



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

Judgment No. 2024-UNAT-1487

Mubashara Iram

(Applicant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT ON APPLICATION FOR REVISION

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| Before: | Judge Gao Xiaoli, Presiding Judge Katharine Mary Savage Judge Leslie F. Forbang |
| Case No.: | 2023-1857 |
| Date of Decision: | 25 October 2024 |
| Date of Publication: | 20 November 2024 |
| Registrar: | Juliet E. Johnson |

Counsel for Applicant: Raja Muhammad Farooq

Counsel for Respondent: Noam Wiener

JUDGE GAO XIAOLI, PRESIDING.

1. Ms. Mubashara Iram (Ms. Iram), a former staff member at the United Nations Children’s Fund (UNICEF), contested a disciplinary decision to separate her from service with compensation in lieu of notice and with termination indemnity for harassing her colleagues. The United Nations Dispute Tribunal (UNDT) granted her application in part. Ms. Iram and the Secretary-General both appealed.

2. By Judgment No. 2023-UNAT-1340 (prior Judgment),¹ the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) dismissed Ms. Iram’s appeal, granted the Secretary-General’s appeal and modified the UNDT Judgment, dismissing her application in its entirety.

3. Ms. Iram filed an application for revision of the prior Judgment with the Appeals Tribunal.

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

Facts and Procedure²

5. Ms. Iram was separated from UNICEF by the Sanction Letter dated 11 May 2020 for serious misconduct: bullying two staff members, making abusive comments towards a staff member’s child, repeatedly and unwelcomingly calling and messaging two staff members after work-hours, insulting a staff member in the presence of other personnel during a team meeting, shouting at a staff member in the presence of another staff member, and repeatedly and unwelcomingly touching and hugging a staff member after that staff member had told her that it made them feel uncomfortable.³

6. On 8 August 2020, Ms. Iram filed an application before the UNDT, seeking to be reinstated into service and having all the allegations dropped, awarded compensation, and having the parties concerned held accountable for initiating the case.⁴

7. On 26 April 2022, the UNDT rendered Judgment No. UNDT/2022/039 (UNDT Judgment) granting Ms. Iram’s application in part, rescinding the contested disciplinary measure and

¹ *Mubashara Iram v. Secretary-General of the United Nations*, Judgment dated 8 May 2023.

² Summarized from the prior Judgment as relevant to the application for revision.

³ Prior Judgment, paras. 8-9.

⁴ *Ibid.*, para. 10.

replacing it by that of demotion of one step in grade with deferment, for three years, of eligibility for consideration for promotion, and ordering the Secretary-General to reinstate her and effect any back payments accordingly.⁵

8. Ms. Iram lodged an appeal of the UNDT Judgment, to which the Secretary-General filed a response. The Secretary-General also lodged an appeal of the UNDT Judgment, to which Ms. Iram filed a response.⁶ The Appeals Tribunal consolidated the appeals.

The prior Appeals Tribunal Judgment

9. By Judgment No. 2023-UNAT-1340 dated 8 May 2023, the Appeals Tribunal dismissed Ms. Iram's appeal, granted the Secretary-General's appeal and modified the UNDT Judgment, dismissing Ms. Iram's application in its entirety. The Appeals Tribunal referred the case to the Secretary-General for possible action to enforce accountability.

10. The Appeals Tribunal agreed with the UNDT that there was clear and convincing evidence that Ms. Iram had harassed other staff members over a substantial period of time, and that this behaviour constituted serious misconduct.⁷ The Appeals Tribunal dismissed, among her other arguments, her contention that the complainants and other witnesses had colluded against her and were not credible.

Procedure before the Appeals Tribunal

11. On 9 October 2023, Ms. Iram filed an application for revision of the prior Judgment of the Appeals Tribunal,⁸ on which the Secretary-General filed comments on 9 January 2024.

12. In Order No. 537 (2023), the Appeals Tribunal, on Ms. Iram's first motion, increased the page limits for the briefs to ten pages for both parties. In Order No. 540 (2023), the Appeals Tribunal denied a second motion filed by Ms. Iram which was an "attempt to relitigate the previous

⁵ *Ibid.*, para. 12. In addition, the UNDT decided that, should the Secretary-General elect to pay compensation in lieu of reinstatement, she should be paid, as an alternative, a sum equivalent to 12 months of her net base salary at the rate that she would have been paid had she been demoted at the time of her separation, minus the termination indemnity that she received upon her separation (*ibid.*, para. 13).

⁶ Prior Judgment, paras. 20-21.

⁷ *Ibid.*, paras. 49 and 53 and 58.

⁸ The relevant version of Ms. Iram's application for revision was filed as Annex 1 to her motion to waive the page limit for the application.

motion” and reargue Order No. 537 (2023), and directed her to file the appropriate application for revision within ten days.⁹ She did not.

Submissions

Ms. Iram’s Application for Revision

13. Ms. Iram requests the Appeals Tribunal to accept her apology for the misconduct, restore her dignity and, in essence, to reconsider the prior Judgment.

14. With regard to any decisive fact that was unknown, Ms. Iram refers to documents from 2014-2018. The Fact-Finding Report (investigation report) was defective and retaliatory. There were professional grudges against her. The Appeals Tribunal should “adv[is]e” UNICEF to produce true copies of her colleagues’ performance evaluation reports and should also take into account the statements of other individuals. The Appeals Tribunal failed to notice that her conduct had been assessed as excellent by multiple managers. The Appeals Tribunal should review the assessment Note.

15. As concerns becoming aware of the above-mentioned facts, Ms. Iram submits that she determined the facts subsequent to the “retrieval” and review of the additional evidence after she found a lost old hard drive and two USB flash drives on 21 August 2023. The additional evidence was “accident[al]ly retrieved”, some exhibits were also found “randomly” from disorganized folders.

16. With respect to the facts being decisive to warrant a revision of the prior Judgment, Ms. Iram argues that the allegations against her were false and her statements were truthful. The standard of proof is not met. She was overly ambitious. She did not commit any misconduct.

The Secretary-General’s Comments

17. The Secretary-General requests the Appeals Tribunal to determine that no application for revision is before it or, in the alternative, dismiss the application.

18. The Secretary-General argues that Ms. Iram has not independently filed an application for revision. Annex 1 to her first motion does not constitute an application.

⁹ Order No. 540 (2023), paras. 11-14.

19. The Secretary-General submits that Ms. Iram has not complied with Order No. 540 (2023). Annex 1 to her first motion does not conform to the instructions in the Order, in particular to the requirement that the application not exceed ten pages, and is therefore not receivable.

20. The Secretary-General maintains that Annex 1 to Ms. Iram's first motion does not meet the requirements in Article 11 of the UNAT Statute. It does not demonstrate any new, decisive facts that were unknown to her or the Appeals Tribunal. The evidence referred to is comprised of e-mail correspondence and documents dating from long before the prior Judgment was rendered. Her explanation implies that the material was in her possession during the proceedings.

Considerations

21. First, we note that Ms. Iram's application for revision of the prior Judgment exceeds the page limit set forth by our Rules of Procedure.

22. Article 24 of our Rules of Procedure provides that "[e]ither party may apply to the Appeals Tribunal, on a prescribed form, for a revision of a judgement (...). The brief that accompanies the application for revision and the comments thereon shall not exceed five pages." Paragraph 6 of the UNAT Practice Direction No. 1 on "Filing of Documents and Case Management" clearly requires that "[p]arties must comply with the page limits, if any, prescribed by the standard forms issued by the Appeals Tribunal". The Application for Revision of Judgment Form, at Section III, prescribes that "[t]his Section must not exceed five pages".

23. Ms. Iram's first motion requested permission to file an increased number of pages. The Appeals Tribunal issued Order No. 537 (2023), in which it granted the motion in part and increased the page limit for her application to ten pages. However, Ms. Iram did not comply with this Order. Section III of her application is thirteen pages, exceeding the limit of ten pages. Her application therefore violates the page limit.

24. In failing to comply with the Order of this Tribunal, Ms. Iram risked that her conduct would be found to constitute a manifest abuse of process under the terms of Article 9(2) of the UNAT Statute, with a consequent order of costs being made against her. Although we are unable to condone Ms. Iram's patent disregard for the Order of this Tribunal, we do not find that, despite our disapproval of her conduct, it reaches the threshold of a manifest abuse of process such as to warrant an award of costs against her.

25. In spite of the breach of our Order, Ms. Iram’s application for revision has no merit for the reasons that follow.

26. We have said in *Costa* that “the authority of a final judgment—*res judicata*—cannot be so readily set aside. There are only limited grounds as enumerated in Article 11 of the Statute of the Appeals Tribunal for review of a final Judgment.”¹⁰

27. Article 11(1) of the UNAT Statute 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, 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.

28. As we held in *Mohammad*:¹¹

(...) [F]or 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.

29. Therefore, the first issue for consideration in this case is whether Ms. Iram has presented a new fact unknown to the Appeals Tribunal and her at the time the prior Judgment was rendered.

30. Ms. Iram has produced a number of documents, mainly e-mail communications, with the intention to substantiate that she had been making efforts to create a harmonious working relationship with her colleagues; that all the complaints against her were fabricated for retaliatory and improper motives; that she had obtained good performance evaluations and had a record of good behaviour; that she never conducted herself inappropriately by shouting at, hugging or touching the complainants; that she was excluded from every process during the mediation; that a

¹⁰ *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-063, para. 4 (internal citation omitted).

¹¹ *Samer Nayif Mahmud Mohammad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2023-UNAT-1352, para. 31.

substantial number of complaints were dropped and there was not a single independent witness or piece of evidence in support of any allegation; and that the standard of proof required was not met, nor the criteria for the disciplinary sanction.

31. In Section III.B of her application (“when & how [she] become aware of the fact or facts”), Ms. Iram states:

The request for revision of Judgment was fully determined after the overwhelming review of Judgment, relevant exhibits & retrieval of add evidences after finding the lost old hard drive & 2 USBs on 21 Aug. 2023. The additional evidences are accidentally retrieved & were not known to the Appellant & were not shared with OIAI/DHR [Office of Internal Audit and Investigation / Division of Human Resources] & UNDT related to FFR [Fact-Finding Report], Hospitalization, certain communication, travels & leaves as when reviewed them together with certain aspects & allegations the facts are astonishing to explore how the Appellant was victimized over the period without her knowledge & she was naïve to understand the whole situation. Some exhibits are also found randomly from disorganized folders.

32. Since all the “new” evidence submitted with Ms. Iram’s application has always been in her possession, either in her old hard drive or in her disorganized folders, and she never mentioned them or made any effort to have them produced during the judicial proceedings, we consider that this evidence was not new to her. Her application therefore cannot meet the first requirement. As a result, we need not discuss the other three requirements.

33. We note nevertheless that Ms. Iram’s submissions essentially repeat or add to the same arguments that she raised before the Appeals Tribunal in the prior proceedings. We reiterate what we held in *Awe*:¹²

(...) This Tribunal has stated that an application for revision is not a substitute for an appeal; and no party may seek revision of a judgment merely because he or she is dissatisfied with it and “wants to have a second round of litigation”. A revision of a final judgment is an exceptional procedure and not an additional opportunity for a party to re-litigate arguments that failed at trial or on appeal.

34. Therefore, we find that there is no basis on which to grant Ms. Iram’s application for revision of the prior Judgment.

¹² *Awe v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-735, para. 22 (internal citations omitted).

Judgment

35. Ms. Iram's application for revision of Judgment No. 2023-UNAT-1340 is dismissed.

Original and Authoritative Version: English

Decision dated this 25th day of October 2024 in New York, United States.

(Signed)

Judge Gao, Presiding

(Signed)

Judge Savage

(Signed)

Judge Forbang

Judgment published and entered into the Register on this 20th day of November 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar