



# Administrative Tribunal

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## ADMINISTRATIVE TRIBUNAL

Judgement No. 1257

Case No.1306

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

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Julio Barboza, President; Ms. Jacqueline R. Scott; Mr. Goh  
Joon Seng;

Whereas, on 30 May 2003, a former staff member of the United Nations Relief  
and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as  
UNRWA or the Agency) filed an Application containing pleas which read as follows:

### “SECTION II PLEAS

Applicant prays [the] Tribunal to hold the following:

- a. ... [T]he Applicant [should be re-examined] by a medical board to decide his fitness.
- b. In case the Applicant [is] found unfit for service as a teacher, to order compensation paid as established in cases of medically unfit staff members.
- c. To order suitable compensation for the injury sustained for disallowing [the] Applicant to submit his application for re-examination by the medical board.
- d. Payment of any compensation as may be ordered in US \$ at the rate of exchange available at the date of separation.
- e. Payment of counselling fees and secretarial expenses, as may be decided.”

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 December 2003 and periodically thereafter until 31 March 2005;

Whereas the Respondent filed his Answer on 31 March 2005;

Whereas the Applicant filed Written Observations on 26 August 2005;

Whereas the summary of facts, including the employment record, contained in the report of the Joint Appeals Board (JAB) reads as follows:

**“II. SUMMARY OF FACTS**

...

... On 5 December 1992, the [Applicant] was offered and accepted a temporary indefinite appointment as an Area staff member in the capacity of Teacher (English) Grade 08 at Safad School, [Syrian Arab Republic (SAR)].

[Between 20 September 1997 and 18 May 1998, the Applicant spent 90 days on sick leave, primarily as a result of back pain.]

... On 19 May 1998 the [Applicant] wrote to [the] Chief, Field Education Programme, SAR, requesting that he be referred to a Medical Board to assess his fitness for continued service with the Agency.

... On 1 September 1998, [the] Director of UNRWA Affairs, Syria, wrote to [the] Chief, Field Health Programme, Syria, requesting that the [Applicant] be examined by a Medical Board. The Board which convened on 8 September ... concluded that he was fit for further service. The Director of UNRWA Affairs, Syria, accepted the Board's recommendation on 16 September ...

... The [Applicant] was informed of the Board's conclusion and the Administration's acceptance of the Board's recommendation on 20 September 1998.

... On 29 June 1999, the [Applicant] submitted a request for Early Voluntary Retirement effective close of business on 5 July 1999.

... On 1 July 1999, [UNRWA informed] ... him that his request for Early Voluntary Retirement ... [had been accepted]. The [Applicant] was also informed that if he wished to cancel his request for Early Voluntary Retirement, such request would be reviewed on its own merits and without any obligation on the part of the Agency only within six working days from the date he left the Agency.

... Effective ... 5 July 1999, the [Applicant] was separated from the Agency's service for reason of Early Voluntary Retirement according to Area staff rule 109.2.

... On 1 September 1999, the [Applicant] wrote to [the] Field Administration Officer, SAR, requesting that a fresh Medical Board be convened to assess his case and for the time being he requested to be appointed to a clerical post. In the event he would be found unfit, he requested termination on medical grounds. [In the Applicant's view, his

separation from service from the Agency had yet to take effect, and would take effect on 14 September 1999.]

... On 9 February 2000, [the Applicant was reminded] ... that the Medical Board had examined him on 8 September 1998 and found him fit for further service with the Agency and, in any event, he was subsequently separated from the Agency service effective 5 July 1999 on Early Voluntary Retirement upon his own request.

... On 20 February 2000, the [Applicant] wrote to the Director of UNRWA Affairs, SAR, requesting her to consider his separation on medical grounds.

[On 2 March 2000, the Applicant lodged an appeal with the UNRWA Area staff JAB in Amman.]

... On 5 March 2000, [the] Director of UNRWA Affairs, SAR, ... [replied] ... that there was nothing to add to [UNRWA's] letter of 9 February 2000."

The JAB adopted its report on 5 February 2002. Its evaluation and judgement, and recommendation, read as follows:

### **"III. EVALUATION AND JUDGEMENT**

19. In its deliberations the Board examined all documents cited before it, including the Appellant's personal file and came out with the following:

- a) The Board noted that the Appellant submitted his appeal a year and two months after the decision of the Medical Board was issued which would deem the Appeal not receivable.
- b) The Board also noted that the Appellant was separated from the Agency by Early Voluntary Retirement on his own request and that there was no actual decision to challenge.
- c) In this context, the Board believes that the Administration has acted within the framework of standing Rules and Regulations without the interference of prejudice or any other extraneous factors.

### **IV. RECOMMENDATION**

20. In view of the foregoing ..., the Board unanimously declares the appeal not receivable."

On 5 March 2002, the Commissioner-General transmitted a copy of the report to the Applicant and informed him that he agreed with the JAB's conclusion that the appeal was not receivable and had decided to dismiss the appeal on that basis.

On 23 September 2002, Counsel for the Applicant wrote to the Tribunal requesting the Applicant's personnel and JAB files, and making reference to an earlier fax of 14 June.

On 30 May 2003, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Tribunal should waive the time limits in the case.
2. The Applicant should be re-examined by the Medical Board to determine his fitness for service.
3. The Respondent deprived the Applicant of a complete copy of his medical evaluation.
4. The Applicant was coerced into resigning.

Whereas the Respondent's principal contentions are:

1. The Application in its entirety is not receivable by the Tribunal.
2. The Applicant's appeals were time-barred.
3. There are no exceptional circumstances warranting waiver of the time limits in this case.

The Tribunal, having deliberated from 28 October to 23 November 2005, now pronounces the following Judgement:

I. The Application comes to the Tribunal following a recommendation by the JAB, which was accepted by the Commissioner-General, that the Applicant's claim was not receivable, as it was time-barred.

II. The Applicant was on a temporary indefinite appointment as an Area staff member Teacher with UNRWA in Syria. As a result of a worsening back condition, which forced the Applicant to take significant sick leave, the Applicant requested that a Medical Board be convened to determine whether he was fit for service. On 8 September 1998, a Medical Board was convened, and it concluded that the Applicant was indeed fit for service. The Director, UNRWA Affairs, Syria, accepted the Medical Board's recommendation, and the Applicant was informed of this on 20 September. As a result of what he alleges to be an increasingly debilitating back condition, impeding his ability to perform his duties as a teacher, the Applicant sought Early Voluntary Retirement, which was approved on 1 July 1999, effective 5 July. On 1 September, the Applicant, apparently then wishing to have his separation from service be treated as a separation for medical purposes rather than as an Early Voluntary Retirement,

requested that another Medical Board, “of an appeal nature”, be convened. This request was denied by the Organization on 9 February 2000. Thereafter, on 20 February, the Applicant requested that his separation from service, which had been pursuant to Early Voluntary Retirement, be considered a medical separation, not an Early Voluntary Retirement. This request was also denied.

III. On 2 March 2000, the Applicant appealed to the JAB, which decided, on 3 February 2002, that the case was time-barred, being filed over 10 months after the issuance of the administrative decision from which he appealed. On 5 February the JAB issued its report, concluding that the Applicant’s appeal was not receivable, being time-barred. On the same day, the JAB communicated its report to the Commissioner-General and, on 5 March, the Commissioner-General informed the Applicant that he accepted the JAB’s recommendation that the case was not receivable. On 23 September 2002, the Applicant sent a fax to the Tribunal, requesting access to certain files. That letter referenced an earlier June fax, of which the Tribunal has no record. On 30 May 2003, the Applicant filed his Application with the Tribunal. At no time was any application or request for extension of time in which to file his Application made by the Applicant or his attorney.

IV. The Statute and the Rules of the Tribunal set forth the conditions under which an application is receivable. Where the JAB’s recommendations are unfavorable to the Applicant, the Statute makes clear in article 7, paragraph 4, that an Application is not receivable unless it is filed within ninety days of the date on which the JAB report is communicated to the Applicant. In any particular case, however, the Tribunal may suspend or waive such time limits pursuant to its statutory powers under article 7, paragraph 5. Generally, though, the Tribunal, which recognizes the importance of complying with procedural rules, finding them to be “of the utmost importance for the well functioning of the Organization” (Judgement No. 1106, *Iqbal* (2003)), will not waive or suspend such time limits unless there are extraordinary circumstances, including “serious reasons which prevented the Applicant from acting”. (See Judgement No. 359, *Gbikpi* (1985).) In the instant case, the Applicant filed his Application to the Tribunal on 30 May 2003, approximately 14 months after the date on which the JAB report was communicated to the Applicant. This is well in excess of the ninety-day period set forth in the Statute. The Applicant made no requests for extension or suspension of the time limits, nor did he allege any circumstances that would warrant a waiver or suspension of the time limits by the Tribunal. Even if the 23

September 2002 fax were to be construed as a request for extension of the time in which to file, and the Tribunal cannot imagine how this could be, given the nature of that fax, which very specifically requested personnel records but alluded not at all, expressly or implicitly, to any extension of time or waiver of time limits, the Tribunal finds that the request would still be untimely, being filed over 7 months after the JAB report was communicated to the Applicant. As the Applicant did not set forth any circumstances based upon which the Tribunal might justify a waiver or suspension of the statutory time limits, the Tribunal has no choice but to find that the Applicant's claim is not receivable, being time-barred.

V. For the foregoing reasons, the Applicant's claim is rejected in its entirety.

*(Signatures)*

**Julio Barboza**  
President

**Jacqueline R. Scott**  
Member

**Goh Joon Seng**  
Member

New York, 23 November 2005

**Maritza Struyvenberg**  
Executive Secretary