



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

Judgment No. 2023-UNAT-1353

**Nisreen Abusultan
(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 Graeme Colgan Judge Gao Xiaoli
Case No.:	2022-1724
Date of Decision:	30 June 2023
Date of Publication:	10 July 2023
Registrar:	Juliet Johnson

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

JUDGE KANWALDEEP SANDHU, PRESIDING.

1. Ms. Nisreen Abusultan¹ contested the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) to deny her request to resume her duties via telecommuting from outside her duty station in Amman, Jordan, after the end of her second year of Special Leave Without Pay (SLWOP) (the contested decision).
2. By Judgment No. UNRWA/DT/2022/029² (the impugned Judgment), the Dispute Tribunal of UNRWA (UNRWA DT or UNRWA Dispute Tribunal) concluded that the contested decision was lawful and that the Agency did not abuse its discretion by denying Ms. Abusultan's request to telecommute from outside her duty station.
3. Ms. Abusultan appeals and seeks compensation.
4. For the reasons set out below, the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

5. In 2021, Ms. Abusultan was employed as an Administration and Training Officer, Grade 14, on a fixed-term appointment in the Finance Department, Jordan Field Office (JFO).
6. On 3 March 2019, Ms. Abusultan was placed on SLWOP for one year for personal reasons upon her request. On 1 March 2020, her SLWOP was extended for another year upon her request.
7. On 1 October 2020, as she was residing in Canada, Ms. Abusultan requested by e-mail to the Deputy, Head Field Finance Office, JFO (D/HFFO/J), to end her SLWOP and to work from Canada "as long as this option [would be] available".³ On 11 November 2020, the D/HFFO/J informed Ms. Abusultan by e-mail that her request was denied because "as a local staff, [she] ha[d] to be on standby to attend the office anytime upon request during the COVID-19 situation just like

¹ The UNRWA DT spelled the Appellant's name as "Nisreen Abu Sultan". However, we adopt the spelling "Nisreen Abusultan" as it appears on the appeal form.

² *Abu Sultan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2022/029.

³ E-mail of 1 October 2020 from Ms. Abusultan to the D/HFFO/J, Subject: Regards.

the remaining staff of JFO”.⁴ On the same date, Ms. Abusultan expressed to the D/HFFO/J by e-mail her disagreement with the Agency’s decision.⁵

8. On 14 February 2021, the Human Resources Assistant, Entitlements, Human Resources Department, JFO (HRAE/HRD/JFO) sent an e-mail to Ms. Abusultan inquiring if she intended to return to her duty station at the end of her SLWOP.⁶

9. On 15 February 2021, Ms. Abusultan informed the HRAE/HRD/JFO by e-mail that she planned to work remotely from Canada until the COVID-19 restrictions were lifted and then travel back to Jordan.⁷

10. On 21 February 2021, the Entitlements Officer, HRD, JFO informed Ms. Abusultan by e-mail that, in accordance with Area Personnel Directive No. A/1/Rev.1/Part I/Section I (Telecommuting) (PD A/1) her new request to telecommute from outside her duty station after the end of her second year of SLWOP was denied as no travel restrictions existed and as the Agency was implementing a 30 per cent staff attendance policy in the office.⁸

11. On 6 April 2021, Ms. Abusultan requested a decision review of the decision of 21 February 2021 denying her request to telecommute from outside her duty station.⁹ The Agency did not inform Ms. Abusultan of the outcome of the decision review.

12. On 26 May 2021, Ms. Abusultan filed an application with the UNRWA Dispute Tribunal contesting the decision to deny her request to resume her duties via telecommuting from outside her duty station.

⁴ E-mail of 11 November 2020 from the D/HFFO/J to Ms. Abusultan, Subject: Re: Regards.

⁵ E-mail of 11 November 2020 from Ms. Abusultan to the D/HFFO/J, Subject: Re: Regards.

⁶ E-mail of 14 February 2021 from the HRAE/HRD/JFO to Ms. Abusultan, Subject: Confirmation on resumption on duty – Nisreen Abusultan.

⁷ E-mail of 15 February 2021 from Ms. Abusultan to the HRAE/HRD/JFO, Subject: Re: Confirmation on resumption on duty – Nisreen Abusultan.

⁸ E-mail of 21 February 2021 from the Entitlements Officer, HRD, JFO to Ms. Abusultan, Subject: FW: Confirmation resumption duty – Nisreen Abusultan.

⁹ The UNRWA Dispute Tribunal, in its footnote 1 of the impugned Judgment, mentioned that: “The Tribunal notes that [Ms. Abusultan] referred in her application to a decision dated 22 March 2021 as the contested decision, but that she did not attach this decision to her application. Nevertheless, the Tribunal considers that the decision to which [Ms. Abusultan] refers must in any event be a repetition of this decision of 21 February 2021, as [Ms. Abusultan] contests the decision not to grant her request to resume her duties via telecommuting after the end of her second year on SLWOP.”

Impugned Judgment

13. In its Judgment, the UNRWA Dispute Tribunal recalled that pursuant to PD A/1, telecommuting was not an entitlement, but rather an exceptional work arrangement that fell within the discretion of the Agency on work arrangement matters. Therefore, the UNRWA Dispute Tribunal concluded that the contested decision did not violate PD A/1, as Ms. Abusultan was required to be present at her duty station and there were no longer COVID-19 travel restrictions that prevented her from doing so.¹⁰

14. Regarding Ms. Abusultan's argument that the contested decision violated Area Staff Circular No. A/07/2020 (Temporary Measures on Granting Extensions for Staff Members on SLWOP During COVID-19 Outbreak), the UNRWA Dispute Tribunal noted that this Circular concerned only extensions of SLWOP and not telecommuting and therefore was not applicable to the present case.¹¹

15. Finally, it concluded that Ms. Abusultan had "failed to show that the denial of her request to telecommute was arbitrary or capricious, was motivated by prejudice or other extraneous factors or was flawed by procedural irregularity or error of law".¹²

Submissions**Ms. Abusultan's Appeal**

16. Ms. Abusultan argues that the UNRWA Dispute Tribunal failed to award her compensation for the loss of salary from October 2020 to May 2021 (the date of her application to the UNRWA DT).

17. With respect to the impugned Judgment, Ms. Abusultan submits that the UNRWA Dispute Tribunal erred in law in dismissing her application as it "did not see any of the injustice or racism that affected the management decision when they approved working from home conditions to other staff members from other countries and nationalities".

¹⁰ Impugned Judgment, para. 23.

¹¹ *Ibid.*, para. 24.

¹² *Ibid.*, para. 26.

18. She also contends that by denying her request to resume her duties to telecommute from outside her duty station, the Agency “broke the roles [...] regarding [SLWOP] during COVID-19”.

19. Lastly, Ms. Abusultan notes that the HRD shared some of her personal information with other staff members without her permission which “affect[ed] [her] life personally”.

The Commissioner-General’s Answer

20. The Commissioner-General requests that the Appeals Tribunal dismiss the appeal in its entirety. He submits that the UNRWA Dispute Tribunal did not err in fact, law, or procedure when it dismissed Ms. Abusultan’s application.

21. The Commissioner-General contends that Ms. Abusultan failed to identify and establish how the UNRWA DT erred in law pursuant to Article 2(1)(c) of the Appeals Tribunal Statute, which is sufficient for the Appeals Tribunal to dismiss her application as without merit.

22. Relying on Appeals Tribunal jurisprudence, the Commissioner-General submits that the UNRWA Dispute Tribunal did not err in not awarding her compensation, as the contested decision was not found unlawful.¹³

23. The Commissioner-General also contends that the UNRWA Dispute Tribunal correctly applied PD A/1 and that Ms. Abusultan failed to demonstrate any abuse of discretion in the Agency’s contested decision. The Commissioner-General notes that by reaching this conclusion, the UNRWA DT was consistent with the UNRWA legal framework as well as with the Appeals Tribunal jurisprudence on the standard of review in administrative matters.¹⁴

Considerations

24. The issue in this appeal is whether the UNRWA Dispute Tribunal erred in dismissing Ms. Abusultan’s application contesting the Agency’s decision to deny her request to resume her duties via telecommuting from outside the duty station at the end of her second year of SLWOP.

¹³ *Sirhan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-860, para. 24.

¹⁴ Impugned Judgment, paras. 19-20 and 22.

25. Ms. Abusultan submits that the UNRWA Dispute Tribunal erred on a question of law in its Judgment. However, she fails to identify in her appeal what error of law was committed. We recall our jurisprudence that an appellant has the burden of satisfying the Appeals Tribunal that the first instance judgment is defective based on one or more of the grounds in the Appeals Tribunal Statute. In the present case, she has failed to discharge her burden and has not demonstrated that the UNRWA Dispute Tribunal committed any of the errors outlined in Article 2(1) of the Statute. Instead, she relitigates arguments that failed before the UNRWA Dispute Tribunal and expresses her general disagreement with the impugned Judgment. This is contrary to the purpose of an appeal to the Appeals Tribunal.¹⁵

26. In any event, we find that the UNRWA Dispute Tribunal did not err when it held that the contested decision was a lawful exercise of the Agency's discretion to allow staff members to telecommute.

27. When reviewing the validity of the Agency's exercise of discretion in administrative matters, as in the present case, the UNRWA Dispute Tribunal determines if the decision is "legal, rational, procedurally correct, and proportionate".¹⁶ This means reviewing "whether relevant matters have been ignored [or] irrelevant matters considered, and [...] whether the decision is absurd or perverse".¹⁷ However, as we found in *Kanbar*:¹⁸

(...) [I]t is not the role of the [UNRWA] Dispute Tribunal to consider the correctness of the choice made by the [Agency] amongst the various courses of action open to it. Nor is it the role of the [UNRWA] Dispute Tribunal to substitute its own decision for that of the [Agency]. As we stated in *Sanwidi*, when the [UNRWA] Dispute Tribunal (and the Appeals Tribunal) conducts a judicial review of this nature, it does not engage in a merit-based review.

28. The Agency issued PD A/1 that sets out the terms for exercising its discretion in regard to telecommuting for staff members with indefinite or fixed-term appointments. Paragraph 7 of PD A/1 clearly states that telecommuting is an "exceptional arrangement based on the best interests of the staff member and the Agency" and is "not an entitlement". It further provides

¹⁵ *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-711, paras. 20-22.

¹⁶ *Yolla Kamel Kanbar v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1082, para. 30.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

that telecommuting “is contingent on the satisfactory performance by, and responsibility of, the requesting staff member” and “must not be used for personal needs”. Paragraphs 7 and 9 of PD A/1 further provide that approval for regular telecommuting is required but that “[s]taff members who are regularly required to attend meetings, inspect or work in UNRWA installations or who are otherwise required to be physically present at the duty station are not normally granted telecommuting”.

29. The Agency reviewed and considered Ms. Abusultan’s request for telecommuting in accordance with the legal framework. It denied her request because there were no longer travel restrictions and the Agency was implementing a 30 per cent attendance requirement in the office as it moved out of the COVID-19 pandemic.¹⁹ Further, the Agency confirmed that Ms. Abusultan was “local staff” who had to be on standby to attend the office anytime upon request like the remaining staff in JFO.²⁰ Therefore, it was not in the best interest of the Agency to approve her request.

30. Ms. Abusultan submits that the contested decision violated Area Staff Circular No. A/07/2020 of October 2020. However, this Circular allows staff members who were in their second year of SLWOP to request an extension of their special leave up to an additional year under certain conditions in line with temporary measures to support staff members facing the impact of the COVID-19 pandemic. It does not apply to a request for telecommuting and therefore, there was no violation of this Circular in the present case.

31. Ms. Abusultan also submits that she has received differential or discriminatory treatment compared to other staff but fails to provide any basis for this allegation. There is no evidence that the contested decision was biased or based on any improper motive, or that it was arbitrary, irrational, absurd, or perverse.

32. Therefore, we find that the contested decision was a valid and lawful exercise of the Agency’s discretion.

33. As there was no unlawful administrative decision and the Agency acted appropriately in denying Ms. Abusultan’s request for telecommuting, her claim for compensation must fail.

¹⁹ Impugned Judgment, para. 23.

²⁰ E-mail of 11 November 2020 from the D/HFFO/J to Ms. Abusultan, Subject: Re: Regards.

Judgment

34. Ms. Abusultan's appeal is dismissed, and Judgment No. UNRWA/DT/2022/029 is hereby affirmed.

Original and Authoritative Version: English

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

(Signed)

Judge Sandhu, Presiding

(Signed)

Judge Colgan

(Signed)

Judge Xiaoli

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

(Signed)

Juliet Johnson, Registrar