



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

---

Judgment No. 2024-UNAT-1429

**Hakam Shahwan**  
**(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 Katharine Mary Savage, Presiding Judge Gao Xiaoli Judge Graeme Colgan
Case Nos.:	2023-1816 & 2023-1817
Date of Decision:	22 March 2024
Date of Publication:	2 May 2024
Registrar:	Juliet E. Johnson

---

Counsel for Mr. Shahwan:	Anca Apetria
Counsel for Commissioner-General:	Natalie Boucly

**JUDGE KATHARINE MARY SAVAGE, PRESIDING.**

1. In Judgment No. UNRWA DT/2023/018 (impugned Judgment), the Dispute Tribunal for the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or Dispute Tribunal) decided three applications filed by Mr. Shahwan in which he contested three decisions of his former employer, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency).

2. In Case No. UNRWA/DT/HQA/2020/45, the Dispute Tribunal rescinded the Agency's decision to place a Note in Mr. Shahwan's Official Status File (OSF) (contested decision 1) which listed the findings of an investigation conducted against Mr. Shahwan,<sup>1</sup> but stated that given Mr. Shahwan's pending separation, no further action was being pursued. The Tribunal ordered the Agency to pay Mr. Shahwan 3,000 Jordanian dinars (JOD) for his legal costs but denied his other requests for compensation.

3. In Case No. UNRWA/DT/HQA/2020/64, the Dispute Tribunal dismissed Mr. Shahwan's challenge to the Agency's denial of his sick leave request (contested decision 2) as not receivable.

4. In Case No. UNRWA/DT/HQA/2021/032, the Dispute Tribunal rescinded the Agency's decision to refuse to complete Mr. Shahwan's performance evaluation reports and provide a fulsome certificate of service (contested decision 3). The Tribunal ordered the Agency to pay Mr. Shahwan JOD 3,000 for his legal costs but denied his other requests for compensation.

5. Both parties have filed appeals against the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal). In Case No. 2023-1816, the Commissioner-General appeals the award of legal costs to Mr. Shahwan. In Case No. 2023-1817, Mr. Shahwan appeals the denial of compensatory damages. These cases have been consolidated for judgment by the UNAT.<sup>2</sup>

6. For the reasons set forth herein, the Appeals Tribunal grants the Commissioner-General's appeal in Case No. 2023-1816 and grants in part Mr. Shahwan's appeal in Case No. 2023-1817.

---

<sup>1</sup> The investigation concerned Mr. Shahwan and four other senior managers of UNRWA.

<sup>2</sup> *Hakam Mohammad Shahwan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Order No. 544 (2023).

**Facts and Procedure**

7. Given that neither party appeals the UNRWA DT's determination on the merits of Mr. Shahwan's claims, only a brief summary of the factual background is presented.<sup>3</sup>

8. As of 1 March 2018, Mr. Shahwan was the Chief of Staff (CoS) of the Agency at the D-2 level. In January 2019, the Secretary-General requested that the United Nations Office of Internal Oversight Services (OIOS) investigate Mr. Shahwan and four other senior managers of UNRWA, including the former Commissioner-General.

9. On 4 July 2019, Mr. Shahwan submitted his resignation effective 31 July 2020 pursuant to conditions negotiated with the former Commissioner-General about matters unrelated to the OIOS investigation. These conditions were set out in a Separation Agreement.

10. The Separation Agreement specified in Section 12 that "UNRWA will provide the Staff Member with a positive performance evaluation (E-PER) by his supervisor(s) to enable him to seek alternative employment outside UNRWA". Section 13 also stated that UNRWA would provide Mr. Shahwan "with a certificate of service addressing position and duration of service with UNRWA", and that if more information on his performance was needed, it would be provided on the basis of "the Agency's official records, i.e., completed performance evaluations".<sup>4</sup>

11. On 30 July 2019, an UNRWA spokesperson reported to the press that Mr. Shahwan had been fired by UNRWA. The spokesperson also stated that the Deputy Commissioner-General had resigned.<sup>5</sup> On 6 November 2019, the former Commissioner-General resigned.

12. On 14 November 2019, OIOS completed its investigation of Mr. Shahwan, which concluded that his conduct was "inconsistent with the standards expected of a United Nations civil servant" and recommended that the Executive Office of the Secretary-General take appropriate action.<sup>6</sup> Mr. Shahwan was never invited to respond to the investigation findings or the allegations of misconduct.

---

<sup>3</sup> There is no appeal of the outcome of Case No. UNRWA DT/HQA/2020/064 regarding Mr. Shahwan's sick leave request, accordingly, those facts are omitted from this description.

<sup>4</sup> Impugned Judgment, para. 10.

<sup>5</sup> Annex 3 to Mr. Shahwan's UNRWA DT application.

<sup>6</sup> Impugned Judgment, para. 13.

13. On 17 March 2020, the acting Commissioner-General informed Mr. Shahwan of the decision to place a Note in Mr. Shahwan's OSF. The Note lists the investigation findings, but stated that, given Mr. Shahwan's pending separation, no further action was being pursued.<sup>7</sup>

14. On 13 May 2020, Mr. Shahwan was permitted to provide comments to the Note in his OSF.

15. On 19 May 2020, senior members of the United Nations Secretariat met with member states to discuss actions taken against the senior management of UNRWA. The Under-Secretary-General advised the participants that the investigation of Mr. Shahwan was ongoing, although it was not.<sup>8</sup> On 9 July 2020, the Inner City Press published a memorandum describing the 19 May 2020 meeting on their website.<sup>9</sup>

16. Following Mr. Shahwan's Request for Decision Review (RDR) of contested decision 1, which was rejected, Mr. Shahwan filed his first application with the UNRWA DT on 29 July 2020, requesting the removal of the Note from his OSF, compensation for mental stress and anxiety, and for public harm to his reputation in the amount of one year of gross salary, and compensation for legal costs in an amount no less than USD 10,000.

17. In the same time period, from 22 March 2020 through 15 June 2020, Mr. Shahwan sought to have the Agency complete his performance evaluation documents pursuant to the Separation Agreement. Although Mr. Shahwan had completed his portion, the Agency repeatedly advised that the former Commissioner-General had not responded to its requests to provide input.

18. On 5 November 2020, Mr. Shahwan's counsel requested his work certificate and the performance evaluations within 30 days. The Agency did not respond. Mr. Shahwan then submitted a RDR for contested decision 3, being the failure to provide these documents. The Agency did not respond to the RDR.

19. On 30 January 2021, the Agency provided Mr. Shahwan with a certificate of service showing his title and period of service, but without a description of his duties.

---

<sup>7</sup> Annex 11 to Mr. Shahwan's UNRWA DT application.

<sup>8</sup> Annex 18 to Mr. Shahwan's UNRWA DT application.

<sup>9</sup> Annex 19 to Mr. Shahwan's UNRWA DT application.

20. On 10 May 2021, Mr. Shahwan filed another application with the UNRWA DT with respect to the Agency's failure to provide the requested personnel documentation.

21. Regarding the placement of the Note in his OSF, Mr. Shahwan sought orders (i) that UNRWA withdraw the Note from his OSF in its control and destroy it; (ii) that UNRWA pay him compensation in the amount of one year of gross salary for the mental stress and anxiety it caused to him, for the public harm to his reputation after 25 years of service with the United Nations system, and for the bias and prejudice towards him; and (iii) that UNRWA pay him for legal costs incurred in bringing the Dispute Tribunal procedure, in an amount to be confirmed at the end of the procedure, but not less than USD 10,000.

22. In respect of the failure to provide him with a certificate of service and performance evaluations, Mr. Shahwan sought orders (i) that UNRWA immediately complete all pending performance reports for him in accordance with UNRWA Staff Regulations and Rules and the Separation Agreement; (ii) that UNRWA immediately issue a work certificate, indicating in addition to his title, grade and years of service, the nature of his duties, the quality of his work and his conduct, in accordance with the Separation Agreement; (iii) that UNRWA pay him compensation equivalent to his gross salary, from 1 August 2020 and until such time that the performance evaluations and the corrected work certificate were delivered to him, for having prevented him to obtain gainful employment during the same period (that is for nine months at the time his UNRWA DT Application was submitted); (iv) that UNRWA pay him compensation in the amount of three months' gross salary for the mental stress and anxiety it caused him as a result of the lack of employment, the uncertainty with respect to his financial situation and to his capacity to support his family, for which he is the only breadwinner; and (v) that UNRWA pay him legal costs incurred in bringing the Dispute Tribunal procedure, in an amount to be confirmed at the end of the procedure, but not less than USD 5,000.

*Impugned Judgment*

23. In the impugned Judgment, the UNRWA DT found that contested decision 1 was unlawful for two reasons. First, the Dispute Tribunal found that the Agency breached various provisions of International Personnel Directive I/10 on Disciplinary Measures and Procedures (PD I/10) that were aimed to ensure that Mr. Shahwan's due process rights were respected. Specifically, the Agency was found to have disregarded Mr. Shahwan's due process rights in

failing to inform him about the allegations of misconduct and the investigation findings, and of his right to respond to these allegations in writing.<sup>10</sup>

24. Second, the Dispute Tribunal found that contested decision 1 was unlawful because the Agency selected a disciplinary measure – the placement of the Note in Mr. Shahwan’s OSF – that was not one of the options available in the exclusive list of disciplinary measures set forth in UNRWA Staff Rule 10.2(a).<sup>11</sup>

25. The Dispute Tribunal rescinded contested decision 1 and ordered the Agency to remove the Note from Mr. Shahwan’s OSF. With regard to Mr. Shahwan’s claim for compensation, the Tribunal found that the only evidence of alleged harm was his own testimony, which was insufficient to establish that he suffered compensable harm. His request for compensation was accordingly denied. The Tribunal found however that although Mr. Shahwan had “failed to substantiate the actual amount of costs for legal representation”, it was appropriate to award him JOD 3,000 for legal costs for legal representation.<sup>12</sup>

26. With regard to contested decision 3, the Dispute Tribunal recognized that the terms of the Separation Agreement required the Agency to issue both positive performance evaluations and a positive certificate of service to Mr. Shahwan.<sup>13</sup> However, the Tribunal concluded that these conditions violated the Standards of Conduct for the International Civil Service. The Agency knew that an investigation was ongoing at the time they agreed to give Mr. Shahwan a positive performance evaluation and agreeing to do so when the investigation was not complete was not in compliance with the Standards of Conduct.<sup>14</sup>

27. The Dispute Tribunal held that given the hierarchy of legal norms, the obligations in the Standards of Conduct and UNRWA Staff Regulations and Rules prevailed over the privately-contracted Separation Agreement. The Tribunal accordingly concluded that it would not enforce Sections 12 and 13 of the Separation Agreement.<sup>15</sup> However, the Tribunal rescinded the contested decision of the Agency not to issue the performance evaluations of

---

<sup>10</sup> Impugned Judgment, paras. 40 and 46.

<sup>11</sup> *Ibid.*, para. 48.

<sup>12</sup> *Ibid.*, para. 53.

<sup>13</sup> *Ibid.*, para. 103.

<sup>14</sup> *Ibid.*, para. 107.

<sup>15</sup> *Ibid.*, paras. 113 and 115.

2018, 2019 and 2020 for Mr. Shahwan, and ordered that a certificate of service be issued that included Mr. Shahwan's title, position and duties.

28. With regard to Mr. Shahwan's request for material damages, on the basis that he was prevented from obtaining employment from 1 August 2020 until such time that he received the performance evaluations and corrected certificate of service, the Dispute Tribunal found that Mr. Shahwan's testimony was insufficient to establish that he suffered damage since he had not submitted any evidence that he had not obtained gainful employment during this period.<sup>16</sup>

29. The Dispute Tribunal held that the only evidence of alleged mental stress and anxiety was Mr. Shahwan's own testimony, which was insufficient to establish that he suffered harm which could be compensated. Accordingly, in the absence of sufficient evidence of such, Mr. Shahwan's claim for compensation for mental stress and anxiety was rejected. In relation to compensation for legal costs, the Tribunal found that Mr. Shahwan had "failed to substantiate the actual amount of legal costs for representation in this procedure" but "consider[ed] that it would be appropriate to award [Mr. Shahwan] JOD 3,000 for legal costs for representation".<sup>17</sup>

### **Appeals**

30. The Commissioner-General filed an appeal against the impugned Judgment on 23 June 2023, to which Mr. Shahwan submitted an answer on 23 August 2023. This appeal was registered as Case No. 2023-1816. Mr. Shahwan filed his own appeal against the impugned Judgment on 24 June 2023, to which the Commissioner-General replied on 29 August 2023. This appeal was registered as Case No. 2023-1817. By order of the Appeals Tribunal, these two appeals were consolidated for hearing and judgment.<sup>18</sup>

---

<sup>16</sup> *Ibid.*, para. 116.

<sup>17</sup> *Ibid.*, para. 118.

<sup>18</sup> *Shahwan Order, op. cit.*

## Submissions

*Case No. 2023-1816*

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

31. The Commissioner-General appeals against the award of costs for legal representation. He submits that the UNRWA DT erred in fact and law and exceeded its competence in awarding costs for legal representation in the absence of a specific finding of manifest abuse of proceedings.

32. The Commissioner-General relies on Article 10(6) of the UNRWA Dispute Tribunal Statute that states: "Where the Dispute Tribunal determines that a party has abused the proceedings before it, it may award costs against that party." He also points to the Appeals Tribunal's Judgment in *Kamunyi*, where the UNAT held that "no legal costs are due to a party when the opposing party has not abused the process".<sup>19</sup>

33. The Commissioner-General contends that the UNRWA DT erred when it made an award of legal costs in the absence of any finding that the Agency had manifestly abused the proceedings before it. He argues that the UNRWA DT provided no substantiation for this award of costs.

34. The Commissioner-General also submits that the Appeals Tribunal has advised that litigants cannot be expected to be reimbursed for hiring private counsel when there is a legal service funded by the Organization available to the staff member.<sup>20</sup> In this case, Mr. Shahwan could have availed himself of the services of the Legal Office for Staff Assistance (LOSA).

35. The Commissioner-General notes that the Dispute Tribunal did not request any estimation or explanation of the actual costs of Mr. Shahwan's counsel; indeed, the Tribunal expressly found that Mr. Shahwan "failed to substantiate" them. The Commissioner-General submits that the UNRWA DT has no discretion to award legal costs in the absence of any substantiation of the costs by Mr. Shahwan and in the absence of a finding that the Agency has manifestly abused the proceedings.

---

<sup>19</sup> *Kamunyi v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-194, para. 36.

<sup>20</sup> *Angioli Rolli v. Secretary-General of the World Meteorological Organization*, Judgment No. 2023-UNAT-1346, para. 62.



36. The Commissioner-General therefore requests that the Appeals Tribunal vacate the award of costs of JOD 3,000 in each of Case No. UNRWA/DT/HQA/2020/045 and UNRWA/DT/HQA/2021/032.

**Mr. Shahwan's Answer**

37. Mr. Shahwan submits that the UNRWA DT's award of legal costs was fully justified.

38. Mr. Shahwan submits that the Agency abused the UNRWA DT proceedings and that he was forced to file the third application with the UNRWA DT in Case No. UNRWA/DT/HQA/2021/032 due to the Agency's refusal to respond to his entreaties regarding his performance evaluations and his RDR (on contested decision 3).

39. In addition, Mr. Shahwan submits that the Commissioner-General abused the proceedings by taking 120 days to file his reply, when he previously had refused to give any response to Mr. Shahwan's requests for the performance evaluations or answered his RDR.

40. Mr. Shahwan argues that the Commissioner-General does not contest the facts found by the UNRWA DT, and that these facts justify the award of legal fees.

41. Mr. Shahwan submits that in *Delaunay*,<sup>21</sup> the Appeals Tribunal affirmed the award of legal costs in the absence of a precise finding of abuse of authority, simply because the appellant in that case had succeeded in her appeal and was represented by a private lawyer. The fact that LOSA was available to him is irrelevant and that it is, in any event, widely known that LOSA is overwhelmed and understaffed, with only one legal officer to serve 32,000 UNRWA employees.

42. Mr. Shahwan suggests that the Agency deliberately keeps LOSA understaffed, while at the same time, staffs its own legal office with three internationally-recruited lawyers, to maintain its power over appeals submitted against management. In these circumstances it is contended to amount to bad faith for the Agency to claim that he should have availed himself of LOSA's services.

43. Mr. Shahwan submits that he had made a claim to legal fees in both of the referenced cases, and that he expected that the UNRWA DT would hold a case management discussion

---

<sup>21</sup> *Delaunay v. Le Greffier de la Cour Internationale de Justice*, Arret no. 2019-TANU-939, para. 63.

about his fees. Given that the procedure before the Dispute Tribunal lasted three years, Mr. Shahwan had no way of knowing when the time for submission of his legal bills would be.

44. Mr. Shahwan states that the amounts awarded (JOD 3,000 per case) is far below what he actually paid in legal fees, which was CHF 11,691.

45. Mr. Shahwan further submits, relying on the Appeals Tribunal's Judgment in *Terragnolo*,<sup>22</sup> that there was no obligation for him to make a specific request for reimbursement in order for the UNRWA DT to make the award.

46. For these reasons, Mr. Shahwan requests that the UNAT dismiss the appeal in its entirety.

*Case No. 2023-1817*

### **Mr. Shahwan's Appeal**

47. Mr. Shahwan appeals the impugned Judgment on the grounds that the UNRWA DT erred on questions of law and fact in failing to award him compensation for the material and moral damages that he suffered at the hands of the Agency.

48. Mr. Shahwan submits that the UNRWA DT contradicted itself and existing case law by finding, on the one hand, that Mr. Shahwan had not adduced "sufficient evidence" of harm but, on the other hand, finding that the placement of the Note in his OSF "has [a] direct legal consequence [in] that it impacts future career prospects of the staff member".<sup>23</sup>

49. Mr. Shahwan submits that because he had the Note in his OSF for three years, he was unable to mention any reference contact in the job applications that he has submitted since he left the Agency and has not once been pre-selected or called for an interview following the countless applications he submitted since 2020.

50. Mr. Shahwan points out that the Appeals Tribunal has expressly recognized that placing such notes in the personnel files of staff members is detrimental to the career prospects of staff.<sup>24</sup> Given this jurisprudence, it is difficult to understand on what basis the UNRWA DT

---

<sup>22</sup> *Terragnolo v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-566.

<sup>23</sup> Impugned Judgment, para. 36.

<sup>24</sup> See *Ronahi Majdalawi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2023-UNAT-1322; *Abed and Abed v.*

could have required more evidence of harm to his reputation, nor did it state what evidence should have been provided.

51. Mr. Shahwan submits that the Agency has acted maliciously by tarnishing his name in the media, and as the UNRWA DT found, violated his due process rights by not informing him of the outcome of the investigation or allowing him to defend himself, which supports the damage done to him.

52. The fact that he did not produce a medical report about his mental stress and anxiety around these issues is irrelevant since egregious violations of his due process rights, malicious acts by the Agency, and silence by the Agency to the rumours circulating about his integrity, are patently sufficient to cause severe distress and anxiety. Mr. Shahwan submits that he suffered due to the Agency's acts and simply withdrawing the Note is insufficient to compensate him for the material and moral damage incurred by him and his family for three years.

53. He contends further that the UNRWA DT erred on a question of fact when it asserted that he had not produced evidence that he remained unemployed following the end of his contract with the Agency. Mr. Shahwan states that he informed the Dispute Tribunal about this in May and October 2021. In addition, the Tribunal was informed that he was in a precarious financial situation in November 2022 due to the unlawful contested decisions.

54. Mr. Shahwan contests the suggestion that there is no evidence that the Note in his OSF or the lack of performance evaluations are the reason that he could not obtain alternate employment. He submits that there can be no other explanation why a staff member with an unblemished career for thirty years and positive performance evaluations until 2018 was not able to get a job, even for lower-level positions. Placing reliance on the Appeals Tribunal decision in *Kallon*,<sup>25</sup> he states that there are exceptions to the rule that a staff member must provide expert or independent evidence of harm in order to receive compensatory damages. Since the Agency misled him for almost a year on the issuance of personnel documents, it denied him the tools to find other employment in violation of the Separation Agreement, and

---

*Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2022-UNAT-1297.

<sup>25</sup> *Kallon v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742, paras. 77-79.

it still refuses to issue the requested documents in spite of the impugned Judgment, moral damages are justified.

55. He seeks that the Agency be held responsible for pressuring him into entering into a Separation Agreement that it had no intention of respecting and seeks that the negative effects of the unlawful contested decisions be corrected and that he be awarded compensation for the distress, anxiety, and deception caused by the Agency's acts, and the precarious financial situation that he and his family have been in for the past three years.

56. Since the UNRWA DT took more than two and a half years after submission of his first application, and two years from the submission of his third application, to issue the impugned Judgment, an unjustifiable delay resulted which provides a basis for an award of moral damages, as found by the Appeals Tribunal in *Benfield-Laporte*.<sup>26</sup>

57. Mr. Shahwan requests that in accordance with Article 9(1) of the Appeals Tribunal Statute (Statute), that the UNAT (i) order UNRWA to pay him material damages in the amount of one year of his last salary (level D-2, step 2) for the placement of the Note in his OSF; (ii) order UNRWA to pay him the equivalent of his gross salary from 1 August 2020 until such time as the performance evaluations and corrected work certificate are delivered to him; (iii) order UNRWA to pay him compensation in the amount of four months of gross salary for mental stress and anxiety; and (iv) order UNRWA to pay him for the legal costs incurred in this appeal, in the amount of at least USD 5,000.

58. Mr. Shahwan also requests an oral hearing before the Appeals Tribunal. He submits that he requested a hearing before the UNRWA DT, which was implicitly rejected. He notes that he has not had the possibility to express himself before a judge and explain the harm done to him and his family for the past three years. Considering that his appeal concerns a request for compensation for material damage due to not having employment because of UNRWA's unlawful acts, he respectfully submits that it is of utmost importance that he be heard by the Appeals Tribunal Judges.

---

<sup>26</sup> *Benfield-Laporte v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-505.

**The Commissioner-General's Answer**

59. The Commissioner-General submits that the UNRWA DT did not err as a matter of fact, law or procedure in dismissing Mr. Shahwan's request for material and moral damages.

60. The Commissioner-General submits that Mr. Shahwan's arguments are wholly misconceived. The Commissioner-General recalls that in 2014 the General Assembly amended Article 10(5) of the Statute of the United Nations Dispute Tribunal (UNDT Statute) so that the Dispute Tribunal may award compensation for harm if such harm is "supported by evidence". Effective 1 January 2018, this was adopted into the UNRWA DT Statute. Accordingly, it is now established that the UNRWA DT may only award compensation for harm where the staff member has presented evidence other than his own testimony that he suffered moral injury due to the contested decision.

61. The Commissioner-General also relies on the Appeals Tribunal's Judgment in *Rehman*, which made clear that there needs to be evidence "by way of a medical or psychological report of harm, stress or anxiety caused to the employee, which can be directly linked, or reasonably attributed, to a breach of his or her substantive or procedural rights".<sup>27</sup>

62. The Commissioner-General avers that Mr. Shahwan has effectively admitted that he has produced no corroborative independent evidence of harm, because in his pleadings Mr. Shahwan contends that such evidence is not necessary in his case. This admission is enough to dismiss his appeal.

63. The Commissioner-General contends that Mr. Shahwan's claim that he is entitled to damages for the "egregious violations" to his fundamental rights is wholly misconceived. The Commissioner-General relies on the UNAT's Judgment in *Korkut Yavuz*, in which it was stated that "a breach of a staff member's rights, despite its fundamental nature, is thus not sufficient to justify such an entitlement [to moral damages]. There must indeed be proven harm stemming directly from the Administration's illegal act or omission for compensation to be awarded."<sup>28</sup>

64. The Commissioner-General submits that Mr. Shahwan "has not presented an iota of evidence to establish financial loss as a result of his alleged failure to obtain gainful

---

<sup>27</sup> *Rehman v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-885, para. 18.

<sup>28</sup> *Korkut Yavuz v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1266, para. 32.

employment stemming from the non-issuance of the performance evaluations for 2018-2020 and the work certificate”.

65. Mr. Shahwan’s job applications are contended to be “wholly irrelevant” as they may demonstrate only that he applied for jobs, but “not demonstrate that the loss, if any, is directly caused” by the decisions not to issue the performance evaluations and work certificate.

66. The Commissioner-General argues that Mr. Shahwan may not have been able to secure another job with the United Nations, but he has failed to prove that he has not received remuneration and made a living in some other way. In the absence of any independent corroborative evidence affirming that non-pecuniary harm has occurred, the UNRWA DT was correct to dismiss the claim for moral damages with regard to the non-issuance of the performance evaluations and work certificate.

67. The Commissioner-General further avers that Mr. Shahwan’s plea for material damages for the placement of the Note in his OSF is not properly before the UNAT, because it was not presented to the UNRWA DT, and Mr. Shahwan cannot present this issue for the first time on appeal. According to the UNAT’s jurisprudence, when compensation has not been requested, none should be awarded.<sup>29</sup> The Appeals Tribunal, it is submitted, should therefore dismiss his appeal in its entirety because he has failed to establish that the UNRWA DT made any error warranting reversal on the question of compensation.

### **Considerations**

#### *Application for oral hearing*

68. Mr. Shahwan sought an oral hearing of his appeal. Article 8(3) of the Statute provides that the Appeals Tribunal shall decide whether oral proceedings should be held in an appeal. Article 18(1) of the Appeals Tribunal Rules of Procedure (Rules) permits the judges hearing a case to determine whether to hold an oral hearing either on their own initiative or on the written application of a party “if such hearings would assist in the expeditious and fair disposal of the case”.

---

<sup>29</sup> Citing *James v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-009, para. 46.

69. An appeal is required to be determined efficiently and fairly.<sup>30</sup> By their nature, in most appeals the factual and legal issues have already been clearly defined by the parties, with a limited need for further clarification of such issues as a result.<sup>31</sup> An oral hearing on appeal is considered exceptional for the reason that such a hearing will very often not “assist in the expeditious and fair disposal of the case”, as required by Article 18(1) of the Rules. In *Ular*, an oral hearing was declined on the basis that the Appeals Tribunal does not sit as one of first instance and that an appeal is not a rehearing of the matter “but an opportunity for the parties to appeal on narrow bases, such as errors of law, fact and jurisdiction”.<sup>32</sup>

70. Mr. Shahwan advanced no particular reasons why an oral hearing of his appeal is required, other than his wish for a personal audience with a judge, which is not a proper ground for a hearing. The factual and legal issues have already been clearly defined by the parties and do not require further clarification in an oral hearing. No exceptional circumstances exist which would warrant an oral hearing in the matter and there is no apparent reason proffered to show why an oral hearing is required to facilitate the expeditious and fair determination of the matter. For these reasons the application for an oral hearing is refused.

71. Two issues remain for determination in these appeals. The first is whether the UNRWA DT erred in awarding a total of JOD 6,000 in legal fees to Mr. Shahwan. The second is whether the Dispute Tribunal erred in failing to award any moral damages to Mr. Shahwan.

#### *Legal costs*

72. Article 10 of the UNRWA DT Statute echoes Article 10(6) of the UNDT Statute and provides that legal costs may be awarded against a party determined by the Dispute Tribunal to have “manifestly abused the proceedings” before it. It follows that the Tribunal is therefore required to make a finding that there has been a manifest abuse of the proceedings by a party in order to award legal costs pursuant to Article 10.

73. Although the Dispute Tribunal made no finding that there had been a manifest abuse of proceedings by the Commissioner-General, and instead found that Mr. Shahwan had “failed

---

<sup>30</sup> *Mustapha Guenfoudi v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1364, paras. 61-62

<sup>31</sup> *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-712, para. 12.

<sup>32</sup> *Lillian Ular v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1212, paras. 30-33.

to substantiate the actual amount of legal costs for representation in this procedure”,<sup>33</sup> it nevertheless awarded him legal costs of JOD 3,000 following the rescission of contested decision 1. In relation to contested decision 3, the Tribunal found that the Agency had no valid reasons for its refusal to complete Mr. Shahwan’s performance evaluations and ordered that the Commissioner-General pay Mr. Shahwan JOD 3,000 for legal costs. With no evidence of a manifest abuse of proceedings by the Commissioner-General before the Tribunal, nor any finding of such an abuse of proceedings made, the costs orders made by the Tribunal did not accord with the terms of Article 10 of the UNRWA DT Statute and were therefore unjustified and cannot be sustained.

74. In *Delaunay*,<sup>34</sup> legal costs were awarded not under Article 10(6) of the UNDT Statute but under Article 10(5)(b) on the basis that harm was found to have been suffered by the appellant as a result of the flawed handling by the Administration of the allegations against her, with the appellant required as a result to incur legal costs to defend herself. Following *Delaunay*, this Tribunal in *Rolli*<sup>35</sup> held that in particular circumstances costs may be awarded under Article 10(5)(b) as a form of compensatory damages for harm where loss is attributable to the Organization’s unlawful acts or omissions. However, it found that such an award will only be made in rare circumstances having regard to the facts and where no staff legal assistance was available which caused the staff member to incur the cost of external legal advice. Thus, where the Office of Staff Legal Assistance (OSLA) or an equivalent service (like LOSA) is available to staff members, such losses will not need to be incurred and will not be compensated.<sup>36</sup>

75. To award compensation for harm, clear evidence of such harm must exist. Where the harm takes the form of legal costs incurred, evidence is required that the circumstances of a matter are of such a nature as to justify such an unusual award, including that no staff legal assistance was available to the staff member which created the need to seek external legal advice or representation.<sup>37</sup> No such evidence was placed before the Dispute Tribunal by Mr. Shahwan. There is no indication that the circumstances of this matter justified such an

---

<sup>33</sup> Impugned Judgment, para. 53.

<sup>34</sup> *Delaunay* Judgment, *op. cit.*, para. 63.

<sup>35</sup> *Rolli* Judgment, *op. cit.*, para. 62.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*



unusual award or that Mr. Shahwan was unable to make use of the staff legal assistance available to him (LOSA) which caused him to incur the cost of external legal advice.

76. It follows that if we considered that the legal costs were awarded by the Dispute Tribunal under Article 10(5)(b) (which is not apparent from the impugned Judgment), there existed no basis on which to justify such an order given the evidence before the Tribunal. It follows that in awarding legal costs against the Commissioner-General the UNRWA DT erred. The Commissioner-General's appeal against both of the costs orders made must therefore succeed and the orders are hereby set aside.

*Appeal against refusal to grant moral damages*

77. Turning to Mr Shahwan's appeal against the refusal to award him moral damages, Article 10(5)(b) of the UNRWA DT Statute echoes Article 10(5)(b) of the UNDT Statute, following its amendment by the General Assembly in 2014. Article 10(5)(b) provides that the Dispute Tribunal may order:

(b) Compensation for harm supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm supported by evidence and shall provide the reasons for that decision.

78. In terms of Article 9(1)(b) of the Statute, this Tribunal may award compensation for harm on a similar basis.

79. To justify an award of compensation for harm, three elements must be proved, namely: (i) an illegality; (ii) the existence of harm; and (iii) proof of a nexus between the two.<sup>38</sup> It is thus not enough simply to demonstrate the existence of an illegality in order to obtain compensation.<sup>39</sup> The claimant bears a burden, in addition, to adduce sufficient evidence to prove that the illegality caused moral injury or harm which should be compensated. While the facts may in some circumstances speak for themselves and constitute sufficient evidence to allow a finding of harm, this is not always so,<sup>40</sup> and the mere fact of an administrative

---

<sup>38</sup> See *Kebede v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-874, paras. 20-22.

<sup>39</sup> *Kallon Judgment, op. cit.*, para. 60; *Marius Mihail Russo-Got v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1095, para. 39.

<sup>40</sup> *Kallon Judgment, op. cit.*, para 63.

wrongdoing will not necessarily lead to an award of compensation.<sup>41</sup> Compensation may be awarded for a proven illegality where the existence of harm caused by it is supported by sufficient evidence adduced.

80. In *Kallon*<sup>42</sup> it was recognized that implicit in the notion of “compensation for harm” in Article 10(5)(b) of the UNDT Statute is the possibility that compensation may be awarded for non-economic harm or moral injury, subject to the express prohibition on exemplary or punitive damages contained in Article 10(7) of the UNDT Statute. It was reiterated that the award of moral damages is only permissible in circumstances in which a proper evidentiary basis has been laid to allow such an unusual award. In a contractual setting, including the contract of employment, compensation for actual financial loss sustained is usually regarded as sufficient for both the loss and the vexation or inconvenience caused by the breach.<sup>43</sup> For moral damages to be justified, evidence as to peculiar circumstances which have caused a violation of personality rights that are not able to be sufficiently remedied by compensation for actual patrimonial loss must exist. Although in certain circumstances the facts may speak for themselves and lead to a presumption of moral injury, given the unusual nature of an award of moral damages, there must exist a sufficient evidentiary basis to support such an award. That evidence must prove on a balance of probabilities the existence of factors causing harm, which may include evidence of damage to a staff member’s personality rights or dignity, comprised of psychological, emotional, spiritual, reputational and analogous intangible or non-patrimonial incidents of personality.<sup>44</sup>

81. The UNRWA DT rescinded the Commissioner-General’s decision not to provide performance evaluations to Mr. Shahwan for 2018, 2019 and 2020 and ordered that these be issued to Mr. Shahwan with a work certificate reflecting his period of service, his title and duties. In relation to Mr. Shahwan’s claim for compensation for damage in being prevented from obtaining gainful employment due to the failure to provide him with the certificate of service and performance evaluations and his claim for compensation for mental stress and anxiety, the Dispute Tribunal found that the only evidence of harm was his own testimony

---

<sup>41</sup> *Ibid.*, para. 60.

<sup>42</sup> *Ibid.*, para. 62.

<sup>43</sup> *Ibid.*, paras. 62 and 66.

<sup>44</sup> *Ibid.*, para. 70.

which was insufficient to establish his claim for damages. Consequently, his claim for compensation under both heads was rejected.

82. Ordinarily, as set out in cases such as *Ross*,<sup>45</sup> the testimony of an applicant alone, without corroboration by independent evidence, expert or otherwise, affirming that non-pecuniary harm has occurred, is generally not sufficient to support an award of damages. Yet, in certain cases the evidence of the applicant, considered together with the nature of the violation and the facts surrounding it, may provide a sufficient and convincing basis for the reasonable inference that damage has been sustained of such a nature as to warrant the award of compensation for harm.<sup>46</sup>

83. Mr. Shahwan relies on *Kallon*<sup>47</sup> as support for his contention that it was irrelevant that he did not produce a medical report to prove the existence of mental stress and anxiety, given that his main preoccupation was to find an alternative job. Were this contention to be accepted, it would have the effect that compensation for mental stress and anxiety, which is by its nature an exceptional remedy, could be awarded with no more than Mr. Shahwan's own very limited evidence on the issue. In the absence of any corroborating evidence as to his mental state, the evidence of Mr. Shahwan was insufficient, and the Dispute Tribunal did not err in rejecting his claim. The appeal against the refusal to grant moral damages due to mental stress and anxiety must consequently fail.

84. Turning to Mr. Shahwan's claim for moral damages as a consequence of the failure to provide him with the certificate of service and performance evaluations, it is material that UNWRA had expressly agreed in the Separation Agreement that such documentation would be provided to him. Yet, over an extended period following the conclusion of this Agreement, the documentation was inexplicably not provided, even in the face of Mr. Shahwan's requests that the terms of the Agreement be complied with. In fact, despite assuring him that the documentation would be issued, UNRWA officials thereafter failed to respond to Mr. Shahwan's enquires or his RDR.

---

<sup>45</sup> *Ross v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-926, para. 57. The reasoning in *Ross* was subsequently applied in cases including *Zachariah*, *Auda*, *Timothy*, and *Langue*. See *ibid.* (collecting cases).

<sup>46</sup> *Kallon* Judgment, *op. cit.*, para 79.

<sup>47</sup> *Ibid.*

85. There is no serious dispute that following his termination Mr. Shahwan remained unemployed and was placed in a precarious financial position over an extended period of three years. Mr. Shahwan had been a staff member with a long career with the United Nations of approximately 30 years, with positive performance evaluations received at UNRWA until 2018. The evidence of his repeated unsuccessful applications for employment was not disputed before the Dispute Tribunal, nor was the fact that his repeated requests for the documentation were ignored. It can hardly be questioned that as a direct result Mr. Shahwan was unable to prove his past employment record with the United Nations to prospective employers.

86. There is no merit in the Commissioner-General's argument that there was no evidence of a nexus between Mr. Shahwan's unsuccessful employment applications and its failure to provide him with the documentation required. This is so in that without proof of prior employment, Mr. Shahwan's employment applications were incomplete. It is therefore reasonable to conclude from the facts that it was proved that Mr. Shahwan suffered harm as a result of the illegality committed, namely the Commissioner-General's flagrant disregard for the terms of the Separation Agreement and that there existed a nexus between such harm and the illegality. For these reasons we are of the view that the UNRWA DT erred in dismissing Mr. Shahwan's claim for moral damages in this respect.

87. In *Ular*,<sup>48</sup> the issue of moral damages was referred back to the Dispute Tribunal for determination on the basis that an error of procedure had arisen as a result of the Tribunal's failure to rule on a motion to allow the introduction of medical evidence. No such similar considerations apply in this matter. We do not therefore consider it necessary to remand the issue of moral damages to the Tribunal for reconsideration. Since we are satisfied that the illegality committed caused harm to Mr. Shahwan's employment prospects, amounting to a serious violation of his career and his person, we are satisfied that moral damages in terms of Article 9(b) under the Appeals Tribunal Statue should properly be awarded to Mr. Shahwan.

88. As to quantum, Mr. Shahwan sought an award of damages from 1 August 2020 until the date of receipt by him of the personnel documentation from UNRWA. An award of moral damages is not to be punitive but compensatory of a substantial moral injury. In *Awe*,<sup>49</sup> USD 5,000 was awarded to the staff member as compensation for harm to reputation and professional standing exacerbated by the continuing and unacceptable delay in affording him

---

<sup>48</sup> *Ular* Judgment, *op. cit.*, para. 55.

<sup>49</sup> *Awe v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-774, paras. 37-38.

the relief to which he was entitled, with there having been a failure to provide prompt and effective redress for such harm, which was of a temporary nature and did not affect the totality of Mr. Awe's career. In *Dieng*,<sup>50</sup> despite no evidence of pecuniary damages in the form of loss of opportunities due to Mr. Dieng not being able to apply for any job, a total award of two months' net base salary was found to be adequate compensation for reputational harm following the failure to provide prompt and effective redress to Mr. Dieng, and for stress and anxiety suffered as a result of the breach of the applicable law and his due process rights. In *Pirraaku*,<sup>51</sup> six months' net base salary awarded by the Dispute Tribunal was found to be adequate in the circumstances of the case and fairly reflected the prejudice suffered by the staff member.

89. Having regard to the clear and undisputed evidence of moral damage suffered by Mr. Shahwan due to his treatment by UNRWA, which had a direct impact on his career and his person in circumstances in which UNWRA had undertaken to and was obliged (either in the normal course as a former employer or pursuant to the promises underlying the parties' Agreement) to provide the documentation requested, we consider an award of moral damages in the amount of three months' net base salary to be appropriate. We are not persuaded that it would be appropriate to award damages to the extent sought by Mr. Shahwan having regard to the facts of this matter.

---

<sup>50</sup> *Boubacar Dieng v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1118, para. 87.

<sup>51</sup> *Pirraaku v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-561, para. 23.

**Judgment**

90. The Commissioner-General's appeal succeeds and Mr. Shahwan's appeal succeeds in part.

91. Judgment No. UNRWA DT/2023/018 is reversed in part and the orders made therein at paragraph 119, parts (i)(c), (iii)(d) and (iii)(e) are modified and substituted as follows:

- a) The orders of legal costs made in Case No. UNRWA/DT/HQA/2020/045 and Case No. UNRWA/DT/HQA/2021/032 are reversed.
- b) Mr. Shahwan's request for compensation is granted in part. The Commissioner-General is directed to pay Mr. Shahwan compensation for non-pecuniary damage (moral damages) equivalent to three months' net base salary in total.
- c) The award of compensation is to be effected within 60 days of the date of issuance of this Judgment. Interest shall accrue on the compensation award from the date of issuance of this Judgment at the current US Prime Rate until payment is made. If payment is not made within the 60-day period, an additional 5 per cent shall be added to the US Prime Rate.

Original and Authoritative Version: English

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

*(Signed)*

Judge Savage, Presiding

*(Signed)*

Judge Gao

*(Signed)*

Judge Colgan

Judgment published and entered into the Register on this 2<sup>nd</sup> day of May 2024 in New York, United States.

*(Signed)*

Juliet E. Johnson, Registrar