



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

Judgment No. 2022-UNAT-1286

**Raed Mousa
(Appellant)**
v.
**Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East
(Respondent)**

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge Graeme Colgan Judge John Raymond Murphy
Case No.:	2021-1620
Date of Decision:	28 October 2022
Date of Publication:	14 December 2022
Registrar:	Juliet Johnson

Counsel for Appellant:	Self-Represented
Counsel for Respondent:	Hannah Tonkin

JUDGE SABINE KNIERIM, PRESIDING.

1. The United Nations Appeals Tribunal (UNAT or Appeals Tribunal) has before it an appeal by Mr. Raed Mousa against Judgment UNRWA/DT/2021/037 of the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT), of 19 August 2021. This Judgment dismissed his application challenging the Commissioner-General's implied decision not to investigate his allegations of misconduct reported through the Office of Internal Oversight Services (OIOS), as not receivable.

2. For the reasons set out below, we dismiss the appeal.

Facts and Procedure

3. Mr. Mousa was employed by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) on a fixed-term appointment, as Ophthalmologist, at the Gaza Field Office (GFO) since 5 August 2002.

4. On 15 June 2019, the Director of UNRWA Operations, Gaza (DUO/G) obtained information through social media that, on 13 June 2019, some patients received an Avastin injection at the International Eye Centre (IEC), one of UNRWA's contracted hospitals, and subsequently developed complications. A related Board of Inquiry (BoI) report established, and Mr. Mousa confirmed, that the Avastin injections were performed by him.

5. By letter dated 6 August 2019, the DUO/G instructed the Senior Field Investigator to conduct an investigation into the following allegations against Mr. Mousa: 1) working for the IEC without a valid UNRWA authorization for outside activities; 2) working for the IEC while on sick leave from the Agency; and 3) contributing to malpractice leading to complications for patients during his work at the IEC.

6. On 22 January 2020, the DUO/G imposed on Mr. Mousa the disciplinary measures of written censure and suspension without pay for one month. Mr. Mousa was disciplined based on the findings that he had worked at the IEC while on sick leave from UNRWA and without a valid authorization. The allegations against Mr. Mousa that he had contributed to malpractice were found to be unsubstantiated. Mr. Mousa contested this decision before the UNRWA DT.

By Judgment UNRWA/DT/2020/067 dated 16 November 2020, the Tribunal dismissed the application.¹

7. By e-mail to the DUO/G dated 28 October 2019, Mr. Mousa requested permission to engage in an outside activity, indicating that he is one of only two surgeons in Gaza who can perform vitreoretinal surgeries. On 17 June 2020, Mr. Mousa was informed that the DUO/G had denied his Outside Activity Request (OAR). Mr. Mousa did not contest this decision before the UNRWA DT.

8. On 16 September 2020, Mr. Mousa submitted a request for protection against retaliation to the Ethics Office. Mr. Mousa indicated in his request that the denial of his OAR was a detrimental action. On 24 January 2021, the Chief, Ethics Office (C/EO) responded to Mr. Mousa's request. The C/EO determined that there was no prima facie case of retaliation against Mr. Mousa.

9. On 20 December 2020, Mr. Mousa contacted the OIOS to report misconduct. The OIOS determined that the matter fell under the purview of the Commissioner-General and, on 23 December 2020, referred OIOS case No. 1196/20 to the Commissioner-General. Mr. Mousa was duly informed by the OIOS in this regard. The Commissioner-General did not follow up on the communication of the OIOS.

10. On 24 April 2021, Mr. Mousa filed an application with the UNRWA DT, contending that there was no response from the Commissioner-General with respect to his allegations of misconduct that he had reported through the OIOS.

11. By Order No. 085,² the UNRWA DT ordered Mr. Mousa to produce evidence establishing that he had submitted a request for decision review, and Mr. Mousa submitted his response on 3 August 2021.

12. On 6 August 2021, Mr. Mousa filed a new motion with UNRWA DT providing information regarding a new misconduct report against the Commissioner-General, filed by him with the OIOS (Case no. OIOS 0830/21).

¹ Mr. Mousa appealed Judgment UNRWA/DT/2020/067, and this Tribunal dismissed his appeal in Judgment No. 2021-UNAT-1151.

² *Mousa v. Commissioner-General of the United Nations Relief and Works Agency for the Palestine Refugees in the Near East*, Order No. 085 (2021).

13. On 19 August 2021, the UNRWA DT issued its Judgment UNRWA/DT/2021/037, dismissing Mr. Mousa's application as not receivable. The UNRWA DT held that the contested decision was the Commissioner General's implied decision not to investigate his allegation of misconduct after referral of the case by OIOS on 23 December 2020, but Mr. Mousa did not follow Area Staff Rule 111.2 and the jurisprudence of the UNAT which require that a request for decision review against the contested decision be submitted before filing an application with the UNRWA DT. In his response to Order No. 085, Mr. Mousa provided a copy of his request for decision review against the 22 January 2020 disciplinary sanction. In addition, by e-mail to the Commissioner-General dated 29 July 2021, Mr. Mousa requested review of the decision with respect to his allegations of misconduct. As Mr. Mousa did not submit a request for decision prior to filing his application before the UNRWA DT on 24 April 2021, and the Tribunal has no jurisdiction to waive this requirement, the UNRWA DT dismissed Mr. Mousa's application as not receivable *ratione materiae*.

Procedure before the Appeals Tribunal

14. On 13 October 2021 Mr. Mousa filed an appeal with UNAT challenging the UNRWA DT Judgment.

15. On 21 December 2021, the UNAT received the Commissioner-General's response to the appeal.

Submissions

Mr. Mousa's Appeal

16. Mr. Mousa contends that the UNRWA DT did not consider or rejected important evidence, namely the e-mail sent by him on 3 February 2020 requesting review of the final decision of the DUO/G, and dismissed the case; in support, Mr. Mousa refers to annexes 10 – 14 and 20 – 21 of his appeal.

17. He submits that through the investigations, it became clear that while the accusation of medical malpractice against him was disproved, some other facts were revealed indicating that the Service Contract with the IEC, signed by and as such the responsibility of the DUO/G, didn't include a number of other medical services in addition to the Avastin

injections. He claims in this case the DUO/G was influenced by a non-UNRWA party, for personal purposes.

18. Mr. Mousa submits he subsequently informed the DUO/G, but instead of addressing this information, the DUO/G neglected the issue, which prompted Mr. Mousa to raise it to the higher levels of the UNRWA, but to no avail. This led to a report of misconduct submitted by Mr. Mousa against the DUO/G through the OIOS (Case no. OIOS 1196/20). The reported misconduct was referred by the OIOS to the Commissioner-General for further appropriate action, but according to Mr. Mousa, there was no response from the Commissioner-General with respect to these allegations, which suggests a cover up of administrative corruption.

19. Mr. Mousa also claims that after the submission of his application with UNRWA DT, once again that court did not properly take all the evidence into account and dismissed the case. This concerns in particular, his newly reported misconduct against the Commissioner-General filed with the OIOS (Case no. OIOS 0830/21), in addition to the misconduct reported earlier against the DUO/G (Case no. OIOS 1196/20). He requests the UNAT to refer the reported misconduct in OIOS 0830/21 against the Commissioner-General and related following events, to the OIOS for further investigations, in accordance with relevant applicable rules. He also requests an oral hearing in order to better describe relevant facts and his submissions.

The Commissioner-General's Answer

20. According to the Commissioner-General, in his appeal Mr. Mousa has failed to identify, by citation to any provision in Article 2(1) of the UNAT Statute, the grounds for his appeal, and as such, his appeal is defective. Mr. Mousa has not demonstrated in what respect the UNRWA DT, by dismissing his application, exceeded, or failed to exercise its jurisdiction, erred on a question of law, committed an error in procedure, or erred on a question of fact, resulting in a manifestly unreasonable decision. Mr. Mousa does not criticize the reasons for dismissing his application. In his appeal he raises issues regarding an alleged cover up in relation to a contract that UNRWA had concluded. In addition, he raises issues concerning an alleged failure to comply with relevant rules relating to reported alleged misconduct. In the Commissioner-General's view, all these issues are not germane to the cardinal issue – whether the UNRWA DT erred in law in dismissing the application as not receivable for failure to submit a decision review request. The Commissioner-General submits that failure

to raise claims under the UNAT Statute and to explain how the UNRWA DT erred in deciding his claims is a sufficient basis for UNAT to dismiss the appeal.

21. The Commissioner-General contends that the UNRWA DT did not err as a matter of fact or law that would require a reversal of the UNRWA DT's Judgment dismissing Mr. Mousa's application as not receivable. In addition, Mr. Mousa had failed to submit a decision review request as required under the applicable provisions of the legal framework. The submitted documents he refers to in support of his contention cannot be construed to be a decision review request in relation to the matter before the UNRWA DT challenging the Commissioner-General's implied decision not to investigate his allegations of misconduct.

22. In addition, the Commissioner-General contests the admission by UNAT of additional documents submitted by Mr. Mousa, having regard to the provisions of Article 2(5) of the UNAT Statute, since he has not demonstrated exceptional circumstances warranting the admission of additional evidence on appeal, nor has he sought leave to present such evidence on appeal.

23. According to the Commissioner-General, the relief sought by Mr. Mousa is untenable at law. He requests UNAT to find that the UNRWA DT did not err on a question of fact, as a matter of law or in procedure when it dismissed Mr. Mousa's application and therefore, to dismiss the appeal in its entirety.

Considerations

Oral hearing

24. Mr. Mousa requests an oral hearing. Oral hearings before the Appeals Tribunal are governed by Article 18(1) of the Appeal Tribunal's Rules of Procedure, which provides:

... The judges hearing a case may hold oral hearings on the written application of a party or on their own initiative if such hearings would assist in the expeditious and fair disposal of the case.

25. Mr. Mousa does not provide a compelling reason why an oral hearing before the Appeals Tribunal should be granted in this appeal. As the case deals with the issue of receivability *ratione materiae*, this Tribunal does not find that an oral hearing is necessary or

would “assist in the expeditious and fair disposal of the case” within the meaning of Article 18(1) of the Appeals Tribunal’s Rules of Procedure.

Mr. Mousa’s Appeal

26. The only relevant question on appeal is whether the UNRWA DT erred in dismissing Mr. Mousa’s application as not receivable *ratione materiae* because he had not submitted a request for decision review in accordance with Area Staff Rule 111.2.

27. Mr. Mousa, in his appeal, does not show that the contested Judgment was defective. According to Article 2(1) of the UNAT Statute,

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

- (a) Exceeded its jurisdiction or competence;
- (b) Failed to exercise jurisdiction vested in it;
- (c) Erred on a question of law;
- (d) Committed an error in procedure, such as to affect the decision of the case; or
- (e) Erred on a question of fact, resulting in a manifestly unreasonable decision

28. Mr. Mousa’s appeal does not refer to any of the grounds of appeal mentioned in Article 2(1) of the UNAT Statute. The only submission regarding the relevant issue of receivability is his complaint that the UNRWA DT did not consider or rejected important evidence contained in Annexes 10 – 14 and 20 – 21 of his appeal.

29. However, neither his submission nor the annexes of the appeal show any errors in the UNRWA DT’s Judgment. The Tribunal correctly applied Area Staff Rule 111.2 which provides, in relevant parts:

- 1. A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her terms of appointment or the contract of employment, including all pertinent regulations and rules and all relevant administrative issuances pursuant to Staff Regulation 11.1 (A), shall, as a first step, submit a written request for a decision review: (A) in the case of staff members of Field Offices, to the UNRWA Field Office Director in charge of the Field Office[.]

...

3. A staff member shall submit a request for decision review within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested

30. The UNRWA DT correctly found that a request for decision review against the contested decision must be submitted prior to filing an application to the Dispute Tribunal. Under the constant jurisprudence of the Appeals Tribunal, an application is only receivable when a staff member has previously submitted the impugned administrative decision for decision review.³

31. On appeal, Mr. Mousa does not show that, contrary to the UNRWA DT's findings, he fulfilled this requirement. The 3 February 2020 e-mail (Annexes 11 and 12) cannot be regarded as a request for decision review against the contested decision. The 3 February 2020 e-mail was the request for decision review⁴ against the 22 January 2019 decision imposing on Mr. Mousa a disciplinary sanction, but not against the contested decision in the present case, that is the Commissioner-General's implied decision not to investigate Mr. Mousa's allegations of misconduct after OIOS had referred the case to the Commissioner-General on 23 December 2020. Annex 10 of the appeal contains the 22 January 2019 disciplinary sanction. The documents contained in Annexes 14, 20 and 21, are the 19 August 2021 UNRWA DT Judgment now under appeal (Annex 14), Mr. Mousa's 24 April 2020 application to the UNRWA DT (Annex 20), and Mr. Mousa's 6 August 2020 Motion to the UNRWA DT (Annex 21). The UNRWA DT⁵ took into account that Mr. Mousa submitted a request for decision review on 29 July 2021 (Annex 13 of the Appeal) after he had filed his application to the UNRWA DT on 24 April 2021, and correctly held that this did not fulfill the requirements of Area Staff Rule 111.2 and the jurisprudence of the Appeals Tribunal.

32. All other arguments raised by Mr. Mousa concern the merits of the case and as such are not relevant for the present appeal.

33. Insofar as Mr. Mousa attempts to introduce additional documentary evidence, he has not demonstrated exceptional circumstances warranting the admission of additional evidence on appeal nor has he sought leave to present such additional evidence as he was

³ *Adjini et al. v. Secretary-General of the United Nations*, Judgment 2011-UNAT-108, para. 23

⁴ This was also noted by the UNRWA DT, see Judgment UNRWA/DT/2021/037, para. 25.

⁵ *Ibid.*

required to do in terms of Article 2(5) of the UNAT Statute. The evidence is not admissible on appeal.

Judgment

34. Mr. Mousa's appeal is dismissed, and Judgment UNRWA/DT/2021/037 is affirmed.

Original and Authoritative Version: English

Decision dated this 28th day of October 2022 in New York, United States.

(Signed)

Judge Knierim, Presiding

(Signed)

Judge Colgan

(Signed)

Judge Murphy

Judgment published and entered into the Register on this 14th day of December 2022 in New York, United States.

(Signed)

Juliet Johnson, Registrar