



**THE UNITED NATIONS APPEALS TRIBUNAL**



his request on 1 June 2017 as time-barred. He further asserts that on 19 June 2017, he submitted another request for decision review which remained unanswered.

5. Mr. Abu Nqairah maintains that he did not receive a letter dated 29 June 2014 informing him that he was not entitled to the parallel education allowance. Usually when a confidential private letter is sent to the person involved, he or she would sign for receipt of such letter, which he never did. He further argues that he had sent a message and applied for the allowance after 29 June 2014 and had not received a reply and that he would have been informed in the course of this correspondence had a letter indeed been sent on 29 June 2014.

6. Mr. Abu Nqairah asserts that he received an administrative decision from the DUO/J on 31 May 2017.

7. In view of the foregoing, Mr. Abu Nqairah requests the Appeals Tribunal to vacate the UNRWA DT Judgment.

**The Commissioner-General's Answer**

8. The Commissioner-General submits that the appeal is not founded on any of the grounds of appeal provided for under the Appeals Tribunal Statute. As such, the appeal is defective as the Appeals Tribunal has consistently held that it is not sufficient for an appellant to simply state his or her disagreement with the outcome of a case or repeat the arguments submitted before the Dispute Tribunal. By simply asserting that he complied with the time limits rather than criticizing the UNRWA DT's reasons for dismissing the application, Mr. Abu Nqairah is in effect simply rearguing his case before the Appeals Tribunal.

9. The Commissioner-General asserts that the UNRWA DT did not err as a matter of fact, law or procedure when it dismissed Mr. Abu Nqairah's application. The UNRWA DT was him

10. Even assuming, that Mr. Abu Nqairah did not receive the letter dated 29 June 2014 (which the Commissioner-General refutes), it remains that by his own admission, he was aware of the decision not to pay him the allowance since 2009 and at the latest, he knew or ought to have known that he was not entitled to receive it when Area Staff Circular No. 03/2012 dated 2 August 2012 containing the rates for teaching and non-teaching staff was published. Therefore, his request for decision review was unduly late in any case.

11. Moreover, the Commissioner-General claims that Mr. Abu Nqairah failed to raise the issue of non-receipt of the letter dated 29 June 2014 although the letter had been mentioned in the Commissioner-General's reply before the UNRWA DT and Mr. Abu Nqairah made observations on the reply and therefore had an opportunity to challenge the proposition that he had received the letter. The issue of non-receipt of the letter is therefore a new element which, in accordance with the consistent Appeals Tribunal jurisprudence, may not be introduced for the first time on appeal and is thus inadmissible.

12. In light of the foregoing, the Commissioner-General requests that the Appeals Tribunal dismiss the appeal in its entirety.

### **Considerations**

13. The issue before this Tribunal is whether the UNRWA DT correctly concluded that Mr. Abu Nqairah's application was non-receivable .

14. The UNRWA DT found that on 29 June 2014 Mr. Abu Nqairah had received notification of the administrative decision to refuse to pay the parallel education allowance, and that, accordingly, that day, the 60-calendar day time limit to request decision review began to run. Accordingly, the UNRWA DT concluded that both requests (in Arabic and in English), submitted, respectively, on 4 May 2017 and 19 June 2017 were far beyond the time limits prescribed by the relevant provision. The UNRWA DT further determined that, to the extent that Mr. Abu Nqai.033222wTwe0.306 -1.7322 TD.boipli -5.U9(e)-2g

15.

applicable legal framework set out in the UNRWA DT Statute, particularly Article 8, which states as follows:

1. An application shall be receivable if:  
...  
( ) An applicant has previously submitted the contested administrative decision for decision review; (...)  
...
3. (...) The Dispute Tribunal shall not suspend, waive or extend the deadlines for decision review.

19. Second, the evidence in the case file bears out the UNRWA DT's finding that Mr. Abu Nqairah had requested payment of the parallel education allowance in 2009 and

22. Lastly, there is no merit in Mr. Abu Nqairah's contention that the decision on his request for decision review is challengeable before the internal justice system. The UNRWA DT was perfectly cognizant of the applicable jurisprudence, according to which the response to a request for decision review (or likewise for management evaluation) is not an administrative decision subject to judicial review, as we clearly stated in : "[T]he judicially reviewable administrative decision is the underlying decision 'that is alleged to be in non-compliance with the terms of appointment or the contract of employment of the staff member'".<sup>12</sup>

23.



**Judgment**

25. The appeal is dismissed and Judgment No. UNRWA/DT/2017/043 is affirmed.

Original and Authoritative Version: English

Dated this 29<sup>th</sup> day of June 2018 in New York, United States.

Judge Halfeld, Presiding

Judge Murphy

Judge Raikos

Entered in the Register on this 10<sup>th</sup> day of August 2018 in New York, United States.

Weicheng Lin, Registrar