



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

Judgment No. 2017-UNAT-719

Saeed
(Applicant)
v.
Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East
(Respondent)

JUDGMENT ON APPLICATION FOR REVISION

Before:	Judge Thomas-Felix, Presiding Judge Rosalyn Chapman Judge Sabine Knierim
Case No.:	2016-954
Date:	31 March 2017
Registrar:	Weicheng Lin

Counsel for Mr. Saeed:	Self-represented
Counsel for Commissioner-General:	Lance Bartholomeusz

JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. On 24 March 2016, the United Nations Appeals Tribunal (Appeals Tribunal) rendered Judgment No. 2016-UNAT-617 in the case of *Saeed v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. On 20 June 2016, Mr. Wissam Jeries Saeed filed a request for revision of judgment and on 8 August 2016, the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) filed his comments.

Facts and Procedure

2. The following facts are taken from the Appeals Tribunal Judgment:¹

... Effective 14 September 2005, [Mr. Saeed] joined the Agency as Microfinance and Accounts Officer [...] at the Microenterprise and Microfinance Department on a fixed-term appointment. Effective 1 September 2009, he was promoted to the post of Chief of Finance (“CoF”)[,] Grade 20, Step 4.

... [On] 1 May 2012, the Chief, Microfinance Operations (“CMO”) informed [Mr. Saeed] that an informal [Opportunity to Improve (OTI)] process had been initiated in order to monitor his performance, improvement and development in performing his functions.

... In [Mr. Saeed]’s Performance Evaluation Report (“PER”) dated 19 December 2012, his overall performance was assessed as a “performance [that] falls short of expectations”.

... On 19 December 2012, the Director, Microfinance Department (“DMD”) recommended the extension of [Mr. Saeed]’s contract for six months in order to give [Mr. Saeed] “additional time to improve his performance”.

... By note dated 21 December 2012, [Mr. Saeed] expressed his disagreement with his performance evaluation and declined to sign his PER.

... On 17 May 2013, an interim evaluation was conducted with [Mr. Saeed] in order to review his performance during the first quarter of 2013 and consider a further extension of his contract. The interim evaluation report included various examples of [Mr. Saeed]’s underperformance.

¹ Impugned Judgment, para. 1, citing *Saeed v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2015/008/Corr.01, paras. 2-21.

... By memorandum dated 17 May 2013 to the Personnel Department, the CMO requested the renewal of [Mr. Saeed]'s contract for a further period of six months, i.e. up to 31 December 2013.

... [Mr. Saeed] was on sick leave from 3 June to 21 June 2013 [during which time he underwent surgery].

... By email dated 7 June 2013, the CMO approved a new workflow for the Finance Division. [Mr. Saeed claims that upon enquiring about the new workflow during his sick leave, he was informed the workflow was temporary.]

... On 24 June 2013, [Mr. Saeed] returned to duty after his sick leave [and was informed that he should comply with the new workflow].

... By email dated 24 June 2013 to the DMD copied to the Director of Human Resources ("DHR"), [Mr. Saeed] refused to accept the tasks assigned to him in the new workflow. He requested that an investigation be conducted in relation to the new workflow of the Finance Division and asked for leave pending the investigation.

... From 26 June 2013 to 30 August 2013, [Mr. Saeed] was on leave. He returned to duty on 2 September 2013. [Mr. Saeed claims that on this day, during a meeting with the DMD and the CMO, the CMO informed him that she had instructed staff to no longer follow Mr. Saeed's instructions.]

... [On] 3 September 2013, the Officer-in-Charge, Human Resources Department ("OiC, HRD") replied to [Mr. Saeed]'s email of 24 June 2013. In his letter, the OiC, HRD outlined [Mr. Saeed]'s underperformance leading up to the redistribution of duties to meet the operational needs of the Department. He found no grounds to conduct an investigation and encouraged [Mr. Saeed] to embrace the opportunity to improve his performance through the OTI process.

... [On] 4 September 2013, [Mr. Saeed] was invited for a meeting in order to initiate a formal OTI process. [Mr. Saeed] did not attend the meeting. Another meeting was scheduled on 5 September 2013, which [Mr. Saeed] refused to attend.

... [On] 6 September 2013, the OiC, HRD informed [Mr. Saeed] that a formal OTI process had been initiated the same day, and he encouraged [Mr. Saeed] to participate positively in the OTI process.

... [On] 6 September 2013, the DMD invited [Mr. Saeed] for a meeting to discuss the plan, objectives, deliverables, reporting format and timelines for the formal OTI process. [Mr. Saeed] refused to attend.

... [On] 6 September 2013, the DMD informed [Mr. Saeed] that the OTI process would move forward and submitted to him a signed copy of the formal OTI working plan. [Mr. Saeed] was required to submit a short monthly report on his progress in relation to the objectives of the plan.

... [On] 11 September 2013, [Mr. Saeed] was invited to the first joint meeting with the DMD and CMO, scheduled for 13 September 2013, to discuss his progress on the objectives set out in the plan. [Mr. Saeed] was also reminded that his refusal to attend that meeting would be taken as an indication of his continuing refusal to participate in the OTI process.

... On 19 September 2013, [Mr. Saeed] requested review of the following: 1) the CMO's decision to approve a new workflow for the Finance Division, 2) the CMO's directions given to staff in the Finance Department not to take instructions from [Mr. Saeed], and 3) the OiC, HRD's decision to refer him to a formal OTI process.

... [On] 24 October 2013, the Deputy Commissioner-General ("DCG") replied to [Mr. Saeed]'s request. The letter states, in relevant part, as follows:

... (i) concerns about the level of your performance are well-documented and substantiated through an informal OTI process, the results of which led to the initiation of a formal OTI process on 6 September 2013; (ii) ... the OTI process was initiated to afford you the opportunity to improve your overall performance[;] (iii) ... your rights have not been breached by any substantive or procedural irregularity or improper motive or abuse of discretion by the restructuring of the Microfinance Department.

3. Mr. Saeed subsequently unsuccessfully filed an application with the Dispute Tribunal of UNRWA (UNRWA DT), which, on 17 February 2015, rendered its Judgment rejecting Mr. Saeed's application. The UNRWA DT found, *inter alia*, that Mr. Saeed's challenge to the CMO's decision to approve a new workflow for the Finance Division was not receivable in that Mr. Saeed had not requested decision review thereof within 60 days of 7 June 2013, when the workflow was first introduced.

4. Mr. Saeed then appealed the UNRWA DT Judgment to the Appeals Tribunal. On 24 March 2016, the Appeals Tribunal issued Judgment No. 2016-UNAT-617 in which it dismissed the appeal in its entirety, stating that Mr. Saeed had not based his appeal on any grounds for appeal set forth in the Appeals Tribunal Statute (Statute). With regard to the approval of the new workflow, the Appeals Tribunal held that "even if it were to be considered an administrative decision subject to appeal, the request for decision review was submitted after the expiry of the deadline provided for in Area Staff Rule 111.2, as correctly pointed out by the UNRWA Dispute Tribunal".²

² *Ibid.*, para. 10.

Submissions

Mr. Saeed's Application

5. Mr. Saeed refers to a series of facts where he requested that an investigation be conducted in relation to the new workflow and suggests that by doing so, he filed a request for decision review on time. He further submits that he timely asked for a review “only 16 days” after receiving a reply to his e-mail from OiC, HRD on 3 September 2013 which was more than two months after he had requested the investigation.

6. Stating that the Appeals Tribunal misinterpreted the relevant dates, Mr. Saeed asks to “re-appeal” his case before other Judges.

The Commissioner-General's Comments

7. The Commissioner-General submits that Mr. Saeed has failed to comply with Article 11(1) of the Statute in that he has not cited any new facts that were unknown to him and the Appeals Tribunal. He merely disagrees with the Appeals Tribunal's Judgment and attempts to have a second round of litigation, which is insufficient.

8. The fact referred to by Mr. Saeed, namely that he had requested a review in relation to the new workflow, was properly before the Appeals Tribunal at the time of the Judgment and thus not a “new fact”. According to the Commissioner-General, “the contention now advanced that the request for investigation on 2[4] June 2013 was a decision review request is an attempt to re-litigate the issue of receivability”.

Considerations

9. Mr. Saeed has requested a review of Appeals Tribunal Judgment No. 2016-UNAT-617. This request is governed by Article 11(1) of the Statute and Article 24 of the Appeals Tribunal Rules of Procedure (Rules). Article 24 of the Rules provides as follows:

Either party may apply to the Appeals Tribunal, on a prescribed form, for a revision of a judgement on the basis of the discovery of a decisive fact that was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application for revision will be sent to the other party, who has 30 days to submit comments to the Registrar on a prescribed form. The application for revision must be

made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

10. Mr. Saeed therefore must present in his application for revision a decisive fact that was unknown to him and to the Appeals Tribunal at the time the judgment was rendered. This review procedure is corrective in nature and is not an opportunity for Mr. Saeed to reargue his case.³

11. As stated in *Ghahremani*:⁴

... Applications for revision of judgment are governed by Article 11(1) of the Statute and Article 24 of the Rules of Procedure of the Appeals Tribunal. By these provisions, an applicant must show or identify the decisive facts that, at the time of the Appeals Tribunal's judgment, were unknown to both the Appeals Tribunal and the party applying for revision; that such ignorance was not due to the negligence of the applicant; and that the facts identified would have been decisive in reaching the decision.

12. Mr. Saeed has not presented any new and decisive fact to the Appeals Tribunal. We therefore find his application to be without merit.

Judgment

13. The application for revision is dismissed.

³ *Maghari v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-392, para. 19; *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-321, para. 8.

⁴ *Ghahremani v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-351, para. 9.

Original and Authoritative Version: English

Dated this 31st of March 2017 in Nairobi, Kenya.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Chapman

(Signed)

Judge Knierim

Entered in the Register on this 26th day of May 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar