



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

Judgment No. 2022-UNAT-1297

**Osama Abed & Eman Abed
(Appellants)**
v.
**Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East
(Respondent)**

JUDGMENT

Before:	Judge Martha Halfeld, Presiding Judge Graeme Colgan Judge John Raymond Murphy
Case No.:	2022-1647
Date of Decision:	28 October 2022
Date of Publication:	21 December 2022
Registrar:	Juliet Johnson

Counsel for Appellants:	Amer Abu-Khalaf, LOSA
Counsel for Respondent:	Natalie Boucly

JUDGE MARTHA HALFELD, PRESIDING.

1. Mr. Osama Abed and Ms. Eman Abed (the Appellants) contest the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) to serve each of them with an advisory letter, a copy of which was placed in their Official Status Files (OSFs).
2. In Judgment No. UNRWA/DT/2021/068 of 9 December 2021 (impugned Judgment), the Dispute Tribunal of UNRWA (UNRWA DT or UNRWA Dispute Tribunal) dismissed the Appellants' applications on the basis that they were not receivable.
3. The Appellants' appeal of the impugned Judgment is now before the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
4. For the reasons set out below, we reverse the Judgment and remand the case to the UNRWA DT for consideration on the merits.

Facts and Procedure

5. The following facts are taken from the impugned Judgment:¹

... At the time material to the instant applications, the Applicants were employed by the Agency as Professor, Grade 16, at the Faculty of Educational Sciences and Arts ("FESA").

...

... The Applicants filed several complaints to the Director of UNRWA Affairs, Jordan ("DUA/J") against the Dean of FESA ("D/FESA").

... In April 2021, the Senior Field Investigator, Jordan Field Office ("SFI/JFO") conducted separate management interventions with the Applicants regarding to their complaints against the D/FESA.

... By email dated 2 June 2021, the Head, Field Human Resources Office, Jordan ("H/FHRO/J") invited the Applicants to a new management intervention that would be held on 8 June 2021. The H/FHRO/J further informed the Applicants that cooperation with a management intervention process was not optional and that failure to cooperate might constitute misconduct.

¹ *Abed and Abed v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2021/068, paras. 2, 4-10. The Applicants in the impugned Judgment are Appellants here.

... The Applicants state that, during the management intervention, the SFI/JFO did not allow them to take the floor and that they were forced to send an email stating that they abide by the Agency's regulatory framework.

... By email to the H/FHRO/J dated 10 June 2021, Ms. Iman Abed confirmed that she abides by the Agency's regulatory framework.

... By email dated 17 August 2021, the SFI/JFO informed the Applicants that the DUA/J authorised the opening of an investigation following the Applicants' complaints against the D/FESA.

... By letters dated 17 August 2021 to the Applicants, the H/FHRO/J served each with a reminder letter. These are the contested decisions. The letters state that the Applicants should comply with Area Staff Regulation 1.1 and 1.4, and that a copy of the letter will be placed in their respective Official Status Files ("OSFs").

UNRWA DT Judgment

6. The UNRWA DT held that the letters in question could not be considered as disciplinary measures, as no sanction was imposed in accordance with the exhaustive list of disciplinary measures set out in Area Staff Rule 110.1. Similarly, the relevant provisions of Area Personnel Directive No. A/10/Rev. 3 (PD A/10) did not indicate that a reminder letter could be considered an administrative decision that was a non-disciplinary measure.² In view of UNRWA's regulatory framework and UNAT jurisprudence, the UNRWA DT considered that such oral or written reminders or warnings could not be considered appealable administrative decisions, as they do not produce direct legal consequences affecting a staff member's terms or conditions of appointment.³

7. The UNRWA DT held that such letters were not appealable administrative decisions and that the applications were therefore not receivable *ratione materiae*.⁴

8. The UNRWA DT held that UNRWA was entitled to add such written reminders to the Applicants' OSFs as long as they were duly informed about it, which they were.⁵

9. The UNRWA DT concluded that the applications were not receivable and dismissed them.⁶

² *Ibid.*, para. 22.

³ *Ibid.*, para. 25.

⁴ *Ibid.*, para. 26.

⁵ *Ibid.*, para. 27.

⁶ *Ibid.*, para. 28.

Submissions

Appellants' Appeal

10. The Appellants submit that the UNRWA DT erred in fact when it concluded the applications were not receivable. The Appellants submit that as their case involves an administrative decision of UNRWA, it should be “entertained” by the UNRWA DT.

11. The Appellants submit that the UNRWA DT erred in fact because there was an ongoing investigation concerning abuse of power and the Appellants were not informed of the outcome of the investigation or given an opportunity to respond. The Appellants submit that there was no legal basis upon which to serve the reminder letters.

12. Relying on *Ngokeng*,⁷ the Appellants submit that the decision to serve the Appellants a letter which was placed in their OSFs is subject to judicial review. The Appellants submit that the letters have direct legal consequences affecting their terms and conditions of appointment and constitute a contestable administrative decision under Chapter XI of the Area Staff Rules. The Appellants submit their applications ought to have been found receivable by the UNRWA DT and the matter heard on the merits.

13. The Appellants submit that the UNRWA DT erred in law in its consideration of the letters as mere “simple reminders”.⁸ The Appellants submit that UNRWA must follow a procedure to the end of the investigation which uncovers evidence of misconduct and that a staff member has the right to respond to allegations and to request a decision review when misconduct is established. The Appellants submit that UNRWA failed to respect the Appellants’ rights and act with regard for fairness, due process or applicable regulations, rules and administrative issuances.

14. The Appellants further submit that these letters were “advisory letters and not reminder letters” and that there is no UNRWA rule that allows UNRWA to place such letters (disciplinary or non-disciplinary) into the files of staff members. The Appellants also submit that UNRWA “cannot create ad hoc rules to justify its unlawful acts” and argues that the only authority which exists within the United Nations system (but not at UNRWA) is in Section 9.7 of ST/AI/2007/1 (Unsatisfactory conduct, investigations and the disciplinary process) where it is stated that a note can be placed in the file of a former staff member who left the Organisation before the end of

⁷ *Ngokeng v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-460, para. 26.

⁸ Impugned Judgment, para. 26.

an investigation or disciplinary procedure. The Appellants submit that this provision implies that the investigation must be conducted until the end, which is different from the instant situation, as the Appellants were issued advisory letters without completing the investigation process and the Appellants are still staff members.

15. The Appellants submit that the UNRWA DT erred in fact and law “to verify if actual due process for the Appellants was adhered to” before making its decision to summarily dismiss the Appellants’ cases.

16. The Appellants request UNAT to find that the UNRWA DT erred by failing to appreciate the fact-in-issue before it, and failing to appreciate whether the investigation was carried out by UNRWA with due process before it issued the advisory letters. The Appellants seek the following remedies: (1) the impugned Judgment is reversed; and (2) the advisory letters are removed from the Appellants’ personnel files.

The Commissioner-General’s Answer

17. The Respondent submits that the UNRWA DT did not err, as a matter of fact, law or procedure when it dismissed the Appellants’ applications as not receivable. The Respondent requests that the Tribunal dismiss the Appeal in its entirety.

18. The Respondent submits that the impugned Judgment was, as a matter of law, free of error.

19. The Respondent submits that the UNRWA DT correctly concluded that such letters could not be considered as appealable administrative decisions, as they did not produce direct legal consequences affecting the staff members’ terms or conditions of appointment.

20. The Respondent submits that the letters were merely informative and instructive in nature and cannot be considered an administrative decision capable of producing direct legal consequences affecting the terms and conditions of the Appellants’ appointments. The Respondent recalls it is the duty of managers to bring to the attention of staff issues regarding their performance or conduct, and to remind them of the applicable framework. The letters also served as notice by UNRWA that an investigation would be initiated into the complaints filed by the Appellants.

21. The Respondent submits that the Appellants' arguments regarding investigations and due process, including that they were given no opportunity to respond, are "wholly misconceived". The Respondent submits that no due process rights attached prior to the issuance of the letters, and that the letters formed part of managerial action and not of a disciplinary process.

22. On the nature of the letters, the Respondent submits that whether the letters were advisory or reminders is immaterial and that a review of the letters reveals that they were informative and instructive in nature, lacking direct adverse consequences on the Appellants' terms and conditions of appointment. The Respondent further points out that the Appellants do not allege any adverse impact of placing the letters in their OSFs.

23. The Respondent submits that the Appellants' argument that there is no UNRWA rule which allows for the placing of advisory letters in OSFs is a new element that was not put forward before UNRWA DT and cannot be introduced for the first time on appeal (*Planas*⁹). The Respondent requests that the UNAT find this aspect inadmissible.

24. The Respondent submits that the placement of the letters in the Appellants' OSFs is not an appealable administrative decision as it has no direct legal consequences affecting the terms and conditions of their appointment. The letters were not adverse material.

25. The Respondent submits that the applications before UNRWA DT were not receivable, as correctly determined by the UNRWA DT. The Appellants failed to identify reversible errors and the UNRWA DT did not err on a question of fact, as a matter of law or in procedure in dismissing them.

26. The Respondent submits that the relief sought by the Appellants has no legal basis.

27. On the grounds that the instant appeal is "patently without merit, frivolous and constitutes an abuse of process", the Respondent requests an award of costs against the Appellants pursuant to Article 9(2) of the UNAT Statute, noting that the cost of an appeal to the UNAT is USD 16,778 and is fully borne by the Organisation.

⁹ *Planas v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-049, para. 13.

28. The Respondent requests the UNAT to find that the UNRWA DT did not err on a question of fact, as a matter of law or in procedure when it dismissed the Appellants' applications as not receivable, and therefore to dismiss the instant appeal in its entirety. In addition, the Respondent requests an award of costs, as detailed in the preceding paragraph.

Considerations

29. The main issue for consideration and determination in the present case is whether the UNRWA DT erred when it found that the applications were not receivable *ratione materiae*, since the reminder letters were not appealable administrative decisions.

30. In their applications to the UNRWA DT, the Appellants had challenged the Agency's decisions to serve each with a reminder letter that cited Area Staff Regulations 1.1 and 1.4 and referred to their obligation as staff members working with the Agency to "fully adhere to the Agency's Regulation and Rules and to behave all the times in a manner befitting (their) status as a staff member of the Agency". The letters were dated 17 August 2021 and sent separately to each of the Appellants.

31. UNRWA Area Staff Regulations 1.1 and 1.4 stipulate that:

REGULATION 1.1

Staff members, by accepting appointment, pledge themselves to discharge their functions with the interests of the Agency only in view.

REGULATION 1.4

Staff members shall conduct themselves at all times in a manner befitting their status as employees of the Agency. They shall not engage in any activity that is incompatible with the proper discharge of their duties with the Agency. They shall avoid any action and in particular any kind of public pronouncement which may adversely reflect on their status, or on the integrity, independence and impartiality which are required by that status. While they are not expected to give up their national sentiments or their political and religious convictions, they shall at all times bear in mind the reserve and tact incumbent upon them by reason of their employment with the Agency.

32. The UNRWA DT found that the letters were simple reminders of the Agency's existing rules and there were no irregularities in this action on the part of the Agency. It further found that when the Agency notices that a staff member or staff members may be disregarding the Agency's regulatory framework, it is a lawful exercise of its authority to issue reminders or

warnings to maintain acceptable adherence to a code of conduct and to avoid potential reprimands or disciplinary measures.¹⁰

33. The Appeals Tribunal cannot agree with the UNRWA DT's arguments and will set out below the reasoning behind this determination.

34. The former Administrative Tribunal's definition of an administrative decision which is subject to judicial review has been adopted by the Appeals Tribunal:

a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.¹¹

35. Thus, the key characteristics of an administrative decision subject to judicial review is that the decision must "produce direct legal consequences" affecting a staff member's terms or conditions of appointment. "What constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision."¹²

36. The Appellants correctly argue that the letters were not simply reminders, but advisory letters placed in their OSFs, directly affecting their terms and conditions of appointment.

37. In this regard, the UNRWA legal framework follows the same scheme as the United Nations Secretariat in terms of establishing a difference between certain measures, which are considered to be of a disciplinary nature, and other lighter administrative measures,

¹⁰ Impugned Judgment, para. 26.

¹¹ Former Administrative Tribunal Judgment No. 1157, *Andronov* (2003), para V. See also *Ngokeng* Judgment, *op. cit.*, para. 26; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-365, para. 14; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-313, para. 19; *Al Surkhi et al. v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-304, paras. 26-28.

¹² *Bauzá Mercére v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-404, para. 18. See also *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 28; *Wasserstrom v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-457, paras. 34-35, and 41; *Ngokeng* Judgment, *op. cit.*, para. 27; *Andati-Amwayi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-058, para. 17 et seq.

which are not considered disciplinary. In this regard, Area Staff Rule 110.1, Paragraph 5 provides the *disciplinary measures* which are available to the Agency under Area Staff Regulation 10.2. These are: a) written censure; b) loss of one or more steps in grade; c) deferment, for a specified period, of eligibility for a salary increment; d) suspension without pay for a specified period; e) fine; f) deferment, for a specified period, of eligibility for consideration for promotion; g) demotion with deferment, for a specified period, of eligibility for consideration for promotion; h) separation from service, with notice or compensation in lieu of notice, with termination indemnity; i) separation from service, also known as termination for misconduct, with notice or compensation in lieu of notice, and without termination indemnity; j) summary dismissal.

38. In turn, Paragraphs 42 and 43 of PD A/10 regulate the *administrative decisions that are not disciplinary measures*, which include:

... Administrative decisions that are not disciplinary measures include: *reprimands*, recovery of monies owed to UNRWA, allowing an appointment to expire, termination in the interests of the Agency, and administrative leave with or without pay pending an investigation.¹³

... Reprimands are oral or written communications by the immediate supervisor or higher authority to a staff member, drawing his/her attention to minor breaches of the UNRWA Staff Regulations, Rules, or other administrative issuances or to relatively unsatisfactory work performance. Documentation of an oral reprimand or a written reprimand is included in the staff member's official status file. The reprimand may include a provision prescribing a time period after which it is removed from the official status file. As a reprimand is not a disciplinary measure, it should not normally be used to address established misconduct at the conclusion of a disciplinary process.

39. As can be seen from the above, reprimands are administrative measures not considered to be disciplinary measures, even though they undoubtedly contain an element of reproach, admonition or at least criticism in order to avoid further breaches of the applicable rules and regulations. Reprimands are used to address minor infractions and they contain all the key elements to characterize them as reviewable administrative decisions.

40. The Appeals Tribunal holds that the UNRWA DT incorrectly found that the reminder letters were not "reprimands" for the purposes of allowing the Appellants to challenge the issuance and placement of such letters in their respective official personnel files. Firstly, this

¹³ Emphasis added.

is because such a reminder in an official personnel file cannot be considered a “neutral” action, but rather a “warning” of any “possible disregard of the Agency’s regulatory framework”, as acknowledged by the UNRWA DT itself. To the eyes of the average person, such a “reminder” is undeniably akin to a reprimand. Secondly, in *Rantisi*,¹⁴ the Appeals Tribunal affirmed the UNRWA DT Judgment according to which, *inter alia*, reminder letters from the UNRWA Director of Human Resources to two individual staff members had failed to acknowledge the difference in conduct between the staff members, leading to partial success of the claim. In that case, the UNRWA DT found that the Agency had failed when it treated the two staff members similarly by administering the same reminder “to maintain a high level of professionalism in all of her personal interactions as an UNRWA staff member, particularly when professional disagreements arise,” when one of the staff member’s conduct was arguably worse than the other.¹⁵

41. Regardless of the outcome on the merits in *Rantisi*, what matters most to the present case is the fact that the UNRWA DT found that the decision to issue a reminder letter was judicially reviewable. Indeed, the Appeals Tribunal agrees with the Appellants that there is no UNRWA rule that authorises the Agency to issue “reminder letters” unless they are interpreted as being a reprimand, that is, an administrative decision subject to judicial review, given its direct adverse impact on the staff member’s terms or conditions of appointment.¹⁶ This reasoning stands even in the absence of any sanction permissible as a disciplinary measure, since this is the essence of any administrative or managerial measure which is non-disciplinary. In the present case, the direct legal consequence of the letters will be their placement in the Appellants’ OSFs with possible impact on their future career prospects.

42. The Commissioner-General argues that managers have the duty and prerogative to bring to the attention of their staff any issue of concern with regard to their performance or their conduct, and to remind them of the law, whether in a meeting or in writing. The Appeals Tribunal considers that the letters sent to the Appellants did have the individual purpose of an admonition rather than a general purpose of a reminder, or even performance

¹⁴ *Rantisi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-528, paras. 4, 5 and 27.

¹⁵ See *Rantisi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees*, Judgment No. UNRWA/DT/2013/033, para. 107. In that specific case, the UNRWA DT further established that “there was sufficient material upon which it was legitimate to administer such a reminder” despite the seriousness of the conduct of one of them which would warrant a more severe disciplinary or administrative measure.

¹⁶ The Appeals Tribunal notes that the Commissioner-General acknowledged that the letters were “managerial action” in his answer to the instant appeal.

appraisal. They were indeed quite formal and could possibly have had a certain degree of ambiguity, particularly in the context of the complaints cited therein, which had been filed by the Appellants against the Dean of FESA leading to the opening of an investigation against him.

43. In light of the above, the UNRWA DT erred when it found that the applications were not receivable *ratione materiae* due to the fact that the challenged reminder letters were not reviewable administrative decisions. Accordingly, the matter must be remanded to the UNRWA DT, under Article 2(10) of the Appeals Tribunal Statute, for a decision on the merits, which will include review of the challenge to the issuance of the reminder letters and their placement in the Appellants' respective OSFs.

44. As the appeal succeeds and the case is remanded to the UNRWA DT, the Appeals Tribunal rejects the Commissioner-General's claim of groundless and frivolous applications and request for an award of costs against the Appellants. There has been no abuse of the appeals process that would warrant such an award pursuant to Article 9.2 of the Appeals Tribunal Statute.

Judgment

45. The Appellants' appeal is granted, Judgment No. UNRWA/DT/2021/068 is reversed and the case is remanded to the UNRWA DT for consideration on the merits.

Original and Authoritative Version: English

Decision dated this 28th day of October 2022 in New York, United States.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Colgan

(Signed)

Judge Murphy

Judgment published and entered into the Register on this 21st day of December 2022 in New York, United States.

(Signed)

Juliet Johnson, Registrar