



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

Judgment No. 2015-UNAT-573

**Walden
(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 Inés Weinberg de Roca, Presiding
Judge Luis María Simón
Judge Mary Faherty

Case No.: 2014-658

Date: 30 October 2015

Registrar: Weicheng Lin

Counsel for Mr. Walden: Self-represented

Counsel for Commissioner-General: Lance Bartholomeusz

JUDGE INÉS WEINBERG DE ROCA, PRESIDING.

1. On 27 June 2014, the United Nations Appeals Tribunal (Appeals Tribunal) rendered Judgment No. 2014-UNAT-436 in the case of *Walden v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East* (UNRWA or Agency, respectively). On 22 September 2014, Mr. Bryan Lindsay Walden filed a request for revision of judgment as well as a motion requesting that the Appeals Tribunal strike certain paragraphs of the Appeals Tribunal Judgment. On 7 November 2014, the Commissioner-General of UNRWA filed his comments on both the application for revision and the motion to strike.

Facts and Procedure

2. On 20 July 2000, Mr. Walden entered the service of the Agency at its Headquarters in Amman as a Senior Procurement Officer, P-4, on a fixed-term appointment for one year. His appointment was subsequently extended.

3. By letter dated 27 May 2009, the Commissioner-General informed Mr. Walden that his appointment would be terminated for misconduct effective 1 June 2009. The letter specified that Mr. Walden had submitted a non-accredited degree in support of his successful application for the post of Senior Procurement Officer, and that by doing so, he had misrepresented his academic qualifications to the Agency.

4. By letter dated 23 June 2009, Mr. Walden appealed the decision to terminate his appointment before the former Joint Appeals Board. The application was subsequently transferred to the UNRWA Dispute Tribunal (or UNRWA DT).

5. On 18 April 2013, the UNRWA DT issued Judgment No. UNRWA/DT/2013/011. It found that the facts on which the decision to terminate Mr. Walden's employment for "knowingly" misrepresenting his academic qualifications was based were not established by clear and convincing evidence; that the facts as established by the Agency did not amount to misconduct; and that therefore the sanction was disproportionate. The UNRWA Dispute Tribunal set aside the termination decision and ordered Mr. Walden's re-instatement. In the alternative, and bearing in mind the exceptional circumstances of the case, that Tribunal awarded compensation in the amount of two years and six months' net base salary.

6. Both parties appealed and on 27 June 2014, the Appeals Tribunal issued Judgment No. 2014-UNAT-436. The Appeals Tribunal found that “termination [was] not disproportionate to the offence taking into account that Mr. Walden’s recruitment, in the first instance, was predicated on the existence of a degree subsequently established to be without merit and which never would have qualified him for selection by the Organization”.¹ Accordingly, the Appeals Tribunal vacated the UNRWA DT Judgment.

Submissions

Mr. Walden’s Application

7. The two-pronged test applied by the Office of Human Resources Management which had advised the Agency regarding academic/professional qualifications inquires “whether there was an intent to deceive” as well as “whether the person would still qualify for the functions, if [it] were not to consider the diploma mill degree”. By ignoring that Mr. Walden also had a graduate business diploma from the Graduate School of Business, University of Auckland, and by overlooking that Mr. Walden’s successor had the same qualifications as Mr. Walden, the Appeals Tribunal reached an erroneous conclusion.

8. The Appeals Tribunal erred in altering the charge from “knowingly misrepresenting the [Master for Business Administration (MBA)]” to “presenting the MBA” and “lacking any professional qualification”; and in making factual assumptions about Mr. Walden’s qualifications that were at variance with the actual facts.

9. The Appeals Tribunal has yet to pass judgment on the charge of “having knowingly misrepresented his academic qualifications by submitting a non-accredited degree in support of his application for employment with the Organization”. Mr. Walden’s provision of an additional degree that was not from a recognized institution did not affect his eligibility for the post and was not the decisive factor in his selection.

10. Mr. Walden only became aware of the fact that the existence of his legitimate degree was unknown to the Appeals Tribunal when he received the Appeals Tribunal Judgment on 30 August 2014.

¹ Impugned Judgment, para. 34.

11. In his motion, Mr. Walden asks that the Appeals Tribunal strike paragraphs 34, 36 and 37 of its Judgment as they are misleading or erroneous.

12. Mr. Walden requests that the Appeals Tribunal grant his application and motion and revise the Appeals Tribunal Judgment.

The Commissioner-General's Answer

13. The existence of Mr. Walden's qualification from the University of Auckland is a fact that was known to the Appeals Tribunal, as this information was set out in various annexes to Mr. Walden's application to the UNRWA DT as well as the UNRWA DT judgment. Moreover, the aforementioned degree is not a "decisive fact" which would change the outcome of the case or require revision, since it was the contested MBA which was determinative in Mr. Walden's selection.

14. With respect to Mr. Walden's contention that the Appeals Tribunal has yet to pass judgment on the charge of "having knowingly misrepresented his academic qualifications by submitting a non-accredited degree in support of his application for employment with the Organization", the Commissioner-General submits that this request does not come within the permitted scope of review by the Appeals Tribunal; and as already stated, the Appeals Tribunal was aware that Mr. Walden had obtained his professional position with an inexistent university degree.

15. The Commissioner-General asks that the Appeals Tribunal dismiss both Mr. Walden's application for revision and motion to strike.

Considerations

16. Applications for revision of judgment are governed by Article 11 of the Statute and Article 24 of the Rules of Procedure of the Appeals Tribunal. By these provisions, an applicant must show or identify the decisive facts that at the time of the Appeals Tribunal Judgment were unknown to both the Appeals Tribunal and the party applying for revision; that such ignorance

was not due to the negligence of the applicant; and that the facts identified would have been decisive in reaching the decision.²

17. The Appeals Tribunal has consistently held that “any application which, in fact, seeks a review of a final judgment rendered by the Appeals Tribunal can, irrespective of its title, only succeed if it fulfils the strict and exceptional criteria established by Article 11 of the Statute of the Appeals Tribunal”.³

18. The request filed by Mr. Walden does not fulfil the statutory requirements and constitutes, in fact, a disguised attempt to re-open the case.

19. The supposedly unknown facts that Mr. Walden contends warrant a revision of judgment relate to arguments and conclusions contained in the written Judgment. Mr. Walden disagrees with the Judgment and basically submits a second appeal, a remedy which is not available to the parties once this Tribunal has issued a final judgment. His application is not receivable.

Judgment

20. The application for revision is dismissed.

² *Maghari v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees*, Judgment No. 2013-UNAT-392, para. 15, citing *Macharia v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-128, para. 7. See also *Gakumba v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-492, para. 11.

³ *Gakumba, ibid.*, para. 13, citing *Beaudry v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-129, para. 16.

Original and Authoritative Version: English

Dated this 30th day of October 2015 in New York, United States.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Simón

(Signed)

Judge Faherty

Entered in the Register on this 18th day of December 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar