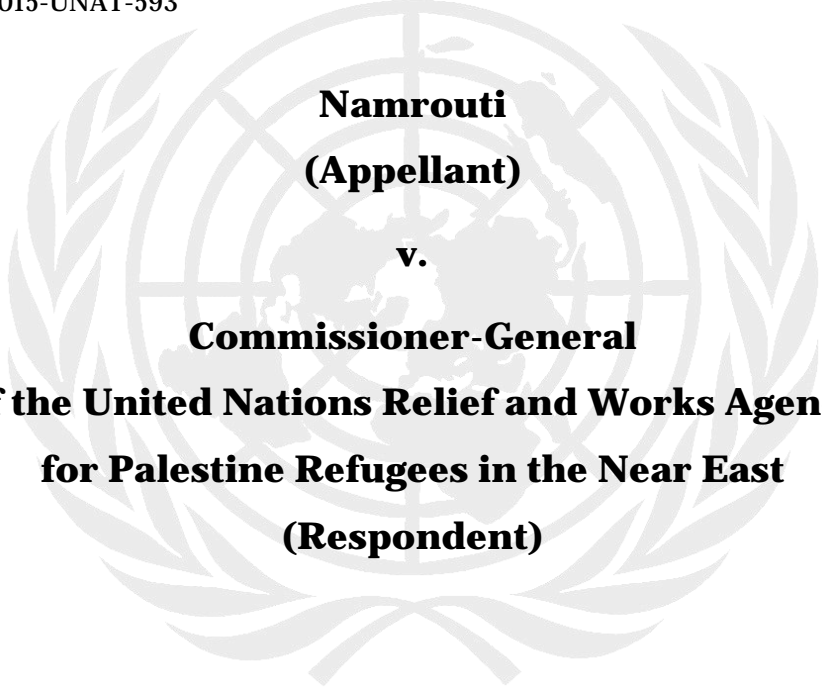




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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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)**

**JUDGMENT**

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Before:	Judge Inés Weinberg de Roca, Presiding Judge Deborah Thomas-Felix Judge Richard Lussick
Case No.:	2015-691
Date:	30 October 2015
Registrar:	Weicheng Lin

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Counsel for Mr. Namrouti: Self-represented

Counsel for Commissioner-General: Lance Bartholomeusz

**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, respectively) on 23 November 2014 in the case of *Namrouti v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Shadi Namrouti filed his appeal on 21 January 2015 and the Commissioner-General of UNRWA answered on 27 March 2015.

**Facts and Procedure**

2. On 15 July 2010, Mr. Namrouti, who was already in the service of the Agency, was granted a fixed-term appointment as a Computer Lab Technician, Grade 10, at the Amman Training Centre (ATC).

3. On 4 October 2012, Mr. Namrouti attended an annual meeting of ATC instructors and laboratory technicians, the purpose of which was to welcome teaching staff at the inception of the new scholastic year. During this meeting, the Officer-in-Charge (OiC) of the ATC gave Mr. Namrouti the floor and the latter expressed his opinion and provided comments.

4. On 8 October 2012, Mr. Namrouti received a letter of reprimand from the OiC/ATC. The reprimand referred to previous verbal warnings that the OiC/ATC had given Mr. Namrouti and indicated that Mr. Namrouti's manner of communicating, particularly during the meeting of 4 October 2012, was unacceptable and on this occasion warranted a written reprimand.

5. On 11 October 2012, Mr. Namrouti e-mailed the OiC/ATC and the Staff Union Representative, contesting the letter of reprimand. The OiC/ATC dismissed the complaints in Mr. Namrouti's e-mail on 18 October 2012.

6. On 22 October 2012, Mr. Namrouti submitted a complaint of prohibited conduct against the OiC/ATC to the Jordan Field Ethics Office. On the same day, he also conducted a survey asking participants of the 4 October 2012 meeting how they had perceived the meeting's events.

7. On 4 December 2012, Mr. Namrouti requested review of the decision to issue him with a letter of reprimand.

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 Counsel for the Respondent acknowledged that the e-mails were not already on the case file, the UNRWA DT ordered the Respondent to submit the evidence to the UNRWA Dispute Tribunal, and afforded Mr. Namrouti the opportunity to reply thereon.
14. After the hearing on 13 October 2014, the Respondent submitted the evidence to the UNRWA DT, which was transmitted to Mr. Namrouti on the same day.

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 witnesses. The UNRWA DT habitually reverses the roles of the parties at oral hearings so as to lead applicants to lose their cases and thus protect UNRWA.

19. The UNRWA DT erred in allowing the Respondent to first present two witnesses consecutively. This unfairly favoured the Respondent and left the Appellant in a difficult situation to refute the Respondent's case.

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,<sup>1</sup> 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 file the document(s) after the hearing and to receive Mr. Namrouti's comments thereon.

24. Mr. Namrouti requests that the Appeals Tribunal either: (a) vacate the UNRWA DT Judgment and remand his case for consideration before a new Judge; or (b) allow the Appellant to request the Secretary-General of the United Nations to revoke UNRWA's diplomatic immunity in order that Mr. Namrouti may seek justice in Jordan's local courts.

### **The Commissioner-General's Answer**

25. There is no basis for the allegation that the Appellant was denied the right to cross-examine the Respondent's witnesses as the trial record reveals that the Appellant cross-examined both of the Respondent's witnesses.

26. The Appellant's assertion that he was not permitted to object to the testimony of the first witness is misleading in that the trial record reveals that the UNRWA DT Judge interjected during the Appellant's cross-examination of the Respondent's witness.

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<sup>1</sup> UNRWA Dispute Tribunal Practice Direction No. 03, titled "Information for Parties Appearing Before the UNRWA Dispute Tribunal", General Staff Circular No. 03/2014, 6 March 2014.

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 the Respondent had closed his case.

28. Concerning the alleged violations of Practice Direction No. 3, the Appellant was aware by reason of Order No. 096 (UNRWA/DT/2014) and Order No. 105 (UNRWA/DT/2014) that the aim of the hearing was to “determine what exactly ha[d] been said at the meeting on 4 October 2012”. The Appellant was thus not prejudiced by the Respondent’s failure to provide a precise description of the relevance of his witnesses’ testimony.

29. Further, the Respondent’s submission of evidence after the oral hearing was pursuant to the UNRWA DT’s Order and was consistent with the UNRWA DT’s power to order the production of any document pursuant to Article 12(1) of the UNRWA DT Rules, as well as general case management powers pursuant to Article 14 of the UNRWA DT Rules. At any rate, as the Appellant was aware of the existence of the documents, which were e-mail exchanges between himself and his supervisor, no prejudice was occasioned to the Appellant.

30. There is also no merit to the Appellant’s claims that the testimony of his witnesses, who were duly sworn in, was affected by them having to testify before their supervisors. His assertion is speculative and unsupported by evidence.

31. The UNRWA DT Judgment was otherwise free of error and the UNRWA DT correctly dismissed the application. The Agency requests that this Tribunal dismiss the Appellant’s appeal.

### **Considerations**

32. Mr. Namrouti does not raise any challenges as to the merits of the UNRWA DT Judgment on appeal. His appeal relates to the procedure adopted by the UNRWA Dispute Tribunal in hearing his complaint. In particular, Mr. Namrouti complains that the management of cases by the UNRWA DT Judge, not only his, but all cases of UNRWA staff members, is unjustly

designed to ensure that applicants lose their cases and protect UNRWA. He claims that the allegedly unfair hearings “kill[] the internal Justice mechanism” within UNRWA.

33. At the outset, we note the large discretion afforded to the UNRWA Dispute Tribunal in relation to case management matters. Article 14 of the UNRWA DT Rules provides that the UNRWA DT “may, at any time, either on an application of a party or of its own initiative make any order or give any direction which appears to the judge to be appropriate for a fair and expeditious disposal of the case and to do justice to the parties”. Our jurisprudence has consistently held that the Appeals Tribunal will not lightly interfere with the broad discretion of the first instance tribunal in the management of its cases.<sup>2</sup>

34. Having reviewed each of the grounds of appeal raised by Mr. Namrouti we are not persuaded that the UNRWA Dispute Tribunal erred in procedure or otherwise exceeded its jurisdiction in the exercise of its powers, such as to warrant reversal of the Judgment.

35. Mr. Namrouti alleges that the UNRWA DT erred in reversing the roles of the parties at the oral hearing, and that in reversing the role of the parties, the UNRWA DT erroneously reversed the burden of proof. There is no merit in either challenge. The order in which the parties may be heard is a matter of discretion of the judge who has management over the case. In the instant matter, the UNRWA Dispute Tribunal reversed the role of the parties in order for the Respondent to show that the alleged facts giving rise to the issuance of the contested reprimand were established. Contrary to Mr. Namrouti’s own views, this was not to his detriment; rather, the UNRWA DT required the Respondent to show that its imposition of a reprimand on Mr. Namrouti was warranted. We can see no error in the approach taken by the UNRWA Dispute Tribunal in this regard. Further, the trial record reflects that Mr. Namrouti did not object at any point during the proceedings to the order of calling the witnesses.

36. Mr. Namrouti’s complaints that the UNRWA DT improperly allowed the Respondent to first present two consecutive witnesses, and to allow all the witnesses to remain in the courtroom after they had testified, are also without merit. While the presentation of two witnesses

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<sup>2</sup> *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-560, para. 30, citing *Leboeuf et al. v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-354, para. 8, *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-294, para. 20, and *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062, para. 23. See also *Darwish v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-369, para. 26 (noting that the UNRWA DT has discretion in matters of procedure).

consecutively differed from ordinary procedures for the calling of witnesses, we are not persuaded that the variance amounts to an error in procedure invalidating the Judgment. Further, there was no prejudice to Mr. Namrouti who had the opportunity to cross-examine both witnesses and present his case after the close of the Respondent's case. Similarly, insofar as his witnesses remained in the courtroom and thus had to testify before the Respondent's witnesses, the trial record indicates that neither Mr. Namrouti nor his witnesses objected to the procedure or otherwise indicated their discomfort in this regard before the UNRWA DT.

37. We also reject Mr. Namrouti's complaint that his right to cross-examine some of the Respondent's witnesses was breached. A review of the recording of the oral hearing shows that Mr. Namrouti was granted the opportunity to question both witnesses. That the UNRWA DT Judge deemed one of Mr. Namrouti's questions to the first witness to be irrelevant to the facts at hand also falls within the Tribunal's discretion. Article 13(5) of the UNRWA DT Rules provides the UNRWA DT with discretion to "exclude evidence which it considers irrelevant, frivolous, or lacking in probative value" and to "limit the oral testimony as it deems appropriate".

38. Mr. Namrouti further claims that the UNRWA DT breached Practice Direction No. 3 insofar as he was not provided with the names of the Respondent's witnesses at least 15 days before the hearing or a description of the relevancy of their proposed testimony, as required.

39. Article 21 of Practice Direction No. 3 provides:<sup>3</sup>

At least 15 calendar days before the hearing date *or by another date ordered by the Tribunal*, the participants must provide the Tribunal and the opposing party with the names of the witnesses they intend to call at the hearing and a description of the relevance of the witnesses' testimony. [...]

40. In the present matter, the UNRWA DT informed the parties on 21 September 2014, that it intended to hold a hearing on 13 October 2014, and ordered the parties to file their proposed witness lists by 6 October 2014 at the latest, being one week before the scheduled oral hearing. Mr. Namrouti and the Respondent respectively filed their responses indicating the specific witnesses they intended to call at the oral hearing on 7 and 8 October 2014 and the oral hearing took place as scheduled five days thereafter, on 13 October 2014. In view of the express wording of Article 21, which makes clear that the UNRWA DT may set "another date" by which the parties' witness lists must be filed, we are not persuaded that the UNRWA DT violated

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<sup>3</sup> Emphasis added.



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. Further, notwithstanding the late notice of the Respondent's witnesses, the clear wording of Order No. 096 (UNRWA/DT/2014) and Order No. 105 (UNRWA/DT/2014) clarified that the aim of the hearing was to "determine what exactly has been said at the [4 October 2012] meeting". Consequently, we do not find that any prejudice was caused to Mr. Namrouti by the failure to provide him with a description of the relevance of the witnesses' testimony.

42. Mr. Namrouti's challenge to the filing of a document by the Respondent after the oral hearing must also be rejected. Pursuant to Article 12(1) of the UNRWA DT Rules governing "Oral evidence at oral hearings", the UNRWA Dispute Tribunal "may make an order [...] to produce any document". Further, Article 13(2) of the UNRWA DT Rules provides that the UNRWA DT "may order production of evidence from either party *at any time* and may require any person to disclose any document Or provide information that appears to the Tribunal to be necessary for a fair and expeditious disposal of the proceedings".<sup>4</sup>

43. The power of the UNRWA Dispute Tribunal pursuant to Articles 12(1) and 13(2) of the UNRWA DT Rules to order the production of evidence is distinct from the obligation on the parties pursuant to Article 24 of Practice Direction No. 3 to file the evidence they intend to use at the hearing at least seven calendar days before a scheduled hearing. Accordingly, the UNRWA DT did not err in procedure in ordering that the Respondent file the documents after the hearing. While Mr. Namrouti claims that the filing of the documents took him by surprise, the UNRWA DT granted him the opportunity to file his comments with respect to the new documents, and we thus see no prejudice to Mr. Namrouti.

44. In view of the foregoing, there are no grounds warranting the reversal of the UNRWA DT Judgment pursuant to Article 2(1) of the Appeals Tribunal Statute.

### **Judgment**

45. The appeal is dismissed and the Judgment of the UNRWA Dispute Tribunal is affirmed.

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<sup>4</sup> Emphasis added.

Original and Authoritative Version: English

Dated this 30<sup>th</sup> 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 18<sup>th</sup> day of December 2015 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar