



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

Judgment No. 2023-UNAT-1349

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

JUDGMENT

Before: Judge Martha Halfeld, Presiding
Judge Graeme Colgan
Judge Gao Xiaoli

Case No.: 2022-1717

Date of Decision: 30 June 2023

Date of Publication: 6 July 2023

Registrar: Juliet Johnson

Counsel for Appellant: Self-represented

Counsel for Respondent: Natalie Boucly

JUDGE MARTHA HALFELD, PRESIDING.

1. Said Ali Tamalawi, a staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency), contested a decision to impose on him the disciplinary measures of a written censure, a fine equivalent to two months' salary and deferment of eligibility for promotion for a period of one year (contested Decision).
2. By summary Judgment No. UNRWA/DT/2022/022,¹ the UNRWA Dispute Tribunal (UNRWA DT) dismissed the application as not receivable (impugned Judgment). Mr. Tamalawi lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).
3. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure²

4. At the time of the events in question and issuance of the contested Decision, Mr. Tamalawi was employed by the Agency as Secondary English Teacher, Grade 12, Step 19 at the Deir Yassin Secondary School.³
5. By memorandum dated 2 December 2021, a Senior Field Investigator informed Mr. Tamalawi that an allegation was raised against him of inflicting corporal punishment against a student at Deir Yasin School (Complainant) and that the Investigation Office was conducting an investigation into the allegation.⁴ In this regard, Mr. Tamalawi was interviewed on 6 December 2021.
6. By letter dated 13 January 2022, the Director of UNRWA Affairs, Lebanon, (DUA/L) informed Mr. Tamalawi that, according to the allegations, he threw a chair towards the Complainant and later hit him in the face on 25 November 2021 and that, according to the findings

¹ *Tamalawi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment dated 7 June 2022.

² Summarized from the impugned Judgment as relevant to the appeal.

³ Impugned Judgment, para. 2.

⁴ *Ibid.*, para. 3; notification of investigation dated 2 December 2021 (Annex 1 to the appeal).

of the investigation, the allegations were substantiated and would constitute misconduct.⁵ He responded to that letter on 24 January 2022.

7. By the DUA/L's letter dated 21 March 2022, Mr. Tamalawi was informed of the contested Decision.⁶

8. On 19 May 2022, he filed an application with the UNRWA DT, requesting rescission of the contested Decision and recovery of all amounts deducted from his salary.⁷ The application was not transmitted to the Commissioner-General.

The impugned Judgment

9. The UNRWA DT, by summary Judgment, dismissed the application as not receivable.

10. The UNRWA DT noted that in his application, Mr. Tamalawi stated that he had been informed of the contested Decision on 21 March 2022 and that he did not submit a Request for Decision Review (RDR).⁸ Therefore, it is clear from the case record that he did not submit an RDR regarding the contested Decision before filing his application with the Tribunal. As the UNRWA DT has no jurisdiction to waive this requirement under Article 8(3) of its Statute, the application is not receivable *ratione materiae*.

Procedure before the Appeals Tribunal

11. On 6 August 2022, Mr. Tamalawi filed an appeal of the impugned Judgment with the Appeals Tribunal, to which the Commissioner-General filed an answer on 7 October 2022.

12. On 3 June 2023, Mr. Tamalawi filed a motion requesting leave to file additional pleadings, to which the Commissioner-General responded on 18 June 2023.

⁵ Impugned Judgment, para. 4; letter dated 13 January 2022 (Annex 4 to the appeal).

⁶ Impugned Judgment, para. 6; contested Decision of 21 March 2022.

⁷ Impugned Judgment, paras. 7–9.

⁸ *Ibid.*, para. 14.

Submissions

Appellant's Appeal

13. Mr. Tamalawi requests the Appeals Tribunal to review the contested Decision and invalidate it, and order to return to him all the deducted salary and benefits instalments and to take disciplinary measures against the student and the staff members who advanced false statements and facts against him.

14. He argues that the contested Decision is unfair. He did not commit the alleged act. His hand touched the Complainant's cheek by accident when he was trying to escort the Complainant back to the classroom. None of his team members witnessed the incident. Even the students in the class were not able to see whether his hand touched the Complainant's cheek as he had his back towards the classroom. The students were minors. DUA/L was unsure if he had thrown the chair in the Complainant's direction. Furthermore, the main witness—the Deputy School Principal (DSP)—is not neutral and trustworthy. DSP did not see the incident. DSP was a collaborator with the School Principal in creating a scenario where Mr. Tamalawi would be obliged to transfer from the school. DUA/L failed to request evidence of the multiple instances of abuse of Mr. Tamalawi by the School Principal.⁹

15. He submits that the relevant pieces of evidence and the identities of the witnesses and the Complainant are unknown. He requests that their identities be revealed and their presence or absence on the day of the incident be examined as well as the seat map of the students in the classroom at the time, in order to establish whether the students who possibly were witnesses against him could have seen his hand touching the Complainant's cheek. Moreover, the investigator did not report his exact words during the interview; he was not trying to “prevent the student from leaving the class”. In addition, she incorrectly used the word “hit” instead of the word “touched”.¹⁰

16. Mr. Tamalawi contends that the disciplinary measure was extreme in its severity. In many previous cases, measures taken for corporal punishment did not exceed a written reprimand. DUA/L noted the absence of previous disciplinary measures against him. His nature is calm and

⁹ Mr. Tamalawi alleges provocations, harassment and attempts of constructive transfer.

¹⁰ Mr. Tamalawi requests that the Appeals Tribunal refer to the recording and not only the summary.

not susceptible to violence. He has never been reported for using violence. Deducting two month's salary affects negatively his whole family.

The Commissioner-General's Answer

17. The Commissioner-General requests the Appeals Tribunal to dismiss the appeal.

18. The Commissioner-General argues that Mr. Tamalawi's appeal is not well-founded on any of the grounds of appeal. He does not criticize the reasons for dismissing his application as not receivable and such defect is sufficient basis to dismiss the appeal. His arguments before the UNRWA DT were identical to the grounds of his appeal advanced before the Appeals Tribunal.

19. The Commissioner-General submits that the UNRWA DT Judgment is free of error on any question of law. Its consideration of the receivability of the application cannot be assailed. The impugned Judgment comports with the UNRWA regulatory framework.

Considerations

Motion to file additional pleadings

20. The Appeals Tribunal addresses first Mr. Tamalawi's motion to file additional pleadings. In accordance with Article 31(1) of the Appeals Tribunal Rules of Procedure and Section II.A.3 of Practice Direction No. 1, the motion is rejected for mainly two reasons. Firstly, there are no exceptional circumstances to justify such a filing. As a general rule, a party must submit their arguments in their appeal brief and not after it. Additional arguments can only be filed in limited situations where exceptional circumstances are presented. Mr. Tamalawi has not shown such circumstances in this case. Secondly, the motion is rejected because the additional pleadings are not consequential for the outcome of the case, as they merely reiterate Mr. Tamalawi's discontentment with the impugned Judgment.

The appeal

21. The main issue for consideration and determination in the present case is whether the UNRWA DT erred when it found that the application was not receivable *ratione materiae*, because Mr. Tamalawi did not submit a request for decision review of the contested

administrative decision, but rather, undisputedly filed his application before the UNRWA DT as a first step to challenge the contested Decision.

22. In his appeal, Mr. Tamalawi does not contend that the UNRWA DT erred in its Judgment. Rather, he reiterates his arguments regarding the merits of the case and fails to state the grounds of appeal relied upon, in terms of Article 2(1) of the Appeals Tribunal Statute. As the issues raised in the appeal are connected to the merits of the application and the application was dismissed by the UNRWA DT on grounds of receivability, the arguments raised by Mr. Tamalawi in the appeal do not meet the threshold of the receivability assessment. The Appeals Tribunal finds that his arguments are not adequate so as to reverse the impugned Judgment.

23. As noted in *Krioutchkov*¹¹ and *Aliko*,¹² the Appeals Tribunal is not a forum for a party to reargue the case without identifying the defects and demonstrating on which grounds an impugned Dispute Tribunal judgment is erroneous. For this reason alone, his appeal must fail.

24. Nevertheless, we note that the UNRWA DT Judgment is correct, and the summary judgment issued by the UNRWA DT on its own initiative was not only in accordance with the principles of judicial economy and efficiency, but also in the interest of expeditious disposal of the case. As provided in Article 5 of the UNRWA DT Rules of Procedure:

Article 5 Summary judgement

A party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law. The Tribunal may determine, on its own initiative, that summary judgement is appropriate.

25. Thus, a summary judgment may be issued by the UNRWA DT when there is no dispute concerning the material facts and the moving party is entitled to judgment as a matter of law. It can be issued either in response to a party's request or on the Tribunal's own initiative.¹³ The latter was the case when the UNRWA DT issued the impugned Judgment. As the case stands, there is no dispute concerning the material fact that Mr. Tamalawi did not submit a request for decision review.

¹¹ *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-711, paras. 20-22.

¹² *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540, paras. 28-29.

¹³ *Koumoin v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-833, paras. 21-24.

26. Furthermore, as this Appeals Tribunal has already established in *Zaqqout*¹⁴, the legal framework applicable to UNRWA cases provides that 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, shall, as a first step, submit a written request for decision review: (A) in the case of staff members of Field Offices, to the UNRWA Field Office Director in charge of the Field Office; and (B) in the case of staff members of Headquarters, to the Director of Human Resources.¹⁵ Specifically relating to the challenge of disciplinary measures, UNRWA DT Area Staff Rule 111.2(2) similarly states as follows:

A staff member wishing to formally contest an administrative decision to impose a disciplinary measure 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; and

(B) in the case of staff members of Headquarters, to the Director of Human Resources.

27. In the same vein, Article 8.1(c) of the UNRWA DT Statute stipulates that an application shall be receivable if an applicant has previously submitted the contested administrative decision for decision review. Furthermore, Article 8.3 bars the UNRWA Dispute Tribunal from suspending, waiving, or extending the deadlines for decision review.

28. It has long been established in the Appeals Tribunal's jurisprudence that a request for decision review or management evaluation is a mandatory first step in the appeal process.¹⁶ Being a mandatory first step before coming to the internal justice system, the request for management evaluation or decision review provides the Administration with the opportunity to reassess the situation and correct possible mistakes or errors with efficiency without the

¹⁴ *Ashraf Ismail abed allah Zaqqout v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2022-UNAT-1246, paras. 53-57 and 69-71.

¹⁵ See UNRWA Area Staff Rule 111.2(1).

¹⁶ *Faye v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-654, para. 31; *Darwish v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-369, para. 24; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-293, para. 27.

need of judicial intervention.¹⁷ The Tribunals have no jurisdiction to waive deadlines for requests for management evaluation or decision review.¹⁸ This jurisprudence is in full accordance with the applicable legal framework set out in the UNRWA DT Statute, particularly Article 8.¹⁹

29. The requirement of requesting decision review or management evaluation may, however, have exceptions. For example, Staff Rule 11.2(b) of the United Nations exempts from requesting a management evaluation the staff member wishing to formally contest an administrative decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure following the completion of a disciplinary process. However, unlike the Staff Rules of the United Nations, the UNRWA Statute and Area Staff Rules provide no exemption from the general requirement of requesting decision review or management evaluation being a mandatory first step in the appeal process. Quite the opposite, as discussed, it contains an explicit provision for such a requirement.

30. Having reiterated the applicable legal framework, we note that in reaching its conclusion, the UNRWA DT found that Mr. Tamalawi was notified of the impugned decision on 21 March 2022 and that he admittedly did not submit a request for decision review.

31. Considering the above, the UNRWA DT did not err when it found that Mr. Tamalawi's application was not receivable *ratione materiae* on the basis that he failed to file a request for decision review.

32. The arguments submitted and remedies sought by Mr. Tamalawi would demand a full assessment of the merits of the application. However, the Appeals Tribunal is not able to make determinations on the merits due to the UNRWA DT's finding that Mr. Tamalawi's application was not receivable.

¹⁷ *Vukasović v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-699, para. 13, citing *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-521, para. 17, in turn citing *Servas v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-349, para. 22 and citations therein.

¹⁸ *Faust v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-695, para. 40, citing *Eggesfield v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-402, para. 23 and citations therein.

¹⁹ *Lara Sahyoun v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1149, para. 28. Also, *Vukasović, op. cit.*, para. 13; *Faye, op. cit.*, para. 31; *Gehr, op. cit.*, para. 27.

33. The appeal accordingly fails.

Judgment

34. Mr. Tamalawi's appeal is dismissed, and Judgment No. UNRWA/DT/2022/022 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 30th day of June 2023 in New York, United States.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Colgan

(Signed)

Judge Gao

Judgment published and entered into the Register on this 6th day of July 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar