



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

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Judgment No. 2015-UNAT-598

**Thweib  
(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 Luis María Simón, Presiding  
Judge Deborah Thomas-Felix  
Judge Inés Weinberg de Roca

**Case No.:** 2014-701

**Date:** 30 October 2015

**Registrar:** Weicheng Lin

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**Counsel for Ms. Thweib:** Self-represented

**Counsel for Commissioner-General:** Lance Bartholomeusz

**JUDGE LUIS MARÍA SIMÓN, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal of Judgment No. UNRWA/DT/2015/003, issued 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 22 January 2015 in the case of *Thweib v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Ms. Maisa Thweib appealed on 22 March 2015 and the Commissioner-General of UNRWA answered on 22 May 2015.

**Facts and Procedure**

2. The following facts are taken from Judgment No. UNRWA/DT/2015/003:<sup>1</sup>

... Effective 1 April 2010, the Applicant was employed by the Agency as Acting Deputy Chief, Field Relief and Social Services Programme on a limited duration contract of one year which was then extended until 31 October 2011, the date she resigned from her post.

... On 18 and 19 September 2011, the Applicant and other staff members organised and participated in a sit-in strike to protest against the decisions of the Director of UNRWA Operations, Jordan (“DUO/J”) relating to the dismissal of two staff members and to the extension of the term of the General Services Committee of the Area Staff Union.

... By email to the Director of the Department of Internal Oversight Services (“DDIOS”), dated 19 September 2011, the Director of the Department of Human Resources requested an investigation of the protest action. Following the preliminary assessment, the DUO/J requested by inter-office memorandum dated 20 September 2011 the DDIOS to commence a formal investigation into the Applicant’s exact involvement with respect to the sit-in strike.

... By letter dated 4 January 2012, the DUO/J informed the Applicant that she had decided that, as the Applicant had separated from the Agency, the matter would not be pursued, however, “the outcome of this investigation and the follow up correspondence will remain on record”.

... On 2 March 2012, the Applicant submitted her request for decision review of the decision of 4 January 2012.

... On [12] June 2012, the Applicant filed her application with the [UNRWA Dispute] Tribunal.

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<sup>1</sup> Impugned Judgment, paras. 3-16.

... After having granted the Applicant's motion to exclude the Respondent from participating in the proceedings, the [UNRWA Dispute] Tribunal issued on 15 July 2013 Judgment *Thweib and Al Hasanat* UNRWA DT/2013/028, in which it rescinded the DUO/J's decision dated 4 January 2012, ordering that "[a]ny reference to misconduct including the outcome of the investigation and the follow-up correspondence as indicated in [the DUO/J's] letter [of] 4 January [2012] be expunged from the records and not to be relied upon should the Applicant seek to be re-employed by the Agency nor should it be mentioned in any reference to be provided in respect of Ms. Thweib to any person, Agency, or body whether within or outside UNRWA". Furthermore, the [UNRWA Dispute] Tribunal ordered the Respondent to pay the Applicant the sum of USD 3,000 as moral damages.

... On 27 June 2014, by Judgment *Thweib and Al Hasanat* 2014-UNAT-449, the [Appeals Tribunal] reversed Judgment *Thweib and Al Hasanat* UNRWA/DT/2013/028 and remanded the cases to the [UNRWA Dispute] Tribunal for a hearing before a different Judge.

.. By Order No. 097 (UNRWA/DT/2014) dated 22 September 2014, the [UNRWA Dispute] Tribunal re-opened the case and ordered the Respondent to submit his reply.

... By email dated 11 November 2014, the Head, Field Human Resources Officer sent to the Applicant the current DUO/J's letter informing her that the Agency would rescind the impugned decision of 4 January 2012.

... On 12 November 2014, the Respondent filed his response and requested the [UNRWA Dispute] Tribunal to declare the application moot. By Order No. 116 (UNRWA/DT/2014) of 23 November 2014, the [UNRWA Dispute] Tribunal requested the Applicant to provide comments to the reply of the Respondent. Furthermore, the [UNRWA Dispute] Tribunal ordered that it would be appropriate for a fair and expeditious disposal of the case to separate the case from the case of Applicant Wisam Al Hasanat and to treat each application independently.

... On 27 November 2014, the Applicant filed a motion requesting leave to amend her application to seek compensation for material and moral damages.

... The Respondent responded to the Applicant's motion on 5 December 2014, requesting the [UNRWA Dispute] Tribunal to reject the motion.

... On 7 December 2014, the Applicant submitted additional comments with respect to the response of the Respondent of 5 December 2014[4].

3. On 22 January 2015, the UNRWA DT issued Judgment No. UNRWA/DT/2015/003. The UNRWA DT found that, while in principle, an applicant may at any given moment before a case is adjudicated modify the requested remedies, Ms. Thweib's case was different. At the time she filed the motion to amend her application to seek compensation for material and

moral damages, she had already received a notification of the DUO/J's decision, which granted all the remedies she had sought in her application. The UNRWA DT held that it would be unfair to a respondent to allow an applicant who had received the full remedy to then seek new remedies never requested before. The UNRWA DT therefore found Ms. Thweib's application moot and dismissed it.

### **Submissions**

#### **Ms. Thweib's Appeal**

4. Ms. Thweib claims that, contrary to the UNRWA DT's finding, the DDIOS did not commence a formal investigation against Ms. Thweib; rather, the investigation related to the alleged misconduct of another staff member who was notified accordingly. When interviewed in the course of that investigation, Ms. Thweib was under the impression that she was being interviewed as a witness. She was only informed that she was the subject of the investigation when she received a letter dated 15 December 2011 informing her of the findings of the investigation and giving her an opportunity to respond. The failure to notify her beforehand was a violation of her due process rights. Moreover, none of the allegations against her were substantiated.

5. Ms. Thweib contends that she did not initially request moral and material damages because she hoped for a swift resolution of her case. However, it took the Commissioner-General three years to agree to remove the letter of misconduct from her file "which was not self-motivated but only a malicious act to unjustly close the case denying [her] her right for compensation for the mistreatment and unreasonable delay in reaching a just solution".

6. Ms. Thweib contends that the following arguments justify an award of moral damages: she was treated unfairly and was a victim of abuse by the former DUO/J; she worked under considerable emotional stress due to the actions taken by the DUO/J, the latter's authoritative style of management and abuse of power, which forced her to resign from the Agency; and her emotional stress was further increased as a result of the unjust suspension of the programme Chief, Field Relief and Social Services, due to which Ms. Thweib had to assume the latter's responsibilities and rebuild the morale of the team.

7. Ms. Thweib also seeks compensation for material damages as “the Agency’s failure to resolve this issue for three years had serious impacts on [Ms. Thweib’s] employment prospect, finances, and professional reputation”.

8. Ms. Thweib requests that the compensation for moral damages awarded by the UNRWA DT in Judgment No. UNRWA/DT/2013/028 be reinstated in addition to granting her material damages.

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

9. Ms. Thweib has not demonstrated in what respect the UNRWA DT, by dismissing her application as moot, exceeded or failed to exercise its jurisdiction, erred in law, committed an error in procedure or erred in fact resulting in a manifestly unreasonable decision. Ms. Thweib merely reargues the case for granting compensation for emotional stress and moral damages, issues that Ms. Thweib attempted to introduce by way of amendment to her application. Her appeal is not founded on any of the grounds set out in Article 2(1) of the Statute of the Appeals Tribunal.

10. The relief sought by Ms. Thweib has no legal basis. The Appeals Tribunal set aside the original judgment of the UNRWA DT and remanded the case for a *de novo* hearing. Hence, the conclusions in the original judgment are legally nullified. Moreover, Ms. Thweib’s attempt to introduce an amendment to her application to seek material and moral damages was correctly rejected by the UNRWA DT and that rejection has not been challenged in the instant appeal.

11. The Commissioner-General requests that the Appeals Tribunal reject Ms. Thweib’s appeal in its entirety.

### **Considerations**

12. Under Article 2(1) of the Appeals Tribunal Statute, the Appeals Tribunal is competent to hear and pass judgment on an appeal against a judgment of the Dispute Tribunal where it is asserted that the Dispute Tribunal exceeded its competence, failed to exercise its jurisdiction, erred in law or procedure or erred in fact resulting in a manifestly unreasonable decision.

13. On appeal, Ms. Thweib has failed to demonstrate that the Dispute Tribunal erred in any way when it dismissed her application finding it to be moot. That outcome was the natural consequence of the administrative rescission of the impugned decision, circumstance that contemplated the staff member's claim and rights, solving the previous irregularity.

14. Ms. Thweib's request to amend her application to seek compensation for material and moral damages was filed after she had received a notification of the DUO/J's decision to grant the remedies she had sought. The UNDT correctly found that, at that point, the application had become moot and it rejected it.

15. Ms. Thweib's other claims on appeal also have no merit, and this Tribunal need not address them.<sup>2</sup>

16. Hence, there is no merit in the appeal.

### **Judgment**

17. The appeal is dismissed in its entirety and the UNRWA DT Judgment is affirmed.

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<sup>2</sup> *Badawi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2012-UNAT-261, para. 38.

Original and Authoritative Version: English

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

*(Signed)*

Judge Simón, Presiding

*(Signed)*

Judge Thomas-Felix

*(Signed)*

Judge Weinberg de Roca

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

*(Signed)*

Weicheng Lin, Registrar