



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

Judgment No. 2021-UNAT-1127

**Mohammed Hamdan Mahmoud Sirhan
(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 Sabine Knierim, Presiding Judge Graeme Colgan Judge Kanwaldeep Sandhu
Case No.:	2020-1446
Date:	25 June 2021
Registrar:	Weicheng Lin

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

JUDGE SABINE KNIERIM, PRESIDING.

1. Mr. Mohammed Hamdan Mahmoud Sirhan contested the decision by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) to terminate his service on medical grounds. The UNRWA Dispute Tribunal (or UNRWA DT) ordered rescission of the contested decision or payment to Mr. Sirhan of USD 13, 500 as in-lieu compensation. Both parties appealed. The United Nations Appeals Tribunal (Appeals Tribunal or UNAT) dismissed Mr. Sirhan's appeal, granted the Commissioner-General's appeal and vacated the UNRWA DT Judgment. Mr. Sirhan applied for a revision of the UNAT Judgment. For reasons set out below, we dismiss the application for revision.

Facts and Procedure

2. Mr. Sirhan is a former staff member at the Jordan Field Office (JFO), UNRWA. In December 2017, his service as a Sanitation Labourer was terminated on medical grounds, and he appealed.

3. The medical grounds relate to the severe low back pain that Mr. Sirhan suffered on 28 March 2017 while trying to lift a heavy garbage container. On 3 May 2017, the Field Human Resources Officer, Jordan, requested that a medical board be convened to evaluate Mr. Sirhan's fitness for continued service with the Agency. The Medical Board met on 24 May 2017 to examine Mr. Sirhan. On 28 September 2017, the Medical Board concluded that Mr. Sirhan was unfit for continued service with the Agency as a Sanitation Labourer, but he was fit to work as a Messenger. The Medical Board found that Mr. Sirhan has lumbar disc disease, which is a lifelong condition and does not allow a patient to carry heavy objects.

4. In Judgment No. UNRWA/DT/2019/026 dated 22 May 2019, the UNRWA Dispute Tribunal ordered rescission of the termination decision or payment to Mr. Sirhan of USD 13,500 as in-lieu compensation. It found that the Agency's decision to convene a medical board "less than two months" after Mr. Sirhan's service-incurred injury in order to evaluate his fitness for continued service was manifestly unreasonable. Both parties appealed the UNRWA DT's decision to the Appeals Tribunal.

5. In Judgment No. 2020-UNAT-1023 dated 26 June 2020, the Appeals Tribunal, with Judge Colgan dissenting, dismissed Mr. Sirhan's appeal, but granted the Commissioner-General's appeal and set aside the UNRWA DT Judgment. The Appeals Tribunal found that the UNRWA DT erred in interpreting Area Staff Rule 106.4 (Compensation for death, injury or illness attributable to service) as requiring the Agency to provide injured staff members an adequate time for recovery before convening a medical board, and that it was reasonable for the Agency to convene a medical board after Mr. Sirhan's service-incurred injury in order to examine his fitness for continued service. The Appeals Tribunal also found that the Medical Board had lawfully come to the conclusion that Mr. Sirhan was unfit for service as a Sanitation Labourer, and there was no rule or regulation obliging UNRWA to place Mr. Sirhan to the post of a Messenger.

6. On 24 August 2020, Mr. Sirhan filed an application for revision of Judgment No. 2020-UNAT-1023. On 14 October 2020, the Commissioner-General filed his comments on the application for revision.

Mr. Sirhan's Application for Revision

7. Mr. Sirhan requests that the Appeals Tribunal accept his application for revision, review the impugned Judgment, consider his case with compassion and humanitarianism, and do him justice.

8. Mr. Sirhan submits that he is seeking a revision of the Appeals Tribunal Judgment because of two decisive facts unknown to him or the Appeals Tribunal at the time of the issuance of the said Judgment:

9. While the impugned Judgment states, in paragraph 12, that Mr. Sirhan did not file an answer to the Commissioner-General's appeal, he in fact filed an answer by e-mail on 27 July 2019.¹ He became aware of this factual error only after the impugned Judgment had been translated into Arabic at his own expense.

¹ According to our record, on 27 July 2019, Mr. Sirhan sent a submission, presumably his answer to the Commissioner-General's appeal, to the eFiling-DoNotReply@un.org e-mail address, which does not accept mails. Consequently, the Registry did not receive Mr. Sirhan's 27 July 2019 filing in the UNAT1 e-mail address box.

10. Approximately one week after the Appeals Tribunal issued the impugned decision on 26 June 2020, he met with two former colleagues who told him that, sometime in April 2017, they had heard the Chief of Health Program say to his Deputy, while the former colleagues were in the office of the Chief of Health Program, that the Director of UNRWA Operations, JFO, had ordered him (Chief of Health Program) to convene a medical board for Mr. Sirhan without delay and then to terminate his appointment by any means possible. Subsequently, the Chief of Health Program and his Deputy coordinated with the Chief of Human Resources Office to prematurely convene a medical board without regard for the job security and rights of the staff. The former colleagues did not disclose what they had heard to Mr. Sirhan because they feared that they could be harmed by those officials as the latter continued to supervise their work in the intervening years. The former colleagues no longer fear those officials because they were dismissed and do not now have authority over them. The former colleagues remain available to testify to the veracity of their information before the Appeals Tribunal. Mr. Sirhan maintains that the Medical Board was the product of a conspiracy and was convened in an underhanded and incorrect manner. The Appeals Tribunal should review the impugned Judgment in the light of this new information.

11. Finally, Mr. Sirhan claims that the UNRWA Dispute Tribunal and the Appeals Tribunal ignored or failed to consider many things.

The Commissioner-General's Comments

12. The Commissioner-General requests that the Appeals Tribunal reject Mr. Sirhan's application for revision, as this is merely his attempt to use this vehicle to have a second round of litigation.

13. The Commissioner-General then discusses the two facts Mr. Sirhan alleges as decisive facts. He submits that Mr. Sirhan's answer was not properly filed as he sent it via e-mail, instead of the Appeals Tribunal's e-filing portal. The Commissioner-General notes that Mr. Sirhan filed his own appeal through the Appeals Tribunal's e-filing portal, and that in transmitting the Commissioner-General's appeal, the UNAT Registry instructed Mr. Sirhan to use the e-filing portal for e-filing and substantive communications.

14. As for Mr. Sirhan's allegation about what his two former colleagues had told him about what they had heard the Chief of Health Program tell his Deputy about what the Director of UNRWA Operations had instructed the Chief of Health Program to do, the Commissioner-General questions the credibility and probative value of the witness evidence from the two former colleagues. Additionally, he submits that the alleged saying by the two former colleagues is a hearsay evidence, which concerned UNRWA officials who were not involved in the convening of the Medical Board. Such evidence, even if given some level of credibility, is not pertinent to the established facts and would not have been decisive in reaching the original decision.

Considerations

15. The revision of a UNAT judgment is governed by Article 11(1) of the UNAT Statute, which provides:

Subject to article 2 of the present statute, either party may apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which 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 must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

16. And Article 24 of the UNAT Rules of Procedure has this to say:

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. The brief that accompanies the application for revision and the comments thereon shall not exceed five pages.

17. Mr. Sirhan's application does not present any decisive new fact which could lead to a revision of our earlier judgment in this case.

Mr. Sirhan's answer to the Commissioner-General's appeal

18. Mr. Sirhan submits that while the impugned Judgment states, in paragraph 12, that he did not file an answer to the Commissioner-General's appeal, he in fact filed an answer by e-mail on 27 July 2019.

19. Mr. Sirhan does not correctly quote our judgment. In paragraph 12, we stated: "No answer to that appeal was received from Mr. Sirhan." This statement was, and is, correct. Mr. Sirhan may have filed an answer to the Commissioner-General's appeal. However, he sent it to the eFiling-DoNotReply@un.org e-mail address, which does not accept mails. Consequently, the Registry did not receive Mr. Sirhan's 27 July 2019 filing in the UNAT1 e-mail address box, as stated in paragraph 12 of our judgment.

20. Mr. Sirhan's answer was not properly filed as he sent it via e-mail, instead of the Appeals Tribunal's e-filing portal. While he had filed his own appeal through the Appeals Tribunal's e-filing portal, for his answer to the Commissioner-General's appeal he used an e-mail address which does not accept mails, although, in transmitting the Commissioner-General's appeal, the UNAT Registry had instructed him to use the e-filing portal for e-filing and substantive communications.

21. Even if Mr. Sirhan had used the e-filing portal, this would have made no difference to the substantive outcome of his case.

Conversation with his two former colleagues

22. We find that Mr. Sirhan's allegations with respect to the conversation with his former colleagues are not persuasive and of limited reliability. Mr. Sirhan did not present any direct evidence but only hearsay evidence relating to an alleged event that took place more than three years before, in April 2017. He is relaying a conversation he had with his former colleagues who relayed another conversation in which they were not directly involved, but overheard between the Chief of Health Program and his Deputy about yet another conversation between the Chief of Health Program and the Director of UNRWA Operations, JFO. There is no written statement of the proposed evidence from the person/s who Mr. Sirhan says overheard the conversation between the officials to enable the Appeals Tribunal to gauge its relevance and admissibility.

23. Mr. Sirhan's explanation as to why his two former colleagues remained silent for such a long time is also insufficient. His submissions remain vague as he does not present the dates of the dismissal of the officials which allegedly allowed the two former colleagues to finally raise their voice. Also, to be persuasive, such an explanation should come from the proposed witnesses themselves, but has not.

24. Further, the alleged conversation between the officials does not constitute a decisive fact. Our judgment was mainly based on the finding and decision of the Medical Board, which declared that Mr. Sirhan was unfit for continued service with the Agency as a Sanitation Labourer, because he has lumbar disc disease, which is a lifelong condition and does not allow a patient to carry heavy objects. Neither the Chief of Health Program nor the Director of UNRWA Operations, JFO, had the authority, at the time, to make a decision as to whether or not Mr. Sirhan was medically fit for further service.

Alleged errors of the UNRWA DT and the UNAT

25. Mr. Sirhan's other allegations do not relate to any facts unknown before the Appeals Tribunal's Judgment was rendered. Instead, Mr. Sirhan tries to show that both the UNRWA DT and the UNAT committed errors when dealing with his case. However, Mr. Sirhan cannot again appeal the UNRWA DT Judgment, and there is no possibility under our Statute to appeal a judgment of the Appeals Tribunal.

Judgment

26. Mr. Sirhan's application for revision is dismissed.

Original and Authoritative Version: English

Dated this 25th day of June 2021.

(Signed)

Judge Knierim, Presiding
Hamburg, Germany

(Signed)

Judge Colgan
Auckland, New Zealand

(Signed)

Judge Sandhu
Vancouver, Canada

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

(Signed)

Weicheng Lin, Registrar