





6. Mr. Al Sayyad began his service with the Agency on 13 December 2004. He was appointed as a Grade-10 Paymaster in the CO of the WBFO effective 1 July 2011.

7. In October 2012, the Department of Internal Oversight Services (DIOS), UNRWA, received information about suspected fraud in the CO. The first reported case was partially investigated by the WBFO in July 2012. When further frauds were discovered a few months later amounting to USD 1,600, senior management of the WBFO contacted DIOS for an investigation.

8. By letters dated 18 October 2012, the Director of UNRWA Operations, West Bank (DUO/WB) informed each of Jaber et al. that he was suspended from duty with pay pending the investigation into the suspected fraud in the CO. On 23 and 24 July 2013, each of Jaber et al. was interviewed by DIOS.

9. In a report dated 6 January 2014, the DIOS investigation concluded that a total of USD 5,679 had been misappropriated from the CO, but it could not determine who was responsible for the creation of false documents and the misappropriation.

10. By letters dated 31 March 2014, the DUO/WB informed each of Jaber et al. that the investigation was complete and that while fraud had taken place, fault could not be attributed to anyone.

11. On 16 April 2014, Mr. Jaber received an e-mail explaining the deficiencies in the CO setup as identified by the auditors and the new procedures to be implemented in order to improve security. One key change was to replace the post of "Cashier" encumbered by Mr. Jaber with two roles: the Cashier-Cheque and the Cashier-Cash. Mr. Jaber uUNRWA, 28.f2h

20.

14. On 2 June 2015, the UNRWA Dispute Tribunal issued the four Judgments now under appeal, dismissing the applications by Jaber et al. In respect of Jaber et al.'s argument that their prolonged suspension pending investigation was unreasonable, in violation of their due process rights and amounted to an abuse of authority, the UNRWA Dispute Tribunal did not find the duration of the investigation unreasonable given the complex financial issues and voluminous documents involved. It found that the 18-month delay in closing the investigation was not due to the Agency's negligence and that it did not violate Jaber et al.'s due process rights. As there was no breach of Jaber et al.'s rights, the UNRWA DT rejected their requests for compensation. It also rejected Jaber et al.'s requests that the Agency issue an apology and that the UNRWA Dispute Tribunal issue a declaration of their innocence. In addition, the UNRWA Dispute Tribunal rejected Mr. Jaber's challenge of the decision to replace his post of Cashier with two positions of Cashier-Cheque and Cashier-Cash, finding that the UNRWA Commissioner-General had acted within his discretion to change the systems and processes in the CO in order to prevent future fraud.

#### Submissions

##### Jaber *et al.*'s Appeals

15. The contentions advanced by Jaber et al. are identical, except in so far as they relate to the effects of the investigation on their respective personal and family lives. These common contentions may be summarized as follows.

16. The UNRWA Dispute Tribunal erred in law by finding that the duration of the investigation was not unreasonable. While the case entailed serious financial issues and sensitive documentation, the abnormal and excessive delay in carrying out the investigation was unjustified and not attributable to actions taken by Jaber et al. The Agency's explanations about the complexity of the fraud, the need to hire external assistance, the poor performance by the external investigator and the difficulties in contacting a number of witnesses were irrelevant. The delay was due to incompetence, inefficiency and negligence of DIOS, and it breached the international standards and Jaber et al.'s rights.

17. The UNRWA Dispute Tribunal erred in law and procedure by deciding that the delay in closing the investigation was not due to the Agency's negligence and, moreover, that Jaber et al.'s due process rights were not violated. It overlooked the evidence submitted

in this regard. The 18-month investigation not only prejudiced Jaber et al.'s due process rights but also turned their administrative leave into a de facto disciplinary measure, in violation of UNRWA's Regulations and Rules. It caused anxiety, defamation and humiliation to Jaber et al. The ruling by the UNRWA Dispute Tribunal is inconsistent with the jurisprudence of the Appeals Tribunal and other international administrative tribunals.

18. The UNRWA Dispute Tribunal erred in law by concluding that moral damages could not be awarded, as the Agency was duty bound to investigate fraud allegations. The charge of fraud affected not only Jaber et al.'s professional careers but also their personal lives leading to the onset of many psychological disorders. By this finding, the UNRWA Dispute Tribunal also disregarded the social cultural damage and humiliation Jaber et al. suffered within the Arab society.

19. Jaber et al. request that the Appeals Tribunal vacate the Judgments and order an unspecified amount of moral damages for Messrs. Jaber and Al Sayyad, and two years' net base salary for Messrs. Baidoun and Shalabi.

The Commissioner-General's Answer

20. The UNRWA Dispute Tribunal did not err in law when it found that the duration of the investigation was not unreasonable. The Appellants merely disagree with this finding and seek to reargue their cases. They have failed to identify any error of law or fact in that finding; nor have they adduced evidence

measure. Moreover, no disciplinary measures were imposed after the conclusion of the investigation and the Appellants were reinstated. There was a continuous effort to complete the investigation on the part of the Agency. The length of the investigation was due to a series of factors, none of which was attributable to 2678 -1.73e of w-W

interests of both the Agency and the subject staff member, it is also important that the investigation be thorough and that all reasonable avenues of inquiry be exhausted.

27. Fraud undermines the very integrity of the Organization. When an investigation is complex, it has to be exhaustive.

28. Jaber et al. accept in their appeals that the “[c]ase entailed serious financial issues and sensitive documentation”. No evidence has been provided establishing undue delay in the investigation.

29. Article 9 of the Statute of the Appeals Tribunal requires compensation for harm to be supported by evidence.

30. Jaber et al. suffered no pecuniary injury since they were paid during the whole period of the investigation.

31. Additionally, they did not present any evidence showing they suffered mental distress during the investigation, and such evidence was necessary for an award of moral damages; thus, moral damages were not warranted.

32. For these reasons, there is no merit to Jaber et al.’s claim that the UNRWA DT erred in not awarding them compensation for the lengthy administrative delay during the investigation.<sup>1</sup>

#### Judgment

33. The UNRWA Dispute Tribunal Judgments are affirmed.

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<sup>1</sup> Abu Jarbou v. Commissioner-General of the United Nations Relief and Work s Agency for Palestine Refugees in the Near East, Judgment No. 2013-UNAT-292, paras. 45-46.

