



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

Judgment No. 2013-UNAT-292

**Abu Jarbou
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Rosalyn Chapman, Presiding Judge Luis María Simón Judge Mary Faherty
Case No.:	2012-321
Date:	28 March 2013
Registrar:	Weicheng Lin

Counsel for Appellant:	Hala Abu Hijleh/Ghada A. Yasin
Counsel for Respondent:	Anna Segall

1. Mr. Abdul Munem Abu Jarbou has filed an appeal of Judgment No. UNRWA/DT/2012/011 issued by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT) on 23 February 2012, in Amman, Jordan, and that appeal is currently pending before the United Nations Appeals Tribunal (Appeals Tribunal).

Facts and Procedure

2. At all relevant times, Mr. Abu Jarbou was Principal of the UNRWA Rehabilitation Center for Visually Impaired (RCVI or Center) in Gaza. On 2 July 2003, Mr. Lionel Brisson, then Director of UNRWA Operations, Gaza (DUO/G), and Director of Operations, HQ Gaza, appointed a Board of Inquiry (BOI) “to establish and ascertain the facts related to ... allegations and complaints [against Mr. Abu Jarbou] and to ... investigate the way the RCVI is being administered and assess the management of the Center in the effective discharge of its duties and responsibilities”. In appointing the BOI, the DUO/G noted:

Such allegations and complaints [against the Appellant] ... are revealing of a strained atmosphere which is not auspicious to the smooth running of the RCVI. Given the seriousness of the allegations made against a senior staff member and taking into account that this could be detrimental to the image of the RCVI and the Agency, I have decided that a Board of Inquiry be established with a mandate to conduct a complete investigation.

3. The BOI issued its report on 7 September 2003, after interviewing under oath 30 witnesses, including Mr. Abu Jarbou, and reviewing numerous documents. The BOI report concluded that “adequate evidence” existed to show Mr. Abu Jarbou “exercised and orchestrated a policy of coercion, discrimination, prejudice, slander and intimidation on a number of staff members in the RCVI who were under his care”. The BOI determined that Mr. Abu Jarbou, who “was entrusted with the management and running of the RCVI center, ... misused and abused the authority vested in him to manage and administer the Center. His manipulative, devious, cunning style of management has been clearly exposed to the [BOI] ...”. In this regard, the BOI set forth in detail Mr. Abu Jarbou’s mistreatment of certain current and former Center staff members. The BOI also determined that Mr. Abu Jarbou “was grossly negligent in his duties and responsibilities as a manager” of the staff, finances and supplies of the RCVI.

4. On 22 September 2003, the DUO/G forwarded the BOI report to Mr. Abu Jarbou, highlighting some of the findings and concluding:

It is clear that you failed to meet the minimum standards required to be a supervisor of human and material resources, let alone be the Principal (manager) of a semi-independent centre that aims to deliver programmes to one of the most vulnerable groups in society, the blind and partially sighted students ... [Y]ou were grossly negligent in your duties and responsibilities as a manager ... Your conduct ... constitutes an abuse of authority, negligence, mismanagement, breach of trust and failure to uphold the standards of conduct expected from an UNRWA staff member.

The above mentioned BOI's findings constitute a violation of the applicable standards of conduct expected of an UNRWA staff member and amount to misconduct under the terms of UNRWA Area Staff Rule 110.1 and Area Staff Regulation 10.2.¹

5. On 7 October 2003, Mr. Abu Jarbou sent a written response to the BOI report.

6. On 19 February 2007, Mr. John Ging, the new DUO/G sent Mr. Abu Jarbou a letter advising him that his appointment was being terminated with immediate effect "in the interests of the Agency under Area Staff Regulation 9.1, thereby allowing [him] to receive the full amount of [his] Provident Fund account as well as a termination indemnity". More specifically, the Director advised Mr. Abu Jarbou that he had abused the authority vested in him as Principal of RCVI "by practicing discrimination, unfair treatment and intimidation vis-à-vis Agency staff" and had "badly mismanaged the RCVI's human resources and finances". As Mr. Ging explained:

I have come to the conclusion that it would not be in the best interests of the Agency for you to continue as Principal of the RCVI. The record before me suggests that you have been guilty of serious misconduct. Your management of the Centre has been marred by too many incidents of serious controversies between yourself and other staff members and by your failure to put in place appropriate financial and physical inventory controls over RCVI funds and property.

¹ UNRWA Area Staff Regulation 1.2 reads: "The Commissioner-General may impose disciplinary measures on staff members whose conduct is unsatisfactory." UNRWA Area Staff Rule 110.1 provides: "1. Disciplinary measures under staff regulation 10.2 shall consist of written censure, suspension without pay, demotion, or termination for misconduct, provided that suspension pending investigation under staff regulation 10.4 or under rule 110.2 shall not be considered a disciplinary measure. 2. Written censure shall be authorized by the Commissioner-General and shall be distinguished from reprimand of a staff member by a supervisory official. Such reprimand shall not be deemed to be a disciplinary measure within the meaning of these rules."

7. On 18 March 2007, Mr. Abu Jarbou sent a letter to the DUO/G, requesting review of the termination decision and responding to each of the charges.

8. On 15 May 2007, Mr. Abu Jarbou appealed to the UNRWA Area Staff Joint Appeals Board (AJAB) challenging his termination and seeking to “[p]rov[e] [his] innocence” so he can “get ... back to [his] work at UNRWA”. The AJAB was abolished 1 July 2009, and Mr. Abu Jarbou’s case was transferred to the UNRWA DT.

9. On 16 January 2012, the Commissioner-General filed a reply to the application, with numerous annexes. On 22 February, 2012, Mr. Abu Jarbou sent an e-mail to the Registry of the UNRWA DT acknowledging receipt of the Commissioner-General’s reply and asking permission “to comment or reply to the Respondent’s reply”. On the same date, the UNRWA DT’s Registrar advised Mr. Abu Jarbou by e-mail:

There is no provision in the Rules of Procedure for the UNRWA Dispute Tribunal for the filing of a reply to the Respondent’s reply. Furthermore, the Judge has asked me to convey to you that a reply is not necessary. The Judge currently had the case under reserve, and if she needs any further information from you, you will be notified.

10. On 23 February 2012, the UNRWA DT issued Judgment No. UNRWA/DT/2012/011, finding no merit to Mr. Abu Jarbou’s application and dismissing it.

11. On 8 May 2012, Mr. Abu Jarbou, represented by counsel, filed the pending appeal challenging the UNRWA DT Judgment and seeking:

(a) “[c]ompensation for the stress and anxiety [he] suffered ... during the three year and a half year delay of the Agency in making a final determination”;

(b) compensation for the UNRWA DT’s “delay in hearing the case and allowing the Respondent to be a part of the proceedings ...”;

(c) compensation for his wrongful termination after three and a half years “equal to his salary and entitlements from the time of termination to the time of judgment with interest”; and

(d) “[r]eappointment to his position with full benefits and salary entitlements retroactive from the date of termination ...”.

12. On 10 July 2012, the Respondent filed his answer.

Submissions

Mr. Abu Jarbou's Appeal

13. The UNRWA DT erred procedurally when it allowed the Respondent to participate in the proceedings and when it relied on Respondent's reply in making its decision. The Appellant filed his appeal before the AJAB on 15 May 2007, and the Respondent, in violation of Article 6 of UNRWA DT's Rules of Procedure (Rules), filed his reply more than four and a half years later on 16 January 2012. The record does not show that the UNRWA DT ever granted the Respondent the right to participate in the proceedings and to file a tardy reply. Thus, the Respondent should not have been party to the UNRWA DT proceeding and the UNRWA DT should not have relied on Respondent's reply in making its decision.

14. The UNRWA DT erred procedurally when it failed to exercise its discretion under Article 32 of the Rules to allow Mr. Abu Jarbou to file a rejoinder to Respondent's tardy reply. In light of the passage of time since filing his application before the AJAB, the interests of justice required that the UNRWA DT allow the Appellant to file a rejoinder, and it was manifestly unfair and prejudicial for it not to allow him to do so.

15. The UNRWA DT erred on a matter of law when it determined that termination was a proportionate sanction for Appellant's offenses. Assuming UNRWA's objective in terminating the Appellant was the smooth operations of the Center, the more than three-year delay between the issuance of the BOI's report and his termination is not rationally related to that objective since the Appellant continued to act as Principal of RCVI during that period.

16. Termination under Area Staff Regulation 9.1 is to ensure the Agency's maximum efficiency of staff; it is not a catch-all to terminate staff when other methods of termination, such as summary dismissal for serious misconduct, are not available or sufficient. Since the Appellant was not suspended and continued to act as Principal of RCVI for more than three years after the BOI report, his termination is not rationally related to the objectives of Regulation 9.1, *i.e.*, to ensure the maximum efficiency of UNRWA's staff.

17. The UNRWA DT failed to exercise its jurisdiction when it did not compensate the Appellant for UNRWA's more than three-year delay in making the final determination to separate him from service, despite noting that the delay was "totally inappropriate and unjustified ... [and] surely must have caused severe uncertainty". Under Article 10 of the

UNRWA DT's Statute, compensation of at least two years' net base salary should have been awarded to the Appellant.

18. The UNRWA DT erred as a matter of law when it failed to adequately consider the Appellant's submissions.

The Commissioner-General's Answer

19. The Appellant's claim of procedural error in allowing the Respondent to file a tardy reply is a new claim that was not raised before the UNRWA DT and, thus, cannot properly be raised on appeal. Although the Appellant had an opportunity to object to the Respondent's participation when the Respondent's reply was sent to him under Article 6(2) of the Rules, he did not do so. Since the Appellant did not properly raise this question before the UNRWA DT, he cannot now raise this claim on appeal.

20. The Appellant's claim of procedural error in denying his request to file a rejoinder is a new claim that was not raised before the UNRWA DT and, thus, cannot properly be raised on appeal. The Appellant did not make a formal motion or application to the UNRWA DT to file a rejoinder, and there was no order precluding him from doing so. An e-mail inquiry from the Appellant to the Registry requesting permission to file a rejoinder is not part of the UNRWA DT's official record. Since the Appellant did not properly raise his request before the UNRWA DT, he cannot now raise this claim on appeal.

21. The UNRWA DT did not err on a matter of law. The UNRWA DT's determination that the Appellant's termination was proportionate to his offenses is not an error of law, and the Appellant has not identified any errors regarding the determination of proportionality. Rather, the Appellant has made several arguments which were not made before the UNRWA DT.

22. There is no merit to the Appellant's claim that the UNRWA DT failed to adequately consider his submissions, as demonstrated by the findings in the Judgment. Rather, the UNRWA DT considered the Appellant's submissions and found them to be unsubstantiated.

23. The Appellant did not properly raise the issue of compensation for the administrative delay preceding his termination before the DT because he did not plead for compensation in his application. Rather, the Appellant sought only a determination that he was “not guilty” and an order returning him to his position as Principal of the Center. Thus, the UNRWA DT did not fail to exercise its jurisdiction. Moreover, the Appellant presented no evidence to substantiate any claim of harm suffered by him, and even though there was a substantial delay between the issuance of the BOI report and his termination, the Appellant is not entitled to compensation when he suffered no harm. To the contrary, the Appellant was working and being paid during this whole period.

24. Finally, the Commissioner-General submits that there is no legal basis for the remedies the Appellant seeks.

Considerations

The Procedural Error Did Not Prejudice Mr. Abu Jarbou or Violate His Due Process Rights

25. This Tribunal has previously noted that the former AJAB was abolished as of 1 July 2009, and the UNRWA DT was established effective 1 June 2010.² All matters pending before the AJAB were transferred to the UNRWA DT, including Mr. Abu Jarbou’s application. Apparently, the Commissioner-General did not file a reply to Mr. Abu Jarbou’s application while it was pending before the AJAB, since no reply was transferred to the UNRWA DT.

26. Article 4(4) of the Rules requires that the UNRWA Registrar “shall transmit a copy of the application to the Respondent”. Article 6(1) of the Rules requires that:

The Respondent’s reply shall be submitted within 30 calendar days from the date of receipt of the application by the Respondent ... The Respondent who has not submitted a reply within the requisite period shall not be entitled to take part in the proceedings except with the leave of the Tribunal.

27. Mr. Abu Jarbou claims that the UNRWA DT erred procedurally when it permitted the Respondent, without any written order, to participate in the proceedings and to submit a late reply. For the reasons discussed below, this Tribunal concludes that it was a procedural error

² *Achkar v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-267; Area Staff Regulation 11.1.

to allow the Commissioner-General to participate in the proceedings and to file a late reply without a written order, but Mr. Abu Jarbou was not prejudiced by this error and the error did not violate his due process rights.

28. The record shows that Mr. Abu Jarbou filed his application before the AJAB on 15 May 2007 and the Commissioner-General submitted his reply or answer to that application before the UNRWA DT more than four years later -- on 16 January 2012. It does not show when Mr. Abu Jarbou's application was transmitted to the Commissioner-General or why the Commissioner-General's reply was not filed until January of 2012. Without this information, we are unable to determine with certainty the date by which the Respondent should have submitted his reply and whether the reply was late. Nevertheless, assuming official tasks are regularly performed,³ and Mr. Abu Jarbou's application was promptly transmitted to the Respondent, this Tribunal reasonably assumes that the Respondent's reply should have been submitted long before January 2012.

29. Under Article 6(1) of the Rules, the Respondent could only participate in the proceedings and submit a late reply "with the leave of the Tribunal". Yet, the record does *not* include an order issued by the Dispute Tribunal (either in response to an application by the Respondent or on its own motion) allowing the Respondent to participate and to submit a tardy reply. This is a procedural error which the UNRWA DT should have addressed in its Judgment. It did not. Indeed, the Judgment is silent about the Respondent's reply, not even noting that it had been submitted.

30. The General Assembly in paragraph 4 of Resolution 61/261 (4 April 2007) establishing the new two-tier system of administration of justice sets forth the purposes and goals of our system:

[The General Assembly] *Decides* to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike[.]

³ *Rolland v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-122.

Transparency is essential for any system of administration of justice that embraces the principles of the rule of law and due process. And transparency requires the issuance of a written order when leave of the Tribunal is granted.

31. Generally, a party who fails to raise an issue before the trial court cannot later raise that issue on appeal.⁴ Here, Mr. Abu Jarbou did not object to the untimely submission of the Respondent's reply. But in reality, he had no advance notice that the UNRWA DT was considering allowing the Respondent to submit a late reply and he did not learn of the reply until he received it from the UNRWA DT Registry. Thus, the only objection Mr. Abu Jarbou could have made would have been a motion to strike the reply as untimely and/or as not authorized by a written order. In light of the nature of the response Mr. Abu Jarbou received from the UNRWA DT Registry when he inquired about filing an opposition to the reply, discussed below, a motion to strike the reply does not seem to have been a realistic procedure for Mr. Abu Jarbou. In these circumstances, this Tribunal concludes that Mr. Abu Jarbou's failure to object to the submission of the Respondent's late reply before the UNRWA DT does not prevent him from raising on appeal the question of procedural error stemming from the absence of an order authorizing the reply.

32. This Tribunal stated in *Bertucci*:⁵

[T]he Statute of the [United Nations Dispute Tribunal] does not provide for any sanction comprising the exclusion of one party from the proceedings ... Neither the principle of respect for the right to a defence nor the right to an effective remedy before a judge, recognized by Article 8 of the Universal Declaration of Human Rights, imply any recognition that the Tribunal has the power to impose such a sanction in the case of "disobedience".

The rationale of *Bertucci* applies to the present case. Since the Respondent has the right to participate in the proceedings, the UNRWA DT on its own motion could have issued an order allowing the Respondent to file a late reply. Thus, Mr. Abu Jarbou cannot show how he has been prejudiced or harmed by the submission of the late reply without an order authorizing it. Without a doubt, filing the late reply without a written order is a procedural error by the UNRWA DT. But not all procedural errors are prejudicial and not all procedural errors

⁴ See *Shakir v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-056.

⁵ *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-121 (full bench), para. 51.

violate a party's due process rights. In the present case, the submission and consideration of the Respondent's late reply were not prejudicial to Mr. Abu Jarbou and did not violate his due process rights; thus, the lack of a written order does not require that the Judgment be reversed.

33. Mr. Abu Jarbou also claims that the UNRWA DT procedurally erred when it did not permit him to file a rejoinder or response to the Respondent's reply. The record shows that Mr. Abu Jarbou never made a formal application or motion before the UNRWA DT to file a rejoinder. Rather, he merely sent an e-mail inquiry to the Registry asking permission to file a rejoinder. Both that e-mail and the Registry's response to it are not part of the official record. Since Mr. Abu Jarbou did not properly raise this question before the UNRWA DT, he cannot now raise it on appeal.⁶ Although we do not address the merits of this claim, this Tribunal would like to offer some guidance. When responding to Mr. Abu Jarbou's e-mail inquiry, it would have been the preferable for the Registry to have advised Mr. Abu Jarbou to put his request in writing to the UNRWA DT so that it could be ruled on by the judge. That way, Mr. Abu Jarbou would have preserved his record to raise the question on appeal. Instead, the Registrar relayed an *ex parte* communication from the judge to Mr. Abu Jarbou (a party) without giving notice to the other party (the Respondent). Generally, *ex parte* communications between parties and the Tribunal are the antitheses of transparency and should never take place during a proceeding. Additionally, it is not the function of the Registrar to give legal advice. Under Articles 14 and 32 of the Rules, Mr. Abu Jarbou could have made a motion to file an additional pleading or rejoinder, and the UNRWA DT judge might have granted his motion.

The Sanction of Termination Was Proportionate to the Offense

34. Mr. Abu Jarbou was terminated from service as Principal of the Center under Area Staff Regulation 9.1, which provides: "The Commissioner-General may at any time terminate the appointment of any staff member if, in his opinion, such action would be in the interest of

⁶ The rejoinder that Mr. Abu Jarbou wanted to submit did not address the merits of the charges set forth in the termination letter, but events since that letter was sent. According to Mr. Abu Jarbou, those events showed that he was getting along with his staff and the Center was operating smoothly. Events subsequent to the termination decision, however, had little relevancy to the questions before the UNRWA DT.

the Agency.” Pursuant to Area Staff Personnel Directive No.A/10/Rev.1, paragraph 3.2,⁷ the Commissioner-General has delegated the authority to terminate staff to the Field Director, who, at the time the termination letter was sent to Mr. Abu Jarbou, was Mr. Ging.

35. Area Staff Regulation 1.1 provides that UNRWA “[s]taff members, by accepting appointment, pledge themselves to discharge their functions with the interests of the Agency only in view”. Area Staff Regulation 1.4 imposes, in part, the following additional duties, responsibilities and privileges on UNRWA staff members: “Staff members shall conduct themselves at all times in a manner befitting their status as employees of the Agency. They shall not engage in any activity that is incompatible with the proper discharge of their duties with the Agency.”

36. As of 27 January 2003, the UNRWA Commissioner-General promulgated the International Civil Service Commission’s 2001 Standards of Conduct for the International Civil Service (Standards of Conduct), which includes several pertinent provisions. Paragraphs 15 and 16 of the Standards of Conduct provide:

Managers and supervisors are in positions of leadership and it is their responsibility to ensure a harmonious workplace based on mutual respect. ... Managers are also responsible for guiding and motivating their staff It is natural for managers to be seen as role models and they have therefore a special obligation to uphold the highest standards of conduct. It would be quite improper for them to solicit favours, gifts or loans from their staff; they must act impartially, without intimidation and favouritism.

Paragraph 19 also provides:

It must be the duty of international civil servants to report any breach of the organization’s rules and regulations to a higher level official, whose responsibility it is to take appropriate action. An international civil servant who makes such a report in good faith has the right to be protected against reprisals or sanctions.

⁷ Paragraph 3.2 of UNRWA Personnel Directive No. A/10/Rev. 1 reads, in part, that “[a]uthority to impose disciplinary measures other than summary dismissal is delegated to the Chief Personnel Services Division in Headquarters and to Field Office Directors in their Fields”.

37. Mr. Abu Jarbou had held the position of Principal of the Center since 1990. The job description for Principal of RCVI states that the Principal:

Is responsible for the administration and operation of the rehabilitation centre, and in particular: ... Supervises and guides the teaching and administrative staff of the centre. ... Prepares and controls the budget for the centre. ... Ensures that the administrative functions of the centre are properly implemented and in particular ensures the security and proper maintenance and use of the centre's premises, equipment, cash and supplies. ... Develops and implements income-generating projects related to the centre with the dual aim of providing employment to the visually impaired and promoting the financial sustainability of the centre.

38. When a termination of service under Area Staff Regulation 9.1 “is connected to any type of investigation of a staff member’s possible misconduct, it must be reviewed as a disciplinary measure, because that is what it in reality is”.⁸ Generally, “[d]isciplinary matters are within the discretion and authority of the Commissioner-General of UNRWA”.⁹ However, the Commissioner-General “shall act fairly and reasonably and comply with the requirements imposed ... by law”.¹⁰ To judicially review a disciplinary sanction imposed on a staff member, the Tribunal should “examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offence”.¹¹

39. On appeal, Mr. Abu Jarbou does not claim that the facts on which his termination was based have not been established, that his acts or omissions might not be the basis for sanctions of some sort, or that the Respondent’s decision to terminate him was arbitrary, motivated by prejudice or flawed by procedural irregularity. He complains only that the sanction of termination is not proportionate to the established facts, as required to terminate a staff member from service under UNRWA Area Staff Regulation 9.1.¹²

⁸ *Haniya v. Commissioner-General of the United Nations Works and Relief Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-024, para. 30.

⁹ *Applicant v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-280, at para. 120; *Abu Hamda v. Commissioner-General of the United Nations Works and Relief Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-022, para. 37.

¹⁰ *Ibid.*

¹¹ *Haniya; Mahdi v. Commissioner-General of the United Nations Works and Relief Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-018, para. 27.

¹² Cf. *Doleh v. Commissioner-General of the United Nations Works and Relief Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-025; See *Haniya*.

40. In considering Mr. Abu Jarbou's termination, the UNRWA DT applied the correct standards for reviewing a termination based on misconduct. In considering proportionality, the UNRWA DT concluded that the sanction of termination "was neither disproportionate nor unwarranted as to amount to an injustice", noting:

Termination in the interest of the Agency has milder effects than a termination for misconduct as the former preserves certain termination benefits not payable if a staff member's appointment is terminated for misconduct, or if he/she is summarily dismissed for serious misconduct. In the case at hand, the Tribunal finds that even though the Respondent was exercising his authority to legitimately sanction the [Appellant's] misconduct, he did it in such a manner which was less severe on the [Appellant], taking into consideration the long delay in making a final decision in his case and the suffering which such uncertainty may have caused him.

41. Apart from this conclusion, the UNRWA DT did not discuss the nature of Mr. Abu Jarbou's acts and omissions and whether those acts and omissions could properly support the sanction of termination, as required. We have noted:

In the context of administrative law, the principle of proportionality means that an administrative action should not be more excessive than is necessary for obtaining the desired result. The requirement of proportionality is satisfied if a course of action is reasonable, but not if the course of action is excessive. This involves considering whether the objective of the administrative action is sufficiently important, the action is rationally connected to the objective, and the action goes beyond what is necessary to achieve the objective.¹³

42. The position of trust and responsibility Mr. Abu Jarbou held as Principal of the Center is of primary importance to our consideration of proportionality. As aptly stated in the Standards of Conduct, a manager and supervisor is in a position of leadership and is supposed to be a role model for the staff members he supervises.

43. This Tribunal finds that the termination of Mr. Abu Jarbou's services as Principal of the Center under Area Staff Regulation 9.1 is a proportionate and reasonable sanction for Mr. Abu Jarbou's mismanagement of the Center's staff. In particular, Mr. Abu Jarbou either colluded with one of the Center's staff members, Mr. Masalha, or was grossly negligent in supervising Mr. Masalha, whom he assigned to work far fewer hours than the usual work

¹³ *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, at para. 39.

schedule each week while he was improperly, in violation of UNRWA Regulations and Rules, also working part-time at Al-Aqsa University. Additionally, Mr. Abu Jarbou improperly used both Ms. Amna Abu Jasser and Ms. Latifa Obeid, who were employed and paid as cleaners at a minimum salary level, to perform other duties well in excess of their grade or salary. Further, Mr. Abu Jarbou improperly criticized one of the Center's staff members, Mr. Subhi Yusef Al-Ju'eidi, for making a complaint against him. And Mr. Abu Jarbou intimidated staff members who complained about him to higher authorities and pressured them and their families to withdraw their complaints. Perhaps most damning of all, Mr. Abu Jarbou fabricated memoranda after-the-fact alleging acts of misconduct by staff members with whom he was having problems or who had made complaints against him in an effort to demean those staff members and to cast them into disrepute. Mr. Abu Jarbou's mismanagement of the Center's staff was inconsistent with his duties and responsibilities as the Center's Principal and his obligations under Area Staff Regulations 1.1 and 1.4 and the Standards of Conduct.

44. This Tribunal also finds that the termination of Mr. Abu Jarbou's services as Principal of the Center is a proportionate and reasonable sanction for Mr. Abu Jarbou's mishandling of the Center's financial matters and constitutes a separate ground to terminate his services as the Center's Principal under Area Staff Regulation 9.1. More specifically, Mr. Abu Jarbou rented out the Center's hall and did not keep records of the fees paid for its rental. Similarly, there were no records of the sales of baskets produced by the Center's trainees. Further, Mr. Abu Jarbou authorized a vendor to pay monies owed the Center for the sale of baskets to a third-party's account, rather than to the Center. And most importantly, by the manner in which Mr. Abu Jarbou mishandled the Center's finances, as discussed above, the Center's staff members and others in the community could reasonably infer that not all fees and monies owed the Center were paid to the Center and that, instead, Mr. Abu Jarbou used those monies for his own personal purposes. Such financial mismanagement was inconsistent with Mr. Abu Jarbou's duties and responsibilities as the Center's Principal and his obligations under Area Staff Regulations 1.1 and 1.4 and the Standards of Conduct.

No Award of Compensation Is Required

45. On appeal, Mr. Abu Jarbou claims that the UNRWA DT failed to exercise its jurisdiction under Article 10 of the UNRWA DT Statute when it did not compensate him for UNRWA's lengthy delay between the issuance of the BOI Report and his termination. On

the other hand, the Commissioner-General argues that the UNRWA DT did not err in not awarding Mr. Abu Jarbou any compensation because he did not request compensation in his application and, since he was working and being paid during the administrative review period, he did not suffer any harm or prejudice from the delay. Further, the Commissioner-General notes that Mr. Abu Jarbou did not present any evidence to the UNRWA DT of mental stress or anxiety to support a claim for such damages.

46. Without a doubt, an extraordinary, unacceptable and unexplained delay occurred at the administrative level between the issuance of the BOI report and Mr. Abu Jarbou's termination. But not every delay will be cause for the award of compensation to a staff member.¹⁴ Rather, the staff member's due process rights must have been violated by the delay and the staff member must have been harmed or prejudiced by the violation of his or her due process rights. In the present case, the UNRWA DT did not determine that Mr. Abu Jarbou's due process rights were violated by the administrative delay in terminating him. And the UNRWA DT did not determine that Mr. Abu Jarbou was harmed or prejudiced by the delay preceding his termination. To the contrary, Mr. Abu Jarbou suffered no pecuniary injury since he was working and being paid during the whole period of administrative review.¹⁵ Additionally, Mr. Abu Jarbou did not present any evidence showing he suffered mental distress during the delay, and such evidence is necessary for an award of moral damages; thus, moral damages were not warranted.¹⁶ For these reasons, there is no merit to Mr. Abu Jarbou's claim that the UNRWA DT erred in not awarding him compensation for the lengthy administrative delay preceding his termination.

47. There also is no merit to Mr. Abu Jarbou's claim that the UNRWA DT did not "adequately consider" his submissions. Although the UNRWA DT did not address in detail each of the charges against Mr. Abu Jarbou set forth in the termination letter, as the Appellant did in his application, it did apply the correct standards in considering

¹⁴ *Zhouk v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-224, para. 17; *Wu v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-042, para. 33.

¹⁵ *Nasrallah v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-310, para. 26 (also decided during the 2013 spring session); *Nyakossi v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-254; *Sina v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-094.

¹⁶ *Hastings v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-109.

Mr. Abu Jarbou's termination. It is not necessary for any court, whether a trial or appellate court, to address each and every claim made by a litigant, especially when a claim has no merit.¹⁷

Judgment

48. The appeal of Mr. Abu Jarbou is dismissed.

¹⁷ *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153.

Original and Authoritative Version: English

Dated this 28th day of March 2013 in New York, United States.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Simón

(Signed)

Judge Faherty

Entered in the Register on 24th of May 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar