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JUDGE GRAEME COLGAN, PRESIDING.

1. Isra Basam Mansour (the Appellant) appeals the decision of the Dispute Tribunal of the United Nations Relief and

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alternative position or post for a staff member found unfit to continue to serve in his or her current post. It held, however at paragraph 26 of its Judgment: "[I]n the event that a staff member is terminated because no other vacant post can be found, this decision can be contested." The Tribunal further concluded that Ms. Mansour did not have the necessary specified experience in administrative work to be appointed to the vacant administrative assistant post to which she claimed she

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11. The UNRWA DT erred in concluding (at paragraph 25 of its Judgment) that she did not contest the Medical Board's conclusion. She says she had no opportunity to review the Board's medical report and there was no evidence that she received a copy of it. Furthermore, this report was not issued by specialised physicians but rather by general practitioners and it did not refer to another medical report issued by Jordan Hospital concluding that she had suffered a partial disability of 50 per cent of occupational functioning of her affected limb. These failures lead to a manifestly unreasonable decision to terminate her appointment.

12. The UNRWA DT erred in law in its assessment of the Agency's decision to terminate her appointment and in particular by asserting that the decision was hasty, arbitrary and premature. In particular, the Appellant relies on the very belated assessment by the Agency that although there were several suitable office work posts available before the decision was made to end her appointment, as at least 104 (including some that were reserved exclusively for local staff) remained available after that decision was taken. After her appointment was terminated, she was not considered to be "local staff". She submits that the Agency should have appointed her to one of these, at least while it was still assessing whether her injury was service-incur 1 (le .24 18 585) 1 (.24 18 583.92cm BT -35838 58-1 (c) -1 (e) BT -0.808 -965 Tm

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15. Next, the Appellant submits that the Tribunal erred in finding that she had failed to adduce evidence that the decision to terminate her appointment was arbitrary or capricious. She says that documents put before the UNRWA DT established that this decision was arbitrary and flawed procedurally on several grounds, including that the decision was premature and hasty; that it was in breach of Staff Rule 106.4 and/or the Syrian Social Security Law; it ignored the recommendation of the Medical Board that the Appellant was fit for office work but did not wait for the availability of such a post; its exercise was an abuse of power in that its effects on the Appellant and her family were more damaging than those of waiting for the availability of an office post including one suited to an expert in mathematics as the Appellant is; that the Appellant was not given access to the Medical Board's report and thereby an opportunity to contest its findings including by reference to a report by her attending physician; and finally that the termination of her appointment was effected during the period of her sick leave, and before the completion of her treatment.

16. The Appellant says that the UNRWA DT failed to exercise its jurisdiction to call for an ! oral hearing into the facts of the case and did not respond to the Appellant's motion filed on ! 5 December 2018 to initiate the hearing of the case, which request was repeated ! at least once in September 2019 after the application had been before the UNRWA DT for almost a year. On 30 September 2019, the Tribunal issued its Judgment very soon after the Appellant's final request for expedition, but in contravention of Article 9(1) and (2) of the Statute of the UNRWA Dispute Tribunal relating to the production of evidence and personal appearances.

17. The Appellant seeks revocation or reversal of the UNRWA DT's Judgment, or its modification including by

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The Commissioner-General's Answer

18. The Respondent denies that the UNRWA DT failed to exercise its jurisdiction or to

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28. In relation to the plea by the Appellant that termination was effected during her sick leave and before the completion of her treatment, the Respondent says that the "provisions of law and justice and equity" relied on by the Appellant are not specified and do not appear in the relevant UNRWA regulatory framework. Termination during sick leave is not prohibited.

29. As to the failure of the UNRWA DT to hold an oral hearing, these are discretionary considerations under Articles 11 and 14 of the Tribunal's Rules of Procedure and in respect of which the Appeals Tribunal has afforded a broad latitude to the Dispute Tribunal.[4]

30. Finally, the Respondent submits that the Appellant's claim to moral damages is a new remedy not sought from the UNRWA DT and so is not receivable.[5]

Considerations

31. Because the Appellant's grounds of appeal are numerous and, as presented, repetitive and non-sequential, we will structure our decision of the appeal as follows. First, we will make some general remarks about the scope of our powers on an appeal such as this. Second, we will address those aspects of the appeal challenging the UNRWA DT's methodology in deciding

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33. Ms. Mansour's first particular ground of appeal challenging the UNRWA DT's methodology is that, in effect, it simply copied and pasted the Agency's submissions to form its judgment and did not address factual issues raised by her or consider her case. However, the Appellant's submissions do not identify any instances of these alleged deficiencies.

reveal a viable ground of challenge. Further, even if that ground had been advanced, it would not have succeeded. The Medical Board process was not to consider how her injury occurred or in what circumstances (work-related or not) but rather whether she was fit to resume work as a teacher and, indirectly, whether she might be eligible for compensation. Whether the injury was work-related concerned primarily issues of compensation. It cannot be said that the Medical Board's assessment, report and recommendations made more than a year after the injury event were premature or hasty. Nor, given the clear disability reported on, could it be said to have been arbitrary. This ground of appeal must be and is dismissed.

37. As to Ms. Mansour's complaint that the UNRWA DT wrongly refused to afford her an in-person hearing, that it did not respond to her motion filed on 5 December 2018 to initiate the hearing of the case, and that immediately after she reiterated that motion in September 2019 it issued its less-than-comprehensive decision, we decide as follows. First, the Tribunal has a broad discretion whether to hold a hearing in person or to decide a case on the papers as happened here. Although broad, that discretion is not absolute or unfettered. Among other tests, it must be exercised in the interests of justice, not arbitrarily or perversely and it must take account of relevant considerations and not of irrelevant ones. Although the UNRWA DT's Judgment sets out, in chronological sequence, some of the steps taken to bring the case to decision, there is no reference to those relied on by the Appellant except that it records that her motion for an expedited hearing filed in September 2019 was referred to the Respondent on the same date. There is no reference to whether the Respondent replied and if so, what the Agency said. If it did not reply, there is no reference as to why the UNRWA DT did not wait for its response.

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39. The answer to the Appellant's contention that these steps breached Article 9(1) and (2) of the Tribunal's Statute requires consideration of those provisions. They are:

Article 9

40. These address the production of evidence, including documents (paragraph 1) and whether an applicant or "any other person" (who may potentially include an applicant's representative or counsel) is required at "oral proceedings" (a hearing in person as opposed to a consideration of the case solely on papers filed). Whether a case is to be the subject of such an oral hearing is governed by Article 7 of the Statute

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42. In answer to the submission relating to the UNRWA DT's failure or refusal to hold an in-person hearing, the Respondent relies on the discretion afforded to the Dispute Tribunal and on the jurisprudence on the subject illustrated by the case of *Namrouti*. Although that case emphasises the broad discretion allowed to the UNRWA DT in case and hearing management, which we accept, it is distinguishable in the sense that it was a case in which a full oral in-person hearing was allowed. At issue in *Namrouti* was the Tribunal's ability to

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Appellant to now, for the first time, launch an attack as she does on the Board by alleging that it was wrongly constituted of general medical practitioners rather than specialists, and that it did not refer to a report that had been submitted to it from Jordan Hospital which concluded that Ms. Mansour was partially disabled by a 50 per cent loss of occupational functioning of her affected limb.

53. Next, the Appellant says that there were several suitable administrative posts available to her and although some of these arose before the Medical Board reported, some remained open, and others arose, after the decision was made to end Ms. Mansour's role as a teacher. However, only one position was identified by the Appellant and even if she may have been qualified for it, this was both restricted to staff working at the Irbid Area Office (apparently affected by a potential restructuring) and, in any event, closed before the Medical Board's assessment was known and the decision was made about Ms. Mansour's future as a teacher.

54. The Appellant's case is that Ms. Mansour was disqualified from being appointed to this position because, after her service as a teacher was terminated, she was no longer considered to be "local staff". We do not agree. The restriction on applicants for that position was not by reference to whether someone was "local staff" but rather that they worked at the Irbid Area Office which was the subject of a staff review. So, the preference was for people affected, at least potentially, by that event and not to other persons including the Appellant. This ground of appeal is likewise without merit.

55. On the point whether the Agency should have waited until a suitable administrative post became available to her before terminating her employment, we conclude (again because we have said so in other cases recently[7]) that there is no regulatory obligation on the Agency to find an alternative position for a disabled staff member or even to delay any finality of dismissal to enable one to be found for the disabled staff member. Whether that should be so, especially for long-serving staff for whom and on whose family the effects of unemployment will be severe, is not for us to determine. In these UNRWA circumstances however, this ground of Ms. Mansour's appeal fails.

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56. On the point of access to the Medical Board, the evidence shows that Ms. Mansour was notified in writing of the establishment of the Board and of her opportunity to submit her own medical assessment(s) to it. Likewise, she was informed of the Board's assessment in its report after that was submitted to the Agency, although it appears she was not given a copy of the report. The Agency did not ignore the recommendations of the Board – it accepted the recommendation about Ms. Mansour's continuing unfitness to work as a teacher and also

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DT, that decision of this point necessitates a close examination of the state of the pleadings there and the Tribunal's pleadings process.

61. First, we analyse the pleading process. Pursuant to Article 7 of the Statute of the UNRWA Dispute Tribunal, this is set out in Staff Regulation 11.4

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64. The UNRWA DT erred in law in applying the flawed assumption that because she had not filed a rejoinder, Ms. Mansour had accepted both the Agency's assurance that she would be paid and that what she would be paid would be correct. It is difficult from the material we have to ascertain whether, now, Ms. Mansour still claims these sums from the Agency. The just way to address the UNRWA DT's erro

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68. In the Appellant's circumstances as we are aware of them and according to the relevant rules, Ms. Mansour may have been entitled to be on full pay for the first six months after her injury and thereafter compensation payments should have been determined "in accordance with the workmen's compensation or labour law applicable in accordance with [the] rule".

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of the Respondent's reply that the Agency filed in response to Ms. Mansour's claims in the Dispute Tribunal. Although the Respondent asserts that this then gave Ms. Mansour the opportunity to contest the Medical Board's conclusions, that overlooks the facts that her employment was terminated on 7 December 2018 without an opportunity to know the information that was the basis for that termination. It is hardly surprising in these circumstances that Ms.

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