



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

Judgment No. 2022-UNAT-1275

Hussam Abd AlRhman Al Dirawi
(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 John Raymond Murphy Judge Sabine Knierim
Case No.:	2022-1649
Date of Decision:	28 October 2022
Date of Publication:	21 November 2022
Registrar:	Juliet Johnson

Counsel for Applicant: Self-represented

Counsel for Respondent: Natalie Boucly

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. Mr. Hussam Abd AlRhman Al Dirawi¹ has filed an application for revision of Judgment No. 2021-UNAT-1158 (Impugned Judgment).
2. Before the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA Dispute Tribunal or UNRWA DT, and UNRWA or Agency, respectively), Mr. Al Dirawi had contested the decision to separate him without termination indemnity for serious misconduct in the form of his beating a disabled student while employed as a teacher by UNRWA. In Judgment UNRWA/DT/2020/052, the UNRWA DT dismissed his application.
3. On appeal, in Judgment No. 2021-UNAT-1158, the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) dismissed Mr. Al Dirawi's appeal and affirmed the UNRWA DT Judgment.
4. For the reasons set out below, we dismiss the application.

Facts and Procedure

5. Effective 9 September 2009, the Applicant was employed by the Agency on a fixed-term appointment as Teacher Arts and Crafts at Education Department, Gaza Field Office. At the time of the serious misconduct, he occupied the same post.
6. The following summary of the UNRWA DT Judgment is taken from the Impugned Judgment²:

... On 27 August 2020, the UNRWA Dispute Tribunal issued the impugned decision in Judgment No. UNRWA/DT/2020/052, in which it dismissed the Appellant's application.

... The UNRWA Dispute Tribunal found that the following facts, as reported in the Investigation Report, were established by clear and convincing evidence. The Appellant asked the victim to come to the front of the classroom after the latter had failed to answer a question. The Appellant then hit the victim's hand with a hose and slapped

¹ Various spellings have been used of the Applicant's name throughout the application and appeals process. For ease of reference, we have maintained the spelling adopted by UNAT previously (see *Hussam Abd AlRhman Al Dirawi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1158, footnote 1).

² *Ibid*, paras. 13-17.

him on the face. The victim tried to leave the classroom to find the School Principal, but the Appellant pushed the victim, and he fell to the floor and hit his head on a desk. The victim returned to his desk crying, and the Appellant told him to stop crying and raise his head. When the victim did not do as asked, the Appellant hit the back of his head, causing the victim's head to hit a desk again. As a result, his nose began to bleed.

... The UNRWA Dispute Tribunal found that the Appellant's actions were in clear violation of the UNRWA regulations, and thus that the Appellant's actions constituted misconduct.

... The UNRWA Dispute Tribunal determined that the disciplinary sanction of "separation from service without termination indemnity" was proportionate to the Appellant's misconduct. It acknowledged that this disciplinary sanction was one of the most severe that the Agency could impose on a staff member, but found that it was proportionate in view of the nature and gravity of the Appellant's actions.

... Lastly, the UNRWA Dispute Tribunal found there was no evidence that the Agency's decision was tainted by procedural irregularity, prejudice, or other extraneous factors or errors.

7. On appeal, the UNAT held that the UNRWA DT did not err in law or fact when it dismissed the application. The UNAT denied the appeal and affirmed Judgment No. UNRWA/DT/2020/052.³

Application for revision of judgment

8. On 12 January 2022, Mr. Al Dirawi submitted an application for revision of the Impugned Judgment.

9. On 15 February 2022, the Respondent submitted its response to the application.

Submissions

Mr. Al Dirawi's Application

10. Mr. Al Dirawi submits as his first contention that there is a "contradiction of the students about the facts". Mr. Al Dirawi submits that the claim that he hit the student (victim) with a hose on his amputated foot causing him to fall to the ground is contradicted by the evidence of: the victim, who did not indicate that he was hit with a hose on his amputated foot; Witness No. 4 who indicated that the teacher caught the victim to prevent him from leaving the classroom, and then

³ Ibid, paras. 41-42.

the victim fell on the ground; and Witness No. 6 who indicated that he saw the teacher “who was not with him”; and Witness No. 7, who indicated that the teacher hit the victim with his foot, who then fell on the ground, collided with the seat and then fell on his amputated foot.

11. Mr. Al Dirawi submits as his second contention that the testimony of the school principal, the school counselor and the school secretary were not consistent with the victim’s statement. He states that Witness No. 2 indicated that he did not see any signs of beating on the victim nor did he see any marks on the face. He states that Witness No. 3 indicated that he did not see redness on the victim’s face and that he did not see the teacher carrying a hose in the classroom or in the yard, and Witness No. 8 indicated that he did not see any signs of beating on the victim.

12. Mr. Al Dirawi further submits that there is an issue with the photos in the medical report. He states that: “The pictures related to the injuries must be shown to a technical expert to reveal their credibility while there is no agreement between the pictures related to the injuries and the medical report.” He refers to the following discrepancies: (1) when asked about the pictures, Witness No. 7 said that the right side of the victim’s face was redder than the left side; (2) Witness No. 8 indicated that he doubted the pictures because he saw the victim’s face was normal; and (3) Witness No. 3 indicated that the victim’s face was not reddened as it was in the pictures. In addition, there was a discrepancy as the medical report did not indicate the presence of bleeding on his nose, but the dismissal letter indicated that Mr. Al Dirawi hit the victim’s head against the desk causing his nose to bleed.

13. With reference to *Sanwidi*⁴, Mr. Al Dirawi submits that it is clear that the facts upon which the decision was based were not clearly confirmed, so the Appeals Tribunal must correct the decision to separate him from service.

The Commissioner-General’s Comments on the Application

14. The Commissioner-General submits that the application does not fulfil the strict and exceptional criteria established under Article 11 of the Appeals Tribunal Statute (Statute).

15. The Commissioner-General submits that Mr. Al Dirawi has not adduced a new fact which was unknown to the UNAT and him at the time the Impugned Judgment was rendered.

⁴ *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084.

16. The Commissioner General submits that Mr. Al Dirawi's contentions are "patently misconceived and wholly without merit". The Respondent notes that the issues raised by Mr. Al Dirawi were duly considered by the UNAT.

17. The Commissioner-General submits that Mr. Al Dirawi's contentions are in the nature of a re-litigation of his appeal. Recalling *Maghari*⁵, the Commissioner-General submits that Mr. Al Dirawi merely disagrees with the decision of UNAT and seeks to reargue his appeal.

18. The Commissioner-General requests the UNAT to reject Mr. Al Dirawi's request for revision of judgment.

Considerations

19. 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.

20. Applications for revision of judgment are governed by Article 11 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; that the facts identified would have been decisive in reaching the decision⁶; and that the decisive facts existed at the time when the judgment was given and discovered subsequently. Facts which occur after a judgment has been given are not such facts within the meaning of Article 11 of the Statute and Article 24 of the Rules of Procedure of the Appeals Tribunal, this remains the case irrespective of the legal consequences that such facts may have.⁷

⁵ *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.

⁶ *Hasan Khalil Sirhan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1131, para. 31; *Mbaigolmem v. Secretary-General of the United Nations*, 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.

⁷ *Carolina Larriera v. United Nations Joint Staff Pension Board*, Judgment No. 2022-UNAT-1193, para. 24.

21. 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”.⁸

22. Thus, in order to succeed in his quest for revision, Mr. Al Dirawi must prove that he has discovered a decisive fact that was unknown to both him and this Tribunal at the time of judgment and that this fact existed at the time when the judgment was given and discovered subsequently. The decisive fact relied on by Mr. Al Dirawi is mainly said to be that the Appeals Tribunal did not take into consideration in its Judgment the following: i) the students’ contradictions on the facts; ii) the statements of the School Principal and the School Secretary; and ii) the photos of the medical report.

23. However, the supposedly unknown facts that Mr. Al Dirawi details in his application for revision focus on findings and conclusions of this Tribunal in the Impugned Judgment with which he disagrees. Notably, these matters were considered in that appeal and Mr. Al Dirawi basically submits a second appeal for a reassessment of the above facts, a remedy which is not available to the parties once this Tribunal has issued a final judgment. His application is not receivable. 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.

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

⁸ *Hasan Khalil Sirhan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1131, para. 32; *Mbaigolmem v. Secretary-General of the United Nations*, 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. 17.

Judgment

25. The Applicant's request for revision of Judgment No. 2021-UNAT-1158 is hereby dismissed.

Original and Authoritative Version: English

Decision dated this 28th day of October 2022 in New York, United States.

(Signed)

Judge Raikos, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Knierim

Judgment published and entered into the Register on this 21st day of November 2022 in New York, United States.

(Signed)

Juliet Johnson, Registrar