UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2021-UNAT-1131

Hasan Khalil 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 Dimitrios Raikos, Presiding Judge Martha Halfeld Judge John Raymond Murphy
Case No.:	2020-1431
Date:	25 June 2021
Registrar:	Weicheng Lin

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

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. Hasan Khalil Sirhan (Mr. Sirhan) has submitted an application for revision of Judgment No. 2018-UNAT-860 that the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) issued on 29 June 2018. For reasons set out below, we dismiss the application.

Facts and Procedure

2. On 29 June 2018, the Appeals Tribunal rendered Judgment No. 2018-UNAT-860 granting the appeal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency). The UNRWA Commissioner-General (Commissioner-General or Respondent) had sought review of the Judgment of the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or Dispute Tribunal), which ordered the Agency to pay Mr. Sirhan the sum of USD 24,600 for a one-year loss of salary.[1]

3. Mr. Sirhan had applied for the post of Hydrogeologist at the Lebanon Field Office (LFO), and in August 2016 he was recommended for the post. Given that Mr. Sirhan had an ongoing fixed-term appointment with the Gaza Field Office (GFO), the LFO considered and looked into possibilities of secondment. However, because of delays caused by the Director of UNRWA Operations, Gaza (DUO/G) in releasing Mr. Sirhan, the transfer never materialized and the Director of UNRWA Affairs, Lebanon (DUA/L) cancelled the secondment.

4. Mr. Sirhan challenged the decision of the DUA/L to cancel his secondment to the post of Hydrogeologist at the LFO. In his application to the UNRWA DT, he sought: (i) Rescission of the contested decision and his secondment to the post of Hydrogeologist at the LFO; (ii) Compensation for the expenses incurred in preparing for his secondment to the LFO; and (iii) Compensation for moral damages caused by the Agency's abuse of power.[2]

5. On 20 December 2017, the UNRWA DT found that that the decision not to proceed with the secondment was caused by the delay of the DUO/G, but it was within the lawful discretion of the DUA/L to cancel the secondment.[3] Second, the Dispute Tribunal also found that the delay

[1] *Sirhan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2017/047/Corr.1 (DT Judgment).
[2] *Ibid*, para. 25.
[3] *Ibid*, para. 34.

caused by the DUO/G was not a fundamental breach of Mr. Sirhan's rights.[4] However, the tribunal found that Mr. Sirhan was not treated fairly by the Agency and as a consequence, he was deprived of the opportunity of being appointed to the post for which he was selected.[5] For this reason, the UNRWA DT awarded Mr. Sirhan compensation for the difference between his then current salary and the amount advertised for the Hydrogeologist post at the LFO.

6. The Commissioner-General appealed the DT Judgment arguing that the lower tribunal exceeded its competence when it awarded compensation for loss of salary when in fact the staff member never requested this specific form of relief. In its Judgment on 29 June 2018, the Appeals Tribunal agreed. It found that:[6]

> Mr. Sirhan plainly restricted his claim, at the time of expressing his concrete pleas, to material or pecuniary damages related to the expenses incurred as a consequence of his preparation for his secondment, as well as to the non-pecuniary damage (moral harm) he suffered. *He did not make any specific request for compensation for loss of earnings (salary)*. Any other way of reading Mr. Sirhan's submissions, namely by expanding the scope of the relief sought through his application to the first instance Tribunal so as to cover a request for loss of salary, would prejudice due process of law, affecting the ability of the opposing party to effectively answer his petition that failed to explicitly refer to the specific kind of damage or request adequate compensation for it.

7. Furthermore, the Appeals Tribunal reasoned that given the UNRWA DT had found the actions of the DUA/L, namely the cancellation of the secondment, to be within his lawful discretion and also given that the DUO/G's delay did not result in a fundamental breach of the staff member's rights, there was actually no illegality for which compensation could be awarded.[7]

8. The Tribunal thus concluded that no compensation could be awarded when there is no administrative wrongdoing in need of repair and vacated the DT Judgment.

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[4] *Ibid*, para. 40.
[5] *Ibid*, para. 36.
[6] *Sirhan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-860 (Impugned Judgment), para. 22 (emphasis added).
[7] *Ibid*, para. 24.

9. In August 2019, Mr. Sirhan contacted the Registry of the Appeals Tribunal asking for reconsideration of the Impugned Judgment. The Registry directed the staff member to make a formal application for revision on the Tribunal's e-Filing portal but informed the latter that for time limit purposes, his original e-mail in August 2019 date would be considered.

10. On 19 March 2020, Mr. Sirhan submitted his Application for Revision of Judgment and included therewith a Request for Suspension, Waiver or Extension of Time Limit to Appeal. The Respondent filed his observations on the application on 21 September 2020.

Submissions

Mr. Sirhan's Applications

Request for Suspension, Waiver or Extension of Time Limit to Appeal

11. Mr. Sirhan submits that due to extenuating circumstances faced by him and his family from August 2019 to March 2020, he was unable to prepare a timely and complete application for revision.

12. For family reasons, Mr. Sirhan explains that he had to travel from Gaza to Cairo during that time period, and because of the sensitive political situation in Gaza, traveling required special preparations and arrangements, which made it difficult for him to devote time to his application for revision.

13. Mr. Sirhan adduced convincing documentation with his request for extension, which included family medical records and passport photocopies of entry dates in Egypt.

Application for Revision of Judgment

14. In his application for revision, Mr. Sirhan submits that the Appeals Tribunal had erred in its interpretation of: (i) Regulation 11.3 of the UNRWA International Staff Regulations; (ii) Article 10(5) of the Statute of the UNRWA Dispute Tribunal (UNRWA DT Statute) and (iii) Article 9 (1)(a) of the Appeals Tribunal Statute (Statute).

15. Mr. Sirhan argues that the Impugned Judgment is inconsistent with the Appeals Tribunal's holdings in *Chhikara* and *Ashour*.[8]

16. Mr. Sirhan takes issue with the fact that UNAT granted *in lieu* compensation as an alternative to rescission of the decision not to appoint a staff member in *Chikkara*.

17. Mr. Sirhan also points to UNAT affirming the UNRWA DT Judgment in *Ashour* where the tribunal ordered the decision not to select a staff member be rescinded, or in the alternative, the Agency is to award compensation to the aggrieved staff member.

18. The applicant distinguishes his case and argues that he is even more deserving of compensation, because he was actually selected for the post, unlike the staff members in *Chikkara* and *Ashour*.

19. Mr. Sirhan also highlighted the case in *Appleton,* when this Tribunal affirmed the Dispute Tribunal's award of USD 30,000 in moral damages, as a result of the staff member suffering from stress and anxiety.

20. For the above reasons, Mr. Sirhan asks the UNAT to reinstate the award previously granted by the UNRWA DT with interest.

The Commissioner-General's Observations

Observations on the Applicant's introduction of additional evidence

21. The Respondent first notes that Mr. Sirhan introduced an affidavit of Mr. Hassan El Arqan, which was not part of the case record before the UNRWA DT.

22. The Respondent also notes that the applicant has neither requested leave to have this affidavit admitted nor has he demonstrated any exceptional circumstances warranting its admission. As such, the Commissioner-General requests the Appeals Tribunal not consider this evidence.

[8] *Chhikara v. Secretary-General United Nations*, Judgment No. 2017-UNAT-723; *Ashour v. Commissioner-General United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-899.

Observations on the Request for Suspension, Waiver or Extension of Time Limit to Appeal

23. For the emotive reasons advanced by the applicant and given his unique extenuating circumstances, the Respondent does not object to Mr. Sirhan's motion for suspension, waiver or extension of time limits.

Observations on the Application for Revision of Judgment

24. Assuming *arguendo* that the Judgments in *Chhikara* and *Ashour* are new "facts," as advanced by Mr. Sirhan, the Respondent argues that such proposition cannot stand as *Chhikara* was rendered on 31 March 2017, well before the Impugned Judgment which dated 29 June 2018.

25. As such, *Chhikara* cannot satisfy the requirements of Article 11(1) of the Statute, which demands that the decisive fact be "unknown to the Appeals Tribunal and to the party applying for revision".

26. *Chhikara* was thus known to the Tribunal, and Mr. Sirhan also had the opportunity to rely on that Judgment because he filed his answer almost a year after said Judgment was rendered.

27. The Respondent argues none of the applicant's contentions for revision actually constitutes a "decisive fact which was, at the time the judgment was rendered, unknown to the Appeals Tribunal and to the party applying for revision".

28. The Commissioner-General posits that Mr. Sirhan merely disagrees with the decision and is dissatisfied with the Judgment. Relying on *Maghari*, he argues that the instant application is merely an attempt to have a second round of litigation and should be accordingly dismissed.[9]

[9] *Maghari v. Commissioner-General United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-392.

Considerations

Preliminary issues

29. In light of the circumstances of the present case and the Commissioner-General's observations, we accept Mr. Sirhan's request for suspension, waiver or extension of time limit to file the present appeal and are minded to entertain Mr. Sirhan's introduction of Mr. Hassan El Arqan's affidavit in the context of the merits of his application for revision.

Merits

30. We do not propose to reiterate the conclusions of, and reasoning in, the Judgment sought to be revised. It is recent, comprehensive and self-explanatory.

31. Applications for revision of judgment are governed by Article 11 of the Statute and Article 24 of the Appeals Tribunal Rules of Procedure (Rules). By these provisions, an applicant must show or identify the decisive facts that at the time of the Appeals Tribunal 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.[10]

32. The Appeals Tribunal has consistently held that "any application which, in fact, seeks a review of a final judgment rendered by the Appeals Tribunal can, irrespective of its title, only succeed if it fulfils the strict and exceptional criteria established by Article 11 of the Statute of the Appeals Tribunal".[11]

33. Thus, in order to succeed in his quest for revision, Mr. Sirhan must therefore prove that he has discovered a decisive fact that was unknown to both him and this Tribunal at the time of judgment. The "decisive fact" which he maintains was unknown to him and the Appeals Tribunal was primarily the erroneous interpretation and application of Article 10(5) of the UNRWA DT Statute, Regulation 11.3 of the UNRWA International Staff Regulations

[10] *Mbaigolmem v. Secretary-General of the United Nation*s, Judgment No. 2018-UNAT-890, para.12; *Walden v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees*, Judgment No. 2015-UNAT-573, para. 16; *Maghari v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees*, Judgment No. 2013-UNAT-392, para. 15, citing *Macharia v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-128, para. 7. See also *Gakumba v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-492, para. 11.

[11] *Walden* Judgment, *op. cit.*, para.17.

and Article 9(1)(a) of the Statute from case to case. In this respect, Mr. Sirhan relies on UNAT Judgments in *Chhikara* and *Ashour* and submits that there is a contradiction in the Impugned Judgment in the interpretation of the applicable law on compensation matters, noting that in the Impugned Judgment, the Appeals Tribunal has not affirmed the DT Judgment based on Article 10 (5) of the UNRWA DT Statute as it did in other cases like those mentioned above.

34. However, the interpretation, as well as the application of the law in each specific case by the Appeals Tribunal, even assuming *arguendo* it is not correct or in line with a previous or a subsequent jurisprudence, does not constitute *per se* an unknown decisive fact, apt to support revision. In so far as Mr. Sirhan complains that the Appeals Tribunal erred in not having interpreted and applied the law in the same way as it did in other cases, such does not bring his application within the parameters of Article 11(1) of the Statute.

35. In view of the foregoing, Mr. Sirhan has failed to establish an unknown decisive fact that warrants revision of the Judgment and thus the application for revision falls to be dismissed.

36. In any event, we add that Mr. Sirhan's arguments focus on findings and conclusions of this Tribunal in the Impugned Judgment, concerning his entitlement to compensation for pecuniary damages (loss of earnings) with which he disagrees. These matters were, however, considered and rejected in that appeal in which we found that despite the sad fact that Mr. Sirhan had lost an opportunity to pursue his career within the Agency in the post for which he had been selected, a compensation could not be awarded by the UNRWA DT or this Tribunal due to his not meeting the procedural and substantive requirements of the applicable law in the specific case. In view of the considered view of the Appeals Tribunal in this Judgment on the issue of compensation for loss of earnings, it serves no purpose to consider on revision whether Mr. Hassan El-Arqan's "affidavit", produced and relied on by Mr. Sirhan in terms of his entitlement to damages, is a decisive fact warranting the requested revision. The relevant facts were not unknown to Mr. Sirhan or this Tribunal at the time it rendered its Judgment.

37. In the circumstances, the request filed by Mr. Sirhan does not fulfil the statutory requirements and constitutes, in fact, a disguised attempt to re-open the case. His application is not receivable. The Appeals Tribunal is the final appellate body on such

matters. An application for revision of a judgment which does not meet the statutory prerequisites, cannot be a collateral means of attack on the judgment or allowed to be a second right of final appeal.

Judgment

38. The application is dismissed.

Original and Authoritative Version: English

Dated this 25th day of June 2021.

(Signed)	*(Signed)*	*(Signed)*
Judge Raikos, Presiding Athens, Greece	Judge Halfeld Juiz de Fora, Brazil	Judge Murphy Cape Town, South Africa

Entered in the Register on this 29th day of July 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar