNRWA staff members, effective 1 June 2010. Under the new system, present and former UNRWA staff members can appeal or seek review of administrative decisions alleging non-compliance with the terms of their employment contracts or disciplinary measures by filing an

and the former Administrative Tribunal stopped taking new cases.⁶ On 31 December 2009, the former Administrative Tribunal was abolished.⁷

23. The UNDT correctly concluded it had no subject matter jurisdiction to receive Mr. Achkar's application because the application was brought before the wrong tribunal. Under the recently established system of administration of justice for current and former UNRWA staff members, which was in place when Mr. Achkar filed his application on 19 October 2011, an application alleging non-compliance with an UNRWA employment contract must be brought before the UNRWA DT.⁸ It cannot be brought before the UNDT, which is specifically barred from hearing such applications.⁹

24. It is unclear from Mr. Achkar's appeal whether he is claiming Article 2(10) of the Statute is a ground for the UNDT to receive his application or for this Tribunal to hear his appeal. Erring on the side of caution, this Tribunal will consider whether Article 2(10) affects the jurisdiction of the UNDT to hear applications by UNRWA staff members. It does not. The clear language of Article 2(10) of the Statute of this Tribunal addresses whether the Appeals Tribunal has jurisdiction pursuant to a Special Agreement between the Secretary-General and another entity to hear cases on appeal. On 11 December 2009, a Special Agreement was entered into between the Secretary-General and UNRWA's Commissioner-General by which UNRWA accepted the jurisdiction of the UNAT to hear appeals from the judgments by the UNRWA DT, pursuant to Article 2(10) of the Statute.¹⁰ This Special Agreement does not contain any provision for UNRWA staff members to bring applications before the UNDT as the first step of the administration of justice.

25. The UNDT also correctly concluded it lacked subject matter jurisdiction to receive Mr. Achkar's application because the application was brought against the wrong respondent. This Tribunal has previously concluded the Secretary-General is not the proper respondent in

⁶ General Assembly resolution 63/253.

⁷ *Ibid.*

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THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2012-UNAT-267

Judgment

27. The Judgment of the Dispute Tribunal concluding the application was not receivable for lack of subject matter jurisdiction is affirmed.