

Judgment No. 2021-UNAT-1153Corr.1



Counsel for Appellant: Amer Abu Khalaf, LOSA

Counsel for Respondent Rachel Evers

Reissued for technical reasons on 21 April 2022

ii) on 29 August 2016, Mr. Al Khatib phoned the Complainant and came in an UNRWA bus to pick her up at a place near her house. There were Mr. Al Khatib, the Complainant and the driver in the bus. They arrived at the bank, which the PAR did not name. The Complainant went into the bank and cashed the cheque while Mr. Al Khatib waited in front of the bank door. “Once she arrived to the bank door, [Mr. Al Khatib] pulled out the money from her hand and took her identification documents. He gave her JD 200 and asked her to go to the bus until he pays [sic] the bank the remaining amount owed for the second year [of her tuition] . After 10 minutes, [Mr. Al Khatib] came back and gave the complinnneJe3qaes the et o f the o ina amount o f the(m)1.5 (o)35.2 (n)0.7 (e)1 (y)-1.9 ()-12.4 without(g)-4 “

6. The Investigation Panel reviewed the PAR and interviewed the Complainant, Mr. Al Khatib and five other witnesses, including the driver, the School Counselor and the guard.

a) Mr. Al Khatib accepted that he placed a call on 24 August 2016 to the Complainant informing her that a cheque was in his office for her to pick up, and that she signed for the receipt of the cheque on 31 August 2016, but he denied having accompanied the Complainant to the bank in an UNRWA vehicle or having taken any funds from her. He accused the Complainant of having filed a “malicious” complaint against him.

b) A copy of a bank cheque shows that a nonnegotiable cheque drawn on the Arab Jordan Investment Bank (AJIB) in the amount of JD 1,095 dated 23 June 2016 was issued in the name of the Complainant.

c) An UNRWA transport requisition form (No. 325990 0105) dated 29 August 2016 shows that a vehicle was requested for or by “Registrar (Mr. Al Khatib)” for destination “Yasmeen Bank” for “financial issues”.⁴

d) But the driver denied having driven any student to the bank using the ATC transportation vehicle. He also told the investigators that he had not gone with Mr. Al Khatib to the bank.

e) An undated table with a handwritten “UNRWA JFO/AJIB/JOD Account” on the left margin lists deposits, withdrawals and transfers on 28 and 29 August 2016. One entry reads: on 29 August 2016, there was a cash withdrawal of 1,095, presumably in Jordanian Dinars (No. 6525). The entry does not indicate who withdrew the cash or at what time of the day the withdrawal took place. The Agency submitted the undated table to the UNRWA DT in subsequent proceedings ex parte; it was thus not available to the Investigation Panel.

f) According to the second witness (School Counselor), on 30 August 2016, the Complainant told him that on the previous day Mr. Al Khatib had taken her to the bank to cash her cheque, and Mr. Al Khatib had withheld monies that she allegedly owed to the ATC for tuition. The School Counselor then told the Complainant that the

⁴ Yasmeen Bank here refers to Dahyet Alyasmeen Branch of the AJIB.

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and highlight those factual findings which clearly demonstrate that Mr. Al Khatib committed misconduct.

29. At the outset, it is necessary to give some context to the events that led to Mr. Al Khatib 's separation from service.

30. There was no dispute that, on 24 August 2016, Mr. Al Khatib contacted the Complainant, an UNRWA beneficiary, to tell her that she was entitled to cash assistance and asked her to visit the ATC to collect her cash assistance cheque.

31. The Complainant alleged that when she visited the ATC's office Mr. Al Khatib refused to give her the cheque, but offered to help by accompanying her to the bank in order to cash the cheque. She further claimed that, on 29 August 2016, Mr. Al Khatib and a driver picked her up near her house in a vehicle of the ATC, that they w8.7 (u)1.9 (e)y74 (e)-3.1 50 Tw (d)Tj4.8 (i)4.4 (d1

affect the established conviction of this Tribunal that Mr. Al Khatib had engaged in the above fraudulent actions towards the Complainant.

42. Further, it is not disputed that the Complainant made a complaint about the incident at the first reasonable opportunity to Mr. J. G., the School Counsellor, on the very next day of the event, on 30 August 2016, and the latter advised her to submit an official complaint, which she did. It is common knowledge that it is typical in this kind of disputes concerning fraudulent actions that the alleged conduct most of the times takes place in private, without direct evidence other than from the complainant, and that the evidentiary questions in such cases center on the credibility of the complainant's testimony. In the circumstances, we find, as the UNRWA DT did, that the Complainant's account of the material events was coherent, detailed, and consistent and was of considerable evidentiary weight. In this respect, we share the UNRWA DT Judge's assessment that it would be improbable for the Complainant to have fabricated the whole story to coincide with the fact that Mr. Al Khatib had requisitioned an UNRWA vehicle to go to a bank in the same vicinity as the AJIB, Al-Yasmeen Branch, on the same day of the event (29 August 2016), since that presupposed that the Complainant had known about the particular details of Mr. Al Khatib's whereabouts on that day.

43. The credibility of the Complainant's account of events has not been damaged by any countervailing evidence. On the contrary, its detailed content was confirmed by the above-mentioned testimonies of Mr. J. G. or Mr. S. B. before the Investigators, in which they

53. In sum, the documentary evidence on file, as well as the strong circumstantial evidence and the inherent probabilities of the situation given the potential harm that the Complainant, a beneficiary of the Agency, could suffer as a result of her reporting such an incident, taken cumulatively, suggest to the appropriate evidentiary standard of clear and convincing evidence, as correctly held the UNRWA DT, that Mr. Al Khatib had committed the alleged misconduct. Therefore, his contentions t r r, ihq.leTtorb1.57le |Al Kthew7 (t)1.7 (c)0. (re)7 r

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67. The appeal is dismissed and Judgment No.UNRWA/DT/2020/063 is hereby upheld .

Original and Authoritative Version: English

Dated this 29th day of October 2021.

(Signed)

Judge Raikos, Presiding
Athens, Greece

(Signed)

Judge Sandhu
Vancouver, Canada

(Signed)

Judge Murphy
Cape Town, South Africa

Entered in the Register on this 6th day of December 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar