



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

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Judgment No. 2016-UNAT-623

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

**JUDGMENT**

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**Before:** Judge Deborah Thomas-Felix, Presiding  
Judge Inés Weinberg de Roca  
Judge Luis María Simón

**Case No.:** 2015-726

**Date:** 24 March 2016

**Registrar:** Weicheng Lin

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**Counsel for Mr. Abdullah:**

Self-represented

**Counsel for Commissioner-General:**

Lance Bartholomeusz

**JUDGE DEBORAH THOMAS-FELIX, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal by Mr. Mohammad Mustafa Abdullah of Judgment No. UNRWA/DT/2015/025/Corr.01 rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or UNRWA Dispute Tribunal and UNRWA or Agency, respectively) on 19 April 2015,<sup>1</sup> in the case of *Abdullah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. On 23 July 2015, Mr. Abdullah filed his appeal, and the Commissioner-General filed his answer on 5 October 2015.

**Facts and Procedure**

2. The following facts are uncontested:<sup>2</sup>

... Effective 17 September 1992, the Applicant joined the Agency as a Teacher at Grade 6, Step 1. After successive promotions the Applicant occupied the post of Teacher at Grade 10, Step 12, at Irbid Town Preparatory Boys School No. 2 (“ITPB School”).

... On 19 September 2011, the Applicant was transferred from the ITPB School to the post of Teacher at Grade 10, Step 12, Azmi M. Camp Preparatory Boys School No. 1.

... On 16 February 2012, during a meeting with the Chief, Ethics Office, the Applicant complained that his signature on his annual PER had been forged. By email dated 6 March 2012, the Ethics Office provided the Applicant with a summary note, informing him that his complaint had been referred to the Acting Director of UNRWA Operations, Jordan (“A/DUO/J”).

... The A/DUO/J authorised an investigation to be conducted, and on 17 June 2012 the Applicant was interviewed by a board of investigation.

... By email dated 5 December 2012, the Applicant asked the Field Human Resources Officer about the result of the investigation following his complaint. The Applicant reiterated this inquiry on 20 December 2012.

... By email dated 22 January 2013, the Field Legal Officer refused to inform him about the outcome of the investigation.

... On 4 February 2013, the Applicant submitted a request for decision review of the 22 January 2013 decision.

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<sup>1</sup> Corrigendum No. UNRWA/DT/2015/004/Corr.01 was issued on 14 May 2015.

<sup>2</sup> Impugned Judgment, paras. 2-10.

... By letter dated 12 February 2013, the DUO/J responded to the Applicant informing him that not sharing the outcomes of a formal investigation is not considered to be an administrative decision.

... On 1 June 2013, the Applicant filed his application with the UNRWA Dispute Tribunal [...].

3. On 19 April 2015, the UNRWA DT issued its Judgment. The UNRWA DT found that under General Staff Circular No. 06/2010 (Prohibition of discrimination, harassment – including sexual harassment – and abuse of power) (GSC 06/2010), a staff member who files a complaint of abuse of power has the right to be informed by the Field Director or the Director of Human Resources of the result of the investigation and that therefore, the refusal to inform Mr. Abdullah was unlawful. The UNRWA DT rescinded the contested decision and ordered that the Commissioner-General inform Mr. Abdullah of the conclusion of the investigation and any actions taken by the Agency following his complaint. Absent any proof of material or moral damages, the UNRWA DT rejected Mr. Abdullah's claim for compensation.

4. By application dated 2 June 2015, Mr. Abdullah filed a request for interpretation of judgment with the UNRWA DT. By application dated 10 July 2015, the Agency requested that the UNRWA DT give an interpretation with respect to a different issue. On 14 July 2015, the UNRWA DT issued its judgment on interpretation, rejecting both applications.

5. On 11 November 2015, Mr. Abdullah filed a motion seeking leave to file additional pleadings and to proffer new evidence before the Appeals Tribunal.<sup>3</sup> On 10 December 2015, the Commissioner-General filed comments on Mr. Abdullah's motion.

### **Submissions**

#### **Mr. Abdullah's Appeal**

6. The UNRWA DT erred in fact and failed to exercise its jurisdiction by considering that Mr. Abdullah's application was limited to contesting the Administration's refusal to inform him of the results of the investigation into his complaint that his signature on his annual PER had been forged, thereby failing to address the other two elements of the

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<sup>3</sup> On 30 November 2015, the Registry of the Appeals Tribunal transmitted an official translation of the motion to the Commissioner-General.

contested decision, i.e. the fact that he had been “denied his right to learn the results of the administrative measure taken by the Administration with regard to the [aforementioned] complaint” and the denial of his right to appeal that decision, in case he was dissatisfied with it.

7. The UNWRA DT further failed to exercise its jurisdiction by ignoring his claim that the contested decision was vitiated because of the long period of time taken to process his complaint, a delay that was unjustifiably excessive. While he had raised his complaint with the Chief of Ethics on 16 February 2012 and the Administration became aware of his complaint, at the very latest, on 6 March 2012, the investigation only took place on 17 June 2012. The UNRWA UNDT also erred in law in that it failed to grant Mr. Abdullah compensation on that ground. Finally, as a result of the accumulation of errors, if the Judgment becomes definitive and binding, he will receive the outcome of the complaint some four years after he submitted it.

8. The UNWRA DT failed to exercise its jurisdiction with respect to a number of other arguments set out in Mr. Abdullah’s application, including his claims that the Administration failed to follow up with him to ensure that he was not subjected to retaliation; that the contested decision was tainted by a conflict of interest and that he had been subjected to discriminatory treatment; that the Administration failed to inform him of the applicable provisions for appealing a contested administrative decision to the UNRWA DT; and that the alleged offender had been promoted which was a challenge to the credibility of his complaint. The UNDT also failed to address some of the remedies he requested in his application.

9. The UNRWA DT committed several errors of procedure by relying on UNRWA’s translation of Mr. Abdullah’s application and by dismissing Mr. Abdullah’s requests for leave to proffer new evidence and submit observations on UNRWA’s reply as well as his request for disclosure of evidence.

10. Finally, Mr. Abdullah contends that the UNRWA DT erred in fact and law and failed to exercise its jurisdiction by denying his request for compensation.

11. Mr. Abdullah requests that the Appeals Tribunal reverse the UNRWA DT Judgment, award moral damages for the “inordinate delay and the violation of his objective and/or procedural rights ... with regard [to] his complaint”, order the Commissioner-General to provide him with the full investigation file and refer the case to the Commissioner-General for accountability. Mr. Abdullah asks that the Appeals Tribunal hold an oral hearing.

**The Commissioner-General’s Answer**

12. Mr. Abdullah has failed to demonstrate that the UNRWA DT erred in framing the Administration’s refusal to inform him of the results of the investigation as the contested decision. He has failed to explain the difference between the denial of his “right to learn about the administrative action that the administration took concerning [his] complaint” and the refusal to inform him of the results of the investigation., Further to the UNRWA DT Judgment, the Agency informed Mr. Abdullah of the results of the investigation and its follow-up actions. Moreover, the decision to impose administrative or disciplinary action on a third party has no legal consequences for Mr. Abdullah and he therefore has no right to contest such decision.

13. Mr. Abdullah has not demonstrated that the UNRWA DT erred when it did not address certain parts of his application. The UNRWA DT has jurisdiction to address certain arguments made by an applicant while at the same time disregarding others, when these are not considered relevant. As to the contention that the UNRWA DT failed to review all the remedies requested, the Commissioner-General contends that all remedies sought are listed in paragraph 12 of the Judgment and the requests for access to the investigation report and for compensation are addressed in paragraphs 22 and 25 of the Judgment. While Mr. Abdullah’s request for referral to the Commissioner-General is not explicitly addressed, Mr. Abdullah has not demonstrated how the UNRWA DT erred when it only ordered rescission of the decision.

14. The UNWRA DT did not commit any errors in procedure. Mr. Abdullah has not identified any errors in the translation of his application or demonstrated how the lack of a translation by the UNRWA Dispute Tribunal violated his due process rights or affected the UNRWA DT’s decision. The UNRWA DT has its own translator who verifies translations provided by UNRWA, but it is not the UNRWA DT’s practice to provide applicants with its translation in addition to the translation provided by UNRWA. Moreover, under Articles 13

and 14 of the UNRWA DT's Rules of Procedure, the UNRWA DT has discretionary authority to order the production of evidence or allow a party to submit additional observations. Mr. Abdullah has failed to demonstrate that the exercise of the UNRWA DT's discretionary authority was arbitrary, capricious or motivated by prejudice or extraneous factors.

15. The UNRWA DT correctly found that in the present case the rescission of the decision not to inform Mr. Abdullah was the appropriate remedy and that the UNRWA DT did not err by rejecting Mr. Abdullah's request for moral damages. Mr. Abdullah's mere disagreement with the refusal to grant moral damages is not a ground for appeal.

16. The Commissioner-General requests that the Appeals Tribunal reject the appeal in its entirety.

**Mr. Abdullah Motion seeking leave to submit new evidence and additional pleadings**

17. Mr. Abdullah contends that the Commissioner-General presented the UNRWA DT with "incorrect and/or incomplete, misleading or highly suspect information", "ultimately aimed at sowing chaos and deceiving the Appeals Tribunal, so that the Respondent may win his case in an unacceptable manner and deprive the Appellant of the opportunity for his appeal to be considered justly and impartially". He asks that the Appeals Tribunal find that these are exceptional circumstances, which should allow him to file additional pleadings.

18. Mr. Abdullah seeks leave to rebut the Agency's statement that it informed him about the results of the investigation and the action it took by letter of 9 August 2015; and to request that the Appeals Tribunal award costs against the Agency for abuse of judicial process. He also seeks leave to respond to UNRWA's claim that he had failed to provide evidence to support his request for moral damages and to discuss an UNRWA DT judgment which is currently under appeal in which the UNRWA DT decided to provide the investigation report to another claimant.

**The Commissioner-General's Comments on Mr. Abdullah's Motion seeking leave to submit new evidence and additional pleadings**

19. The Commissioner-General submits that Mr. Abdullah has not established exceptional circumstances warranting the submission of new evidence and/or additional pleadings.

### Considerations

*Preliminary matters: Mr. Abdullah's motion seeking leave to file additional pleadings and to proffer new evidence and his request for an oral hearing.*

20. Article 10(1) of the Appeals Tribunal Rules of Procedure (Rules) which provides for additional documentary evidence to be submitted to the Appeals Tribunal, including written testimony, reads as follows:

A party may seek to submit to the Appeals Tribunal, with an appeal or an answer, documentary evidence, including written testimony, in addition to that contained in the written record. In exceptional circumstances and where the Appeals Tribunal determines that the facts are likely to be established with such additional documentary evidence, it may receive the additional evidence from a party. On its own volition, the Tribunal may order the production of evidence if it is in the interest of justice and the efficient and expeditious resolution of the case, provided that the Appeals Tribunal shall not receive additional written evidence if it was known to the party seeking to submit the evidence and should have been presented to the Dispute Tribunal.

21. Article 31(1) of the Rules, Section II.A.3 of Practice Direction No. 1, and our jurisprudence provide that the Appeals Tribunal may allow an appellant to file a pleading after the answer to the appeal when there are exceptional circumstances justifying the motion.<sup>4</sup>

22. In the present case, Mr. Abdullah has not demonstrated the existence of exceptional circumstances to justify the need to submit new evidence or file additional pleadings and in the circumstances, the motion is dismissed.

23. Mr. Abdullah also made a request for an oral hearing. Oral hearings are governed by Article 8(3) of the Appeals Tribunal Statute and Article 18(1) of the Rules. The factual and legal issues arising from this appeal have been clearly defined by the parties and there is no need for further clarification. We do not find that an oral hearing would “assist in the expeditious and fair disposal of the case”, as required by Article 18(1) of the Rules. The request is therefore denied.

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<sup>4</sup> *Harrich v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-576, para. 19, citing *Nielsen v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-542, para. 51; *Utkina v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-524, para. 16; *Wu v. Secretary-General of the United Nations*, Order No. 225 (2015); *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, para. 36.

*Did the UNRWA DT err in fact and fail to exercise its jurisdiction by considering that Mr. Abdullah's application was limited to contesting the Administration's refusal to inform him of the results of the investigation?*

24. The Appeals Tribunal has consistently held that “[i]t was not essential for the UNDT to set out findings on every submission made [...]. This Tribunal has held that ‘[i]t is not necessary for any court, whether a trial or appellate court, to address each and every claim made by a litigant, especially when a claim has no merit’.”<sup>5</sup>

25. Similarly, we find that the UNRWA DT is not required to set out its findings on every submission presented by Mr. Abdullah and the failure to do so certainly does not amount to an error on the part of the UNRWA DT.

26. We agree with the findings of the UNRWA DT that when a complaint is filed by a staff member, that staff member must be informed of the outcome of that complaint, namely:

- I. What are the findings of the investigation panel; and
- II. What action, if any, is taken in that regard.

27. Indeed, Mr. Abdullah had a right to be informed of the outcome of his complaint. We therefore uphold the order of the UNRWA DT to rescind the contested decision and to order that the Commissioner-General inform Mr. Abdullah of the conclusion of the investigation and of any action which may have been taken by the Agency as a result of the complaint.

*Did the UNRWA DT err in fact and in law and fail to exercise its jurisdiction by denying Mr. Abdullah's request for compensation?*

28. The UNRWA DT rejected Mr. Abdullah's claim for compensation and ruled that proof of material or moral damages was absent from the evidence presented by Mr. Abdullah. The Appeals Tribunal has consistently held that a claim for an award of compensation for

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<sup>5</sup> *Mizyed v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-550, para. 35, citing *Abu Jarbou v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-292, para. 47 (internal citation omitted).



moral damages without specific evidence supporting that claim cannot succeed.<sup>6</sup> Moreover, we have consistently held that not every breach will give rise to an award of moral damages, and, whether or not such a breach will give rise to an award will depend on the nature of the evidence put before the Dispute Tribunal.<sup>7</sup>

29. We uphold the findings of the UNRWA DT that there was no evidence of proof of material or moral damages and its rejection of Mr. Abdullah's claim for compensation. Mr. Abdullah's remaining submissions are without merit and are dismissed.

### **Judgment**

30. The appeal is dismissed and the Judgment of the UNRWA Dispute Tribunal is affirmed.

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<sup>6</sup> *Zamel v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-602, para. 27, citing *Hasan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-541, paras. 23 and 24.

<sup>7</sup> See e.g. *Kozlov and Romadanov v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-228; *Marsh v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-205; *Kasyanov v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-076; *Wu v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-042.

Original and Authoritative Version: English

Dated this 24<sup>th</sup> day of March 2016 in New York, United States.

*(Signed)*

Judge Thomas-Felix,  
Presiding

*(Signed)*

Judge Weinberg de Roca

*(Signed)*

Judge Simón

Entered in the Register on this 13<sup>th</sup> day of May 2016 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar