



**UNITED NATIONS APPEALS TRIBUNAL
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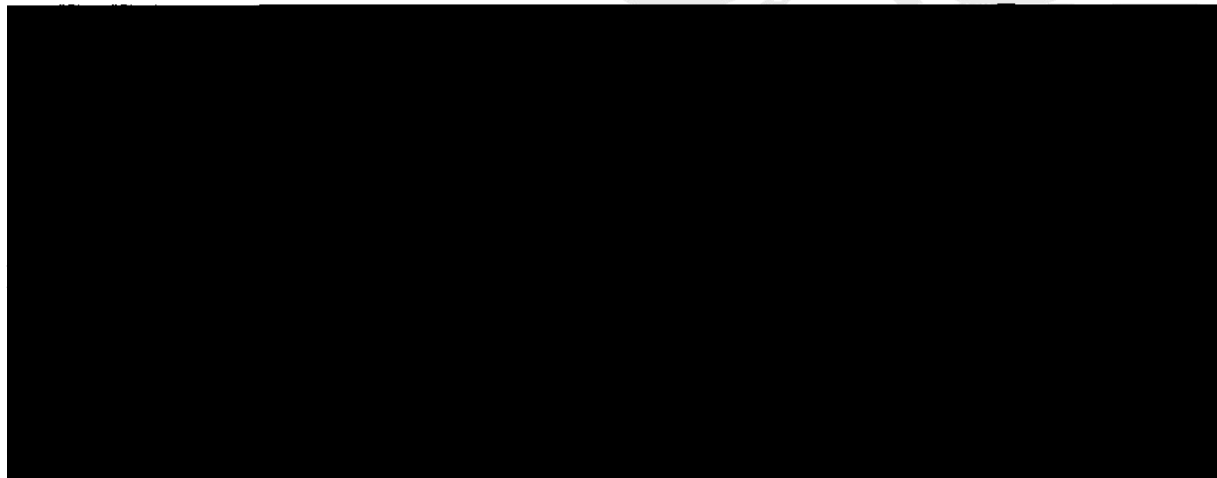
Judgment No. 2014-UNAT-406

**Chahrour
(Appellant)**

v.

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

(Respondent)



Date: 2 April 2014

Registrar: Weicheng Lin

Counsel for Appellant: Amer Abu Khalaf/Ghada Yasin

Counsel for Respondent: Lance Bartholomeusz

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I was annoyed because the advertisement was only 3 months after my recommendation to the post (until March 2010) and I felt that it was not fair to [have me] re-apply to the same post I was recommended to and consequently sit for another technical test and interview... In fact, I thought that I did apply for the re-advertised vacancy but later I discovered and after the deadline that I applied to another vacancy by oversight.

7. On 14 January 2011, an internal candidate, who had been declared redundant at Siblin VTC, was selected and appointed to the post of Registrar.
8. On 2 June 2011, Mr. Chahrour inquired of the UNRWA Grievances Officer, Lebanon, about the incumbent Registrar's resignation and why he had not been contacted to fill the post.
9. On 27 June 2011, the Deputy Director of UNRWA Affairs, Lebanon (D/DUA/L)

19. The Appellant seeks reversal of the UNRWA DT's Judgment and remand of the case for adjudication on the merits. Additionally, he seeks an Order "to deny the Respondent from participating in the proceedings".

The Commissioner-General's Answer

20. The UNRWA DT did not exceed its jurisdiction and competence when it found that this case was suitable for summary judgment under Article 5 of the Rules since the parties did not dispute the material facts and the judgment is restricted to a matter of law.

21. The Respondent's failure to raise the issue of the timeliness of the request for administrative review in his reply is not a waiver of that claim. To the contrary, in the 27 June 2011 e-mail from the D/DUA/L to Mr. Chahrour, the Agency made clear that the Appellant's request for decision review was untimely under Area Staff Rule 111.3.

22. There is no dispute that the decision not to consider Mr. Chahrour for appointment to the Registrar's post was an implied administrative decision, rather than a written decision. With an implied administrative decision, the Dispute Tribunal must determine the date on which the staff member knew or reasonably should have known of the decision. As Mr. Chahrour acknowledged in his rejoinder, he knew of the decision not to consider him for appointment to the post of Registrar when the post was re-advertised on 16 July 2010. His request for review was not timely from that date. Even if he did not know of the decision until 30 April 2011 - the date he acknowledges that he knew he was not considered for the post - his request for decision review remains untimely. Thus, the UNRWA DT did not err in law when it determined that the Appellant did not comply with the regulatory deadline to request decision review.

23. The UNRWA DT did not err in fact or law when it rejected Mr. Chahrour's claim that the date of the administrative decision was 27 June 2011, when he received the e-mail from the D/DUA/L. A staff member cannot always wait for written confirmation of an administrative decision that affects his employment; to the contrary, he must act promptly following an implied administrative decision that adversely affects him.

24. Pursuant to Articles 14 and 30 of the Rules, the UNRWA DT has authority to accept the Respondent's late reply. Granting the Respondent leave to participate in the proceedings is an inferential denial of Mr. Chahrour's motion for default. Since the application was not

receivable due to his failure to timely seek administrative review, Mr. Chahrour cannot show any prejudice from the UNRWA Dispute Tribunal allowing the Respondent to participate in the proceedings.

Considerations

The Issue of Receivability

25. The primary issue on appeal is whether the UNRWA DT properly dismissed the application as not receivable due to Mr. Chahrour's failure to timely seek administrative review of the decision not to consider him for the post of Registrar when the incumbent resigned that post within six months of being appointed. The Appeals Tribunal holds that the UNRWA DT properly determined *sua sponte* that the application was not receivable.

26. Article 8(1)(c) of the UNRWA DT Statute provides that an application is receivable by the UNRWA Dispute Tribunal, *inter alia*, only when the staff member has previously submitted the impugned administrative decision to the Agency for decision review in a timely manner. Article 8(3) of the UNRWA DT Statute provides, in part, that the UNRWA Dispute Tribunal "shall not suspend, waive or extend the deadlines for decision review". The Appeals Tribunal has strictly enforced this prohibition and an identical prohibition in the United Nations Dispute Tribunal Statute (UNDT Statute).¹

27. Current Area Staff Rule 111.2, which went into effect on 1 June 2010, requires a staff

administrative authorities do not raise the issue, because it constitutes a matter of law and the [UNDT] Statute prevents the UNDT from receiving a case which is actually non-receivable".³

29. The rationale of Christensen applies to the present case. To hold otherwise would allow the parties, either deliberately or by negligence, to empower the UNRWA DT with jurisdiction in excess of the parameters established for it. Thus, there is no merit to Mr. Chahrour's claim that the UNRWA DT exceeded its competence or jurisdiction in summarily addressing sua sponte the issue of the receivability of the application when the Commissioner-General did not raise that issue in his reply.

30. Based on the undisputed fact that the Agency did not afford Mr. Chahrour written notice at the time of its decision not to consider him for the post of Registrar when the incumbent resigned on 10 February 2010, the UNRWA Dispute Tribunal properly characterized the Agency's decision as an implied decision.⁴

31. To determine the date by which a staff member must seek decision review of an implied decision, it is incumbent on the UNRWA Dispute Tribunal to first establish the date on which the staff member knew or reasonably should have known of the implied decision.⁵ After considering all the facts, the UNRWA DT determined that 16 July 2010 was the date Mr. Chahrour knew or reasonably should have known of the implied decision.

32. Mr. Chahrour disagrees with the UNRWA DT's determination and argues that it was both an error of fact and an error of law. There is no merit to Mr. Chahrour's claims. Rather, as the UNRWA Dispute Tribunal noted, Mr. Chahrour candidly acknowledged (in his rejoinder to the Commissioner-General's reply) that he actually knew in July of 2010 that the Agency had re-advertised the post of Regi

37. It is now settled that the Dispute Tribunal may, under its Rules, permit the Respondent to file a tardy reply and to participate in the proceedings.⁹ In the past, this Tribunal has urged the UNRWA DT to act transparently when it allows such participation,¹⁰ and the UNRWA DT did act transparently when it addressed the issue of the Respondent's

