



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

Judgment No. 2022-UNAT-1247

Rania Mohammed Dajani
(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 John Raymond Murphy Judge Dimitrios Raikos
Case No.:	2021-1571
Date of Decision:	1 July 2022
Date of Publication:	11 August 2022
Registrar:	Weicheng Lin

Counsel for Appellant:	Jamila Al-Abbasi
Counsel for Respondent:	Ana Peyro-Llopis

JUDGE SABINE KNIERIM, PRESIDING.

1. Before the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA Dispute Tribunal or UNRWA DT), Ms. Rania Mohammad Dajani (the Appellant) contested the decision to put the reclassification of her post on hold. In Judgment No. UNRWA/DT/2021/018 (the Impugned Judgment), the UNRWA DT found that the application was not receivable and therefore dismissed it. Ms. Dajani appeals the Impugned Judgment before the United Nations Appeals Tribunal (UNAT or Appeals Tribunal). For the reasons below, we dismiss the appeal and confirm the Impugned Judgment.

Facts and Procedure

2. Effective 9 September 2008, Ms. Dajani was employed by the United Nations Relief and Works Agency for Palestine Refugee in the Near East (UNRWA or the Agency) on a fixed-term appointment as Secretary B, Grade 9, in the Field Legal Office, West Bank Field Office (WBFO). Following several extensions, at the time material to the present application, she held the same post, at Grade 9, Step 13.

3. On 25 October 2013, Ms. Dajani requested the reclassification of her post to Administrative Assistant, Grade 11. The request was supported by her supervisor, the Head, Field Legal Office, WBFO (H/FLO/WB), who then forwarded the request to the Head, Human Resources Office, WBFO (H/HRO/WB).

4. By e-mail dated 12 December 2014, the H/HRO/WB informed Ms. Dajani that “[a]ll action related to classification are put on hold at the moment at HQ CMSD [l]evel for all posts and all fields so your post reclassification is submitted but not processed and we are waiting for further instructions from HQ.” Ms. Dajani did not challenge this decision.

5. On 7 December 2015, the H/FLO/WB re-submitted to the H/HRO/WB the joint request for reclassification of Ms. Dajani’s post.

6. On 23 December 2015, H/FLO/WB informed Ms. Dajani that the H/HRO/WB had informed her that all reclassifications for WBFO were frozen until the end of 2016.

7. On 3 March 2017, the H/FLO/WB submitted to the Deputy Director of UNRWA Operations, WBFO (D/DUO/WB) a request, on behalf of Ms. Dajani, for the reclassification of her post to Administrative Assistant, Grade 12.

8. On 22 March 2017, the D/DUO/WB responded that all administrative posts would be reviewed together, and therefore the request for the reclassification of the post must be put on hold.

9. On 21 July 2017, the Acting H/FLO/WB asked for an update on the reclassification request. On the same date, the D/DUO/WB responded that the review project was expected to commence in August 2017.

10. On 23 August 2019, the H/FLO/WB informed Ms. Dajani that her reclassification request needed to be reviewed and updated and that she would prioritise the matter once she was back from her leave.

11. On 11 December 2019, Ms. Dajani submitted a request for decision review to the Director of UNRWA Operations, WBFO (DUO/WB) contesting the fact that the Agency had not approved nor responded to her reclassification request submitted on 25 October 2013. She did not receive a response to her request.

12. On 8 April 2020, the application was filed with the UNRWA DT. The application was transmitted to the Commissioner-General on 9 April 2020.

The Impugned Judgment

13. Recalling *Sethia*¹, where the UNAT held that the mere restatement of an original claim does not give rise to a new administrative decision, nor restart the clock on the period during which a decision may be contested, the UNRWA DT held that it was clear from the case record that the contested decision was communicated to Ms. Dajani on 12 December 2014 and that all subsequent communications were a reiteration of that administrative decision.²

¹ *Sethia v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-079, para. 20.

² Impugned Judgment, paras. 25-26.

14. Relying on Area Staff Rule 111.2 and Article 8(3) of the UNRWA DT Statute, the UNRWA DT held that the 60 calendar-day limitation period to request review of the decision began to run on 12 December 2014 and that Ms. Dajani had until 10 February 2015 to submit her request for decision review. The UNRWA DT found that as Ms. Dajani submitted her request for decision review in December 2019, and it had no jurisdiction to waive that requirement, therefore the application was not receivable *ratione materiae*.³

Procedure before the Appeals Tribunal

15. On 26 June 2021, Ms. Dajani filed an appeal of the Impugned Judgment with UNAT and, on 27 August 2021, the Commissioner-General of UNRWA filed a reply.

Submissions

Ms. Dajani's Appeal

16. Ms. Dajani requests UNAT (a) to reverse the UNRWA DT's judgment and remand the case, or that the merits be adjudicated with a request for an investigation into the verbal phone communication; (b) to request UNRWA to upgrade her current post, retroactively, in accordance with her initial request submitted in 2013; and (c) to decide on reasonable compensation for the negligent delay of the upgrading of her post, due to the stress caused.

17. She submits that the UNRWA DT erred on matters of fact and law when it determined that she failed to comply with the time limits by not considering the clear evidence and failing to assess the correct date when a final decision was made by UNRWA.

18. Ms. Dajani submits that the communications are unambiguous and that no final decision was taken in order to start the applications process for decision review. Therefore she waited for a final decision which was only communicated to her verbally on 14 October 2019.

19. Ms. Dajani submits that she was given "incorrect, conflicting and misleading information" by UNRWA, as reclassification of her post was already submitted through e-mail dated 12 December 2014 and the upgrading of the post was merely a "formality".

³ Impugned Judgment, para. 29.

20. She submits that the decision not to upgrade the post was only communicated to her verbally on 14 October 2019 and that therefore she was within the timeframe set out in Area Staff Rule 111.2 by submitting her request for review on 11 December 2019. The UNRWA DT erred in not using its powers to request UNRWA to provide telephone records to confirm the date of the telephone call which was the verbal communication of the decision.

21. Further, Ms. Dajani submits that the UNRWA DT erred in its translation of the wording used in the communication, as “putting on hold” meant postponement and could not qualify as a final decision. The final decision not to upgrade the post (albeit unwritten and subject to undue delay) was on 14 October 2019, when the Administration decided to stop the upgrading.

22. Ms. Dajani submits that she was led to believe that no decision was made over the several years she had enquired and that she did not delay with the following-up of the issue by actively making requests. She requests the UNAT to take notice of the UNDT’s contention in *Morsy*⁴, that time limits are not supposed to trap an appellant who acts in good faith where the appellant is diligent and did not simply sit back and abandon his or her rights. UNRWA provided conflicting and misleading information, preventing her from applying for decision review immediately and allowing her to continue to work at a higher grade without recognition or compensation, and that she acted diligently and in good faith. She cannot be blamed for taking UNRWA representatives at their word, when she was led to believe that there was simply a process to be completed and that it would be at a later date. UNRWA’s actions caused confusion by providing different reasons at different times throughout the years for the delay in the upgrading of her post. It would be unfair to deny her rights in light of UNRWA’s actions and the misleading information provided. She submits that any interpretation that the continuous decision to postpone the process of upgrading the post was an administrative decision, but the verbal decision to stop the process was not, is absurd.

23. Ms. Dajani submits that the UNRWA DT erred in adopting the Commissioner-General’s reply without adequately assessing the case on its merits and the evidence provided. Ms. Dajani submits that this has been made clear in several instances where the UNRWA DT’s considerations replicate the Commissioner-General’s reply with no proper assessment of the merits or evidence. The UNRWA DT failed to consider whether the communication confirmed a

⁴ *Morsy v. Secretary-General of the United Nations*, Judgment No. UNDT/2009/036, paras. 62-63.

postponement of the process and to assess the language used confirming the delay of a process that would take place. Further, the UNRWA DT failed to consider that she was told that the process was late and needed to be fixed, thereby unfairly creating an expectation. Ms. Dajani submits that a pattern has emerged of the UNRWA DT acting in the same way as it has in her case, essentially acting in favour of the Commissioner-General with no proper assessment of the cases, which were ultimately overturned by the UNAT, i.e. in *Niedermayr*⁵, *Zamel*⁶, *Harb*⁷. Ms. Dajani submits that all of these cases show a distinct and clear replication of the Commissioner-General's arguments which were then overturned by the UNAT.

24. Ms. Dajani submits that the UNRWA DT erred on a matter of fact and law in deciding Ms. Dajani's case was not receivable based on time limits. She argues that in the interests of justice her case should have been decided on the merits under Article 14 of the UNRWA DT Rules of Procedures which provides that the UNRWA DT may give any direction which appears to be appropriate for a fair and expeditious disposal of the case and to do justice to the parties. The UNRWA DT did not assess the evidence appropriately, did not interpret the language of the communication from UNRWA and the final verbal decision correctly, did not seek to retrieve evidence of the oral communication for the final decision, and instead sided with the Commissioner-General.

The Commissioner-General's Answer

25. The Commissioner-General requests the UNAT to find that the Impugned Judgment was free of error and to dismiss Ms. Dajani's appeal.

26. As preliminary submissions, the Commissioner-General recalls the jurisprudence of the UNAT that it is insufficient for an appellant to state that he or she disagrees with the outcome of the case or repeat the arguments submitted before the UNDT (*Aliko*⁸); the appeals process is not an opportunity for a party to reargue his or her case (*Crichlow*⁹); and new elements may not be

⁵ *Niedermayr v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (Respondent)*, UNAT Judgment No. 2015-UNAT-603.

⁶ *Zamel v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, UNAT Judgment No. 2015-UNAT-602.

⁷ *Harb v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-643 [incorrect citation in Appeal at para. 29(c)].

⁸ *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540, para. 28.

⁹ *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035, para. 30.

introduced on appeal that were not put forward at the first instance (*Planas*¹⁰). The Commissioner-General submits that many of Ms. Dajani's statements are irrelevant or new elements that were not presented at the first instance.

27. The Commissioner-General submits that Ms. Dajani's contention that she performs duties at a higher grade is not relevant to the case at hand and therefore are not for discussion.

28. The Commissioner-General submits that the following arguments put forth by Ms. Dajani are new elements not submitted at the first instance and therefore must be dismissed:

- a. on receivability, that the e-mail dated 12 December 2014 was not a formal response, represented the postponement of a decision and was merely an update; and that UNRWA failed to formally advise Ms. Dajani of a written decision regarding her reclassification request;
- b. a different final decision was taken on 14 October 2019, which was the relevant date for calculating the deadline for submitting a decision review request;
- c. noting the jurisprudence in *Morsy* that time limits are not supposed to trap an appellant who acts in good faith, that the time limit should be waived because she was active and diligent in following up on her reclassification request;
- d. the subsequent communications following the email response on 12 December 2014 could not be a reiteration of the original decision because different reasons were given for the decision to put on hold or freeze Ms. Dajani's reclassification request;
- e. Ms. Dajani was given incorrect, conflicting and misleading information by UNRWA;
- f. the upgrading process was merely a formality and it had been confirmed to have been processed and waiting for action; and
- g. UNRWA was negligent in its handling of Ms. Dajani's reclassification request.

¹⁰ *Planas v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-049, para. 13.

29. The Commissioner-General submits that the Impugned Judgment was, as a matter of fact and law, free of error. On receivability, the Commissioner-General submits that the UNRWA DT was cognisant of the established facts and the legal framework regarding the receivability of an application challenging the reiteration of an original administrative decision, reviewed the facts and correctly held that Ms. Dajani became aware of the contested decision on 12 December 2014; all subsequent communications were merely a reiteration of the contested decision.

30. The Commissioner-General submits that Ms. Dajani does not satisfy the requirement that a finding of fact by the UNRWA DT was not supported by evidence or that it was unreasonable.

31. On Ms. Dajani's argument that the reclassification was on hold or frozen and that the 14 October 2019 advice constituted a new decision, the Commissioner-General submits that this is disingenuous and an attempt to reargue her case. The Commissioner-General submits that there is no difference between the decision communicated by UNRWA for the first time via e-mail on 12 December 2014 and the reiteration of that decision over the course of the years and, most recently, on 14 October 2019.

32. The Commissioner-General submits that the chronology of facts supported by evidence clearly establishes that the reasons provided between 2014 and 2019 were consistent, indicating that all reclassification requests were to be assessed together and that such review was on hold or frozen pending instructions from headquarters.

33. On Ms. Dajani's reliance on *Morsy* that time limits are not supposed to trap an appellant who acts in good faith and that the time limit should be waived because she was active and diligent in following up on her request, the Commissioner-General submits that this argument and *Morsy* are not pertinent. The Commissioner-General submits that *Morsy* pertains to a request to waive, exceptionally, the deadline for submitting an application to the UNDT, a matter falling under the UNDT Statute, whereas, on the contrary, the UNRWA DT Statute does not provide the authority to waive the deadline for submitting a decision review request.

34. The Commissioner-General submits that Ms. Dajani's plea that the UNRWA DT committed an error by adopting the Commissioner-General's reply without adequately assessing the case or evidence must be dismissed and is an allegation which is contested by the record and the Impugned Judgment.

35. The Commissioner-General submits that Ms. Dajani makes no convincing submissions as to why the Impugned Judgment erred on a question of law or erred on a question of fact resulting in a manifestly unreasonable decision.

Considerations

Merits of the appeal – receivability of Ms. Dajani's application

36. 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 Ms. Dajani did not submit a request for a decision review in a timely manner.

37. Ms. Dajani claims that a final decision on her 2013 request for classification was only issued on 14 October 2019 when she was verbally informed in a telephone call that the upgrading process was stopped altogether.

38. We agree with the Commissioner-General that Ms. Dajani's claim is an argument that is being raised for the first time at the appellate level and as such should not be considered. As we have stated in *Abu Salah* (2019-UNAT-974, paras. 46 and 47):

46. Finally, in his appeal, Mr. Abu Salah submits, *inter alia*, that: (i) none of the Medical Board members are psychologists, in the sense that they are not qualified to diagnose his medical situation; and (ii) the Chair of the Medical Board refused to keep on file the report from the Governmental Psychiatric Hospital.

47. However, these issues were not raised before the UNRWA DT, and thus cannot be introduced for the first time on appeal for consideration by the Appeals Tribunal. It is quite unreasonable for Mr. Abu Salah to assert that the UNRWA DT erred on questions of fact and law with respect to the allegations which were not raised before the UNRWA DT for its consideration and hence were not part of his case before the lower court. Therefore, we find that Mr. Abu Salah's appeal in this regard is not receivable.

39. We have reviewed Ms. Dajani's 11 December 2019 request for decision review and her 8 April 2020 application to the UNRWA DT and find that she did not make her argument at that point. Rather, her allegations on appeal are in complete contradiction to those previous submissions.

40. In her 11 December 2019 request for decision review, Ms. Dajani requested "review of the Agency's failure for the last six years to respond, make a decision and approve my repeated requests/applications to reclassify my current post of Secretary B Grade 9 to Administrative Officer Grade 12." She stated that she was informed by her supervisor, Ms. E.D., on 14 October 2019, "that there would be no reclassification undertaken at the time, and all reclassifications are currently suspended."

41. In her 8 April 2020 application to the UNRWA DT, she also requested "review of the Agency's failure for the last six years to formally respond in writing, make a decision regarding [her] 2013 request to reclassify [her] current post of Secretary B Grade 9 to Administrative Officer Grade 12." She explained that on 14 October 2019, she "was verbally informed by the former Head of the Legal Office (Ms. [E.D.]) that the issue of the reclassification of [her] post ha[d] been frozen."

42. Only in her 25 June 2021 appeal brief, for the first time, does she submit that the 14 October 2019 telephone call informed her that the upgrading process "was stopped altogether" and she was advised that "the process will not be completed and no upgrading would occur".

43. This submission is raised for the first time on appeal and differs substantially from Ms. Dajani's previous statements in her request for decision review and the application, and must therefore be rejected.

44. Further, Ms. Dajani submits that the UNRWA DT erred in finding that putting on hold the reclassification of her post constitutes an administrative decision, as it was not a final decision. She says that such a final decision was only taken and communicated on 14 October 2019 when she was informed that the upgrading process would be stopped altogether and no reclassification would occur.

45. We do not agree for various reasons. The UNRWA DT correctly found that the 12 December 2014 e-mail constitutes an administrative decision.

46. According to her appeal brief, Ms. Dajani requests reclassification of her post with retroactive effect in accordance with her initial request submitted in 2013. Hence, with her 25 October 2013 reclassification request, Ms. Dajani wanted to achieve an immediate upgrade of her post. The 12 December 2014 e-mail informed Ms. Dajani that “all action related to classification are put on hold at the moment at HQ CMSD Level for all posts and all fields so your post reclassification is submitted but not processed and we are waiting for further instructions from HQ”. By this e-mail, Ms. Dajani was unequivocally informed that her request (immediate reclassification of her post) was rejected.

47. To allow Ms. Dajani’s argument (that the “putting on hold”, postponement, freeze or suspension of requests for reclassification does not constitute an administrative decision because it lacks finality) would worsen the legal position of staff members as they could not challenge such action before the Tribunals. Under Article 2.1(a) of the UNDT Statute, staff members can only file applications against administrative decisions. If, as Ms. Dajani alleges, only the “final” decision to reject the reclassification constitutes an administrative decision, the Administration could forever put on hold, postpone, freeze or suspend requests for reclassification, and the staff members would not be able to challenge this before the Tribunals.

48. Finally, Ms. Dajani’s 11 December 2019 request for decision review and her 8 April 2020 application to the UNRWA DT reveal that the 14 October 2019 communication does not differ from previous communication on the subject of Ms. Dajani’s request for reclassification of her post, and also informed her that the upgrading process had been suspended/frozen. If the putting on hold of a reclassification request does not constitute an administrative decision, Ms. Dajani’s application (against the 14 October 2019 communication) would also be irreceivable.

49. All other submissions and allegations of Ms. Dajani in her appeal brief are linked to the issues above or address the merits of the case and do not put the Impugned Judgment into doubt.

Judgment

50. The appeal is hereby dismissed, and Judgment No. UNRWA/DT/2021/018 is confirmed.

Original and Authoritative Version: English

Decision dated this 1st day of July 2022.

(Signed)

Judge Knierim, Presiding
Hamburg, Germany

(Signed)

Judge Murphy
New York, USA

(Signed)

Judge Raikos
New York, USA

Judgment published and entered into the Registry on this 11th day of August 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar