

2021-UNAT-1131, Mohammed Sirhan

UNAT Held or UNDT Pronouncements

The staff member submits that the “decisive fact” which was unknown to him and to the Appeals Tribunal was the erroneous interpretation and application from case to case of Article 10(5) of the UNRWA DT Statute, Regulation 11.3 of the UNRWA International Staff Regulations and Article 9(1)(a) of the UNAT Statute. UNAT disagreed that a variance in the interpretation or application of the law from case to case constitute a “decisive fact” that would warrant revision. The Tribunal dismissed the application, finding that it did not meet the statutory requirements and that it was in fact a disguised attempt to reopen the case.

Decision Contested or Judgment/Order Appealed

A staff member challenged the decision of the Administration to cancel his secondment from one office to another. The UNRWA DT found it was within the discretion of the Administration to cancel the secondment and that the reason for the cancellation (administrative delay) did not result in a fundamental breach of the staff member’s rights. However, the UNRWA DT found that the staff member was not treated fairly, because he was deprived of an opportunity to serve in a post for which he was selected. Thus, the tribunal awarded as compensation the difference between the salary the staff member received while working at the original office and the salary he would have received in the new office. The Commissioner-General appealed the UNRWA DT Judgment arguing that the tribunal exceeded its competence by awarding a form of relief (compensation for loss of salary) which the staff member had not actually sought. UNAT agreed with the Agency and found that the staff member had not sought that particular form of relief. Because loss of salary was not addressed the submissions, UNAT reasoned that the Agency was deprived of an opportunity to adequately respond to that claim. Also, UNAT explained given that the UNRWA DT found that the Administration had acted lawfully when it cancelled the secondment and that the delay did not cause a fundamental breach of the staff member’s rights, there was no illegality for which compensation could be awarded. UNAT thus vacated the Judgment. The staff member filed an application for revision of the UNAT Judgment.

Legal Principle(s)

A variance in the interpretation or application of the law from case to case does not constitute a “decisive fact” that would warrant revision.

Outcome

Revision, correction, interpretation or execution

Outcome Extra Text

Application for revision dismissed.

Full judgment

[Full judgment](#)

Applicants/Appellants

Mohammed Sirhan

Entity

UNRWA

Case Number(s)

2020-1431

Tribunal

UNAT
Registry
New York
Date of Judgement
25 Jun 2021
President Judge
Judge Raikos
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Judgment-related matters
Revision of Judgment
Applicable Law
UNAT RoP

- Article 24

UNAT Statute

- Article 11
- Article 11.1
- Article 9.1(a)

UNRWA DT Statute

- Article 10.5

UNRWA International Staff Regulations
Related Judgments and Orders
2018-UNAT-860