



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

Judgment No. 2015-UNAT-593

**Namrouti
(Appellant)**

v.

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

Date: 30 October 2015

Registrar: Weicheng Lin

JUDGE INÉS WEINBERG DE ROCA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2014/045, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or UNRWA Dispute Tribunal and UNRWA or Agency, respecti

8. On 9 January 2013, the Director, UNRWA Operations, Jordan (DUO/J) affirmed the decision to reprimand Mr. Namrouti.

9. On 3 February 2013, Mr. Namrouti filed an application with the UNRWA DT contesting the issuance of the reprimand.

10. On 21 September 2014, the UNRWA DT issued Order No. 096 (UNRWA/DT/2014), informing the parties that it intended to hold a hearing on 13 October 2014, during which “the parties [would] be provided with the opportunity to present any witnesses[] who were present at the 4 October 2012 meeting”, and ordering the parties to file their proposed witness lists by 6 October 2014 at the latest.

11. On 7 October 2014, after having received Mr. Namrouti’s extensive witness list, the UNRWA DT issued Order No. 105 (UNRWA/DT/2014), ordering the appearance of one witness (the OiC/ATC), and ordering Mr. Namrouti to advise it by 8 October 2014 of the names of three additional witnesses who had been present at the 4 October 2012 meeting who would give evidence at the oral hearing.

12. On 7 and 8 October 2014, Mr. Namrouti and Counsel for the Commissioner-General respectively filed their responses to Order No. 096 indicating by name the witnesses they intended to call at the oral hearing.

13. On 13 October 2014, the UNRWA Dispute Tribunal held an oral hearing at which it heard the evidence of five witnesses, in addition to Mr. Namrouti. At the hearing, the OiC/ATC testified that she had e-mails proving that prior to issuing the contested letter of reprimand she had verbally warned Mr. Namrouti in several instances about his behaviour and way of communication, and offered to produce the e-mails to the UNRWA DT. After t3 0 TDommunicatommunicTc.1

15. On 13 October 2014, Mr. Namrouti filed a request for recusal of the UNRWA DT Judge. In accordance with Article 23(2) of the Rules of Procedure of the UNRWA Dispute Tribunal (UNRWA DT Rules), the request was sent to the UNRWA Internal Justice Committee, which rejected the recusal request on 9 November 2014.

16. On 23 November 2014, the UNRWA Dispute Tribunal rendered its Judgment. The UNRWA DT found that since a written reprimand constitutes adverse material in a staff member's personnel file, it was for the Respondent to show that the alleged facts instigating the issuance of the contested reprimand were established. On the basis of the evidence it heard, the UNRWA DT found that an incident had occurred during the meeting of 4 October 2012 that had been provoked by Mr. Namrouti. Further, the UNRWA DT found that Mr. Namrouti had shown undesirable behaviour on earlier occasions. The UNRWA DT thus concluded that the alleged facts underpinning the letter of reprimand were established. Considering the reprimand to be proportionate to the incident, the UNRWA DT rejected Mr. Namrouti's request to expunge the reprimand from his personnel file, and dismissed the application.

Submissions

Mr. Namrouti's Appeal

17. Mr. Namrouti claims that the UNRWA DT committed numerous procedural errors in violation of the UNRWA DT Statute, the UNRWA DT Rules and UNRWA DT Practice Directions. In particular, he claims that the UNRWA DT Judge's "ability to carry out judicial responsibilities with integrity, impartiality and competence [was] impaired".

18. The UNRWA DT erred in reversing the burden of proof. By allowing the Respondent to present his case and his witnesses first, Mr. Namrouti was required to respond and defend against the Respondent's claims, rather than the other way round. The Judge should have started the hearing with the Appellant's witnesses and subsequently heard the Respondent's

20. The UNRWA DT erred in allowing all the witnesses to remain in the courtroom after they had testified. As the first two witnesses for the Respondent consisted of the then OiC/ATC and the Deputy Principal, Mr. Namrouti's witnesses were required to testify in front of - and contradict the testimony of - their direct supervisors. This unfairly caused them to have a conflict of interest.

21. The UNRWA DT breached Article 12 of the UNRWA DT Rules in not allowing him to cross-examine some of the Respondent's witnesses. As his first attempt to object during the testimony of the Respondent's first witness was not respected, the Appellant refrained from attempting to raise further objections.

22. The UNRWA DT breached Article 21 of Practice Direction No. 3,¹ insofar as Mr. Namrouti did not receive the names of the Respondent's witnesses at least 15 calendar days before the hearing or any description of the relevancy of their proposed testimony.

23. The UNRWA DT breached Article 24 of Practice Direction No. 3 by permitting the Respondent to file a document that was not already in evidence at the start of the hearing, thus surprising Mr. Namrouti. The UNRWA DT improperly ordered that the Respondent

The UNRWA DT enjoys discretion as to the handling of objections and interjections during cross-examination in order to ensure it is receiving necessary and relevant evidence to make a determination of the case.

27. Concerning the order in which the parties presented their case and the order of hearing the witnesses, the UNRWA DT enjoys wide discretion as to how to conduct and manage its hearings. Even assuming that this left the Appellant “in a very hard defensive situation”, there was no prejudice to the Appellant, as he cross-examined the two witnesses and presented evidence through his own witnesses after

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Practice Direction No. 3. Further, neither of the parties claimed that the UNRWA DT's scheduling left them with insufficient time to prepare for the oral hearing. Indeed, apart from noting the alleged violation, Mr. Namrouti does not make any submissions as to how he was prejudiced.

41.

Original and Authoritative Version: English

Dated this 30th day of October 2015 in New York, United States.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Lussick

Entered in the Register on this 18th day of December 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar