



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

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Judgment No. 2024-UNAT-1445

**Moner Ahmed Nasser  
(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**

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Before:	Judge Abdelmohsen Sheha, Presiding Judge Gao Xiaoli Judge Katharine Mary Savage
Case No.:	2023-1849
Date of Decision:	28 June 2024
Date of Publication:	16 July 2024
Registrar:	Juliet E. Johnson

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Counsel for Applicant:	Self-represented
Counsel for Respondent:	Stephen Margetts

**JUDGE ABDELMOHSEN SHEHA, PRESIDING.**

1. Moner Ahmed Nasser (Mr. Nasser), a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency), has applied to the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) for the revision of Judgment No. 2023-UNAT-1360 (UNAT Judgment).<sup>1</sup> In its Judgment, the Appeals Tribunal affirmed Summary Judgment No. UNRWA/DT/2022/038 of the UNRWA Dispute Tribunal (UNRWA DT or UNRWA Dispute Tribunal),<sup>2</sup> in which Mr. Nasser's application was dismissed as not receivable *ratione temporis*.

2. Mr. Nasser 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<sup>3</sup>**

4. At the time of his separation from service, Mr. Nasser had been employed with the Agency since October 2008.

5. On 23 June 2009, the Agency informed Mr. Nasser by letter that an investigation had been opened following allegations of serious misconduct made against him and that he was therefore being placed on administrative leave without pay pending the outcome of the investigation.

6. By letter dated 3 November 2009, the Agency informed Mr. Nasser that it had been established that he had committed serious misconduct in respect of which the disciplinary measure of separation from service with compensation in lieu of notice was imposed pursuant to UNRWA Area Staff Regulations 9.1 and 9.3.

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<sup>1</sup> *Moner Ahmed Nasser v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2023-UNAT-1360.

<sup>2</sup> *Nasr v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2022/038.

<sup>3</sup> Summarized from the UNAT Judgment.

*Procedures before the UNRWA DT and the UNAT*

7. On 12 June 2022, Mr. Nasser submitted a request for decision review (RDR) of the decision to impose on him the disciplinary measure of separation from service.<sup>4</sup> The Agency did not inform Mr. Nasser of the outcome of the decision review.<sup>5</sup>

8. On 12 August 2022, Mr. Nasser filed an application before the UNRWA DT contesting his separation from service.

9. On 22 August 2022, the UNRWA DT issued Summary Judgment No. UNRWA/DT/2022/038.<sup>6</sup> It concluded that Mr. Nasser was informed of the decision to terminate his employment on 3 November 2009 and filed his application with the UNRWA Dispute Tribunal on 12 August 2022. Therefore, it rejected his application as not receivable *ratione temporis* pursuant to Article 8(4) of the UNRWA DT Statute because he filed it more than three years after his receipt of the challenged decision.

10. Mr. Nasser filed an appeal of Judgment No. UNRWA/DT/2022/038 with the Appeals Tribunal and, on 30 June 2023, the Appeals Tribunal dismissed his appeal and affirmed the impugned Judgment.

*The UNAT Judgment*

11. The Appeals Tribunal dismissed Mr. Nasser's appeal and affirmed the UNRWA DT Judgment No. UNRWA/DT/2022/038. The UNAT held that it was obvious that Mr. Nasser filed his application more than three years after his receipt of the contested decision. The UNAT further concluded that pursuant to Article 30 of the UNRWA DT Rules of Procedure, the UNRWA DT had no power to waive that mandatory time limit.

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<sup>4</sup> E-mail from Mr. Nasser to the Administration dated 12 June 2022, Subject: Reviewing the administrative decision according to new evidence.

<sup>5</sup> *Ibid.* The Agency, on behalf of the Deputy Commissioner-General of UNRWA, wrote two e-mails to Mr. Nasser following his request for a decision review. In a first e-mail, the Agency acknowledged receipt of his request for a decision review. On 12 July 2022, in a second e-mail, the Agency informed Mr. Nasser that he may proceed with filing his application to the UNRWA Dispute Tribunal, should he wish to do so.

<sup>6</sup> *Nasr v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2022/038.

12. On 24 August 2023, Mr. Nasser filed an application for revision of the UNAT Judgment, to which the Commissioner-General responded on 27 September 2023.

### **Submissions**

#### **Mr. Nasser's Application**

13. Mr. Nasser requests the Appeals Tribunal to “cancel the decision (dismissal from service) and the legal consequences thereof”.

14. With regard to the UNAT Judgment, Mr. Nasser submits that the Appeals Tribunal's description of his position is incorrect as, at the time of his separation from service, he was a Distribution Supervisor and not an Assistant Packing Supervisor.<sup>7</sup>

15. Regarding the summary of the Commissioner-General's submissions in the UNAT Judgment, which stated that Mr. Nasser's reliance on an e-mail from the Agency dated 12 July 2022 was a new element that was not put forward before the UNRWA DT, Mr. Nasser submits that “it was indicated in a request for additional pleadings”, to which the Commissioner-General did not respond.<sup>8</sup>

16. Mr. Nasser also observes that he submitted a RDR contesting the decision to impose on him the disciplinary measure of separation from service on 17 December 2009 and an appeal before the Joint Appeals Board (JAB), which was approved by letter on 11 March 2010. Relying on Article 8(4) of the UNRWA DT Statute, he further notes that the UNRWA Dispute Tribunal, in its Judgment No. UNRWA/DT/2012/066, rejected his application, “while the case was submitted after the cancellation of the [JAB] and in less than a year”.<sup>9</sup>

17. Therefore, Mr. Nasser contends that the Appeals Tribunal “ignored the evidence and misplaced the application of the applicable legal framework, in particular the application of Article 30 of the UNRWA DT Rules of Procedure, the following in relation to waiver of time limits”.

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<sup>7</sup> UNAT Judgment, para. 5.

<sup>8</sup> *Ibid.*, para. 22.

<sup>9</sup> *Nasr v. Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees*, Judgment No. UNRWA/DT/2012/066.

### **The Commissioner-General's Comments**

18. The Commissioner-General requests the Appeals Tribunal to dismiss Mr. Nasser's application for revision.

19. The Commissioner-General submits that Mr. Nasser's application does not fulfil the requirements set out in Article 11 of the Appeals Tribunal Statute (Statute) and Article 24 of the Appeals Tribunal Rules of Procedure. Indeed, the Commissioner-General contends that Mr. Nasser has not shown any new fact which, at the time the UNAT Judgment was rendered, was unknown to the Appeals Tribunal and to him and would have been decisive in reaching the original decision.

20. Even if the Appeals Tribunal were to consider the 11 March 2010 letter as containing decisive facts, the Commissioner-General contends that Mr. Nasser still failed to "assert when he discovered the decisive facts and as the letter was addressed to him, it stands to reason that [he] was aware of the facts – and as such [it is] not a recent discovery for purposes of a revision".

21. Last, relying on Appeals Tribunal jurisprudence, the Commissioner-General recalls that it is not sufficient for Mr. Nasser to merely indicate that he disagrees with the UNAT Judgment and that an application for revision is not an opportunity for him to reargue his appeal.<sup>10</sup>

### **Considerations**

22. Mr. Nasser requests our Tribunal to revise its earlier Judgment.

23. We remind that Article 10(6) of the Statute reads:

The judgements of the Appeals Tribunal shall be final and without appeal, subject to the provisions of article 11 of the present statute.

24. Article 11(1) of the Statute, to which Article 10(6) is subject, 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,

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<sup>10</sup> *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.

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.

25. It follows that an application for revision is not a normal procedure to contest executable judgments, but rather an exceptional procedure designed to address extraordinary circumstances of late discovery of a decisive fact. An application for revision is not an additional opportunity for parties to relitigate their cases that failed at trial.<sup>11</sup>

26. Following our Judgment in *Muthuswami*, three conditions must be met for an application for revision to succeed: “(i) there is a new fact which, at the time the judgment was rendered, was unknown to the Appeals Tribunal and the party applying for revision; (ii) that such ignorance was not due to negligence of the moving party; and (iii) that the new fact would have been decisive in reaching the original decision”.<sup>12</sup>

27. In his application for revision, Mr. Nasser relies on three grounds that, in his view, would justify the revision of the UNAT Judgment: i) a prior submission of a RDR on 17 December 2009 and Judgment No. UNRWA/DT/2021/066 rendered by the UNRWA DT on the same issue on 12 December 2012; ii) errors in citing the title of his previous position with the UNRWA in the UNAT Judgment as well as ignorance of other financial entitlements associated with that position; and iii) errors in law committed by the Appeals Tribunal in the UNAT Judgment.

28. None of these three grounds warrants a revision of the UNAT Judgment.

29. The facts that a RDR was submitted on 17 December 2009 and that a UNRWA DT Judgment was rendered on the same issue on 12 December 2012 were not unknown to Mr. Nasser before the issuance of the UNAT Judgment. Furthermore, even if these facts had been raised timeously before this Tribunal, they would not have changed the outcome of Mr. Nasser’s case that was, in any event, not receivable. This is because his case had already undergone judicial review, resulting in a final and binding Judgment issued by the UNRWA DT on 12 December 2012.

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<sup>11</sup> *Muthuswami et al. v. United Nations Joint Staff Pension Fund*, Judgment No. 2011-UNAT-102, para. 9.

<sup>12</sup> *Ibid.*, para. 10.

30. The other grounds for revision must also be dismissed. On the one hand, Mr. Nasser is raising issues that are completely irrelevant to the request for revision (the second ground for revision); on the other hand, he is trying to reargue his case by invoking errors of law in the final and binding UNAT Judgment (the third ground for revision). In both cases, these grounds for revision are not sustained as they are inconsistent with the purpose of the procedure of revision which, as previously held, is not a procedure of appeal, but rather an exceptional procedure to address specific cases involving the late discovery of decisive facts.

31. We take the opportunity to make the following observations for the consideration and future guidance of the UNRWA Administration.

32. In support of his first ground for revision, Mr. Nasser submitted documents proving facts that were necessarily known to the UNRWA Administration. These documents show that Mr. Nasser submitted a prior RDR of the contested disciplinary measure on 17 December 2009. Subsequently, Mr. Nasser sought the rescission of the contested decision by applying to the JAB in 2010, in case No. A/08/10. Following the reform of the system of administration of justice in UNRWA in 2010, the case was transferred to the then newly established UNRWA DT and registered under case No. UNRWA/DT/GFO/2010/28. The UNRWA DT issued Judgment No. UNRWA/DT/2012/066, finding the application not receivable *ratione temporis*. That Judgment was not appealed and thus became final. Notwithstanding the finality of that Judgment, Mr. Nasser resubmitted another RDR ten years later, in 2022, in which he raised the same issue again before the UNRWA DT in case No. UNRWA/DT/GFO/2022/048. Although the issue was *res judicata* by its earlier Judgment, the UNRWA DT, ignoring such fact, reassessed the receivability of the case, resulting in another ruling of non-receivability that was later confirmed by our Tribunal in the UNAT Judgment.

33. Although the UNRWA DT reached the same conclusion in its two decisions, we find it regrettable that a Tribunal redecided a matter that was *res judicata*. Indeed, it is the Administration's responsibility, as the opposing party, to bring this vital issue to the attention of the UNRWA DT, or at least to that of the UNAT on appeal. Unfortunately, it did not do so. Such failure on the count of the Administration resulted, in the present case, in adding unnecessary burden on the system of administration of justice, both before the UNRWA DT and before our Tribunal, leading to a waste of resources and energy. Most importantly, the failure of the UNRWA Administration could, in other cases, increase the risk of issuing

contradictory judgments on the same issue, thereby rendering the principle of *res judicata*, a safeguard for legal certainty, obsolete.

34. Considering the seriousness of the failure, the associated risks, and its impact on the proper functioning of the system of administration of justice, the Appeals Tribunal finds it appropriate to refer the matter to the Commissioner-General of UNRWA for possible action to enforce accountability.

35. In light of the foregoing, the application for revision must fail.



**Judgment**

36. Mr. Nasser's application for revision of Judgment No. 2023-UNAT-1360 is dismissed.
37. The matter is referred to the Commissioner-General of UNRWA for possible action to enforce accountability.

Original and Authoritative Version: English

Dated this 28<sup>th</sup> day of June 2024 in New York, United States.

*(Signed)*

Judge Sheha, Presiding

*(Signed)*

Judge Gao

*(Signed)*

Judge Savage

Judgment published and entered into the Register on this 16<sup>th</sup> day of July 2024 in New York, United States.

*(Signed)*

Juliet E. Johnson, Registrar