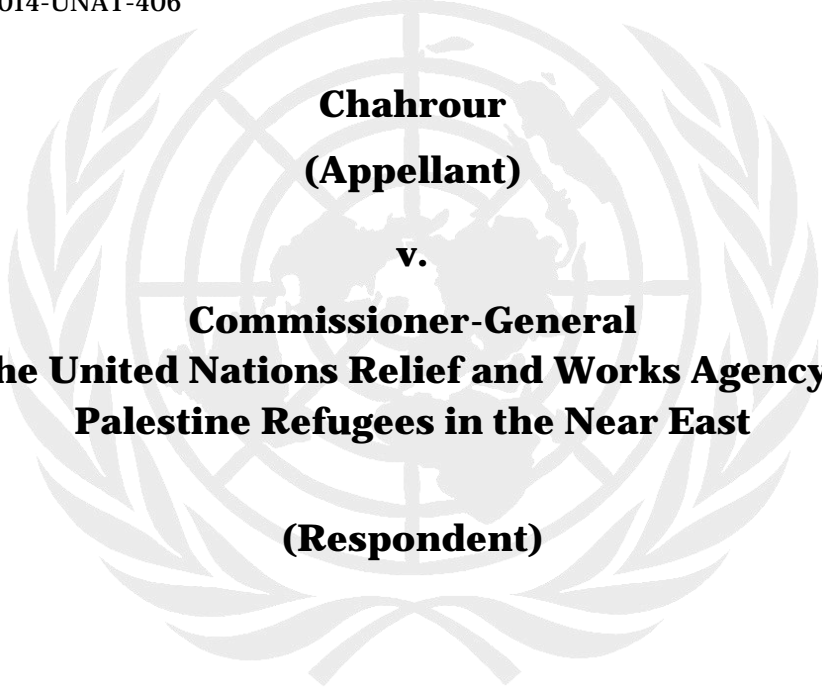




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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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)**

**JUDGMENT**

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Before:	Judge Rosalyn Chapman, Presiding Judge Mary Faherty Judge Inés Weinberg de Roca
Case No.:	2013-456
Date:	2 April 2014
Registrar:	Weicheng Lin

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Counsel for Appellant: Amer Abu Khalaf/Ghada Yasin

Counsel for Respondent: Lance Bartholomeusz

**JUDGE ROSALYN CHAPMAN, PRESIDING.**

1. On 19 February 2013, the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or UNRWA Dispute Tribunal and UNRWA or Agency, respectively) issued Judgment No. UNRWA/DT/2013/005, in the case of *Chahrour v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. On 27 March 2013, Mr. Wasim Mohammad Chahrour appealed the Judgment to the United Nations Appeals Tribunal (Appeals Tribunal), and on 15 May 2013, the Commissioner-General of UNRWA filed his answer. The Appeals Tribunal denied Mr. Chahrour's request to file a rejoinder to the answer in Order No. 147 (2013).

**Facts and Procedure**

2. On 15 January 2007, Mr. Chahrour joined the Agency as a computer teacher, grade 8, at the Wadi Hawareth School in Wavel Camp, Beqaa, Lebanon, on a three-year fixed-term appointment. He was promoted to the post of Field Unified Registration System Administrator, grade 11, at the Lebanon Field Office, effective 7 October 2009.

3. On 25 February 2009, the Agency issued Vacancy Notice No. 13/2009 for the post of Registrar and Alumni Officer (Registrar), grade 12, at the Sibliin Vocational Training Center (VTC). Mr. Chahrour applied for the post.

4. On 18 December 2009, UNRWA's Deputy Field Personnel Officer sent Mr. Chahrour a letter advising him that he did not get the post:

The recruitment process has been completed and you are recommended #2 among those interviewed. Should the candidate recommended #1 decline the offer or vacate the position within six months (until March 2010), you will be considered for employment.

5. The "#1 recommended candidate" took up the post, but effective 10 February 2010, the incumbent Registrar resigned. However, the Agency did not give Mr. Chahrour written notice of the incumbent Registrar's resignation and did not consider him for the post.

6. On 16 July 2010, the Agency issued Vacancy Notice No. 48/2010 for the post of Registrar at VTC. Mr. Chahrour was aware that the post was re-advertised, but he did not apply for it, as he stated:

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) responded to Mr. Chahrour's inquiry, stating, in part:

You are correct – you should have been formally notified in writing of the availability of the post in February 2010.

However, your query comes more than one year after the fact. It is unfortunate that you did not raise the issue earlier – for example, shortly after the same post was advertised in July 2010. ... The post was filled earlier this year by appointing to it a surplus staff member.

The oversight is unfortunate, but I regret that the Agency is unable to address your case one year and four months later.

10. On 1 July 2011, Mr. Chahrour requested that the Director of UNRWA Affairs, Lebanon (DUA/L) review the decision not to appoint him to the post of Registrar at Siblin VTC. The DUA/L did not reply to this request.

11. On 22 August 2011, Mr. Chahrour filed an application with the UNRWA DT.

12. On 24 October 2011, Mr. Chahrour filed a motion for temporary relief with the UNRWA DT, which denied the motion on 13 November 2011 in Order No. 006 (UNRWA/DT/2011).

13. On 18 January 2013, the Commissioner-General filed his reply to the application.

14. On 27 January 2013, Mr. Chahrour filed a rejoinder to the reply, after obtaining leave of the UNRWA Dispute Tribunal to do so.

15. On 19 February 2013, in Judgment No. UNRWA/DT/2013/005, the UNRWA DT summarily determined *sua sponte* that Mr. Chahrour's application was not receivable because he had failed to timely seek administrative review under the former Area Staff Rule 111.3 prior to filing the application, and dismissed the application. In the Judgment, the UNRWA DT gave the Commissioner-General leave to file a tardy reply to the application and to take part in the proceedings, pursuant to Articles 14 and 30 of the UNRWA DT Rules of Procedure (Rules). Mr. Chahrour appeals these determinations.

### **Submissions**

#### **Mr. Chahrour's Appeal**

16. The UNRWA DT did not have jurisdiction or competence to challenge *sua sponte* the timeliness of his request for decision review since the Agency failed to raise the issue of receivability in its reply, and the Dispute Tribunal could not do so on its own. Rather, the Dispute Tribunal should have received the application because nothing "precludes the Agency itself from waiving its rights and the deadlines set by its own Rules".

17. The UNRWA DT erred in law and fact when it determined his request for decision review was untimely. Although the Appellant learned in July 2010 that the Registrar's post was being re-advertised, he did not know that his right to be considered for the post had been violated; he did not learn that fact until 27 June 2011 when he received the D/DUA/L's e-mail. Thus, the deadline for seeking decision review should run from 27 June 2011, and the UNRWA DT erred when it determined that he did not comply with the time limits set forth in Area Staff Rule 111.3.

18. The UNRWA DT erred on a matter of law when it allowed the Commissioner-General to participate in the proceedings without issuing a written order and without addressing the Appellant's motion to exclude the Respondent. The Respondent flagrantly disregarded his responsibility to comply with Article 6(1) of the Rules and was 17 months late in filing his reply to the application. This delay has irreparably prejudiced the Appellant, who could not effectively argue for appointment to the Registrar's post and whose growth within the Agency and future earnings potential were adversely affected.

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).<sup>1</sup>

27. Current Area Staff Rule 111.2, which went into effect on 1 June 2010, requires a staff member, as a first step, to seek decision review within 60 days of written notice of the impugned decision; whereas former Area Staff Rule 111.3 required a staff member, as a first step, to seek decision review within 30 days of written notice of the impugned decision.

28. In *Christensen*, we held that the United Nations Dispute Tribunal (UNDT) "is competent to review its own competence or jurisdiction" under Article 2(6) of the UNDT Statute.<sup>2</sup> We opined that "[t]his competence can be exercised even if the parties or the

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<sup>1</sup> See *Al Surkhi et al. v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-304; see also *Ajdini et al. v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-108.

<sup>2</sup> *Christensen v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-335, para. 20.

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”.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup> 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 Registrar. Despite this acknowledgement, Mr. Chahrour claims that 16 July 2010 is not the date he knew of the implied decision because he was not aware on that date of the *significance* of the re-advertising, i.e., that the Agency had not considered him for the vacant Registrar’s post. However, the Appeals Tribunal has long held that knowledge of the facts – and not the legal consequences flowing from the facts – determines the date from which management evaluation or decision

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<sup>3</sup> *Ibid*, para. 21.

<sup>4</sup> *Al Surkhi*, quoting former Administrative Tribunal Judgment No. 1157 *Andronov* (2003).

<sup>5</sup> *Rosana v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-273.

review must be sought.<sup>6</sup> Since Mr. Chahrour's request for review was filed almost a year after 16 July 2010, it was untimely.

33. In any event, Mr. Chahrour has also acknowledged that by the end of April 2011, he was aware of the legal consequences of the Agency re-advertising the post of Registrar, i.e., that the Agency did not consider him for the post. Assuming *arguendo* that this is the date Mr. Chahrour knew of the implied decision, the request for review remains tardy since it was not made within either 30 or 60 days of this date.

34. Finally, there is no merit to Mr. Chahrour's claim that 27 June 2011 is the date he was aware of the implied decision because that is the date he received written notice from the Agency that he had not been considered for the vacant post of Registrar. As noted above, there is a difference between an implied decision and a written decision, and Mr. Chahrour's attempt to convert an implied decision into a written decision is to no avail.<sup>7</sup> The e-mail of 27 July 2011 merely confirmed the earlier implied decision.<sup>8</sup>

35. For all these reasons, 16 July 2010 is the date Mr. Chahrour knew or reasonably should have known of the decision not to consider him for the post of Registrar. Thus, the UNRWA DT did not make an error of fact or law when it determined *sua sponte* that Mr. Chahrour did not timely seek decision review and his application was not receivable.

#### *Respondent's Reply*

36. Mr. Chahrour objects to the UNRWA DT allowing the Commissioner-General to participate in the proceedings and to file a tardy reply when it did not issue an order to this effect, addressed the issue of receivability solely in the Judgment, and did not rule on his request to exclude the Respondent from the proceedings. There is no merit to Mr. Chahrour's claims.

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<sup>6</sup> *Rahman v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-260.

<sup>7</sup> See *Rosana v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-273, para. 24 (An appellant may not unilaterally determine the date of the administrative decision by sending an e-mail to the Administration expressing an ultimatum to adopt a decision.)

<sup>8</sup> See *Cremades v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-271.



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.<sup>9</sup> In the past, this Tribunal has urged the UNRWA DT to act transparently when it allows such participation,<sup>10</sup> and the UNRWA DT did act transparently when it addressed the issue of the Respondent's tardy reply in the Judgment. Moreover, Mr. Chahrour was allowed to file a rejoinder to the Respondent's tardy reply. Finally, since the application was not receivable, Mr. Chahrour cannot show any prejudice from the Respondent's participation in the proceedings.<sup>11</sup>

### **Judgment**

38. Judgment No. UNRWA/DT/2013/005 is affirmed and the appeal is dismissed.

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<sup>9</sup> *Abu Jarbou v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2012-UNAT-321.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Darwish v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-369; *Chaaban v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-363.

Original and Authoritative Version: English

Dated this 2<sup>nd</sup> day of April 2014 in New York, United States.

*(Signed)*

Judge Chapman, Presiding

*(Signed)*

Judge Faherty

*(Signed)*

Judge Weinberg de Roca

Entered in the Register on this 13<sup>th</sup> day of May 2014 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar