



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

Judgment No. 2022-UNAT-1211

**Alaa Abu Skheileh
(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 John Raymond Murphy, Presiding
Judge Graeme Colgan
Judge Martha Halfeld

Case No.: 2021-1548

Date: 18 March 2022

Registrar: Weicheng Lin

Counsel for Applicant: Amer Abu-Khalaf, LOSA

Counsel for Respondent: Ana Peyro-Llopis

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. On 19 March 2021, the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) granted the appeal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) upholding its decision not to reimburse Mr. Alaa Abu Skheileh (Mr. Abu Skheileh) for unauthorized medical expenses he had incurred in Germany.¹
2. Mr. Abu Skheileh has filed an application for revision of the judgment in terms of Article 11 of the Appeals Tribunal Statute (Statute) on the premise that the UNAT was unaware of certain purportedly relevant precedents of the UNRWA Dispute Tribunal (UNRWA DT or Dispute Tribunal) that presumably may have been decisive, if known.
3. For the reasons set out below, we dismiss the application for revision.

Facts and Procedure

4. Mr. Abu Skheileh began service with the Organization as a Medical Officer on 1 March 2009 at the Syria Field Office in Damascus. He was involved in a serious motor vehicle accident on 17 October 2012 while commuting from home to work in his private car. He suffered severe injuries, for which he had to undergo multiple surgeries.
5. The Syria Field Office determined that the accident was service-incurred. Mr. Abu Skheileh was then fully reimbursed for the five surgeries he underwent in Syria. However, he needed additional care, which he pursued in Germany without obtaining prior authorization from the Agency and in respect of which he submitted a claim for reimbursement in the amount of Euros 53,444.87 and USD 450.00. On 22 July 2018, Human Resources at the Syria Field Office denied Mr. Abu Skheileh's request for reimbursement because he had not received prior approval to pursue medical treatment outside Syria.
6. Mr. Abu Skheileh appealed the decision to the UNRWA DT. The Commissioner-General contended that the determination that the injury was service-incurred was made in error. The UNRWA DT rejected that contention and held that

¹ *Alaa Abu Skheileh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1085 dated 19 March 2021.

the Agency was estopped from changing its previous determination. And although the Dispute Tribunal agreed that Mr. Abu Skheileh had not obtained prior authorization before receiving medical treatment in Germany, it found that the special circumstances of the case warranted reimbursement to the staff member. It therefore rescinded the administrative decision not to reimburse the staff member and directed the Agency to reimburse him upon the production of additional evidence.

7. The Agency appealed the UNRWA DT Judgment. It contended that Mr. Abu Skheileh was debarred from receiving compensation on account of his failure to comply with the provisions of Area Staff Rule 106.4 (12), which requires injured staff members to assign to the Agency any right of action against a third-party when obtaining a favorable judgment or settlement in relation to a claim for damages for service-incurred injuries. The Appeals Tribunal held that Mr. Abu Skheileh was debarred in terms of Area Staff Rule 106.4 (15) from receiving compensation as he had not assigned to the Agency his right of action and moreover did not disclose his insurance payout.²

8. The Appeals Tribunal did not vacate the holding of the Dispute Tribunal that the Agency was estopped from changing its determination that Mr. Abu Skheileh's injury was service-incurred. The Appeals Tribunal reasoned:³

... The UNRWA DT's finding that the Agency is estopped from revisiting the determination of his injury as service related is however convincing. Mr. Abu Skheileh relied on various representations of the Agency over a period of time and acted on them to obtain medical treatment in Syria. He was reimbursed for his medical expenses in Syria, and therefore, justifiably relied on the validity of the decision that his injury was service-incurred. It would be detrimental and inequitable to reverse the determination that the injury was service-incurred on the basis of an authority to reverse patent errors. While the determination was most likely erroneous, the consistent acceptance of it by the Agency and the repeated reliance on it by Mr. Abu Skheileh estop the Agency from asserting the error. *Accordingly, the UNRWA DT did not err in holding that the Agency is estopped from re-visiting its decision that the injury was service-incurred.* However, the fact that medical expenses were covered in Syria does not mean that Mr. Abu Skheileh had a right to recover expenses incurred in Germany.

² *Ibid.*, para. 26.

³ *Ibid.*, para. 23 (emphasis added).

9. By application filed on 21 April 2021, Mr. Abu Skheileh seeks revision of the Judgment on the premise that UNAT was unaware of some UNRWA DT judgments, which rescinded administrative decisions that did not consider an injury to be service-incurred even if sustained outside a staff member's official duties.

10. The Commissioner-General filed his comments on 28 August 2021.

Submissions

Mr. Abu Skheileh's Application

11. Mr. Abu Skheileh submits his case is similar to others in which the UNRWA DT rescinded a determination that an injury was not service-incurred, in instances where the injury was incurred outside the performance of a staff member's official duties.⁴ He maintains that the cited UNRWA DT Judgments constitute decisive facts, which were unknown to both the Appeals Tribunal and the parties. Mr. Abu Skheileh does not expound how these alleged new facts, if known to the Tribunal, would have altered the Judgment.

The Commissioner-General's Comments

12. The Commissioner-General argues that Mr. Abu Skheileh misconstrues the *ratio decidendi* of the Judgment of the Appeals Tribunal. The appeal was decided for the reasons which had nothing to do with the nature of the injury suffered, whether service-incurred or not.

13. The Commissioner-General also argues that Mr. Abu Skheileh has failed to establish when he discovered these alleged new facts or why at the time of the Judgment, they were unknown to both him and the Tribunal. Additionally, the UNAT is not bound by UNRWA DT judgments.

⁴ In support of his application, Mr. Abu Skheileh cited the following cases: *Al Karaki v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2015/013; *Al Fayyoubi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2015/014; *Qubeia v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2015/015; *Abu Zainah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2015/016.

14. The Commissioner-General also notes that UNAT did not disturb the finding of the UNRWA DT regarding the service-incurred nature of the injury suffered by the staff member.

15. The Commissioner-General asks this Tribunal to reject Mr. Abu Skheileh's application in its entirety.

Considerations

16. Article 11(1) of the Statute in relevant part provides:

[E]ither party may apply to the Appeals Tribunal for a revision of a judgment on the basis of the discovery of a decisive fact which was, at the time the judgment was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence.

17. A party seeking revision must show: (1) a new fact which, at the time the judgment was rendered, was unknown to the Appeals Tribunal and to Mr. Abu Skheileh; (2) such ignorance was not due to the negligence of Mr. Abu Skheileh; and (3) the new fact would have been decisive in reaching the original decision.

18. It is established jurisprudence that no party may seek revision of the judgment merely because that party is dissatisfied with the pronouncement of the Appeals Tribunal and wants to have a second round of litigation.⁵

19. In his brief, Mr. Abu Skheileh intimates that the decisive facts unknown to the Appeals Tribunal were various judgments of the UNRWA DT dealing with service-incurred injury cases in which the UNRWA DT decided that the decision not to consider an applicant's accident as attributable to service was rescinded. Mr. Abu Skheileh's submission is misconceived and indicates that he has not understood the basis of the decision of the Appeals Tribunal to deny him reimbursement of his medical expenses incurred in Germany. The issue of whether his injuries were service-incurred is irrelevant. Mr. Abu Skheileh wholly misconstrues the *ratio decidendi* which is found in paragraph 26 of the Judgment and reads as follows:

⁵ *Cohen v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-352, para. 12.

Added to that, and most decisively in this case, the UNRWA DT erred in not considering and upholding the main argument of the Agency. It is not disputed that Mr. Abu Skheileh received damages and insurance compensation. Area Staff Rule 106.4 (14) provides that if a staff member prosecutes to judgment or settles any claim in relation to damages for service-incurred injuries, the proceeds therefrom shall be used to reimburse the Agency for any compensation including expenses of medical services provided under Area Staff Rule 106.4 with respect to injury. Despite being awarded 50% of his damages, Mr. Abu Skheileh did not reimburse the Agency. Area Staff Rule 106.4 (15) provides that any person claiming or in receipt of compensation under the rule who fails to comply with any provisions thereof shall be debarred from receiving compensation unless the Commissioner-General decides differently in exceptional circumstances. Hence, Mr. Abu Skheileh is debarred under this provision from claiming or receiving additional compensation in respect of the medical costs he incurred in Germany.

20. The UNRWA DT judgments in relation to whether or not in the specific circumstances of each case an injury was service-incurred have no bearing at all on the finding that Mr. Abu Skheileh is debarred because he did not reimburse the Agency or assign to it his right of action. The UNRWA DT judgments do not constitute “decisive facts” which were unknown. In any event, the finding of the Appeals Tribunal that the Agency was estopped from denying that the injuries were service-incurred was favorable to him and in effect held that the injuries were service-related.

21. The application for revision is thus without any foundation and must be dismissed.

Judgment

22. The application for revision of Judgment No. 2021-UNAT-1085 is dismissed.

Original and Authoritative Version: English

Dated this 18th day of March 2022.

(Signed)

Judge Murphy, Presiding
Cape Town, South Africa

(Signed)

Judge Colgan
Auckland, New Zealand

(Signed)

Judge Halfeld
Juiz de Fora, Brazil

Entered in the Register on this 29th day of April 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar