

Judgment No. 2024



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Judgment No. 20

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26. Following receipt of Mr. Hussein's response to the OTR letter, the DUA/WB issued a DM letter on 1 February 2021. The DUA/WB concurred with the investigator's assessment that there was clear and convincing evidence to substantiate that Mr. Hussein committed misconduct, in violation of the Charter of the United Nations (Chapter XV, Article 101), the Standards of Conduct for International Civil Service 2013 (paragraph 5), Area Staff Regulations 1.1 and 1.4, and UNRWA Financial Technical Instructions.⁷ Other than noting that she had reviewed Mr. Hussein's response to the OTR letter, there was no analysis of its content.

27. The DUA/WB imposed the disciplinary measure of demotion to an alternative post one grade lower in another office.

28. Mr. Hussein submitted an RDR on 16 February 2021. The DHR upheld the disciplinary decision on 23 March 2021.

29. On 24 May 2021, Mr. Hussein filed an application with the UNRWA DT challenging the disciplinary decision and requesting its rescission. He also requested reimbursement of 156 New Israeli Shekels (NIS) and compensation for moral damages.

Case No. 2021/063 - Tahtamouni

30. At the relevant time, Mr. Tahtamouni occupied the post of Administrative Assistant B at OqueA4 (e)t21

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32. On 2 March 2021, the Officer-in-Charge, DUA/J (OiC/DUA/J) issued a DM letter to Mr. Tahtamouni. The OiC/ DUA/J concluded that he engaged in misconduct by failing to comply with professional standards and engaging in workplace harassment, in violation of the regulatory framework, including the Staff Regulations and Rules, the Revised Statutes of Codu the International Labour Organization (ILO) Convention 111 (Discrimination in Employment) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

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33. After considering Mr. Tahtamouni's response to the OTR letter and noting his acceptance of personal responsibility for the misconduct, the Tribunal imposed on him a written letter of censure and a suspension for 30 days without pay from 15 March 2021 to 14 April 2021. The Tribunal also considered Mr. Tahtamouni's request for compensation for the period of his suspension.

Mr. Tahtamouni filed an appeal with the UNRWAT challenging the Tribunal's decision. He also requested compensation for the period of his suspension. The Tribunal considered his appeal and his request for compensation. The Tribunal found that the Tribunal's decision was not manifestly unreasonable and that the Tribunal's decision on compensation was also not manifestly unreasonable.

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39. On 6 July 2021, the Officer-in-Charge, DA, WB (OiC /DUA/WB) issued a letter to Mr. Tahtamouni regarding his suspension.

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(paragraph 11), and General Staff Circular No. 5/2007 (paragraph 5).¹⁴ The DM letter listed some of Mr. Al Akhras' responses to the OTR letter without comment.

62. The UNRWA DT reasoned that in order to discharge its obligation to determine whether the facts on which the disciplinary sanctions were based were established to the requisite standard of proof, it must be able to ascertain those facts in the disciplinary decisions. The UNRWA DT found that the disciplinary letters in these seven applications “include no factual findings at all or make a finding at such a high level of generality that the Tribunal cannot identify with certainty what specific actions the Agency found to be established.”²⁰ Moreover, absent factual findings, the UNRWA DT stated it could not assess whether the facts constituted misconduct and whether the sanctions imposed were proportionate.

63. In sum, the UNRWA DT held that “[w]ithout knowing what, precisely, the Applicants are supposed to have done, the Tribunal cannot determine whether the contested decisions themselves were lawful and just”.²¹ Accordingly, the UNRWA DT rescinded all the disciplinary decisions in the seven applications.

64. Additionally, the UNRWA DT “observe [d]” that the OTR process in several of the cases was “deeply flawed”.²² In the cases of Ms. Muheisen, Mr. Tahtamouni, Mr. Eladarbeh, and Ms. Abu Fardeh, the UNRWA DT found that the OTR letters failed to clearly inform the individuals which facts the investigation found to have been established. Further, the UNRWA DT noted that in most of the cases, there was no, or virtually no, assessment by the Agency of the arguments made by the Applicants in their responses to the OTR letters.²³ The UNRWA DT found this to be a failure of due process.

65. With regard to the cases of Mr. Hejab and Mr. Eladarbeh, both of whom had been terminated from the Agency, the UNRWA DT set an amount of two years’ net base salary as compensation in lieu of rescission for each of these former staff members.²⁴

66. The UNRWA DT denied Ms. Abu Fardeh’s request for moral damages, finding a lack of causal connection between her salary deduction and her medical symptoms.²⁵

²⁰ *Ibid.*, para. 67.

²¹ *Ibid.*, para. 69.

²² *Ibid.*, para. 70.

²³ *Ibid.*, paras. 71-72.

²⁴ *Ibid.*, paras. 76-77.

²⁵ *Ibid.*, para. 80.

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73. Moreover, the Commissioner-General states that the UNRWA DT's reliance on *Kennedy* was misplaced since that case concerned the proportionality of the disciplinary measure and there was no dispute about the underlying facts.

74. The Commissioner-General submits without equivocation that the UNRWA DT erred in law and fact by consolidating the seven cases because these cases involved distinct and separate administrative decisions, different issues of law, different standards of proof, and concerned staff from different field offices.

75. The Commissioner-General argues that the UNRWA DT's decision to consolidate was based on its mistaken perception that the DM letters were "sparse" in providing reasons. The Commissioner-General observes that none of the Applicants raised an issue regarding the adequacy of the DM letters. The Commissioner-General states that if the UNRWA DT had doubts about the adequacy of the DM letters, it should have asked the parties to make submissions on the matter.

76. The Commissioner-General submits that pursuant to the Appeals Tribunal's decision in *Abu Ata et al.*,³⁰ consolidation may be appropriate where convenient and there is no substantial prejudice to any party. The Commissioner-General argues that this standard is not met here, given the different sets of facts emanating from different fields of operations, different legal issues, and different contested decisions.

77. The Commissioner-General submits that the UNRWA DT erred in failing to fully apply the four-prong test for review of disciplinary decisions. The UNRWA DT claimed it could not examine the second and third prongs of the test: whether the facts constituted misconduct and whether the sanctions imposed were proportionate – based on the deficient content of the DM letters. The Commissioner-General argues that the UNRWA DT was obliged to look beyond the DM letters and examine the entire record. For example, the Commissioner-General states that the UNRWA DT had before it, in the case of Mr. Hejab, the unredacted investigation report, the OTR letter, Mr. Hejab's response, and the witness statements. The Commissioner-General submits that the UNRWA DT failed to exercise jurisdiction vested in it when it did not consider the full record.

³⁰ *Abu Ata et al. v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2020-UNAT-1016.

78. The Commissioner-General claims that had the UNRWA DT engaged in a holistic review of the record it could have appreciated the factual findings underlying the contested decisions. He points out that the Applicants were aware of the factual findings and never contended that they could not defend themselves because of deficient factual findings in the DM letters.

79. The Commissioner-General requests that the Appeals Tribunal vacate the impugned Judgment and remand the seven cases for consideration on their own separate merits.

Mr. Hejab's Answer

80. Mr. Hejab submits that the UNRWA DT did not make a mistake when it consolidated the seven applications; however, as noted in his crossappeal, he believes he is entitled to additional compensation if he is not returned to his former job.

81. Mr. Hejab contends that the UNRWA DT correctly determined that the failure by the Agency to provide a full description of the reasons for the disciplinary decision in the DM letter, and the failure to respond to his RDR, do indeed render the decision to dismiss him from service unlawful. Mr. Hejab points to the Appeals Tribunal's Judgment in *Jafari*, in which it was stated that "a generic reasoning befitting every case is not enough and renders the decision unlawful"³¹

82. Mr. Hejab also submits that the UNRWA DT correctly found that due process required the Agency to assess his response to the OTR letter, which it failed to do. Mr. Hejab relies on the Appeals Tribunal's Judgment in *Hepworth*, in which it was stated: "Due process requires that a staff member must know the reasons for a decision so that he or she can act on it"³²

83. Mr. Hejab submits that the Commissioner-General is incorrect to rely on the reasons in the record that are outside of the DM letter. Mr. Hejab states that the records show that the claims and charges against him were much harsher and stricter than the final findings, and it is impossible to tell from the DM letter what the actual reasons were for his dismissal in light of the fact that the serious claims turned out to be untrue.

84. Mr. Hejab argues that the UNRWA DT correctly applied *Kennedy* when it rescinded the disciplinary decision because the DM letter did not detail exactly the reasons for the termination,

³¹ *Jafari v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-927, para. 26.

³² *Hepworth v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-178, para. 32.

and there were many false claims against him. Even accepting the Commissioner General's argument that *Obdeijn* provides that the failure to give reasons just shifts the burden of proof to the Agency, the Agency did not even try to prove its case for dismissal.

85. Mr. Hejab submits that it is "strange" for the Administration to argue that the staff members should have requested clarification about the reasons, when the Administration did not respond to his request for decision review.

91. Mr. Hussein relies on the Appeals Tribunal's decision in *Nugroho* in which it was stated that:³³

It is therefore good practice for the Organisation to provide a general guidance for its managers that a well written statement of reasons, albeit sometimes succinct depending on the circumstance[s], is fundamental for the correct identification of the matters, concerns and reasoning process of the decisionmaker. (...) What is more, when a justification is given by the Administration for the exercise of its discretion, it must be supported by the facts. In short, there is a threefold purpose for providing reasons for decisions, which is intelligibility (enabling both implementation and acceptance), accountability and reviewability.

92. Mr. Hussein also relies on the Appeals Tribunal's decision in *Obdeijn*, where the Appeals Tribunal noted that "the Tribunals' ability to perform their judicial duty to review administrative decisions and to ensure protection of individuals would be compromised" in the absence of the Administration stating the reasons for its decision. Moreover, "the obligation for the Secretary-General to state the reasons for an administrative decision (...) is inherent to the Tribunals' power to review the validity of such a decision [and] the functioning of the system of administration of justice".³⁴

93. Mr. Hussein submits that the UNRWA DT properly relied on the Appeals Tribunal's decision in *Kennedy*, and that the Commissioner-General's argument that the latter judgment was inapposite is incorrect.

94. Mr. Hussein submits that there was a foundation for joinder of the applications because there were common legal and procedural issues concerning the OTR letters, the DM letters, and the procedural histories.

95. Mr. Hussein ~~Ke. 4()a0.001 T-.5n)5m0.00Tanag0.004T)-4 (rm (5T)-4 (rntJJ/TT0.004 an)a)-4d.0~~

consolidation. As in *Lauritzen*,³⁶ it was within the competence of the UNRWA DT to manage its cases as it saw fit.

96. Mr. Hussein argues that contrary to the submissions of the Commissioner-General, the UNRWA DT examined the standards of review of all seven cases and thus did not fail to exercise its jurisdiction.

97. Mr. Hussein contends that the UNRWA DT correctly observed that the Administration did not consider the responses by the Applicants to the OTR letters, and that this was a violation of their due process rights.

98. Mr. Hussein submits that the UNWRA DT did not err in law and in fact in its conclusion that the DM letters were bereft of factual findings so as to prevent the Dispute Tribunal from conducting a proper review.

99. Mr. Hussein requests that the Appeals Tribunal dismiss the appeal and affirm the impugned Judgment.

Ms. Abu Fardeh's Answer

100. Ms. Abu Fardeh

Mr. Hejab disagrees with two years' net base salary as in-lieu compensation. Mr. Hejab seeks payment of four years' net base salary in the event that the Agency decides to pay compensation rather than rescind the termination decision.

104. Mr. Hejab states that he served the Agency for 30 years without incident and received only the highest praises for his work and devotion to the Agency.

105. Mr. Hejab submits that the significant accusations about financial irregularities proved to be untrue. The Agency decided unequivocally that Mr. Hejab did not pay bribes, earn personal profit, or sell any trees. The ultimate findings were that he did not effectively manage one of his numerous projects (the Bethlehem University Project), did not adequately preserve records of tree removal (Baladi Autism Centre Project), erased WhatsApp communications, and did not report that an engineer on the Bethlehem University Project came from the same refugee camp as him.

106. Mr. Hejab submits that the DM letter was very general and did not give any assessment of the responses that he gave to the OTR letter and its findings.

107. Mr. Hejab claims that his termination for the foregoing findings was disproportionate, given his record, and that he has no doubt that his termination was done for political reasons. Mr. Hejab alleges that some in UNRWA viewed his presence as a burden on UNRWA's relationship with the government of Saudi Arabia.

108. Mr. Hejab submits that the UNRWA DT failed to exercise its jurisdiction when it did not analyze the unique circumstances of his case, which would have supported an award of four years' in-lieu compensation instead of only two years.

that Mr. Hejab has been running tens of projects over tens of years. None of the findings were so grave as to justify termination.

111. Mr. Hejab submits that there was unclear communication of policies concerning conflict of interest. It is “far -fetched” to claim there was a conflict of interest because he did not disclose that a contractor on the Bethlehem University Project came from the same refugee camp as he did. Mr. Hejab notes that the Balata refugee camp is the largest on the West Bank and is the size of a small town. Moreover, he did not choose the contractor; this was done by a tender committee. Mr. Hejab also points out that the Baladi Society knew about the removal of the olive trees and never objected, and that he derived no personal advantage from this situation.

112. Mr. Hejab submits that it was very well-known that the representative of the government of Saudi Arabia, which is one of UNRWA’s largest donors, expressed a dislike for Mr. Hejab. The DUA/WB asked Mr. Hejab not to join site visits with the Saudi representative so as not to upset him. Mr. Hejab contends that the baseless complaints against him were a way to solve an awkward situation for UNRWA with Saudi Arabia.

113. Mr. Hejab points out that the DM letter did not state any findings of facts and did not weigh any mitigating factors, such as his long service and unblemished record. Mr. Hejab also notes that the Agency failed to respond to his RDR.

114. Mr. Hejab submits that the UNRWA DT erred in not considering his age, length of service, and how close he was to retirement when it made the in-lieu compensation award.

115. Mr. Hejab concludes that it is clear that the Agency’s actions against him were punitive, cruel and vindictive, and completely out of line with the offenses, thus justifying an exceptional compensation award under Article 10(5)(b) of the UNRWA DT Statute.

Considerations

116. The threshold issue presented is whether the UNRWA DT erred in consolidating the seven applications and disposing of them in one judgment.

117. There is no doubt that the UNRWA DT has substantial grounds for finding that the Agency’s actions against Mr. Hejab were punitive, cruel and vindictive, and completely out of line with the offenses, thus justifying an exceptional compensation award under Article 10(5)(b) of the UNRWA DT Statute.

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127. Different standards of proof are applicable to these cases clear and convincing evidence in three cases (*Hejab*,⁷¹ *Husseini*,⁷² and *Eladarbeh*⁷³); and preponderance of evidence in four (*Muheisen*,⁷⁴ *Tahtamouni*,⁷⁵ *Al Akhras*,⁷⁶ and *Abu Fardeh*⁷⁷).

128. In light of the significant differences across all of these crucial fields of inquiry, it cannot be said that there was sufficient commonality among these applications to justify consolidation.

129. Moreover, the treatment of these matters on a consolidated basis undermined the fair administration of justice. The impugned Judgment does not reflect an individualized determination regarding the sufficiency *vel non* of the OTR and DM letters in each case, but

Judgment

133. The Commissioner-General's appeal is granted, and Judgment No. UNRWA/DT/2022/060 is hereby reversed and the consolidated cases are remanded to the UNRWA DT with instructions for a different judgment.