

# **UNITED NATIONS APPEALS TRIBUNAL**

# **TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2024-UNAT-1421



**Counsel for Appellant:** Muhammad Mustafa Abdullah

**Counsel for Respondent:** Natalie Boucly

**THE UNITED NATIONS APPEALS TRIBUNAL**

8. At the beginning of the second semester of the 2020/2021 scholastic year, Ms. Mohammad was again assigned to teach English lessons.<sup>6</sup>

9. By message dated 8 March 2021, she informed the School Principal, Jofeh School, (SP/JS)—who was on sick leave—that she declined to teach English to the first-grade students and asked the SP/JS to find a replacement for her.<sup>7</sup>

10. On 9 March 2021, the SP/JS informed Ms. Mohammad of the first contested decision.<sup>8</sup> In the reprimand letter (First Reprimand Letter), issued to her for refusing to teach assigned class periods on 7 and 9 March 2021, the SP/JS stated that her absence from the classroom put students at risk because she was responsible for them and their safety during her class periods.

11. On 14 March 2021, in an exchange of WhatsApp messages between Ms. Mohammad and the SP/JS, she complained about the First Reprimand Letter and stated that she had never consented to teach English, that the SP/JS did not listen to her although she had verbally refused

~~to teach English to the first-grade students and the SP/JS did not listen to her although she had verbally refused~~

teaching load and was not qualified to teach English.<sup>11</sup> She further noted that she had been asked to continue teaching English classes despite her previous verbal and written refusals.

14. On 17 March 2021, by e-mail to the Chief Field Education Programme, Ms. Mohammad reiterated the arguments from her 16 March 2021 e-mail.<sup>12</sup> She also stated that the ES/JFO had put psychological pressure on her.

15. On 23 March 2021, the Area Education Officer, South Amman, JFO, (AEO/JFO) informed Ms. Mohammad of the second contested decision.<sup>13</sup> In the reprimand letter (Second Reprimand Letter) issued to her for her refusal to teach English class periods from 8 to 23 March 2021, the AEO/JFO stated that her behavior had resulted in the students not learning English in that instance and that, despite instructions from her supervisors, she did not complete her work.

16. On 27 April 2021, Ms. Mohammad submitted a Request for Decision Review (RDR).<sup>14</sup>

17. On 19 May 2021, the Director of UNRWA Affairs, Jordan, (DUA/J) responded to Ms. Mohammad's RDR and upheld the second contested decision on the grounds that she had not followed her supervisors' instructions and left her students without an English teacher, without prior coordination with the SP/JS, which resulted in an interruption of the educational process.<sup>15</sup>

18. On 8 August 2021, Ms. Mohammad filed an application with the UNRWA DT.<sup>16</sup> She requested that the UNRWA DT rescind the contested decisions and remove them from her official file, compensate her for moral harm and material damage and refer the case to the Commissioner-General for possible action to enforce accountability.<sup>17</sup>

### *The impugned Judgment*

19. By Judgment No. UNRWA/DT/2023/007 dated 16 February 2023, the UNRWA DT dismissed the application.

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<sup>11</sup> *Ibid.*, para. 11.

<sup>12</sup> *Ibid.*, para. 12.

<sup>13</sup> *Ibid.*, para. 13.

<sup>14</sup>

20. The UNRWA DT considered that the record before it was sufficient to render a judgment without an oral hearing.<sup>18</sup> It is not enough to allege that some witnesses are willing to testify on Ms. Mohammad's behalf. If the witnesses had relevant information to provide, she should have submitted witness statements.

21. The UNRWA DT noted that in her RDR, Ms. Mohammad challenged only the Agency's decision to serve her with the Second Reprimand Letter on 23 March 2021.<sup>19</sup> As she did not submit a RDR regarding the Agency's decision to issue her the First Reprimand Letter of 9 March 2021, this part of the application is not receivable *ratione materiae*.

22. Turning to the merits of the application in respect of the second contested decision, the UNRWA DT observed that Ms. Mohammad acknowledged that she did not teach English from 8 to 23 March 2021.<sup>20</sup> She did not contest the decision to assign her to teach English classes in her application. She did not provide any evidence to substantiate her assertion that the Acting SP/JS had agreed to her decision to stop teaching English classes. Evidence submitted by her shows that the SP/JS repeatedly asked her to continue teaching. Similarly, the evidence shows that she merely

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*Procedure before the Appeals Tribunal*

25. On 29 May 2023, Ms. Mohammad filed an appeal of the impugned Judgment with the Appeals Tribunal, to which the Commissioner-General filed an answer on 31 July 2023.

**Submissions**

**Ms. Mohammad's Appeal**

26. Ms. Mohammad requests the Appeals Tribunal to reverse the impugned Judgment and award all the remedies she sought in the application or, alternatively, remand the case to the UNRWA DT for consideration by a different judge.

27. Ms. Mohammad argues that the UNRWA DT erred in facts and in law when it held that she had failed to request decision review of the first contested decision dated 9 March 2021 and that the part of the application related thereto was not receivable.

28. She notes that she did not have the benefit of legal representation when she filed her RDR. Even so, she explicitly complained about the issuance of the reprimand on 9 March 2021, describing it in her RDR as unjust.<sup>23</sup> Moreover, she demanded a letter of apology from the persons who had taken the contested decisions, including her immediate supervisor, the SP/JS.<sup>24</sup> Without legal representation, she might be excused for requesting an apology with regard to the first contested decision, instead of a more appropriate remedy of rescission.

29. Ms. Mohammad contends that a reasonable and honest person could understand from her submission in the RDR that she was challenging two decisions. In addition to making submissions about the first contested decision, she also attached the First Reprimand Letter. The present challenge was the first she had ever filed. One might wonder why the UNRWA DT did not issue an order explicitly and openly asking her to provide proof that she had requested decision review of the first contested decision. The UNRWA DT failed to exercise its mandate in this regard.

30. On another level, Ms. Mohammad argues that the UNRWA DT erred in procedure when it refused to hold an oral hearing, failed to issue an order for her to name her witnesses and specify

their details, and failed to issue an order to those witnesses to provide their sworn testimony under protection.

31. Ms. Mohammad states that she had explained to the UNRWA DT that she sought an oral hearing to allow her to call witnesses from whom she had been unable to obtain written testimony, owing to *force majeure*.<sup>25</sup> She has no authority to ask other employees to submit themselves to that position. It is incomprehensible why the UNRWA DT did not issue an order to name the witnesses and specify the details of their testimonies on the issues in dispute. It would have been reasonable for the UNRWA DT to order those witnesses to give sworn testimony.

32. Ms. Mohammad contends that the error in procedure resulted in the UNRWA DT erring on an important issue of fact when it found that she had not provided any evidence to substantiate her assertion that the Acting SP/JS agreed to her decision to stop teaching English classes. The UNRWA DT failed to exercise its role as a court of evidence. Hence, Ms. Mohammad submits that the error in procedure led to an erroneous outcome.

33. In addition, Ms. Mohammad contends that the second contested decision also violated the general legal principle that an employee may not be punished twice for the same infraction. Therefore, the UNRWA DT erred in finding the second contested decision lawful.

34. Finally, Ms. Mohammad argues that the UNRWA DT erred in not imposing costs on the Commissioner-General for manifest abuse of judicial process and for prolonging litigation without any reason.<sup>26</sup>

### **The Commissioner-General's Answer**

35. The Commissioner-General requests that the Appeals Tribunal dismiss the appeal in its entirety.

36. The Commissioner-General argues that UNRWA DT did not err in fact, law or procedure when it dismissed the part of the application relating to the first contested decision as not receivable. Ms. Mohammad's RDR reveals that she was categorical as to the decision to be

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Fourthly, we consider whether the UNRWA DT erred in fact or in law in rejecting Ms. Mohammad's motion to impose costs on the Commissioner-General for manifest abuse of judicial proceedings.

*Receivability of the challenge to the First Reprimand Letter*

41. Ms. Mohammad takes issue with the UNRWA DT's finding of non-receivability *ratione materiae* of her challenge to the First Reprimand Letter. She contends that her RDR could have been reasonably and fairly interpreted as challenging not only the Second Reprimand Letter of 23 March 2021, but also the First Reprimand Letter of 9 March 2021.

42. We remind first that UNRWA Area Staff Rule 111.2(1) (Decision review) directs a staff member to submit a RDR:

A staff member wishing to formally contest an administrative decision alleging non-compliance with the terms of appointment must do so within 30 days of the date of the decision. (UNRWA Area Staff Rule 111.2(1) (i))

for decision review, the Dispute Tribunal shall have no jurisdiction to review the administrative decision brought before it.<sup>29</sup>

45. In the same vein, we ruled that only a clear request for decision review, identified through a fair and objective reading, gives the Administration a proper opportunity to review the contested decision.<sup>30</sup> Thus, it is the staff member's responsibility to make sure that the decision he or she disagrees with was clearly included in a request for decision review.<sup>31</sup>

Dispute Tribunal had no choice but to adhere to the objective reading of the RDR. The Tribunals' powers are limited in this regard. Therefore, we find that the UNRWA DT did not err in fact or in law when it considered that Ms. Mohammad had not submitted a RDR in respect of the First Reprimand Letter of 9 March 2021 and found the application in the respective part not receivable *ratione materiae*.

48. Without casting doubt on our finding, we take the opportunity to remind of the importance of seeking legal assistance prior to drafting formal requests. This could be assistance provided by the Legal Office of Staff Assistance of UNRWA (LOSA) or by a private attorney. Indeed, it is up to each staff member to opt for representation or choose to be self-represented and we do not interfere with that choice.

*Not holding an oral hearing*

49. Ms. Mohammad contends that the UNRWA DT committed an error in procedure, which affected the decision of the case, when it denied her request to hold oral hearings where, in particular, the Acting SP/JS could have provided witness testimony.

50. The Commissioner-General maintains that the UNRWA DT did not commit such an error. In the Commissioner-General's view, Ms. Mohammad did not demonstrate the nature of the evidence that could have been provided by witnesses and how the failure to hold an oral hearing affected the decision in the case.

51. We remind that Article 2(1)(d) of the UNAT Statute provides the relevant ground of appeal as follows:

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:

...

(d) Committed an error in procedure, such as to affect the decision of the case (...).

52. With regard to demonstrating the impact of the alleged procedural error, our Tribunal held in *Nadeau* that:<sup>33</sup>

(...) [A] party, in order to be successful on appeal, not only has to assert and show that the UNDT committed an error in procedure but also that this error affected the decision

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<sup>33</sup> *Nadeau v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-733/Corr.1, para. 31.

on the case. As Mr. Nadeau has given no convincing reason on appeal as to why and how an oral hearing before the UNDT would have had an impact on the decision of the case, on this ground alone his appeal must fail. (...)

53. Like in *Nadeau*, and without need to examine the alleged procedural error, we find that Ms. Mohammad does not show how that error of not holding an oral hearing would have affected the outcome of her case.

54. We remind that Ms. Mohammad's narrative before the UNRWA DT suggests that she coordinated with the Acting SP/JS on 7 March 2021 before ceasing to teach English classes. Drawing on such alleged coordination, she contended that the SP/JS should not have served her with the First Reprimand Letter of 9 March 2021. This appears to be the reason why Ms. Mohammad submitted that the Acting SP/JS should have been called to testify before the UNRWA DT.

55. Indeed, it is possible that the testimony of the Acting SP/JS, if the merits of the First Reprimand Letter were to be examined, could have changed the outcome of the case. However,

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award of costs against a party may normally be made after the latter has been fairly warned that the continuation of abusive acts or omissions would result in awarding costs against him or her.<sup>36</sup>

63. In determining whether a party has manifestly abused the process, the Dispute Tribunal exercises discretion and, on appeal, the Appeals Tribunal considers whether the Dispute Tribunal exercised that discretion reasonably and rationally.<sup>37</sup>

**T**

**Judgment**

69. Ms. Mohammad's appeal is dismissed, and Judgment No. UNRWA/DT/2023/007 is hereby affirmed.

Original and Authoritative Version: English

Dated this 22<sup>nd</sup> day of March 2024 in New York, United States.

*(Signed)*

*(Signed)*

Judge Sheha, Presiding