UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2023-UNAT-1352

Samer Nayif Mahmud Mohammad

(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 Martha Halfeld, Presiding Judge Kanwaldeep Sandhu Judge Dimitrios Raikos
Case No.:	2022-1742
Date of Decision:	30 June 2023
Date of Publication:	10 July 2023
Registrar:	Juliet Johnson

Counsel for Applicant:	Self-represented
Counsel for Respondent:	Natalie Boucly

Reissued for technical reasons on 2 August 2023

JUDGE MARTHA HALFELD, PRESIDING.

1. Mr. Samer Nayif Mahmud Mohammad (Mr. Mohammad) contested the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) to impose on him the disciplinary measure of summary dismissal for serious misconduct. On 18 March 2022, the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) issued Judgment No. 2022-UNAT-1195[1] (the UNAT Judgment) affirming Judgment No. UNRWA/DT/2021/003[2] of the Dispute Tribunal of UNRWA (UNRWA DT or UNRWA Dispute Tribunal), in which the UNRWA DT dismissed Mr. Mohammad's application.

2. Mr. Mohammad has filed an application for revision of the UNAT Judgment with the Appeals Tribunal.

3. For the reasons set out below, the Appeals Tribunal dismisses the application for revision.

Facts and Procedure[3]

4. Mr. Mohammad joined UNRWA in February 2001. At the time of his separation from service, he was employed as a Teacher of Arabic language, Grade 11, on a fixed-term employment at Irbid Preparatory Boys School No. 1, Jordan Field Office (JFO).

5. On 3 and 4 May 2016, allegations were reported to the Director of UNRWA Operations, JFO (DUO/J) that Mr. Mohammad had engaged in sexual exploitation and abuse (SEA) of two 8th grade male students (Student A and Student B) at Irbid Preparatory Boys School No. 1, JFO.

6. The Field Investigation Officer, JFO (FIO/J) conducted an investigation into the allegations of SEA against Mr. Mohammad. On 10 July 2016, the FIO/J issued an investigation report concluding that the allegations of SEA were founded and that Mr. Mohammad had attempted to sexually exploit Student A and Student B.

[1] *Samer Mohammad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2022-UNAT-1195.
[2] *Mohammad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2021/003.
[3] Summarized from the UNAT Judgment.

7. For reasons not pertinent here, on 31 January 2018, the investigation was re-opened. Student B's mother was interviewed and she confirmed that she had seen pornographic material on her son's mobile phone. Student B was re-interviewed and confirmed that Mr. Mohammad was the one who had sent the pornographic material to his mobile phone.

8. In June 2018, the DUO/J recommended to the Director of Human Resources (DRH) and the Director of Legal Affairs (DLA) to impose on Mr. Mohammad the disciplinary measure of summary dismissal. This recommendation was accepted by the Agency, and, on 8 November 2018, Mr. Mohammad was informed that the allegations of SEA regarding Student B were substantiated by clear and convincing evidence and that, therefore, the disciplinary measure of summary dismissal for serious misconduct was imposed.

9. On 22 November 2018, Mr. Mohammad submitted a request for decision review contesting the disciplinary measure of summary dismissal.

10. On 20 February 2019, Mr. Mohammad filed an application before the UNRWA DT contesting his summary dismissal which was dismissed on 18 January 2021.

11. Mr. Mohammad filed an appeal of the UNRWA DT Judgment with the Appeals Tribunal and, on 18 March 2022, the Appeals Tribunal dismissed his appeal.

The UNAT Judgment

12. The Appeals Tribunal dismissed Mr. Mohammad's appeal and affirmed the UNRWA DT Judgment. The Appeals Tribunal held that Mr. Mohammad's due process rights were respected during the investigative process and the proceedings before the UNRWA Dispute Tribunal. It concluded that even if Mr. Mohammad was not afforded the opportunity to comment on the additional evidence produced following the re-opening of the investigation, he was correctly informed of the allegations made against him and had the opportunity to make representations before the disciplinary decision was taken, as well as during the proceedings before the UNRWA Dispute Tribunal, which included the right to comment on the evidence produced against him. The Appeals Tribunal further noted that Mr. Mohammad never, not in his appeal or in his initial application to the UNRWA DT, pointed out any shortcomings in the interviews which took place after the re-opening of the investigation.[4]

[4] UNAT Judgment, paras. 42-43.

13. The Appeals Tribunal also held that, contrary to Mr. Mohammad's contentions, the witnesses' testimonies in his favour were taken into consideration by the UNRWA DT.[5]

14. The Appeals Tribunal finally held that there was clear and convincing evidence of serious misconduct and that the sanction imposed was not absurd, arbitrary, or tainted by extraneous reasons or bias. To this effect, the Appeals Tribunal recalled that some degree of deference must be given to the factual findings by the UNRWA DT as the court of first instance.[6]

Procedure before the Appeals Tribunal

15. On 22 October 2022, Mr. Mohammad filed an application for revision of the UNAT Judgment, to which the Commissioner-General responded on 2 December 2022.

Submissions

Mr. Mohammad's Application

16. Mr. Mohammad requests "the [UNAT] Judgment [...] be quashed or suspended and the entire case resubmitted to the UNRWA Dispute Tribunal [...] [o]r [...] [be] squash[ed] [...] and order [his] reinstatement". Mr. Mohammad also requests that the Appeals Tribunal order the payment of "[m]aterial compensation [...] from 9 November 2018 to date, in addition to compensation for psychological and moral damage caused to [his] reputation and [his] family socially and psychologically".

17. With respect to the UNAT Judgment, Mr. Mohammad submits that the Appeals Tribunal's considerations for dismissing his appeal are "marred by error, ambiguity and deficient reasoning".

18. Mr. Mohammad submits that in January 2018, he was cleared of all allegations of SEA and was supposed to be reinstated.[7]

19. Mr. Mohammad contends that the Appeals Tribunal failed to take into consideration that the testimonies of Student B and his mother were tainted by contradictions on "substantive matters".

[5] *Ibid*., para. 53.
[6] *Ibid*., paras. 52-56.
[7] E-mail of 19 January 2018 concerning Mr. Mohammad's return to work.

20. Mr. Mohammad further submits that the Appeals Tribunal erred by relying on the testimony of Student B's mother without an official report of a technical expert of the Cybercrime Unit confirming who sent the pornographic material to Student B, which "makes this evidence legally invalid". He submits that Student B's mother was biased in favour of her son. He also notes that she was interviewed at her home while there is no disposition in the UNRWA legal framework or in Jordanian law allowing an investigator to conduct interviews of witnesses at their home.

21. Regarding the testimony of Student B, Mr. Mohammad contends that the Appeals Tribunal erred by omitting to verify the validity of his statement as a minor, by requesting him to first go "to a doctor and/or a psychological counsellor to verify the validity of [his] allegations".

22. Mr. Mohammad submits that the Appeals Tribunal failed to consider the existence of a family dispute between Student B's family and him.

23. Mr. Mohammad claims that his right to defend himself was not respected when the investigation was re-opened and further interviews of Student B and his mother took place. He submits that he was not given the opportunity to respond or refute the testimonies made during these interviews. He contends that he was informed of this supplemental investigation and its outcome for the "first time through the Judgment handed down by [the Appeals] Tribunal".

24. Finally, Mr. Mohammad submits that he discovered all these facts "through the Judgment issued against [him] […] on 18 March 2022".

The Commissioner-General's Comments

25. The Commissioner-General requests the Appeals Tribunal to dismiss Mr. Mohammad's application for revision in its entirety.

26. The Commissioner-General submits that Mr. Mohammad's application does not reflect the discovery of any decisive new fact unknown to him or to the Appeals Tribunal when it rendered its Judgment, pursuant to Article 11 of the Appeals Tribunal Statute and Article 24 of the Appeals Tribunal Rules of Procedure.

27. The Commissioner-General observes that Mr. Mohammad's arguments are either new or a repetition of the ones he made before the Appeals Tribunal and the UNRWA Dispute Tribunal. More specifically, regarding the fact that Mr. Mohammad was not

informed that the investigation was re-opened, the Commissioner-General points out that it does not constitute a new fact as the issue was considered by both the UNRWA DT and the Appeals Tribunal in their respective Judgments.[8]

28. Finally, relying on Appeals Tribunal jurisprudence, the Commissioner-General recalls that it is not sufficient for Mr. Mohammad to merely indicate that he disagrees with the UNAT Judgment and that an application for revision is not an opportunity for him to re-argue his appeal.[9]

Considerations

29. Article 11(1) of the Appeals Tribunal Statute provides that:

> [E]ither 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.

30. A similar provision appears in Article 24 of the Appeals Tribunal Rules of Procedure.

31. Therefore, for an application for revision to be considered receivable, it should comply with four requirements simultaneously:

i) the new fact discovered was unknown to the Appeals Tribunal and to the party applying for revision at the time the judgment was rendered;

ii) such ignorance was not due to negligence of the moving party;

iii) the new fact would have been decisive in reaching the original judgment;

iv) the application was made within 30 calendar days of the discovery of the fact and within one year of the date of the judgment.

[8] UNAT Judgment, paras. 38-44; *Mohammad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, *op. cit.*, para. 45.
[9] *Maghari v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-392, para. 19.

32. Mr. Mohammad's application for revision of the UNAT Judgment does not comply with any of these requirements. Indeed, there is no fact discovered after the issuance of the UNAT Judgment, which was unknown to the Appeals Tribunal and to Mr. Mohammad. Rather, his submissions basically repeat or add to the same arguments of Mr. Mohammad regarding the perceived injustice from the re-opening and outcome of the investigation which led to his summary dismissal for serious misconduct. His submissions relate to the weight of the additional evidence (interviews of Student B and his mother) previously assessed by the Agency, the UNRWA DT and the Appeals Tribunal. They do not relate to the discovery of a fact unknown to the Appeals Tribunal or to Mr. Mohammad.

33. Furthermore, even if the Appeals Tribunal considered that a new fact unknown at the time of the UNAT Judgment had been discovered, Mr. Mohammad would have failed to file his application for revision within the prescribed time limit of 30 calendar days of the discovery of this new fact, which he claims was on the date of the UNAT Judgment, that is to say, on 18 March 2022. Indeed, his application was only filed on 22 October 2022, which is seven months after the date when he supposedly "discovered" the fact, and about six months after the statutory deadline.

34. In truth, Mr. Mohammad seeks to appeal the UNAT Judgment on the alleged grounds that the Appeals Tribunal erred in assessing the evidence produced against him during the investigation. However, he previously presented the same argument, which was rejected by both the UNRWA DT and the Appeals Tribunal. The only new arguments now advanced by Mr. Mohammad seem to be: i) the need for the messages on Student B's mobile phone to be examined by a technical body; ii) the fact that Student B's mobile phone was not examined by the investigators; iii) the fact that the interview of Student B's mother was conducted at her home; and iv) the fact that Student B should have been taken to a doctor and/or a psychological counsellor to verify the validity of his allegations.

35. However, these arguments are merely nuances of the same general argument challenging the validity of the evidence produced after the re-opening of the investigation. In addition, they pertain to facts known to Mr. Mohammad at the time of the proceedings. Therefore, they should have been presented earlier and they cannot be admitted as sufficient grounds for revision of the UNAT Judgment.

36. This reasoning is in keeping with the Appeals Tribunal jurisprudence, according to which "an application for revision is not a substitute for appeal"[10] and that "no party may seek revision of [a] judgment merely because [it] is dissatisfied with the pronouncement of the Tribunal and wants to have a second round of litigation".[11] Moreover, "revision of a final judgment is an exceptional procedure and not an additional opportunity for a party to relitigate arguments that failed at trial or on appeal".[12]

37. Indeed, Article 10(6) of the Appeals Tribunal Statute provides that "the judgements of the Appeals Tribunal shall be final and without appeal".[13] They are also binding on the parties and decisive.[14] There is accordingly no legal basis to revisit the issue in this case.

[10] *Eid v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-145, para. 2.
[11] *Cohen v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-352, para. 12 citing *Muthuswami et al. v. United Nations Joint Staff Pension Board*, Judgment No. 2011-UNAT-102, para. 11.
[12] *Muthuswami et al. v. United Nations Joint Staff Pension Board*, Judgment No. 2011-UNAT-102, paras. 9 and 13. See also *Massah v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-356, para. 15;
[13] Subject only to the narrow and restrictive provisions of Article 11 of the Appeals Tribunal Statute.
[14] Article 10(5) the Appeals Tribunal Statute.

Judgment

38. Mr. Mohammad's application for revision is dismissed.

Original and Authoritative Version: English

Decision dated this 30th day of June 2023 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Halfeld, Presiding	Judge Sandhu	Judge Raikos

Judgment published and entered into the Register on this 10th day of July 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar