



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

Judgment No. 2021-UNAT-1084

**Nadia Ismail Najjar
(Appellant)**
v.
**Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East
(Respondent)**

JUDGMENT

Before:	Judge Kanwaldeep Sandhu, Presiding Judge John Raymond Murphy Judge Sabine Knierim
Case No.:	2020-1395
Date:	19 March 2021
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Rachel Evers

JUDGE KANWALDEEP SANDHU, PRESIDING.

1. Ms. Nadia Ismail Najjar disputes the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) to not appoint her as a member of the Provident Fund Humanitarian Repayable Withdrawal Committee (Fund Committee) of the Jordan Field Office (JFO).
2. By Judgment No. UNRWA/DT/2020/023,¹ the UNRWA Dispute Tribunal (UNRWA DT) dismissed her application as not receivable *ratione materiae* on the basis that the decision to not appoint her to the Fund Committee did not produce any direct legal consequences affecting her terms or conditions of appointment.
3. For reasons set out below, we dismiss the appeal and affirm the UNRWA DT Judgment.

Facts and Procedure

4. Ms. Najjar is a Human Resources Assistant at the UNRWA Department of Human Resources, JFO. The present controversy arose when Ms. Najjar found out she was not appointed to the Fund Committee, as she expected.
5. As an initial matter, Jordan Field Staff Circular No. J/39/2015 (PF Humanitarian Repayable Withdrawals Committee) dated 22 November 2015 designated the members and alternate members of the Fund Committee.
6. On 19 February 2019, the Head, Field Human Resources Office, Jordan (HR Head) requested Ms. Najjar to prepare a draft circular to designate new members of the Fund Committee, which draft was submitted to the Director of UNRWA Operations, Jordan (Director of Operations) for signing. The draft circular included the name of Ms. Najjar as a member of the Fund Committee.
7. By way of background, the Provident Fund was established for the purpose of providing eligible staff members, upon their separation, benefits to which they may become entitled.

¹ *Al Najjar v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2020/023 dated 28 April 2020 (Impugned Judgment).

8. Ms. Najjar's appointment to this Fund Committee would have been outside her regular work but would have allowed her to accrue overtime.

9. On 27 February 2019, by way of Jordan Field Staff Circular No. J/04/2019 (PF Humanitarian Repayable Withdrawals Committee), the members and alternate members of the Fund Committee were selected and designated effective 1 March 2019. Ms. Najjar's name, however, did not appear on the circular, as was the case in the proposed draft.

10. By e-mail dated 28 February 2019, Circular No. J/04/2019 was communicated to all staff members at the JFO.

11. On 1 March 2019, a new Director of Operations took up the position at the JFO. By e-mails to the new Director of Operations dated 3 and 17 March 2019, Ms. Najjar complained about being excluded as a member on the Fund Committee.

12. On 31 March 2019, by Jordan Field Staff Circular No. J/09/2019 (PF Humanitarian Repayable Withdrawals Committee), the new Director of Operations made a change to the composition of the Fund Committee on the grounds of gender parity, to be effective 1 April 2019. Ms. Najjar was again not listed among the members.

13. On 4 April 2019, the Director of Operations received Ms. Najjar's request for review of the decision to not appoint her as a member of the Fund Committee.

14. On 29 May 2019, Ms. Najjar filed an application with the UNRWA DT challenging the Agency decision not to appoint her on the Fund Committee.

15. In its Judgment, the UNRWA DT held that Ms. Najjar's application was not receivable *ratione materiae*. The tribunal determined that the nomination from the HR Head was nothing more than a recommendation, and Ms. Najjar could not derive any right from such a recommendation. As she was never appointed to the Fund Committee, and given that she did not possess any specific right to such appointment, the Agency's decision to not appoint her did not produce any direct legal consequence affecting her terms and conditions of employment.

Submissions

Ms. Najjar's Appeal

16. Ms. Najjar submits the UNRWA DT erred when it found that her application was not receivable.

17. She says that the decision to not appoint her to the Fund Committee affected her entitlement to receive overtime pay. Overtime is an entitlement for staff members, which gives them the right to financially benefit from overtime pay when performing duties outside their duty hours. Ms. Najjar argues this extra funding should be distributed fairly between staff members, which would be in line with UNRWA's code of conduct and core values. She says that by not appointing her, her rights were violated.

18. Additionally, Ms. Najjar also submits that she had raised her expectations when she prepared the draft circular, which included her name, and as such, her subsequent exclusion from the Fund Committee damaged her morally and caused her psychological damage.

19. Ms. Najjar says that including a Finance Assistant on the Fund Committee is a "misinterpretation of PF technical instructions". She explains that the technical requirement to be on the committee was to have a "financial background" and that as an HR Assistant in the entitlements section, she had the necessary background.

20. The appellant stated she met with the new Director of Operations a few days before the second circular was issued, and he promised to help her, however, he was purportedly influenced by "external interference and factors."

21. Ms. Najjar requests that she be appointed a member of the Fund Committee and be awarded compensation for psychological and material damages.

The Commissioner-General's Answer

22. The Commissioner-General submits the appeal is not well founded on any of the grounds set out in Article 2(1) of the Appeals Tribunal Statute (Statute). The appellant's arguments are nothing more than a repetition of arguments raised before and already considered by the UNRWA DT. The present appeal is nothing but a renewed attempt at arguing the merits of her case. Given that the UNRWA DT dismissed the application as not

receivable and considering that Ms. Najjar does not challenge the Impugned Judgment on the established non-receivability grounds but rather repeats her submissions on the merits of her application, the Commissioner-General says the appeal must be dismissed.

23. Further, the Commissioner-General also submits that the UNRWA DT did not err as a matter of fact or law when it dismissed Ms. Najjar's application as not receivable. The UNRWA DT was cognizant of the established facts of the case and the legal framework regarding receivability. Following a careful review of the application, the tribunal correctly concluded that the impugned decision was not receivable *ratione materiae*.

Considerations

I. Did the UNRWA Dispute Tribunal err in law, fact, jurisdiction or process?

24. Staff Rule 111.4 of UNRWA's Area Staff Rules (Area Staff Rules) provides that pursuant to Article 2(10) of the Statute, the United Nations Appeals Tribunal (Appeals Tribunal) is competent to hear and pass judgment on an appeal that asserts that the UNRWA DT: (a) exceeded its jurisdiction or competence; (b) failed to exercise jurisdiction vested in it; (c) erred on a question of law; (d) committed an error of procedure such as to affect the decision of the case, or (e) erred on a question of fact, resulting in a manifestly unreasonable decision.

(i) Is the Appeal defective?

25. The Commissioner-General says Ms. Najjar has failed to identify the grounds for her appeal as required by the Statute. We agree. An appellant has the burden to demonstrate that the impugned judgment is defective and must identify the specific errors allegedly committed by the UNRWA DT. On appeal, a party cannot merely repeat arguments that failed before the UNRWA DT. More is required. An appellant must demonstrate that the UNRWA DT has committed an error of fact or law warranting intervention by the Appeals Tribunal.²

² *Houran et al. v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2020-UNAT-1019, para. 22. See also *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29.

26. In this instance, Ms. Najjar has failed to specifically identify the errors allegedly committed by the UNRWA DT and therefore, the appeal is defective for that reason. However, we have previously recognized that if an appellant is not legally represented, as is the case here, some latitude may be allowed in the interests of justice.³

27. Therefore, although Ms. Najjar has not clearly formulated the grounds of appeal, we review the merits of the appeal below.

(ii) Review of the UNRWA DT Judgment for errors

28. The issue on appeal is whether the UNRWA DT erred in law or fact resulting in a manifestly unreasonable decision when it concluded that the appellant's application was not receivable *ratione materiae*, as the decision to not appoint her to the Fund Committee did not produce any direct legal consequence affecting her terms and conditions of employment.

29. In *Wasserstrom*,⁴ this Tribunal confirmed our jurisprudence on what constitutes an "administrative decision" subject to judicial review:

The key characteristic of an administrative decision subject to judicial review is that the decision must "produce[] direct legal consequences" affecting a staff member's terms or conditions of appointment. "What constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision."^[5]

30. Ms. Najjar disputes the appointments to the Fund Committee, which appointments are governed by Area Personnel Directive A/6/Part VII/Rev.5 on Provident Fund Humanitarian Repayable Withdrawal (Directive). The Directive provides, in relevant part:

Each Field/HQ PFHRW Committee shall consist of two members and two alternate members appointed by the Field Office Director at the Fields, and Director of Human Resources at HQ and one member appointed by the Area Staff Union concerned. At least one member of the committee must have a financial background.

³ *Houran et al.*, *supra*, note 2.

⁴ *Wasserstrom v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-457, para. 35.

⁵ *Bauzá Mercère v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-404, para. 18, citing *Andati-Amwayi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-058.

31. The Directive gives authority to appoint members to the Fund Committee to the Field Office Director at the Fields, the Director of Human Resources at HQ, and the Area Staff Union. The Directive does not set out the requirements for the appointment of members, other than at least one member of the committee must have a financial background.

32. The UNRWA DT did not err when it held that Ms. Najjar did not have any right to be appointed. She had never been previously appointed as a member of the Fund Committee. This appointment is not part of her terms and conditions of employment with the Agency. Specifically, the UNRWA DT did not err when it held that the inclusion of the appellant's name in the draft circular was a nomination or at most a recommendation. The UNDRWA DT correctly held that the appellant cannot derive any "right" from such a nomination. This could not and did not lead to any enforceable, legitimate expectation of appointment.

33. The appellant says that the legal consequences of the decision to not appoint her to the Fund Committee is that it affected her entitlement to receive overtime pay. Staff Rule 101.3 of the Area Staff Rules governs the payment of overtime: "Staff members who are required to work for one-half hour or more in excess of a maximum number of hours established by the Commissioner-General in respect of specific posts, duties or duty stations, will be deemed to have worked overtime. Overtime will be authorized in advance and duly recorded in accordance with established procedures." There is no evidence that the appellant was authorized or entitled to receive overtime in the context of an appointment on the Fund Committee as part of her terms and conditions of employment. As such, the appellant's argument on this must fail.

34. The appellant also raises concerns about "interference," which raises an allegation of impropriety. Under well-established jurisprudence, the burden of proving any allegations of ill-motivation rests with the party making such claim.⁶ While the appellant has made allegations of improper interference, she provides no evidence in support of those allegations and hence they have no merit.

⁶ *Obdeijn v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-058, para. 38; *Azzouni v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-081, para. 35;

35. In conclusion, her non-appointment to the Fund Committee did not result in any direct legal consequences affecting her terms and conditions of employment with the Agency, and as such, the Agency action was not an “administrative decision subject to judicial review.”⁷ The UNRWA DT correctly held that the application was therefore not receivable *ratione materiae*.

36. Consequently, we dismiss Ms. Najjar’s appeal, and as there was no unlawful administrative decision, the appellant’s requests for relief are dismissed as well.

II. Is the Appeal an Abuse of Process?

37. The Commissioner-General requests an award of costs of USD 250 for a manifest abuse of the appeal process pursuant to Article 9(2) of the Statute because the appellant failed to identify any grounds of appeal but repeated the same arguments made before the UNRWA DT. As a result, the Commissioner-General argues the appeal is frivolous and vexatious and an abuse of process that should be subject to sanction.

38. Article 9(2) of the Statute provides that “(w)here the Appeals Tribunal determines that a party has manifestly abused the appeals process, it may award costs against that party.”

39. Although Ms. Najjar has not been successful in her appeal and repeats the same arguments that were unsuccessful at the UNRWA DT, we do not find that she has “manifestly abused the appeal process”. The appellant has not filed multiple appeals or motions. It is clear she genuinely disagrees with the decision to not appoint her to the Fund Committee and feels aggrieved. The appeal process is available to staff members to ensure their grievances are fully heard and considered. The appeal process is not normally subject to an award of costs that follow the event or litigation where costs are routinely awarded against the unsuccessful party or where a self-represented litigant does not present a strong case. As a result, we find these circumstances are not a “manifest abuse of process”.

40. Therefore, we deny the Commissioner-General’s request for an award of costs.

⁷ *Wasserstrom, supra*, note 4.

Judgment

41. The appeal is dismissed, and the UNRWA DT Judgment is affirmed.

Original and Authoritative Version: English

Dated this 19th day of March 2021.

(Signed)

Judge Sandhu, Presiding
Vancouver, Canada

(Signed)

Judge Murphy
Cape Town, South Africa

(Signed)

Judge Knierim
Hamburg, Germany

Entered in the Register on this 15th day of April 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar