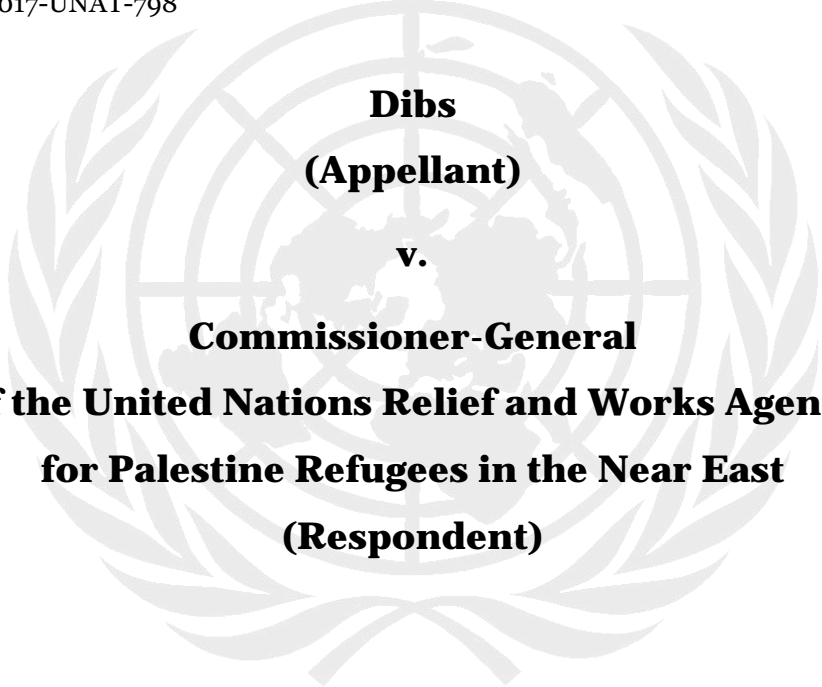




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2017-UNAT-798



**Dibs  
(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 Dimitrios Raikos, Presiding Judge Deborah Thomas-Felix Judge John Murphy
Case No.:	2017-1083
Date:	27 October 2017
Registrar:	Weicheng Lin

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Counsel for Mr. Dibs:	Amer Abu-Khalaf, LOSA
Counsel for Commissioner-General:	Rachel Evers

**JUDGE DIMITRIOS RAIKOS, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2017/018, 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 14 May 2017, in the case of *Dibs v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Khader Hamed Dibs filed the appeal on 11 June 2017, and the Commissioner-General filed his answer on 10 October 2017.

**Facts and Procedure**

2. The following facts are uncontested:<sup>1</sup>

... Effective 1 August 2004, the Applicant was appointed on a fixed-term appointment as a Sanitation Foreman B, Grade 3, in Shufat Camp Environmental Sanitation (“Shufat Camp”) in the Jerusalem Area.

... Following several extensions, effective 1 January 2012, the Applicant’s appointment was converted to an “A” category temporary indefinite appointment.

... On 24 September 2014, the Applicant was shot while in his office at Shufat Camp. He suffered multiple bullet injuries on the lower limbs and subsequently was placed on sick leave from 24 September 2014 until 3 June 2015.

... Between November 2014 and October 2015, the Department of Internal Oversight Services (“DIOS”) conducted an investigation into allegations that the Applicant was engaged in unauthorised outside activities in breach of his neutrality obligations. The Applicant’s statement was taken by the investigators in June 2015 and in August 2015.

... On 12 March 2015, the Applicant requested to be referred to a medical board, as he was incapable of carrying out his duties. The Applicant reiterated this request on 25 June 2015.

... On 14 August 2015, by memorandum to the Director of UNRWA Operations, West Bank (“DUO/WB”), the Applicant submitted a request for Special Leave With Pay (“SLWP”), as he had exhausted his leave credits. On 18 August 2015, the Applicant submitted a similar request to the Chief Area Office, Jerusalem.

... On 29 September 2015, the medical board issued its report and concluded that the Applicant was unfit to perform his duties as a Sanitation Foreman. The Chief, Field Health Programme (“C/FHP”) concurred with this conclusion on 6 October 2015.

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<sup>1</sup> Impugned Judgment, paras. 2-21.

... By letter dated 2 November 2015, the DUO/WB informed the Applicant of the findings of the investigation conducted by DIOS. The Applicant was invited to respond to the said findings.

... By letter dated 29 January 2016, the Head, Field Human Resources Office (“H/FHRO”) informed the Applicant that he had been assessed unfit for service; however, his separation from service would be postponed since the investigation process concerning his alleged misconduct was still ongoing. Furthermore, the letter indicated that his request for SLWP was denied and that he would be suspended without pay as of 1 February 2016, pending the outcome of the investigation.

... By email dated 23 February 2016, the Applicant submitted a request for review of the decisions in the letter of 29 January 2016.

... By letter dated 13 April 2016, the acting Director of UNRWA Operations, West Bank affirmed the decisions in the letter of 29 January 2016.

... On 30 May 2016, the Applicant filed an application with the UNRWA Dispute Tribunal ... [against the decisions of UNRWA 1) not to grant his request for SLWP; 2) not to proceed with the separation based on the conclusion of the medical board; and 3) to suspend him without pay pending the outcome of the investigation.] The application was transmitted to the Respondent on 31 May 2016.

... On 30 June 2016, the Respondent filed his reply. The reply was transmitted to the Applicant on 3 July 2016.

... By letter dated 26 July 2016, the Applicant was separated from service, effective 29 July 2016, with full termination indemnity.

... On 22 August 2016, the Respondent filed a motion requesting an extension of time to submit the Arabic translation of the reply. On 23 August 2016, the motion was transmitted to the Applicant.

... On 14 September 2016, the Respondent filed the Arabic translation of the reply. The Arabic translation was transmitted to the Applicant on the same day.

... By Order No. 022 (UNRWA/DT/2017) dated 26 January 2017, the Respondent was requested to inform the [UNRWA Dispute] Tribunal of the conclusions of the investigation, and whether any actions were, or will be, taken as a result of the conclusions.

... On 14 February 2017, the Respondent filed his response to Order No. 022 (UNRWA/DT/2017). The response was transmitted to the Applicant on the same day.

... By Order No. 029 (UNRWA/DT/2017) dated 19 February 2017, the Respondent was requested to inform the [UNRWA Dispute] Tribunal of the administrative status of the Applicant during the period from 24 September 2014 until the date that he was terminated, i.e. if the Applicant had been on sick leave, on SLWP for a period of time, or on Special Leave Without Pay (“SLWOP”).

... On 21 March 2017, the Respondent submitted his response to Order No. 029 (UNRWA/DT/2017). The response was transmitted to the Applicant on the same day.

3. The UNRWA DT rendered its Judgment on 14 May 2017 dismissing the application in its entirety. At the outset, the UNRWA DT stated that the scope of the application did not encompass the legality of the decision to terminate Mr. Dibs since at the material time when Mr. Dibs submitted his request for decision review and subsequently his application with the UNRWA DT, the decision to separate him had not yet been taken. With respect to the first contested decision to postpone Mr. Dibs' separation on medical grounds until the end of the disciplinary process, the UNRWA DT found that the Commissioner-General had broad discretionary authority and Mr. Dibs had the burden to prove that the decision was unlawful or tainted by bias or prejudice. Since it was in the Agency's interest to discipline a staff member for established misconduct and it would have been difficult to discipline Mr. Dibs subsequent to separating him on medical grounds, the decision to postpone his separation pending the investigation was "wise and (...) not in contradiction with the Agency's regulatory framework".<sup>2</sup>

4. Regarding the second contested decision to place Mr. Dibs on SLWOP until his separation from service, the UNRWA DT found that Mr. Dibs had already exhausted his annual and sick leave credits in June 2015 and the Agency was actually accommodating to him since he was effectively paid salaries that he was not entitled to until the end of January 2016 despite being under investigation. The UNRWA DT considered that it was not unreasonable to suspend the payments in February 2016 until the conclusion of the investigation as the Commissioner-General had sufficient grounds to conclude that the disciplinary charge was *prima facie* well-founded within the meaning of UNRWA Area Staff Regulation 10.4. Considering that Mr. Dibs also did not provide evidence of any bias or arbitrariness on the part of the Agency, the UNRWA DT concluded that the Agency's decision to place Mr. Dibs on SLWOP was lawful.

4. As stated above, Mr. Dibs appealed the Judgment on 11 June 2017. The appeal was transmitted to the Commissioner-General the following day. On 27 September 2017, the Commissioner-General filed a motion requesting a waiver of the time limit to file an answer to the appeal. The Appeals Tribunal granted the motion by Order No. 296 (2017) dated 4 October 2017 and the Commissioner-General submitted his answer on 10 October 2017.

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<sup>2</sup> *Ibid.*, para. 33.

### Submissions

#### Mr. Dibs' Appeal

5. Mr. Dibs submits that the UNRWA DT erred on a question of law by “not making a judgment based on the governing law and the aspirations of the law governing employees and employers of UNRWA”. In case of doubt, a staff member should be granted a right that he or she is entitled to rather than being denied it.

6. He further contends that the UNRWA DT erred on matters of law and fact by “failing to assess the correct facts and the rules and regulations governing the case when coming to the conclusion that the Agency acted correctly when terminating [Mr. Dibs] on [] grounds of misconduct”. The UNRWA DT failed to acknowledge that Mr. Dibs was entitled to SLWP as a result of the service incurred injury and that the sick leave and annual leave should not have been deducted but rather credited back to him once it was found out that his injury was service incurred. The UNRWA DT also failed to consider that the process required for service incurred injuries under UNRWA Area Staff Rule 106.4 and UNRWA Area Personnel Directive A/6/Part. III was not carried out properly as there was an unexplained delay of one year before the medical board found that Mr. Dibs was unfit for work due to a service incurred injury. In fact, the decision to terminate Mr. Dibs on medical grounds was delayed in order to find evidence to terminate him for misconduct without the benefits he was entitled to since at the time he was found unfit for work there was no *prima facie* evidence of misconduct. Under the applicable legal framework, Mr. Dibs would only be ineligible to receive compensation for a service incurred injury if such injury was caused by misconduct. However, the investigated misconduct case was unrelated to the injury. Therefore, it was arbitrary for the Agency to tie the two issues together.

7. Moreover, Mr. Dibs asserts that the UNRWA DT erred on a matter of fact and law when it “did not take into consideration that there was no *prima facie* evidence that [Mr. Dibs] had committed misconduct when he was found unfit for work as a result of a service incurred injury”. Since there was no *prima facie* evidence of misconduct before February 2016 and he was to be considered innocent until proven guilty, it was unlawful to delay the separation on that basis. Instead, he should have been immediately separated on medical grounds and compensated accordingly.

8. Mr. Dibs further submits that the UNRWA DT erred on questions of law and procedure by holding that the “decisions to delay [his] (...) separation (...) on medical grounds and restricting him from receiving his rights [were] appropriately affected by the Agency and [by] not considering that it may have constituted abuse of power” within the meaning of paragraph 6 d) of UNRWA General Staff Circular 06/2010. Such abuse of power led to an investigation “which was affected by bias and prejudice through the knowledge that if they do not find evidence of misconduct they [would] have to pay disability benefit[s] (...) for 24 months and thus, it was in their interest to come to the conclusion that [Mr. Dibs] had committed misconduct”. The Agency thus violated the principle of good faith as established by the Appeals Tribunal jurisprudence.

9. Based on the foregoing, Mr. Dibs asks the Appeals Tribunal to vacate the UNRWA DT Judgment and “to request that the Agency remove the misconduct from his file and (...) separate him on medical grounds and [grant him] the required disability benefit to be dated back to when he was found unfit for work due to a service incurred injury”. He further requests “moral damages and compensation for the abuse of power he has suffered”.

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

10. The Commissioner-General submits that the UNRWA DT Judgment is, as a matter of law and fact, free of error. The UNRWA DT reviewed the relevant facts, was cognizant of the applicable legal framework, and, in a reasoned Judgment, dismissed the application. Mr. Dibs’ grounds of appeal are broad and generalized and he failed to identify the governing law upon which the Judgment is allegedly not based or to point to specific defects in the Judgment.

11. In particular, the UNRWA DT did not err in its conclusion that the Agency had acted correctly when it postponed the decision on separation on medical grounds until the end of the disciplinary process. By the time the medical board rendered its conclusion that he was unfit to perform his duties on 29 September 2015, the investigations into allegations of misconduct which were conducted from November 2014 had long commenced. It was, therefore, reasonable for the Commissioner-General to await the outcome of the investigation before determining the mode of separation and to retain the option of disciplining the staff member in case misconduct was to be found.

12. In addition, it is misleading for Mr. Dibs to suggest that this was a service incurred injury case. In fact, Mr. Dibs did not submit a claim for compensation as contemplated by UNRWA Area Staff Rule 106.4(1) or UNRWA Area Staff Personnel Directive A/6/Part. III, paragraph 5(b) to bring the matter within the service incurred injury provisions. As such, these provisions are inapplicable and the issue of placing Mr. Dibs on SLWP and crediting his annual and sick leave on this basis do not arise and the contention that the UNRWA DT ignored the “process” under these rules is patently misconceived. Any references to service incurred injury are misleading and amount to an introduction of new elements that have not been put forward before the UNRWA DT.

13. Moreover, it is disingenuous for Mr. Dibs to suggest that there was delay in the decision to terminate him on medical grounds with a view to terminating him for misconduct in the absence of *prima facie* evidence for misconduct at the time he was found unfit for work. The decision to postpone the separation decision accords with the Commissioner-General’s discretionary authority for all staffing matters and the interest of the Agency to discipline staff members when misconduct is established, as correctly noted by the UNRWA DT.

14. The Commissioner-General further asserts that the UNRWA DT did not err on the question of a *prima facie* case. No evidence was produced before the UNRWA DT to show that the determination of a *prima facie* case was not proper and the issue of postponing the separation on medical grounds was adequately addressed in the UNRWA DT Judgment.

15. The question of abuse of power was patently misconceived and, at any rate, no evidence was adduced before the UNRWA DT to demonstrate such abuse of power.

16. Finally, the Commissioner-General claims that the remedies sought by Mr. Dibs have no legal basis. In addition, the plea for moral damages was not before the UNRWA DT and is therefore a new matter being raised for the first time.

17. Therefore, he requests the Appeals Tribunal to dismiss the appeal in its entirety.

### **Considerations**

#### *The decision to postpone the separation on medical grounds*

18. UNRWA Area Staff Rule 106.4, under the heading “COMPENSATION FOR DEATH, INJURY OR ILLNESS ATTRIBUTABLE TO SERVICE” provides:

#### **PRINCIPLES OF AWARD AND ELIGIBILITY**

1. Compensation shall be awarded, in the event of death, injury or illness of a staff member which the Agency determines to be attributable to the performance of official duties on behalf of the Agency, except that no compensation shall be awarded when such death, injury or illness has been occasioned by:

- (A) The willful misconduct of any such staff member, including drunkenness;
- (B) any such staff member's willful intent to bring about the death, injury or illness of himself/herself or another.

2. Without restricting the generality of paragraph 1 of this rule, the death, injury or illness of a staff member shall be deemed to be attributable to the performance of official duties on behalf of the Agency in the absence of any willful misconduct or willful intent when:

- (A) The death, injury or illness occurred as a direct result of travel by means of transportation furnished by, or at the expense of the Agency, in connection with the performance of official duties; provided that the provisions of this sub-paragraph shall not extend to private motor vehicle transportation sanctioned or authorised by the Agency solely on the request and for the convenience of the staff member;
- (B) the death, injury or illness directly resulted from strikes, riots, or civil disturbances; provided that at the time of such death or injury the staff member was acting in his/her official capacity at his/her usual post of duty, or at another post consequent to an order given by a superior Agency official;
- (C) the death, injury or illness directly resulted from war, declared or undeclared; provided that at the time of such death or injury the staff member was serving at the Agency's request in a country other than that in which he/she was resident at the time of his/her initial appointment by the Agency, and would not have suffered such death or injury had it not been for his/her employment with the Agency.

...



**MEDICAL EXAMINATION**

8. Every person claiming under this rule or in receipt of compensation thereunder shall undergo such medical examination or examinations as the Commissioner-General may require, at such time or times as he may consider necessary.

**SOLE COMPENSATION**

9. The compensation payable under this rule shall be the sole compensation to which any staff member or his/her dependants shall be entitled from the Agency in respect of any claim falling within the provisions of this rule.

19. UNRWA Area Personnel Directive A/6/Amend. 12/Part. III (Compensation for Death, Injury or Illness) stipulates as follows:

...

(B) As applicable to all area staff members and manual workers, the provisions which enable these categories of Agency employee to continue in full pay status for a period of disability up to six months if necessary, following the injury or illness and thereafter in accordance with the provisions of the applicable Workmen's Compensation or Labour Law, are more liberal than the provisions of any such law.

(C) Therefore salary payment for all area staff members and manual workers, claiming an injury or illness attributable to service, may continue during absence from duty providing that such payments do not-

(i) continue for any period after a settlement of compensation payments is offered unless in accordance with the instructions of Director of Personnel and Administration.

(ii) continue for more than six months from the first day of absence due to the injury or illness claimed to be attributable to service unless in accordance with the instructions of Director of Personnel and Administration.

(D) Where permanent partial disability or permanent total disability is accepted by the Agency as attributable to the performance of official duties a settlement of the claim will be made in accordance with the provisions of the applicable Workmen's Compensation or Labour Law.

...

(B) On receipt of a decision that absence is due to a service incurred injury or illness, Personnel Officers will credit sick leave, advance sick leave or annual leave entitlements that have been debited, and debit special leave with pay, quoting the authority for this action.

20. Mr. Dibs contends that the UNRWA DT erred on matters of fact and law, by ignoring the fact that there is nothing in the rules and regulations that supports the delay to separate someone on medical grounds due to service incurred injury and being found unfit for work as a result, and that the action of delaying the separation and continuing to try to find evidence of a case of misconduct is an abuse of power.

21. Insofar as the Administration's decision to postpone the separation of Mr. Dibs on medical grounds until the end of the disciplinary process is concerned, the UNRWA Dispute Tribunal Judge decided that this decision was "wise" and "was not in contradiction with the Agency's regulatory framework".<sup>3</sup> The first instance Judge based his conclusion on the following grounds:<sup>4</sup>

... For all staffing matters the Commissioner-General has large discretionary authority, and the Applicant has the burden to prove that the decision to postpone his separation from service on medical grounds was unlawful, or tainted by bias or prejudice. It is in the Agency's interest to discipline a staff member when it is established that he or she has engaged in misconduct. Moreover, it is clear that, in October 2015, had the Agency decided to separate the Applicant on medical grounds with disability benefits, even though he was under an investigation for alleged misconduct, it would have been difficult for the Agency to afterwards discipline the Applicant for misconduct.

22. We do not agree with the conclusion reached by the UNRWA DT for the reasons set out below.

23. In our view, the above-quoted provisions of UNRWA Area Staff Rule 106.4 provide for a right of the staff member to be compensated in the event of death, injury or illness which the Agency determines to be attributable to the performance of official duties on behalf of the Agency. As expressly stipulated in law, the staff member is only ineligible for compensation for a service incurred injury when such death, injury or illness has been occasioned either by the willful misconduct of any such staff member, including drunkenness, or any such staff member's willful intent to bring about the death, injury or illness of himself/herself or another.

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<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*, para. 32.

24. Further, the Appeals Tribunal recalls its jurisprudence that the discretionary power of the Administration is not unfettered.<sup>5</sup> The Commissioner-General has an obligation to act in good faith and comply with applicable laws. Mutual trust and confidence between the employer and the employee is implied in every contract of employment. And both parties must act reasonably and in good faith.<sup>6</sup>

25. In the present case, the Appellant, prior to being separated from service on grounds of misconduct (on 26 July 2016), was found on 29 September 2015 by the Medical Board to be unfit to perform his duties as a Sanitation Foreman. His injuries (on his lower limbs) occasioned on 24 September 2014 when he was shot while in his office at Shufat Camp. Subsequently, between November 2014 and October 2015, an investigation was conducted by the Administration into allegations that Mr. Dibs was engaged in unauthorized outside activities in breach of his neutrality obligations during his employment as a Sanitation Foreman at the Shufat Refugee Camp. However, neither the subject of this investigation nor the subsequent termination of Mr. Dibs on grounds of misconduct (on 26 July 2016) were linked by the Administration, in any way whatsoever, to his service incurred injuries.

26. Therefore, under the specific factual circumstances of the case, and in light of the aforementioned legal provisions expressly providing for the staff member's right to be compensated for a service incurred injury, it was neither fair nor reasonable for the UNRWA Administration to delay its decision whether the injuries were work-related or not and to complete the relevant procedure and terminate Mr. Dibs on medical grounds until the pending investigation process concerning his alleged misconduct was over.

27. Having regard to all of the foregoing, the Appeals Tribunal finds that the UNRWA DT erred in law in determining that the Administration's decision to postpone Mr. Dibs' separation on medical grounds until the end of the disciplinary process was lawful.

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<sup>5</sup> *Hamayel v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-459, para. 17, citing *Pérez-Soto v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-329; *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-121 and *Asaad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-021.

<sup>6</sup> *Hamayel v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-459, para. 17.

28. In terms of judicial review of the administrative discretion, the jurisprudence of the Appeals Tribunal has been consistent and clear since its first sessions in 2010 establishing that:<sup>7</sup>

... When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.

...

... In exercising judicial review, the role of the Dispute Tribunal is to determine if the administrative decision under challenge is reasonable and fair, legally and procedurally correct, and proportionate. As a result of judicial review, the Tribunal may find the impugned administrative decision to be unreasonable, unfair, illegal, irrational, procedurally incorrect, or disproportionate. During this process the Dispute Tribunal is not conducting a merit-based review, but a judicial review. Judicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision. This process may give an impression to a lay person that the Tribunal has acted as an appellate authority over the decision-maker's administrative decision. This is a misunderstanding of the delicate task of conducting a judicial review because due deference is always shown to the decision-maker, who in this case is the Secretary-General.

29. The Appeals Tribunal has also ruled that:<sup>8</sup>

... Generally, when the Administration's decision is unlawful because the Administration, in making the decision, failed to properly exercise its discretion and to consider all requisite factors or criteria, the appropriate remedy would be to remand the matter to the Administration to consider anew all factors or criteria; it is not for the Tribunals to exercise the discretion accorded to the Administration. ...

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<sup>7</sup> *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, paras. 40 and 42.

<sup>8</sup> *Ejaz, Elizabeth, Cherian & Cone v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-615, para. 32 and *Aly et al. v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-622, para. 31, both quoting *Egglesfield v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-399, para. 27 (internal citations omitted).

30. Paragraph 1 of UNRWA Area Staff Rule 106.4 specifies that the Agency determines the circumstances in which sustained injuries are attributable to the performance of official duties. This means that the Commissioner-General has discretionary authority in deciding on this matter. Moreover, the relevant section of this Rule specifies certain principles and definitions and excludes particular injuries linked to a staff member's misconduct. A plain reading of this provision shows that it is the Agency that determines whether the injury is service incurred or not.

31. In view of the foregoing, the administrative decision to postpone Mr. Dibs' separation on medical grounds until the end of the disciplinary process is rescinded, and the case is remanded to the Agency to consider whether or not Mr. Dibs' injuries are attributable to the performance of his duties.

32. For the foregoing reasons, the appeal succeeds in this part.

*Moral damages*

33. Mr. Dibs asks the Appeals Tribunal to award him moral damages and compensation for the alleged abuse of power he has suffered which he claims was particularly detrimental for him due to the fact that he was unfit for work following a service incurred injury but was still put through a stressful investigation process.

34. However, Mr. Dibs has not provided any evidence in support of his claim of psychological suffering. In the absence of evidence of harm, this Tribunal determines that Mr. Dibs is not entitled to compensation in this regard.<sup>9</sup>

*The issue of the SLWOP and the suspension without pay*

35. UNRWA Area Staff Rule 105.2 provides in paragraph 1:

... Special leave with full or partial pay or without pay may be granted in the interests of the Agency in cases of extended illness, or for other exceptional reasons, for such period as the Commissioner-General may prescribe.

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<sup>9</sup> *Hasan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-541, paras. 22-24.

36. UNRWA Area Staff Personnel Directive PD A/5/Rev. 7/Part II (Special Leave) provides in paragraph 1.4:

.... Special leave may be approved for the following reasons:

1.4.1 **Illness.** Provided that sick leave, advanced sick leave and annual leave accruals have been exhausted, and provided the Agency considers that a limited extension of absence will give the staff member a reasonable opportunity of returning to duty at a foreseeable date. Such leave may be approved with full, partial, or without pay up to 90 days subject to a written recommendation of the Director of Health In Headquarters (Amman) and Chief, Field Health Programme in Field Offices; any extension beyond 90 days will require the authorization of the Director of Human Resources.

37. Turning to the issue of Mr. Dibs' suspension without pay as of February 2016, the evidence on record, as found by the UNRWA DT, shows that between November 2014 and October 2015, the DIOS conducted an investigation into allegations that Mr. Dibs was engaged in unauthorised outside activities in breach of his neutrality obligations during his employment as a Sanitation Foreman at the Shufat Refugee Camp and that his statement was taken during the investigation in June 2015 and in August 2015. Subsequently, Mr. Dibs was informed by a letter dated 2 November 2015 from the DUO/WB that the investigation was complete and was presented with a detailed summary of the findings and conclusions of the investigation as well as the supporting evidence, upon which he was invited to respond accordingly. In particular, in this letter, the DUO/WB informed Mr. Dibs that he was accused, *inter alia*, of having made unauthorised public statements and having been engaged in political activities/statements.

38. In the course of his appeal, Mr. Dibs claims that the UNRWA DT erred in fact and in law by concluding that he was not entitled to SLWP, when in fact he was entitled to SLWP as a result of the service incurred injury and thus, the deduction of sick leave and annual leave should not have been made in his case as the findings were that his injury was service incurred and that the medical board found him unfit for work. Moreover, he asserts that at the time of the postponement of the separation decision, there was no *prima facie* evidence to support the allegations of misconduct.

39. UNRWA Area Staff Regulation 10.4 provides:

If a charge of serious misconduct is made against a staff member and the Commissioner-General considers that the charge is ‘prima facie’ well founded or that the staff member’s continuance in office pending an investigation of the charge would prejudice the interests of the Agency, the staff member may be suspended, with or without pay, from his/her functions pending the investigation, such suspension being without prejudice to the rights of the staff member.

40. In the present case, as correctly found by the first instance Judge, at least the condition of a *prima facie* well-founded charge was met based on the abovementioned material evidence. In the circumstances of the case, the Appeals Tribunal considers that, given the nature and seriousness of the allegations against Mr. Dibs, it was not unreasonable for the Administration to wish to avoid the risk that Mr. Dibs’ continued presence in the office might jeopardize the investigation into possible serious misconduct. Consequently, the UNRWA DT rightly came to the conclusion that the decision to suspend Mr. Dibs without pay pending the outcome of the investigation was properly and lawfully effected.

41. Further, with respect to Mr. Dibs’ request for SLWP, the available evidence, as established by the UNRWA DT, suggests that Mr. Dibs—despite having exhausted his annual and sick leave credits already in June 2015 and being under investigation—was paid his salaries until the end of January 2016, and the payment of his salaries ceased when he was suspended without pay. Based on this record, the UNRWA DT concluded that it was not unreasonable for the Administration to cease the payments in February 2016.<sup>10</sup>

42. This Tribunal shares the view of the first instance Judge that, under the aforementioned legal and factual circumstances, the challenged administrative decision was reasonable and therefore lawful. The UNRWA DT gave careful and fair consideration to Mr. Dibs’ arguments regarding his request for SLWP, while he had not successfully discharged the burden of proving improper action on the part of the Administration. Indeed, he has not convinced the UNRWA DT, nor the Appeals Tribunal, that the Administration violated his rights in any way in that respect.

43. In view of the foregoing, Mr. Dibs’ appeal succeeds in part.

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<sup>10</sup> Impugned Judgment, para. 36.

**Judgment**

44. The appeal succeeds in part.

45. We hereby vacate the UNRWA Dispute Tribunal's rejection of Mr. Dibs' complaints regarding the administrative decision to postpone his separation on medical grounds until the end of the disciplinary process.

46. The aforementioned administrative decision is rescinded and the case is remanded to the Agency to consider whether or not Mr. Dibs' injuries are attributable to the performance of his duties.

Original and Authoritative Version: English

Dated this 27<sup>th</sup> day of October 2017 in New York, United States.

*(Signed)*

Judge Raikos, Presiding

*(Signed)*

Judge Thomas-Felix

*(Signed)*

Judge Murphy

Entered in the Register on this 8<sup>th</sup> day of December 2017 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar