



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

Judgment No. 2015-UNAT-528

Rantisi
(Respondent/Applicant)
v.
Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East
(Appellant/Respondent)

JUDGMENT

Before: Judge Mary Faherty, Presiding
Judge Rosalyn Chapman
Judge Deborah Thomas-Felix

Case No: 2014-605

Date: 26 February 2015

Registrar: Weicheng Lin

Counsel for Ms. Rantisi: Amer Abu-Khalaf

Counsel for Commissioner-General: Anna Segall

JUDGE MARY FAHERTY, PRESIDING.

1. The United Nations Appeals Tribunal has before it an appeal filed by the Commissioner-General of United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) against Judgment on Remedies No. UNRWA/DT/2014/005, rendered by the Dispute Tribunal of UNRWA (UNRWA DT or UNRWA Dispute Tribunal) on 13 March 2014 in the case of *Rantisi v. Commissioner-General of UNRWA*. The Commissioner-General appealed on 12 May 2014 and Ms. Maha Rantisi answered on 8 July 2014.

Facts and Procedure

2. On 30 September 2013, in *Rantisi v. Commissioner-General of UNRWA*, Judgment No. UNRWA/DT/2013/033 (Judgment on the Merits), the UNRWA DT consolidated three cases filed by Ms. Rantisi contesting: (i) the decision not to request a full investigation into her complaint of harassment; (ii) the imposition of a disciplinary measure of one week suspension without pay, placement of a letter of censure for misconduct in her Official Status File, her placement on special leave with pay and transfer to another post; and (iii) the closure of her retaliation complaint.

Complaint of harassment

3. Ms. Rantisi was the Chief, Field Relief and Social Services Program, Jordan Field Office (C/FRSSP/J) at the time of the contested decisions.

4. In May 2011, Ms. Rantisi and a Field Human Resources Officer in Jordan (FHRO/J) at the time, were involved in a public altercation. The FHRO/J had called Ms. Rantisi “incompetent” in the presence of other staff members and Ms. Rantisi had shouted back that she would sue the FHRO/J. This led to Ms. Rantisi filing a complaint of harassment. A preliminary investigation was conducted by an investigator from the Department of Internal Oversight Services (DIOS) who concluded that the behaviour of the involved parties did not rise to the level of misconduct and recommended that both parties be reminded to behave professionally in their personal interactions.

5. By letter dated 4 October 2011, the then Director of Human Resources (DHR), informed Ms. Rantisi of the results of the preliminary investigation and the decision to take no further action in respect of her complaint. The DHR also reminded both Ms. Rantisi and the FHRO/J (in a separate letter of the same date) that they were to maintain a high level of professionalism in their personal interactions.

One week suspension without pay, written censure, placement on special leave with pay, transfer to another job

6. On the mornings of 18 and 19 September 2011, Ms. Rantisi participated in a sit-in protest at the Jordan Field Office (JFO) regarding two issues, one of which related to a decision by the then Director of UNRWA Operations, Jordan (DUO/J) to postpone the elections of the General Services Committee of the Area Staff Union.

7. By email dated 19 September 2011, the DHR advised the Director, DIOS (D/DIOS) that Ms. Rantisi was leading a protest action outside the JFO and requested that DIOS conduct a preliminary assessment. Based on a preliminary investigation, the DIOS recommended that Ms. Rantisi be suspended pending an official investigation.

8. By letter dated 19 September 2011, the DHR informed Ms. Rantisi that she was suspended from duty on full pay, with effect from 20 September 2011, pending an investigation into a charge of misconduct or serious misconduct. The allegations were that Ms. Rantisi: (i) had instructed staff members in her department to join the protest in a public space in front of the JFO on matters unrelated to their work; (ii) coerced refugees from Zarka/Marka to join the protest; and (iii) verbally abused staff members, staff union representatives and Jordanian police officers during the protest on 19 September 2011.

9. The DIOS' investigation report, dated 27 November 2011, found that Ms. Rantisi had participated in the protest on both days for over an hour but there was no evidence supporting any of the allegations above. The DIOS noted that as most of the protesters were staff members from her department and she was the Chief, it had been assumed by some staff members that Ms. Rantisi was the leader. The DIOS held the view that Ms. Rantisi did not exercise good judgment in participating in the protest. The DIOS inferred that the protesters did not act in the interest of the Agency and that participation in the protest was incompatible with the proper discharge of their duties as required by the Area Staff

Regulations. The DIOS concluded that “Ms. Rantisi violated Area Staff Regulations 1.1 and 1.4 for taking part in the protest”.

10. On 7 December 2011, the DUO/J informed Ms. Rantisi by letter that the investigation report supported the conclusion that her actions constituted serious misconduct warranting severe disciplinary measures up to and including summary dismissal.

11. Ms. Rantisi responded that her participation in the protest did not constitute serious misconduct, her suspension pending investigation was arbitrary and disproportionate, and there was a breach of due process.

12. By letter dated 4 January 2012, the DUO/J informed Ms. Rantisi that, after having reviewed the investigation file along with Ms. Rantisi’s comments, she concluded that Ms. Rantisi had engaged in misconduct and furthermore, she had lost confidence in Ms. Rantisi. The following disciplinary measures were imposed: (a) suspension without pay for a period of one week, and (b) placement of the letter which served as written censure in Ms. Rantisi’s Official Status File. Ms. Rantisi would also be transferred from her post as C/FRSSP/J, with grade protection to an appropriate post to be confirmed, and would remain on special leave with pay until this post was confirmed or the matter was further reviewed by 31 January 2012, whichever was sooner.

Retaliation complaint

13. Ms. Rantisi filed a retaliation complaint on 21 January 2012 as she considered that the disciplinary measures were a retaliatory measure by the DUO/J as a result of her complaint of harassment against the FHRO/J.

14. In a meeting on 22 January 2012, Ms. Rantisi met with the DHR, the Acting Director UNRWA Operations, Jordan (Acting DUO/J) and a new FHRO/J to discuss her future. At the meeting, Ms. Rantisi was advised that she would be transferred to another post as an administrative measure. The Acting DUO/J summarized the meeting in an e-mail dated 23 January 2012. The e-mail also included the Terms of Reference for a new project post as Youth Vulnerability Advisor, to which Ms. Rantisi was requested to respond by 1 February 2012.

15. By e-mail dated 20 February 2012, the new FHRO/J advised Ms. Rantisi that her complaint of retaliation had been referred to the D/DIOS for investigation and that until completion of the investigation, no action would be taken to transfer her to another post or seek a replacement for her post. Ms. Rantisi remained on special leave with pay.

16. On 4 June 2012, the D/DOIS relayed the investigation report relating to Ms. Rantisi's retaliation complaint to the Commissioner-General.

17. On 12 June 2012, Ms. Rantisi met with the Chief/Ethics Office (C/EO) who informed her informally that her allegations of retaliation and abuse of power had not been substantiated, and that the report and recommendations had been sent to the Office of the Commissioner-General from whom she would hear in due course.

18. By e-mail dated 5 July 2012, Ms. Rantisi made inquiries to the FHRO/J as to the outcome of the retaliation investigation and the recruitment for the C/FRSSP/J post of which she had recently become aware.

19. On 15 July 2012, the DUO/J issued a Jordan Field Staff Bulletin announcing a new appointment to the C/FRSSP/J post.

20. On 23 July 2012, the FHRO/J responded by letter to Ms. Rantisi informing her that she had been notified by the C/EO of the outcome of the retaliation complaint on 12 June 2012.

21. On 30 July 2012, the FHRO/J further advised Ms. Rantisi, *inter alia*, that the transfer to the post of Youth Vulnerability Advisor would be subject to review after 12 months in light of ongoing funding, need for the post and Ms. Rantisi's performance.

22. On 8 August 2012, the Officer-in-Charge of DIOS, formally notified Ms. Rantisi of the outcome of the retaliation investigation, informing her that there was insufficient evidence to establish a causal link between the actions of the DUO/J and the DHR and Ms. Rantisi's harassment complaint against the former FHRO/J. He also opined that the administrative action of transfer was permissible under the Agency's rules and justified given the JFO management's loss of trust in Ms. Rantisi, and that the disciplinary measures of one-week suspension without pay and written censure were not abusive sanctions given her seniority and in view of the circumstances.

23. On 13 August 2012, the UNRWA DT issued Order No. 031 (2012) denying Ms. Rantisi's Request for Interim Measures seeking suspension of the decision to transfer her to another post and the appointment of someone else to her post of C/FRSSP/J.

24. On 27 August 2012, Ms. Rantisi submitted the signed Terms of Reference for the post of Youth Vulnerability Advisor with a note for the record that she: (i) was signing the terms under duress for fear of separation from UNRWA; (ii) had not been provided with a convincing reason for the transfer nor a copy of the investigation report; and (iii) was being transferred despite the fact that she had been cleared of specific disciplinary charges.

25. On 2 September 2012, Ms. Rantisi assumed her new post.

UNRWA DT determinations on the three issues

26. In its Judgment on the Merits, the UNRWA DT made the following findings.

Harassment complaint

27. The UNRWA DT found that the reminder letters from the DHR to Ms. Rantisi and the former FHRO/J to maintain professionalism treated the two staff members similarly even though the FHRO's action of calling Ms. Rantisi "incompetent" in front of other staff members could be viewed as harassment and possibly misconduct. Given the failure to acknowledge this difference in conduct, the UNRWA DT held that Ms. Rantisi was not afforded the protection as a victim under the Agency's harassment policy. However, the UNRWA DT held that a full investigation was not necessary as there were no additional facts to be found. Accordingly, this claim succeeded in part.

One-week suspension without pay, written censure, placement on special leave with pay, transfer to another job

28. The UNRWA DT noted that Area Staff Rule 110.2 provides that a staff member may be suspended pending investigation upon a charge of misconduct that is "prima facie" well founded and that such suspension shall be without prejudice to the staff member. The UNRWA DT queried whether the charge in this case was "prima facie well founded" given that no attempt had been made to seek comments from Ms. Rantisi at the time of the decision to suspend her. Regarding the subsequent decision to place Ms. Rantisi on

special leave with pay upon conclusion of the investigation report, the UNRWA DT noted that there were no provisions for the unilateral imposition of special leave by the Agency once the disciplinary investigation was concluded.

29. The UNRWA DT found that placement of Ms. Rantisi on special leave with pay after the conclusion of the investigation report constituted a disciplinary sanction disguised as an “administrative” measure.

30. The UNRWA DT considered that the DUO/J’s letter of 7 December 2011, which stated that Ms. Rantisi’s actions constituted serious misconduct warranting disciplinary measures up to and including summary dismissal, constituted threatening and intimidating language which was wholly unjustified and unsupported by the investigation’s findings.

31. The UNRWA DT also considered that there was a fundamental breach of due process when the Agency failed to provide Ms. Rantisi with sufficient particulars of the evidence against her or an opportunity to present her arguments against the decision to transfer her due to the DUO/J’s loss of trust in her. While noting the investigation’s conclusion that involvement in the protest was a breach of Area Staff Regulations 1.1 and 1.4 and recognizing the Agency’s right to hold Ms. Rantisi to a higher standard given her seniority, the UNRWA DT found the Agency’s response to be “disproportionate, vindictive and procedurally flawed”.

32. The UNRWA DT held that the appropriate remedy was the rescission of the decision to deprive Ms. Rantisi of her post as C/FRSSP/J. It also rescinded the decision to issue a letter of censure and to suspend Ms. Rantisi for one week without pay.

Retaliation

33. The UNRWA DT dismissed the claim of retaliation as it did not find a causal connection between Ms. Rantisi’s complaint of harassment against the former FHRO/J and the disciplinary measures arising from her participation in the protest.

Remedies

34. In its Judgment on Remedies, Judgment No. UNRWA/DT/2014/005, which is the subject of this appeal, the UNRWA DT took note of the Commissioner-General’s request to

also provide the Agency with the option of compensation in lieu of rescission given that there is no Grade 20 post to which either Ms. Rantisi or her successor could be transferred. The UNRWA DT held that, in light of paragraph 5(a) of Article 10 of its Statute, it had no power to order the option of compensation in lieu of rescission given that this was not a case involving appointment, promotion or termination. Accordingly, the rescission order remained undisturbed.

35. The UNRWA DT granted Ms. Rantisi an award for moral damages in the amount of USD 40,000, taking into account the statements of Ms. Rantisi and her therapist as to her level of anxiety and stress, the “grossly unfair, high-handed and arbitrary treatment by senior managers” and the damage to Ms. Rantisi’s reputation due to the unsubstantiated allegations.

Submissions

The Commissioner-General’s Appeal

36. The UNRWA DT erred in law and fact when it ordered the rescission of the decision to transfer Ms. Rantisi without an alternative order of compensation in lieu of rescission. The Commissioner-General notes that Ms. Rantisi’s reinstatement to the post of C/FRSSP/J would irreversibly prejudice the rights of the present incumbent who holds a temporary indefinite contract and has been performing satisfactorily in the post for almost two years. The Commissioner-General further notes that there are no suitable Grade 20 posts, the highest level in Area posts, in the Agency to which either Ms. Rantisi or the present incumbent could be assigned. Moreover, Ms. Rantisi has already been transferred to her new post with salary protection at Grade 20 and has not suffered any material damage as a result of such transfer. Finally, the Commissioner-General notes that Ms. Rantisi’s reinstatement would be extremely difficult as the relationship between the parties has broken down. Given the particulars of this case, the UNRWA DT should have exercised its discretion to award compensation as an alternative to rescission.

37. The moral damages award is disproportionate to the alleged harm and should be reduced. Ms. Rantisi did not suffer any pecuniary loss as her transfer to another post did not affect her salary and entitlements at Grade 20. The UNRWA DT did not specify in clear terms the substantive entitlement or the procedural due process entitlement of Ms. Rantisi that has allegedly been breached. Further, the award amount was based on oral evidence

given by Ms. Rantisi and her therapist. There is no reference to any documentary evidence to support the award of moral damages in the Judgment.

Ms. Rantisi's Answer

38. The UNRWA DT correctly ordered reinstatement as the only effective remedy for the violation of her rights. The Commissioner-General raises for the first time in his appeal the issue of harm to a third party.

39. The UNRWA DT correctly determined that she suffered a high degree of moral damages justifying an award at the top end of the current scale of awards. As noted by the UNRWA DT, such amount was in line with other judgments of this Tribunal and the United Nations Dispute Tribunal where there was a significant degree of non-pecuniary harm.

Considerations

40. On 30 September 2013, the UNRWA DT issued its Judgment on the Merits of the present case and, in part, the Judgment read as follows:

The decision to issue a letter of written censure and to suspend the Applicant for one week without pay is rescinded. The Applicant is entitled to be compensated for the loss of salary during suspension. The decision to transfer the Applicant to a new post is rescinded.¹

41. On 13 March 2014, the UNRWA DT issued the Judgment on Remedies in which, inter alia, it confirmed the foregoing orders. Further, all records of the suspension were to be similarly expunged from Ms. Rantisi's file. The Judgment on Remedies also awarded Ms. Rantisi USD 40,000 for moral damages.

42. The Commissioner-General appeals, in part, the remedies ordered by the UNRWA DT, specifically the order rescinding the decision to transfer Ms. Rantisi and the moral damages award.

43. He asserts:

- (i) that the UNRWA DT erred in law by unduly fettering its discretion to award compensation in lieu of specific performance; and

¹ Judgment No. UNRWA/DT/2013/033, para. 142.

- (ii) that the UNRWA DT erroneously assessed moral damages at USD 40,000.

The alleged fettering of the UNRWA DT's discretion

44. In the context of affirming its order rescinding the decision to transfer Ms. Rantisi, the UNRWA DT stated:

The Applicant has been consistent throughout these proceedings in asserting that she was unlawfully removed from her position as C/FRSSP/J. Her unchallenged evidence was that she had 25 years of unblemished service and was totally committed to her work for which she has the relevant expertise and proven track record. She stated that the Agency moved to fill her post as soon as possible "to close the door for me". She noted that she tried to freeze the recruitment process by filing a request to the Tribunal to suspend the appointment of another staff member to her post until her case before the Tribunal had been resolved but her request was rejected. The Applicant was clear that no amount of money could compensate her for the loss of her former post and that the refusal, by another Judge of the Tribunal, to grant an order for interim relief effectively closed the door to her returning.²

45. At paragraph 16 it went on to note:

The Respondent produced evidence to the effect that the present incumbent of the post is performing satisfactorily and was appointed with effect from 1 August 2012 on a fixed-term appointment for an initial period of two years. In accordance with normal practice this term may be extended for a further period of three years followed by another three years. Accordingly, the Agency will have the opportunity of reviewing the position, in light of the Judgments in this case, no later than 1 August 2014. He was on an indefinite contract since 2011. There are currently no Grade 20 posts to which he could be deployed to make room for the Applicant and none are anticipated. In sum, the Respondent's case is that posts at Grade 20 are rare and it is unlikely that a suitable post will materialise in the foreseeable future. This contention supports the Applicant's argument that the consequence of unlawfully transferring her from her post of C/FRSSP/J caused her irreparable harm.³

46. In the course of the hearing on remedies, the Commissioner-General argued that the UNRWA DT should use its power under Article 10(5)(a) of its Statute to set an amount of compensation the Commissioner-General could elect to pay as an alternative to the rescission of the decision to transfer Ms. Rantisi. The Commissioner-General argued that there were no

² Judgment on Remedies, para 15.

³ Judgment on Remedies, para 16.

suitable grade 20 posts to which either Ms. Rantisi or her successor to the post of C/FRSSP/J could be deployed.

47. The Commissioner-General's argument was addressed by the UNRWA DT as follows:

[...] Counsel for the Respondent submitted that given the difficulty the Respondent faced with there being no suitable Grade 20 posts to which either the Applicant or her successor could be deployed, the Tribunal should use its power under paragraph 5(a) of Article 10 of the Statute to set an amount of compensation that the Respondent may elect to pay as an alternative to rescission [sic] of the contested administrative decision. [Counsel]'s submission is not consistent with the facts found and the strict interpretation of the statutory provision. First, paragraph 5(a) of Article 10 of the Tribunal's Statute is applicable to a contested decision which concerns "**appointment, promotion or termination**". Second, the Respondent has consistently maintained that the transfer of the Applicant was an administrative measure rather than a disciplinary measure. The fact that the Tribunal found that the enforced transfer of the Applicant was a disguised disciplinary measure does not of itself bring the case within the ambit of Article 10.5(a). Furthermore, the Respondent cannot change horses in mid-stream asserting during the hearing on liability that it was an administrative transfer and now advancing a submission during remedy stage of proceedings which in effect is tantamount to arguing that it is a case of appointment, promotion, or termination. It was not.⁴

48. The Commissioner-General submits that in interpreting Article 10(5)(a) as only permitting compensation in lieu of rescission in cases of appointment, promotion and termination, the UNRWA DT erred in law by unduly fettering the discretion it had to award compensation in lieu of specific performance, as the circumstances of a particular case may require.

49. Before this Tribunal, the Commissioner-General advanced the following arguments, which he says merit an alternative award of compensation to rescission:

- (i) The reinstatement of Ms. Rantisi would prejudice the rights of the staff member who was appointed to the post of C/FRSSP/J on 1 August 2012 and who has been on a temporary indefinite contract since January 2012;
- (ii) There are no suitable grade 20 posts in the Agency to which Ms. Rantisi's successor could be deployed as there are few posts at this level. While Ms. Rantisi was

⁴ *Ibid*, para. 17 (emphasis in original).

transferred to the post of Youth Vulnerability Advisor, this was with salary protection at grade 20, thus she did not suffer material damage; and

(iii) Her reinstatement to the post of C/FRSSP/J would be extremely difficult as the relationship between the parties had irretrievably broken down.

50. Ms. Rantisi resists the Commissioner-General's arguments on the ground that the mandatory compensation alternative provided for in Article 10(5)(a) is not applicable to her case, as found by the UNRWA DT.

51. Moreover, she submits that none of the arguments advanced by the Commissioner-General should be taken into account as "they attempt to conceal a manipulation of procedural measures designed to frustrate the proper administration of justice by shutting the door to an effective remedy". She submits that "the only effective remedy for [her] would be to be placed in the same position she would have been, had the contractual obligation been complied with which would be Chief of the Field Relief and Social Services Programme in the Jordan Field Office, a post she has held for more than six years. [She] is responsible for ensuring compliance with the Agency's Staff Regulations, Rules and Directives and hence, is also responsible for repairing the damages caused by decisions arbitrarily and irregularly made by them. Reinstatement is the only effective remedy. Money will not put [her] back in the position she would have been but for the wrongful act."⁵

52. Article 10(5) of the UNRWA DT Statute provides:

As part of its judgement, the Dispute Tribunal may order one or both of the following:

- (a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;
- (b) Compensation, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation and shall provide the reasons for that decision.

⁵ Answer of Ms. Rantisi to the Appeal of the Commissioner-General, 8 July 2014, pages 5 and 7.

53. The UNRWA DT therefore has the statutory discretion to order remedies under sub-paragraph (5)(a) or (5)(b) of Article 10 or both, so that, for example, the compensation referred to in sub-paragraph (5)(b) can represent an additional remedy to rescission/specific performance (or mandatory compensation in lieu thereof where the issue relates to appointment, promotion or termination) ordered pursuant to sub-paragraph (5)(a). Yet again, compensation under Article 10(5)(b) can constitute the independent sole remedy where the UNRWA DT decides rescission or specific performance of a contested administrative decision is not appropriate or merited. Equally, rescission or specific performance can constitute the sole remedy awarded save the mandatory requirement to set an alternative compensation under Article 10(5)(a). The decision on remedy is quintessentially a matter for the first instance Tribunal, having regard to the circumstances of each particular case and the constraints imposed by its governing Statute.

54. The UNRWA DT's discretion under Article 10(5)(a) is constrained by the mandatory requirement to set an amount of compensation (no greater than that provided for in Article 10(5)(b)) as an alternative to an order rescinding a decision on appointment, promotion or termination.

55. Among the findings of the UNRWA DT in the present case, which are not disputed by the Commissioner-General, was that Ms. Rantisi was unlawfully transferred from her post. The UNRWA DT rescinded this unlawful decision, a remedy available under its Statute.

56. In its Judgment on Remedies, the UNRWA Dispute Tribunal quite properly rejected any suggestion that because the transfer was found by the Tribunal to constitute a disguised disciplinary measure the matter could be considered in the context of the appointment, promotion or termination situation provided for in Article 10(5)(a).

57. The Commissioner-General does not take issue with the refusal to categorise the transfer as a measure to which the mandatory provision in Article 10(5)(a) applies; rather, he argues that even absent the situation where a rescinded decision concerns appointment, promotion or termination, the UNRWA DT has a residual discretion under Article 10(5)(a) to order compensation as an alternative to rescission. He argues that the Appeals Tribunal's decision in *Kaddoura*⁶ confirms the reasoned discretion of the first instance Tribunal to

⁶ *Kaddoura v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-151.

specify an alternative of compensation to specific performance depending on the circumstances of each case.

58. We note that in *Kaddoura*, the staff member contended that the United Nations Dispute Tribunal erred by rescinding the original decision on her reassignment without specifying an amount of compensation the Administration could elect to pay in lieu of specific performance. She requested that the Appeals Tribunal award “compensation in lieu of rescission” of the contested decision. In rejecting the staff member’s argument, the Appeals Tribunal stated:

This Court points out that the order of a specific performance is an alternative to the rescission of an administrative decision, depending on the circumstances of each case and subject to the reasoned discretion of the Judge. Under Article 10(5)(a) of the UNDT Statute, an order for compensation in lieu of a specific performance is only required when the administrative decision which is rescinded concerns appointment, promotion, or termination, which is not the case here.⁷

59. The reference in *Kaddoura* to the “reasoned discretion” of the Judge is a reference to the general discretion which is vested in the first instance Tribunal as to whether rescission or specific performance is an appropriate remedy; it is not an authority for the proposition that the Commissioner-General advances here. The Commissioner-General also refers to the decision of this Tribunal in *Verschuur*, where we stated:

Article 10(5)(a) of the Statute of the United Nations Dispute Tribunal provides that the Tribunal may order the rescission of the contested decision or specific performance. Where the contested decision concerns appointment, promotion or termination, the Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to rescission of the contested administrative decision or specific performance ordered. It follows that, in principle, in cases concerning appointment, promotion or termination, the Tribunal should not limit itself to only granting compensation. It has to provide the Administration with a choice between on the one hand, rescinding the decision or performing an obligation and, on the other hand, paying compensation. The Tribunal can’t limit itself to awarding compensation only under exceptional circumstances, and only after informing the parties of its intention in order to allow them to discuss the issue when, owing to the passage of time, a rescission of the decision would serve no purpose or the performance of an obligation

⁷ *Ibid*, para. 41.

would be impossible, or when one of those options would affect the rights of third parties.⁸

60. This paragraph does not assist the Commissioner-General's argument since it is concerned with decisions on appointment, promotion and termination.

61. It is clear that the UNRWA DT's decision to rescind Ms. Rantisi's transfer was a remedy arrived at in the exercise of its discretion under Article 10(5) after a careful consideration of all the facts. Had the UNRWA DT considered compensation an effective remedy, the matter could have been dealt with wholly under Article 10(5)(b) of the Statute. The UNRWA DT chose not to go down that route in the circumstances of this case.

62. In *Cohen*, the Appeals Tribunal has upheld the right to "fair and equitable damages" as "an element of the right to an effective remedy".⁹ In as much as fair and equitable damages are an element of an effective remedy, so too must be the entitlement to have an unlawful administrative decision rescinded or to have a particular obligation performed. The UNRWA DT here saw fit to exercise its discretion such that Ms. Rantisi could be reinstated to the position she held prior to the unlawful transfer. The first instance Tribunal is the body best placed to decide on the appropriate remedy. As already set out, it found Ms. Rantisi's transfer unlawful and unjustified. In arriving at its decision to affirm the rescission order made in the Judgment on the Merits, it is clear from the Judgment on Remedies that the UNRWA DT took cognisance of the Commissioner-General's submission that Ms. Rantisi's successor was performing satisfactorily in the post. Moreover, it took note of the nature of his contract and the scarcity of grade 20 posts within the Agency to which the post incumbent could be deployed. Ms. Rantisi's plea to be reinstated is evident from the contents of paragraph 15 of the Judgment on Remedies, already quoted. A reading of paragraphs 15 and 16 of said Judgment shows that the UNRWA DT weighed the respective positions of Ms. Rantisi and the post incumbent before affirming the order to rescind. That weighing exercise was a matter entirely for the first instance Tribunal.

63. Ultimately, it stated that "the Statute empowers the Tribunal to order the rescission of the contested administrative decision. The Tribunal has done so in paragraph 142 of Judgment No. [UNRWA/DT/2013/033]. There is no reason to depart from that order."¹⁰

⁸ *Verschuur v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-149, para. 48.

⁹ *Cohen v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-131.

¹⁰ Judgment on Remedies, para. 18.

Absent any error of law or manifestly unreasonable factual findings, which are not evident here, the Appeals Tribunal will not interfere with the discretion vested in the UNRWA DT to decide on remedy.

64. In his submissions to this Tribunal, the Commissioner-General argues that Ms. Rantisi's reinstatement would be extremely difficult "as the relationship between the parties has irretrievably broken down". Having regard to the transcript of the hearing annexed to Ms. Rantisi's answer, the Commissioner-General's contention would not appear to be supported by the evidence.

65. In all the circumstances of the case, we are not persuaded by the Commissioner-General's argument that the UNRWA DT erred in law in affirming its decision to rescind Ms. Rantisi's transfer or that it unduly fettered its discretion. As there was no connection to appointment, promotion or termination, there was no requirement to set an amount of compensation as an alternative. The UNRWA DT exercised its reasoned discretion to rescind the transfer. The UNRWA DT's decision is upheld.

The appeal of the moral damages award

66. The Commissioner-General submits that the UNRWA DT erred in awarding USD 40,000 and requests that this Tribunal reduce the damages. It is argued that the award is disproportionate to the harm suffered by Ms. Rantisi.

67. The Commissioner-General maintains, with regard to the first limb of the test for moral damages as set out in *Asariotis*,¹¹ that the UNRWA DT did not specify in clear terms Ms. Rantisi's substantive entitlement or the procedural due process entitlement that was breached. With regard to the second limb set out in *Asariotis*, he argues that the UNRWA DT based its findings on the harm, stress and anxiety suffered by Ms. Rantisi only on oral evidence given by her and her therapist and did not refer to any documentary evidence to support the compensation awarded.

68. In its Judgment on the Merits, the UNRWA DT made the following findings with regard to the harm suffered by Ms. Rantisi:

¹¹ *Asariotis v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-309.

... The Applicant was entitled under GSC No 06/2010 to have her complaint of harassment addressed promptly and fairly. The Agency failed to do so. [...]

The Tribunal finds that there was a fundamental breach of due process when the Agency failed to provide the Applicant with sufficient particulars of evidence against her so as to enable her to mount a proper defence. [...]

The Tribunal finds that the Applicant was removed from her post as Chief without according her elementary due process rights. Dressing this up as an administrative measure is a cynical manipulation of the relevant policy and rules on special leave and those regarding administrative measures in the interests of the Agency. [...]

The decision to impose disciplinary measures was taken in breach of due process and cannot stand. The Tribunal also finds that the transfer of the Applicant to a new post was a disguised disciplinary measure.¹²

69. The UNRWA DT had the benefit of Ms. Rantisi's oral testimony and that of her licenced therapist about the effect on Ms. Rantisi of the impugned administrative decisions. It summarised Ms. Rantisi's evidence at paragraph 30 of the Judgment on Remedies.

70. The first instance Tribunal also had the benefit of a report from Ms. Rantisi's therapist together with a further medical report which outlined Ms. Rantisi's difficulties, her medical diagnosis and the treatment she underwent.¹³ While there is no reference to the medical reports in the Judgment on Remedies, from the transcript annexed to Ms. Rantisi's Answer, it is clear that the UNRWA DT was aware of them. The Appeals Tribunal has no reason to believe other than that the medical reports referred to by the UNRWA DT in the course of the hearing are the reports annexed to Ms. Rantisi's submissions to this Tribunal.

71. We have said in *Solanki* that "compensation must be set by the UNDT following a principled approach and on a case by case basis" and "[t]he Dispute Tribunal is in the best position to decide on the level of compensation given its appreciation of the case".¹⁴

72. Having regard to all of the matters of which the UNRWA DT was apprised, both in the course of the hearing on the merits and on remedies, and taking particular regard of the medical evidence, we find no error of law or fact in the manner in which the UNRWA DT assessed damages or the quantum thereof.

¹² Judgment on the Merits No. UNRWA/DT/2013/033, paras. 107, 122, 127 and 139.

¹³ Answer of Ms. Rantisi to the Appeal of the Commissioner-General, 8 July 2014, Annexes 4 and 5.

¹⁴ *Solanki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-044, para. 20.

73. Accordingly, the Commissioner-General's appeal is dismissed.

Judgment

74. The appeal is dismissed and Judgment No. UNRWA/DT/2014/005 is upheld.

Original and Authoritative Version: English

Dated this 26th day of February 2015 in New York, United States.

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Chapman

(Signed)

Judge Thomas-Felix

Entered in the Register on this 17th day of April 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar