



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

Judgment No. 2020-UNAT-1011

**Tayseer Salah Salameh Abu Fardeh
(Respondent/Appellant)**
v.
**Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East
(Appellant/Respondent)**

JUDGMENT

Before:	Judge Jean-François Neven Judge Sabine Knierim Judge Graeme Colgan
Case Nos.:	2019-1283 & 2019-1285
Date:	26 June 2020
Registrar:	Weicheng Lin

Counsel for Mr. Abu Fardeh: Self-represented

Counsel for Commissioner-General: Rachel Evers/Michael Schoiswohl

Reissued for technical reasons on 24 September 2020

JUDGE JEAN-FRANÇOIS NEVEN, PRESIDING.

1. This case arose from the decision by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) to terminate the service of Mr. Tayseer Salah Salameh Abu Fardeh on medical grounds. The UNRWA Dispute Tribunal found that the Agency's decision to convene a medical board less than five months after Mr. Abu Fardeh's service-incurred injury in order to evaluate his fitness for continued service was manifestly unreasonable. It ordered rescission of the contested decision or payment of USD 12,500 as in-lieu compensation. Both parties appealed. For the reasons stated below, we grant the Commissioner-General's appeal. We also grant Mr. Abu Fardeh's appeal, in part.

Facts and Procedure

2. Effective 11 October 2008, Mr. Abu Fardeh joined the Agency on a three-year fixed-term appointment, Grade 1, Step 1, as Sanitation Labourer at Jarash Camp, Jordan Field Office (JFO). At the time of his termination, Mr. Abu Fardeh was at Grade 2.

3. On 11 March 2017, Mr. Abu Fardeh slipped and fell at work and injured his left knee. He was first taken to an UNRWA clinic and then referred to a hospital in Amman where he was seen by an orthopedist and received an MRI. On the same day, another orthopedist saw Mr. Abu Fardeh. Both doctors prescribed conservative treatment. Four months later, a third orthopedist saw Mr. Abu Fardeh and advised the continuation of conservative treatment without surgical intervention. Mr. Abu Fardeh was on sick leave from 11 March 2017 onwards.

4. On 6 July 2017, Mr. Abu Fardeh submitted a complaint of prohibited conduct against the Chief, Field Health Programme (C/FHP). But the complaint was subsequently dismissed by the Director of UNRWA Operations, JFO (DUO/J).

5. On a form titled "Medical Board proceedings", the Human Resources Services Officer, JFO, entered a request dated 19 July 2017 that a medical board be convened to evaluate Mr. Abu Fardeh's fitness for continued service with the Agency in his current post or any other Manual Worker post subject to the availability of a vacant post at the time of the conclusion of medical board.

6. On 31 July 2017, the Deputy Chief, Field Health Programme (D/C/FHP), completed Part II of the form titled “Composition of the Medical Board”. The Medical Board that he appointed consisted of Dr. N. Jadallah (Head of the Irbid Health Center) as Chairperson, Dr. K. Abu Nqera (Head of the Jarash Health Center) and Dr. A. Ghaith (Medical Officer of the Jarash Health Center).

7. In a letter written in English dated 3 August 2017, the Human Resources Services Officer, JFO, advised Mr. Abu Fardeh that a medical board would be held on 9 August 2017 at the Jarash Health Center to examine him with a view to determining his fitness for continued service with the Agency or otherwise. Attached to the letter was a copy of Parts I and II of the Medical Board Proceedings form. She informed Mr. Abu Fardeh that he may examine and take copies of his medical file and submit any written medical evidence to the Medical Board, and obtain a copy of Part III of his Medical Board Proceedings form after the completion of his medical examination.

8. The Medical Board met to examine Mr. Abu Fardeh. In light of the treatments prescribed by different orthopedists and their medical findings, including the final medical report from Dr. Muawiya dated 28 August 2017,¹ the Medical Board, on 27 September 2017, concluded that Mr. Abu Fardeh was unfit for continued service with the Agency as a sanitation labourer, but he was fit to work as a messenger.

9. On 28 September 2017, the C/FHP concurred with the Medical Board’s conclusion, and, on 9 October 2017, the DUO/J concluded that Mr. Abu Fardeh was medically unfit for continued service with the Agency as a sanitation labourer, but he was fit to work as a messenger.

¹ In his final medical report dated 28 August 2017, Dr. Muawiya stated that: “Patient is not limping and he has a full range of motion of the left knee. He has positive McMurray test for medial meniscus tear and declares pain when walking. The MRI exam showed large medial meniscus tear. Considering his age and profession, he should ideally undergo arthroscopic meniscal repair vs. partial meniscectomy according to intraoperative findings. I believe he may return to work performing lighter physical duties until decision is made by the patient whether to do arthroscopy or remain on conservative treatment and pain killers.”

10. On 21 November 2017, the Head, Field Human Resources Office, JFO (H/FHRO/J) informed Mr. Abu Fardeh that, following the findings of the Medical Board and in the absence of a vacant post of messenger, his services with the Agency would be terminated on medical grounds under Area Staff Rule 109.7, effective 9 December 2017.

11. On 3 December 2017, Mr. Abu Fardeh submitted a request for review of the decision to terminate his appointment on medical grounds. There was no response from the Agency.

12. On 31 January 2018, Mr. Abu Fardeh filed with the UNRWA Dispute Tribunal an application against the Agency's decision to terminate his appointment on medical grounds. The Commissioner-General filed his reply, followed by Mr. Abu Fardeh's observations on the reply and the Commissioner-General's comments on Mr. Abu Fardeh's observations.

13. On 3 February 2019, Mr. Abu Fardeh filed a motion with the UNRWA Dispute Tribunal requesting that the Commissioner-General translate his comments into Arabic.

14. In Order No. 035 dated 14 February 2019, the UNRWA Dispute Tribunal denied Mr. Abu Fardeh's translation request. In its view,

... the [UNRWA Dispute] Tribunal's Rules provide only for the Respondent to submit an Arabic translation of the reply and not further submissions or his annexes. Therefore, [Mr. Abu Fardeh] is to take it upon himself to make the requested translation. Potential costs for [Mr. Abu Fardeh] with respect to translation services can be compensated as material damages by the Judgment, in the event that [his] application is not dismissed.

15. In its Judgment No. UNRWA/DT/2019/023 dated 7 May 2019, the UNRWA Dispute Tribunal ordered rescission of the decision to terminate Mr. Abu Fardeh's service on medical grounds or payment of USD 12,500 to Mr. Abu Fardeh as an in-lieu compensation. The UNRWA Dispute Tribunal considered that the Agency's decision to convene a medical board less than five months after Mr. Abu Fardeh's service-incurred injury in order to examine his fitness for continued service was manifestly unreasonable, because the Agency had failed to give Mr. Abu Fardeh an "adequate time for recovery",² in violation of Area Staff Rule 106.4. It noted that there was no evidence indicating that Mr. Abu Fardeh, who was suffering from a meniscal tear in his left knee, would never recover. In the view of the UNRWA Dispute Tribunal, it appeared that there was a chance that Mr. Abu Fardeh would have been

² Impugned Judgment, para. 44.

able to recover and be apt to work as a sanitation labourer. It also noted that even the Medical Board did not specify that Mr. Abu Fardeh could or would not recover in a reasonable time, and moreover, that the medical certificates that Mr. Abu Fardeh had submitted after the Medical Board had completed its work strongly indicated a serious chance to recover. Estimating that Mr. Abu Fardeh had 75% of the chances to recover and resume his duties, the UNRWA Dispute Tribunal set the monetary compensation as an alternative to rescission at 75% of Mr. Abu Fardeh's two-years' net base salary, or USD 12,500. However, the UNRWA Dispute Tribunal declined to award Mr. Abu Fardeh any moral damages.

16. Both parties appealed the UNRWA Dispute Tribunal Judgment to the United Nations Appeals Tribunal (Appeals Tribunal). The Commissioner-General filed an appeal on 5 July 2019. No answer has been received from Mr. Abu Fardeh. The case was registered under Case No. 2019-1283. Mr. Abu Fardeh filed an appeal on 8 July 2019, to which the Commissioner-General filed an answer on 6 September 2019. The case was registered under Case No. 2019-1285. As per Order No. 361 (2020), the Appeals Tribunal consolidated the two cases for all purposes.

Submissions

Case No. 2019-1283

The Commissioner-General's Appeal

17. The UNRWA Dispute Tribunal erred in fact and in law resulting in a manifestly unreasonable decision, when it rescinded the impugned decision. First, the UNRWA Dispute Tribunal appears to depart from its previous jurisprudence that the decision to refer a staff member to a medical board cannot be considered as an administrative decision and provided no reason for such a departure.³ The contested Judgment should be reversed on the basis that the UNRWA Dispute Tribunal fell in error by reviewing the referral decision and basing its order to rescind the termination decision on the alleged unreasonableness of the referral decision.

³ As the most recent example, the Commissioner-General cites *Fahjan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2018/028.

18. The UNRWA Dispute Tribunal exceeded its competence by assessing the reasonableness of the referral decision, when such an assessment required a medical assessment and the UNRWA Dispute Tribunal was not qualified to do so.

19. The UNRWA Dispute Tribunal erred in law in its interpretation of Area Staff Rule 106.4 as requiring the Agency to give staff members “adequate time for recovery” and in its finding that a period of close to five months was not “adequate”. Nothing in that staff rule requires the Agency to wait a particular period of time before it can refer a staff member to a medical board. The interpretation given by the UNRWA Dispute Tribunal runs counter to the Area Staff Rules that allow the Agency to require staff to undergo medical examinations “at any time”⁴ or “at such time or times as the Commissioner-General may consider necessary”.⁵ The Agency refers staff members to a medical board precisely to assist it in exercising its discretionary decision-making authority. To require the Agency to undertake a *prima facie* medical evaluation prior to referring staff to a medical board is manifestly unreasonable and is inconsistent with the purpose of the medical board proceedings as set forth in the relevant Area Staff Rules and UNRWA’s Personnel Directive PD/A/6.⁶

20. Thirdly, some of the findings of the UNRWA Dispute Tribunal regarding the reasonableness of the referral decision took into account irrelevant considerations such as the medical certificates that Mr. Abu Fardeh had submitted after the Medical Board’s proceedings.

21. Finally, the UNRWA Dispute Tribunal exceeded its competence in setting Mr. Abu Fardeh’s chances of recovery and resumption of duty at 75%. That determination was arbitrary and without basis, as the UNRWA Dispute Tribunal did not dispute the findings and conclusions of the Medical Board in Mr. Abu Fardeh’s case.

22. The Commissioner-General requests that the Appeals Tribunal allow his appeal and reverse the impugned Judgment.

⁴ Area Staff Rule 106.2(9).

⁵ Area Staff Rule 104.4.

⁶ Personnel Directive PD/A/6/Amend. 72 titled “Medical Boards—authorities and procedures”, effective 1 September 1998.

Case No. 2019-1285

Mr. Abu Fardeh's Appeal

23. The UNRWA Dispute Tribunal erred by failing to exercise its jurisdiction when it refrained from ruling on Mr. Abu Fardeh's complaint about receiving a copy of the invitation to the Medical Board examination in English and not in Arabic. The transmission of the letter in English violated his right to understand matters regarding the conditions of his employment and undermined the integrity of the administrative process. By making that error, the UNRWA Dispute Tribunal also erred in failing to grant him compensation for moral harm.

24. The UNRWA Dispute Tribunal erred in fact and in law by failing to order the Agency to pay his wages and benefits from the date of the impugned decision, though it rescinded that decision, and by failing to order any compensation for material damages resulting from the denial of the reasonable and legitimate opportunity to continue to work till retirement. Considering that his contract had been reviewed for a fourth time for three years through 10 October 2020, it is only reasonable that he could have continued to work until the natural age of retirement and that he would have obtained a temporary indefinite appointment.

25. The UNRWA Dispute Tribunal erred in failing to order the Agency to pay the translation costs that he had incurred. It failed to comply with its own Order No. 035. Mr. Abu Fardeh met all the conditions that the UNRWA Dispute Tribunal enumerated in the order, because he had the Commissioner-General's comments translated at his own expense, that he requested the translation costs as part of his financial losses, that his request was supported by evidence, and that the UNRWA Dispute Tribunal did not dismiss his application.

26. Mr. Abu Fardeh requests that the Appeals Tribunal uphold the UNRWA Dispute Tribunal's decision to rescind the contested decision. He also requests that the Appeals Tribunal increase the amount of in-lieu compensation as awarded by the UNRWA Dispute Tribunal, pay him an unspecified compensation for the financial losses from the date of the contested decision to the date of his retirement and for moral damages.

The Commissioner-General's Answer

27. The UNRWA Dispute Tribunal did not fail to exercise its jurisdiction by not determining that the contested decision was tainted by a procedural irregularity, namely that the invitation to the Medical Board was provided to Mr. Abu Fardeh in English, and not in Arabic, because such determination would have been inconsequential for the UNRWA Dispute Tribunal's decision to rescind the contested decision. Moreover, Mr. Abu Fardeh did not previously complain about receiving the invitation in English; he never requested the provision of the invitation in Arabic. Contrary to his allegation, the Camp Services Officer at the Jarash Camp, who had translated the invitation letter for Mr. Abu Fardeh, affirmed in writing that he had translated each paragraph of the invitation letter for the benefit of Mr. Abu Fardeh. In addition, Mr. Abu Fardeh provided the Medical Board with medical reports from his previous medical visits, indicating that he understood the content of the invitation letter and availed himself of the opportunity to submit his own medical evidence. Mr. Abu Fardeh's contention in this regard is contrary to the evidence and should be dismissed.

28. The UNRWA Dispute Tribunal did not err by not awarding Mr. Abu Fardeh compensation for translation costs or for moral damages. Contrary to Mr. Abu Fardeh's assertion on appeal, he did not request compensation for translation expenses incurred. Regarding moral damages, Mr. Abu Fardeh has failed to provide any evidence that rises above a mere statement of allegations.

29. The UNRWA Dispute Tribunal did not err by not ordering the Agency to pay the salaries and allowances to Mr. Abu Fardeh as of the date of the impugned decision. By ordering the rescission of the contested decision, the UNRWA Dispute Tribunal in effect gave the Agency an opportunity to reinstate Mr. Abu Fardeh (including related back pay) or pay him an in-lieu compensation. The UNRWA Dispute Tribunal considered Mr. Abu Fardeh's plea for salaries and allowances, but it arrived at a different conclusion.

30. The Commissioner-General notes that the issue of loss of salary, lost career opportunities, etc., are all new elements or pleas that were not put forward before the UNRWA Dispute Tribunal. In his view, there is no basis to increase the compensatory award in lieu of rescission based on pleas that were not before the UNRWA Dispute Tribunal.

31. The Commissioner-General requests that the Appeals Tribunal dismiss Mr. Abu Fardeh's appeal in its entirety.

Considerations

Case No. 1283

Did the UNRWA DT exceed its competence or err in law in deciding that the decision to convene a medical board less than five months after Mr. Abu Fardeh's service-incurred injury was unlawful?

32. In his appeal, the Commissioner-General alleges that the decision to convene a Medical Board was not an administrative decision or, at least, that it was not unreasonable. He argues that the UNRWA DT erred in deciding that the termination was unlawful on that basis. The Commissioner-General argues that the decision to refer a staff member to a medical board is not a challengeable administrative decision and that the UNRWA DT exceeded its competence in assessing the reasonableness of that decision. We do not agree with that reasoning. The decision must be regarded as a preparatory decision in a series of steps which can lead to the termination on medical grounds. Therefore, the UNRWA DT did not exceed its competence when assessing whether the decision to convene a medical board was lawful and whether it tainted the termination with an irregularity.

33. Furthermore, the Commissioner-General asserts that the UNRWA DT erred in law in deciding that the Area Staff Rule 106.4, which aims at protecting and properly compensating the staff members who sustain a service-incurred injury, has to be interpreted as requiring the Agency to give the staff members in such a situation "an adequate time for recovery" before considering whether separation on medical grounds could be justified.

34. Area Staff Rule 106.4 (Compensation for death, injury or illness attributable to service) states:

PRINCIPLES OF AWARD AND ELIGIBILITY

[...]

AMOUNT OF COMPENSATION PAYABLE

3. The amount of compensation payable under this rule shall be the amount which would normally be payable in the circumstances of the case, but not necessarily in the

form of a pension, under the workmen's compensation or labour law applicable in the Syrian Arab Republic provided that:

(A) Where such compensation includes the cost of medical or hospital treatment, such treatment or hospitalisation shall be provided in Agency-operated or subsidised hospitals unless in exceptional circumstances the Agency authorises other arrangements;

(B) the Agency will continue an incapacitated staff member in full pay status for a period not exceeding six months from the date of the injury or illness or until he/she is declared able to return to work or is offered a settlement for permanent disability whichever is earlier. Such payment of salary and allowances shall be in lieu of the payments of salary or partial salary which are provided by law for the period. Should temporary incapacity extend beyond six months, compensation payments for such further period will be determined in accordance with the workmen's compensation or labour law applicable in accordance with this rule.

4. All payments of salary or related emoluments whether they are based on workmen's compensation or labour laws or are pursuant to sub-paragraph (B) of paragraph 3 of this rule are considered compensation.

35. Area Staff Rule 104.4 (Medical examinations) and 106.2(9) (Sick leave) state:

- Staff members may be required to undergo medical examinations at such time or times as the Commissioner-General may consider necessary.
- A staff member may be required at any time to submit a medical certificate as to his/her condition or to undergo an examination by a medical practitioner nominated by the Director of Health.

36. Those provisions do not require the Administration to provide for an adequate time to recovery before convening a Medical Board. The Commissioner-General has broad discretion to decide when a medical examination is required and those provisions do not limit this discretion. In the present case, the decision to convene a Medical Board five months after Mr. Abu Fardeh's service-incurred injury in order to examine his fitness for continued service with the Agency was reasonable.

37. We conclude that the UNRWA DT erred in deciding that the decision to convene a medical board less than five months after Mr. Abu Fardeh's service-incurred injury was unlawful and that the termination was therefore unlawful.

Did the UNRWA DT err in deciding that the termination based on medical grounds was unlawful and should be rescinded?

38. The Commissioner-General alleges that the UNRWA DT ignored both the Medical Board process established in the Agency's regulatory framework and the recommendations of the Board.

39. Part VI of Area Staff Personnel Directive PD/A/6/Amend. 72 titled "Medical Boards – Authorities and procedures" provides:

6. Notification to Staff Member:

6.1 A copy of Parts I and II of the Form shall be sent to the staff member with a notification of the time, date and place of examination. The staff member must also be advised that he/she may examine and take copies of his/her medical file and that he/she can submit written medical evidence to the board. Further, if an assessment is to be made of the staff member's medical condition by reference to some objective rules of assessment (e.g. concerning the extent of a disability), the staff member must also be advised thereof and provided with access to such rules at his/her request.

7. Medical Records:

7.1 Chief, Field Health Programme will be responsible for ensuring that any Agency records relevant to the medical history of the staff member are made available to the medical board. He/she may need to request sick leave and related personnel records from the Administration.

8. Medical Examination:

8.1 In completing Part III of the Form, the medical board should set out the information under the following headings:

- (a) History
- (b) Physical examination
- (c) Special investigations carried out and results
- (d) Diagnosis
- (e) Prognosis.

8.2 In addition to a physical examination of the staff member, the medical board shall consider all medical reports received either at its request or submitted by the staff member, but the conclusions and recommendations thereof are neither binding upon, nor are they a substitute for the overall assessment of the medical board; however, the medical board should state why it disagrees with any opinion expressed in a written medical report before it.

9. Conclusions of Board:

9.1 In recording its conclusions at Part IV of the Form, the medical board must address all matters in the terms of reference and also confine its recommendations or advice to the terms of reference.

9.2 The Form is to be signed by the chairperson and the members at the appropriate places.

40. The UNRWA DT did not consider the medical investigation and the recommendations of the Medical Board to be procedurally flawed or biased. The decision of the UNRWA DT not to follow the conclusion that Mr. Abu Fardeh was “unfit for continued service with the Agency as Sanitation Labourer” was based on medical documents submitted by Mr. Abu Fardeh after his examination by the Medical Board. A decision based on a regular medical process cannot be considered unreasonable without clear medical evidence and a medical assessment that neither the Agency nor the Tribunal is qualified to carry out. The purpose of the regulatory framework (Part VI of Area Staff Personnel Directive PD/A/6/Amend. 72) is to establish a clear and fair process in which the rights and obligations of the parties are balanced and which can lead to clear and useful recommendations from the Medical Board. It is therefore not reasonable to consider that the documents submitted after the Medical Board, and which the Board did not have an opportunity to review, are as such relevant to rebut the medical conclusion and recommendations of the Board.

41. In the present case, the Medical Board concluded that Mr. Abu Fardeh was “unfit for continued service with the Agency as Sanitation Labourer, but he was fit to work as Messenger”. Before notifying the decision to terminate Mr. Abu Fardeh's appointment, the Agency affirmed that no such post of Messenger was available. It appears that this statement was not challenged in the request for decision review or in the application filed with the UNRWA DT.

42. In addition, even if such an obligation exists for other categories of redundant staff members,⁷ “the Agency’s regulatory framework does not create any obligation on the Agency to find an alternative post for a staff member who is found unfit to continue his/her service in his/her current post”.⁸ The UNRWA Dispute Tribunal, which is only competent to review administrative decisions that are “alleged to be in non-compliance with (...) all pertinent

⁷ See UNRWA Area Staff Personnel Directive PD A/9/Rev. 10 titled “Separation from service”, effective 23 June 2015, paras. 36-37.

⁸ *Mansour v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2019/057, para. 26.

regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance"⁹ is not competent to create an obligation to find the staff member a suitable placement.

43. Therefore, the Commissioner-General rightly submits that the UNRWA DT erred in law and exceeded its competence by challenging the authority of the Medical Board's conclusion without clear and convincing medical evidence, by placing significant value on the medical certificates submitted by Mr. Abu Fardeh after his examination by the Medical Board and by deciding, *proprio motu*, in the absence of medical expert opinion, that the chances of recovery and resumption of duty could be "considered to be 75 per cent".¹⁰

Consequences

44. Consequently, we consider unlawful the conclusion of the UNRWA DT that the termination on medical grounds was unreasonable. It should not have been based either on the consideration that the period from the injury to the invitation to a Medical Board was too short, or on the medical considerations taken into account by the UNRWA DT.

Case No. 1285

Did the UNRWA DT err by not determining that the decision was tainted by procedural irregularity, namely, that the invitation to the Medical Board was provided to Mr. Abu Fardeh in English and not in Arabic?

45. In his appeal, Mr. Abu Fardeh argues that the transmission of the invitation to the Medical Board in English violated his right to understand matters regarding the conditions of employment and undermined the integrity of the administrative process. He alleges that the UNRWA DT erred in failing to grant compensation for moral harm resulting from the Agency's decision to terminate his appointment on medical grounds.

46. The Agency refers to a statement in which Mr. Al Amoudi, the Camp Services Officer of Jarash Camp, confirmed that he had translated the entire letter to Mr. Abu Fardeh and it appears that even if Mr. Abu Fardeh had not asked the Field Human Resources Officer (FHRO)

⁹ Statute of the UNRWA Dispute Tribunal, Article 2(1)(a).

¹⁰ Impugned Judgment, para. 49.

of the Camp to provide a translation of the invitation, he nevertheless appeared before the Medical Board on 9 August 2017.

47. It is therefore reasonable to conclude that if he had not understood the invitation or it had not been translated by Mr. Al Amoudi, Mr. Abu Fardeh would have requested a translation from FHRO or would not have appeared before the Medical Board.

Did the UNRWA DT err in failing to order the Agency to pay the wages and benefits from the date of the impugned decision and to pay compensation for moral damages?

48. Mr. Abu Fardeh asks the Appeal Tribunal to find that the UNRWA DT erred in fact and law and/or erred by failing to exercise its jurisdiction because, after rescinding the decision to terminate his appointment on medical grounds, it did not order that he be paid compensation for material damage.

49. We confirm the conclusions of the Medical Board that Mr. Abu Fardeh was not fit for continued service in his current position as a Sanitation Labourer. Consequently, he could not expect to be reinstated in this position. Mr. Abu Fardeh is therefore not entitled to further compensation for material damage resulting from the termination of his appointment.

50. Mr. Abu Fardeh did not submit any evidence for the award of any compensation for moral damages. Further, the UNRWA DT did not err in finding that the Appellant, “with respect to his request for compensation for moral damages for psychological harm he suffered, has not attained the threshold required for proof of harm to be awarded compensation in accordance with the provisions of Article 10(5) of the Tribunal’s Statute”.¹¹ Finally, as we have concluded that there was no unlawfulness on the part of the Commissioner-General, Mr. Abu Fardeh is not entitled to compensation in any event.

Did the UNRWA DT err in failing to order the Agency to pay the translation costs of the Respondent’s comments?

51. Mr. Abu Fardeh requested to receive the Arabic translation of the Respondent’s comments and his annex No. 11 and filed a motion with the UNRWA DT.

¹¹ *Ibid.*, para. 53.

52. In its Order No. 35 (UNRWA/DT//2019), the UNRWA DT decided, in paragraph 19:

In this regard, pursuant to Article 6 (1) of the Tribunal's Rules, "[i]f the application is submitted in Arabic, the Respondent shall submit its reply in English and, within 14 calendar days after the submission date of the Respondent's reply in English, an Arabic translation of the English reply. The documents attached to the reply may be submitted in the language in which they have been issued." Accordingly, the Tribunal's Rules provide only for the Respondent to submit an Arabic translation of the reply and not further submissions or his annexes. Therefore, the Applicant is to take it upon himself to make the requested translations. Potential costs for the Applicant with respect to translation services can be compensated as material damages by the Judgment, in the event that the Applicant's application is not dismissed. Consequently, the Tribunal holds that it would be in the interests of justice and appropriate for a fair and expeditious disposal of the case for the Tribunal to deny the Applicant's request.

53. The fundamental right of the staff member to a full participation in the justice proceedings requires that he has an opportunity to receive a translation, not only of the Reply of the Respondent, but also of the Comments that, at a later stage of the proceedings, the Respondent could issue, especially if these comments contain rebuttal of the staff member's allegations. There is no legal basis to decide, as the UNRWA DT did, that the potential costs of translation could only be compensated for as material damages by the Judgment, in the event that the Applicant's application was not dismissed. The UNRWA DT should have ordered that Mr. Abu Fardeh be reimbursed for the translation costs of the Respondent's Comments. Before the UNRWA DT, no evidence was presented about how much Mr. Abu Fardeh paid for the translation. Article 2(5) of the Appeals Tribunal Statute states:

In exceptional circumstances, and where the Appeals Tribunal determines that the facts are likely to be established with documentary evidence, including written testimony, it may receive such additional evidence if that is in the interest of justice and the efficient and expeditious resolution of the proceedings. Where this is not the case, or where the Appeals Tribunal determines that a decision cannot be taken without oral testimony or other forms of non-written evidence, it shall remand the case to the Dispute Tribunal. The evidence under this paragraph shall not include evidence that was known to either party and should have been presented at the level of the Dispute Tribunal.

54. At the request of the Registry, Mr. Abu Fardeh submitted a copy of an invoice showing that the translation costs amounted to 80 Jordanian Dinars. That amount is to be reimbursed.

Judgment

55. In Case No. 1283, the Commissioner-General's appeal is granted.

56. In Case No. 1285, the appeal of Mr. Abu Fardeh is granted, in part. The Agency is ordered to reimburse 80 Jordanian Dinars to Mr. Abu Fardeh.

Original and Authoritative Version: English

Dated this 26th day of June 2020.

(Signed)

Judge Neven, Presiding
Brussels, Belgium

(Signed)

Judge Knierim
Hamburg, Germany

(Signed)

Judge Colgan
Auckland, New Zealand

Entered in the Register on this 9th day of July 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar