



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

Dawas

(Respondent/Applicant)

v.

**Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East**

(Appellant/Respondent)

JUDGMENT

Before:	Judge Luis María Simón, Presiding Judge Sophia Adinyira Judge Deborah Thomas-Felix
Case No.:	2015-707
Date:	24 March 2016
Registrar:	Weicheng Lin

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... On 3 July 2011, [Mr. Dawas] was hospitalised and placed on sick leave from 3 July 2011 to 4 August 2011.

... On 31 July 2011, [Mr. Dawas]' OTI was extended until 5 September 2011.

... On 3 September 2011, [Mr. Dawas] was hospitalised again and placed on sick leave until 31 December 2011.

... By email dated 7 September 2011, [Mr. Dawas] requested separation on medical grounds.

... By email dated 8 September 2011, [Mr. Dawas] informed the DUO/J that while on sick leave and due to his health problems, he wanted to avoid discussions about work. On the same day, the DUO/J sent him a letter stating that "your probation/OTI as CAO would have led to a non-confirmation based on performance

3. On 23 January 2014, Mr. Dawas filed an application with the UNRWA Dispute Tribunal challenging the decision of the C/ID, DIOS, to close the investigation into his complaint of discrimination, abuse of power and harassment against the DUO/J on the basis that the reported misconduct was unsubstantiated, and requesting, among other things, financial compensation for damages, distress and the consequences of his hospitalization leading to his separation, as well as DIOS' delay in investigating his complaint.

4. On 7 December 2014, by Order No. 120 (UNRWA/DT/2014), the UNRWA DT ordered the Agency to produce *ex parte* DIOS' unredacted investigation report and a copy of the unredacted records of the interviews DIOS conducted in relation to Mr. Dawas' complaint. The Agency complied with the order on 11 December 2014.

5. On 31 December 2014, by Order No. 129 (UNRWA/DT/2014), the UNRWA DT ordered the Agency to produce *ex parte* several pages of the unredacted record of DIOS' interview of the DUO/J in relation to Mr. Dawas' complaint. The Agency complied with the order on 2 January 2015.

6. On 18 February 2015, the UNRWA Dispute Tribunal rendered its Judgment, upholding Mr. Dawas' application. The UNRWA DT found that although Mr. Dawas' UNRWA DT application complained of DIOS' decision to close its investigation into his complaint, Mr. Dawas really sought to contest the Commissioner-General's implicit decision to close the case and not to take any action in relation to his allegations against the DUO/J.³ Noting the Appeals Tribunal Judgment on *Messinger*,⁴ the UNRWA DT held that it was "entitled to review [Mr. Dawas'] complaint of discrimination, abuse of power and harassment against ... the DUO/J", and "to review the alleged facts and determine if they [were] established".⁵ After reviewing the facts, the UNRWA DT concluded that the DUO/J had abused her authority by improperly using her position to influence the Commissioner-General, and that her conduct vis-a-vis Mr. Dawas, i.e., sending him work-related e-mails and letters, as well as noting the calls or visits of UNRWA staff members convincing Mr. Dawas to retire on medical grounds during his sick leave, could be characterised as harassment.⁶ Accordingly, the UNRWA DT held that based

³ *Ibid.*, paras. 43-44.

⁴ *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123.

⁵ Impugned Judgment, para. 47.

⁶ *Ibid.*, paras. 67, 74-76.

on DIOS' incorrect recommendation to close the investigation into Mr. Dawas' harassment complaint, the Commissioner-General's decision not to take action on the harassment complaint was unlawful and must be rescinded.⁷

7. Noting that the Medical Board had declared Mr. Dawas unfit to continue his services with the Agency, and that Mr. Dawas did not contest this, the UNRWA DT declined to order Mr. Dawas' reinstatement to his post.⁸ The UNRWA DT also rejected Mr. Dawas' request to be compensated for material damages for abuse of power and harassment, noting he had not provided evidence that these caused his sickness or aggravated a pre-existing disease, and the difficulty in demonstrating a causal link between the abuse of power and harassment and his illness.⁹ The UNRWA DT nonetheless awarded Mr. Dawas USD 15,000 in moral damages for the distress and anxiety he had suffered following the abuse of power and harassment, which continued while he was on sick leave, and an additional USD 1,000 for the Agency's protracted delay in handling Mr. Dawas' harassment complaint.¹⁰ The UNRWA DT also referred the case to the Commissioner-General for possible action to enforce accountability.¹¹

Submissions

The Commissioner-General's Appeal

8. The UNRWA Dispute Tribunal exceeded its jurisdiction and erred on questions of law and procedure in usurping the Commissioner-General's discretionary authority and deciding that the DUO/J had abused her power and harassed Mr. Dawas. In doing so, the UNRWA DT also effectively circumvented standard procedures, including due process guarantees, and denied the DUO/J an opportunity to respond to the allegations before the UNRWA DT reached its adverse findings about the DUO/J's conduct.

9. The UNRWA DT exceeded its jurisdiction and erred on questions of law and procedure in conducting a *de novo*⁸¹⁰

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performance issues. Moreover, rather than terminating Mr. Dawas' appointment during the probationary period or not confirming it at the end of the probationary period, the Agency convened a Medical Board to evaluate Mr. Dawas' fitness and ultimately separated Mr. Dawas from the Agency based on medical grounds, thus granting him certain benefits to which he otherwise would not have been entitled. Secondly, pursuant to *Asariotis*,¹² there was no breach of Mr. Dawas' con

14. The UNRWA DT was clear about its role and its jurisdiction, and it is incorrect to state that the UNRWA DT conducted a *de novo* investigation when it limited itself to simply reviewing the evidence at hand. This accorded with the Appeals Tribunal's jurisprudence in *Messinger*, which held that "for the purpose of determining if the impugned administrative decisions were improperly motivated, it is within the competence of the UNDT to examine allegations of harassment. This is different from a *de novo* investigation into a complaint of harassment."¹⁴ The UNRWA DT examined the facts to determine whether the abuse of authority and harassment claims were substantiated, and found the claims to be substantiated. That was not a new investigation.

15. Insofar as the Agency claims that a complainant's right of appeal to the UNRWA DT is limited to challenging the propriety of the procedure followed in respect of allegations of prohibited conduct, the fact that the DIOS investigation report failed to address Mr. Dawas' specific harassment complaint shows serious procedural irregularities.

16. The UNRWA DT did not err on a question of law by substituting its own conclusion that the Doae of a

for the UNRWA DT to assess if the contested facts actually qualified as an abuse of authority, and it was thus open to the UNRWA DT to find so.

18. The UNRWA DT did not err in awarding moral damages. The UNRWA DT correctly found that Mr. Dawas' contractual rights were breached and warranted compensation as per the criteria set out in *Asariotis*. Further, the Commissioner-General's challenge to the UNRWA DT's reasoning for awarding moral damages must be rejected, as it fails to distinguish between moral and material damages. The UNRWA DT correctly awarded compensation, having established that Mr. Dawas suffered damages. Further, the quantum of damages awarded is not excessive and should not be reduced.

19. Mr. Dawas requests that the Appeals Tribunal dismiss the present appeal.

Considerations

20. The Tribunal affirms the findings and conclusions in the Judgment under appeal about the illegality of the closure of the investigation into Mr. Dawas' complaint of discrimination, abuse of power and harassment, as the Agency

23. As we held in *Mashhour*.¹⁶

28. This Tribunal holds that the compensation awarded by the trial court is adequate given the circumstances of the case and the evidence produced about the moral harm and stress suffered by Mr. Dawas, particularly from April 2011 to October 2011 (i.e., performance- and work-related e-mails and letters) and the remarkable delay in the Agency's handling of his complaint (more than 21 months).

29. In conclusion, the appeal does not succeed.

Judgment

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

Original and Authoritative Version: English

Dated this 24th day of March 2016 in New York, United States.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Thomas-Felix

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

(Signed)

Weicheng Lin, Registrar