UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2020-UNAT-1036

Isra Basam Mansour

(Appellant)

v.

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

(Respondent)

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge Sabine Knierim Judge Jean-François Neven
Case No.:	2020-1352
Date:	26 June 2020
Registrar:	Weicheng Lin

Counsel for Appellant: Iyad Bataineh

Counsel for Respondent: Rachel Evers

JUDGE GRAEME COLGAN, PRESIDING.

1. Isra Basam Mansour (the Appellant) appeals the decision of the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or Dispute Tribunal and UNRWA or Agency, respectively) dismissing her application challenging the lawfulness of the Agency's termination of her employment on medical grounds.

2. For reasons set out below, we allow the appeal in part and remand specified issues to the UNRWA DT with directions for re-decision.

Facts and Procedure

3. Ms. Mansour was a schoolteacher employed by UNRWA, initially on a fixed-term appointment, but subsequently converted to what is known as a "temporary indefinite appointment" at a school in the Jordanian city of Irbid. On 15 October 2016, Ms. Mansour suffered a work-related injury and was then on sick leave on full pay for a period of approximately one year until 15 October 2017.

4. On 13 June 2017, the Agency convened a Medical Board to evaluate Ms. Mansour's fitness for continued service. The Board concluded that she was unfit for continued service as a teacher, but that she was fit for office work. The Agency accepted the Board's conclusions and, on 21 November 2017, advised Ms. Mansour that her services would be terminated on medical grounds with effect from 7 December 2017. The Appellant requested a review of this decision but the Agency's initial intention to dismiss was affirmed.

5. It took the Agency a long time to determine whether Ms. Mansour's injury was work-related and, therefore, whether she qualified for the relevant compensation. It was only shortly before the UNRWA DT came to decide her application (in September 2019) that the Agency accepted that Ms. Mansour's disability resulted from a work-related injury and so triggered her entitlement to consequential monetary compensation.

6. In Judgment No. UNRWA/DT/2019/057, the Dispute Tribunal considered several grounds of challenge advanced by Ms. Mansour. Her first was that although she had been recommended as fit for office work, Ms. Mansour was not appointed to a particular vacancy for an administrative assistant in the Agency's Irbid Area Office. The UNRWA DT accepted the Respondent's submission that there was no regulatory or other obligation on the Agency to find an

alternative position or post for a staff member found unfit to continue to serve in his or her current post. It held, however at paragraph 26 of its Judgment: "[I]n the event that a staff member is terminated because no other vacant post can be found, this decision can be contested." The Tribunal further concluded that Ms. Mansour did not have the necessary specified experience in administrative work to be appointed to the vacant administrative assistant post to which she claimed she could and should have been appointed.

7. Next, in response to Ms. Mansour's claims to post-termination monetary entitlements, the Tribunal said that Ms. Mansour had not challenged by rejoinder claim, the Respondent's 13 June 2018 assertion in his reply to her application, that these were "still pending" but were "expected to be effected in due time". The Tribunal assumed in these circumstances that these claims were no longer in issue.

8. At paragraph 30 of its Judgment, the Tribunal dismissed Ms. Mansour's application by concluding: "It follows from the foregoing that the Applicant failed to produce any evidence that the decision to terminate her appointment on medical grounds was exercised arbitrarily or capriciously, was motivated by prejudice or other extraneous factors or was flawed by procedural irregularity or error of law."

Submissions

Ms. Mansour's Appeal

9. First, the Appellant says that the UNRWA DT did not address with sufficient legal reasoning or clarity, all relevant facts of the case (including reviewing the documents adduced) or the Appellant's claims. It is submitted that the Judgment simply copied and reiterated the Respondent's submissions.

10. Next, the Appellant says that the UNRWA DT failed to determine the amount of compensation due to her based on her losses arising from the Agency's disregard of the Medical Board's recommendations. In particular, she says that the Tribunal did not take account of the fact that she was the sole provider for her husband and children including that she was entitled to a dependency allowance as a result of her husband's disability and health status. It was unreasonable to terminate her appointment leaving her with no income without putting any effort into reassigning her to an office post, especially in view of her 10-year tenure and the fact that the injury which disabled her was work-related.

11. The UNRWA DT erred in concluding (at paragraph 25 of its Judgment) that she did not contest the Medical Board's conclusion. She says she had no opportunity to review the Board's medical report and there was no evidence that she received a copy of it. Furthermore, this report was not issued by specialised physicians but rather by general practitioners and it did not refer to another medical report issued by Jordan Hospital concluding that she had suffered a partial disability of 50 per cent of occupational functioning of her affected limb. These failures lead to a manifestly unreasonable decision to terminate her appointment.

12. Contrary to the conclusions of the UNRWA DT, the Appellant had contested the process of the termination of her appointment and in particular by asserting that the decision was hasty, arbitrary and premature. In particular, the Appellant relies on the very belated assessment by the Agency that her injury was work-related reached substantially after the termination of her appointment and the bringing of her challenge to that decision. She says that although there were several suitable office work posts available before the decision was made to end her appointment, some at least of these (including some that were reserved exclusively for local staff) remained available after that decision was taken. After her appointment was terminated, she was not considered to be "local staff". She submits that the Agency should have appointed her to one of these, at least while it was still assessing whether her injury was service-incurred.

13. Next, the Appellant says that the UNRWA DT concluded erroneously that her claim to and receipt of entitlements, upon the Agency eventually concluding that her injury was service-related, was no longer in issue because she had not filed a rejoinder claiming non-receipt of these entitlements. The non-submission of such a rejoinder does not constitute acceptance or approval of a respondent's reply. In her case, the Appellant's position was made clear in paragraph 8 of her application before the UNRWA DT, and also in paragraph 3 of her subsequent motion to the Tribunal that her claims be expedited. Thus, the Tribunal failed to acknowledge and act upon the Agency's breach of Area Staff Rule 106.4 of Chapter VI of the Staff Regulations.

14. The UNRWA DT wrongly held, at paragraph 29 of its Judgment, that the question whether the Appellant's injury was service-related or attributable, was not a contested issue. This affects the procedure that should have been applied by the Agency before dismissal, and the amount of compensation due to the Appellant under Area Staff Rule 109.7. The Appellant also relies on Articles 27-29 of the Social Security Law of Syria.

15. Next, the Appellant submits that the Tribunal erred in finding that she had failed to adduce evidence that the decision to terminate her appointment was arbitrary or capricious. She says that documents put before the UNRWA DT established that this decision was arbitrary and flawed procedurally on several grounds, including that the decision was premature and hasty; that it was in breach of Staff Rule 106.4 and/or the Syrian Social Security Law; it ignored the recommendation of the Medical Board that the Appellant was fit for office work but did not wait for the availability of such a post; its exercise was an abuse of power in that its effects on the Appellant and her family were more damaging than those of waiting for the availability of an office post including one suited to an expert in mathematics as the Appellant is; that the Appellant was not given access to the Medical Board's report and thereby an opportunity to contest its findings including by reference to a report by her attending physician; and finally that the termination of her appointment was effected during the period of her sick leave, and before the completion of her treatment.

16. The Appellant says that the UNRWA DT failed to exercise its jurisdiction to call for an oral hearing into the facts of the case and did not respond to the Appellant's motion filed on 5 December 2018 to initiate the hearing of the case, which request was repeated at least once in September 2019 after the application had been before the UNRWA DT for almost a year. On 30 September 2019, the Tribunal issued its Judgment very soon after the Appellant's final request for expedition, but in contravention of Article 9(1) and (2) of the Statute of the UNRWA Dispute Tribunal relating to the production of evidence and personal appearances.

17. The Appellant seeks revocation or reversal of the UNRWA DT's Judgment, or its modification including by direction that the Tribunal take account of particular evidence. She seeks an award of compensation for the effects of the wrongs suffered by her, including the exercise of this Tribunal's discretion to award more than two years' net base salary because of the exceptional circumstances of her case. She seeks rescission of the decision to terminate her appointment and to direct her relocation to an office work post and/or to allow her to apply for such posts as she is able to fill and as are reserved for UNRWA staff members.

The Commissioner-General's Answer

18. The Respondent denies that the UNRWA DT failed to exercise its jurisdiction or to decide the case unreasonably as the Appellant alleges. He points to the absence of a need by the UNRWA DT to address all of the Appellant's claims, especially when they had no merit.[1]

19. The Appellant's criticism of the Tribunal's decision in respect of the Medical Board's recommendation and of the Agency's failure to appoint Ms. Mansour to an alternative post, is misconceived. The UNRWA DT addressed these matters at paragraphs 25 to 27 of the Judgment and found, in particular, that the Appellant was not appointed because she failed to fulfil the work experience requirements of the post to which she claims she should have been appointed.

20. In relation to the claims to compensation, the Respondent says that it is clear that these were understood (at paragraph 18 of the Judgment for example) and that it properly considered that these were no longer in issue in the absence of a rejoinder filed by the Appellant claiming that these had not been paid, after the Respondent's admission that they were still outstanding but that he expected them to be paid "in due time".

21. The UNRWA DT correctly found that the Appellant's claim to compensation for a service-related injury was not a decision that was contested, so that there could have been no basis for an award. Her only claim was that she was not offered a post as an administrative assistant.

22. In response to the Appellant's claims that the decision to terminate her appointment was hasty, arbitrary and premature, the Respondent says that it appears that these procedural issues appear not to have been "clearly canvassed" before the UNRWA DT because Ms. Mansour did not so allege. The Respondent accepts that by her motion for expedited consideration, she had raised the issue that the Agency had then still not decided whether her injury was service-related – see paragraph 29 of its Judgment. The issue was, however, raised in the context of a request for expedited consideration and no arguments were advanced to suggest that the impugned decision of UNRWA was hasty, arbitrary or premature. These are now advanced as an attempt to re-argue Ms. Mansour's case, contrary to case

[1] *Abu Jarbou v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-292, para. 47.

authority disallowing this.[2] These are new elements not previously advanced and impermissible on appeal.[3]

23. In relation to the grounds of appeal relating to the Medical Board's report, the Respondent contends that the Appellant did indeed contest the decision to terminate her appointment on medical grounds but did not contest the Medical Board's conclusions. The crux of the Appellant's complaint before the UNRWA DT was the fact that she was not offered the post of an administrative assistant after termination based on the Board's conclusions.

24. The Respondent submits that the Appellant has purported to raise new grounds of challenge that were not put before the Tribunal, including that the Board was constituted by general practitioners but not specialists, and that the Board's report made no reference to the Jordan Hospital report. The Respondent submits that the Appellant is not entitled to rely on such new grounds, citing the judgment of this Tribunal in *Planas* at paragraph 13. In any event, the Board's recommendations are not in conflict with the Jordan Hospital report.

25. As to the Appellant's complaint that the UNRWA DT wrongly expected her (represented as she was by counsel) to have filed a rejoinder if unpaid compensation was still in issue at any time before the hearing, the Tribunal was entitled to find as it did that this matter was no longer in issue.

26. There was no basis for the award of compensation by the Tribunal in the absence of any finding by it of liability against the Agency. Further, any claim to compensation pursuant to Area Staff Rule 106.4 and Staff Regulations 6.1 to 6.4, is misconceived because the determination of such compensation is for the Agency, not for the UNRWA DT.

27. The Respondent says that, contrary to the Appellant's case, on 14 June 2018, the respondent's reply to the UNRWA DT included a copy of the Medical Board's report which was sent to Ms. Mansour's counsel thus giving her an opportunity to contest its findings.

[2] *Terragnolo v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-445, para. 19.
[3] *Planas v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-049, para. 13.

28. In relation to the plea by the Appellant that termination was effected during her sick leave and before the completion of her treatment, the Respondent says that the "provisions of law and justice and equity" relied on by the Appellant are not specified and do not appear in the relevant UNRWA regulatory framework. Termination during sick leave is not prohibited.

29. As to the failure of the UNRWA DT to hold an oral hearing, these are discretionary considerations under Articles 11 and 14 of the Tribunal's Rules of Procedure and in respect of which the Appeals Tribunal has afforded a broad latitude to the Dispute Tribunal.[4]

30. Finally, the Respondent submits that the Appellant's claim to moral damages is a new remedy not sought from the UNRWA DT and so is not receivable.[5]

Considerations

31. Because the Appellant's grounds of appeal are numerous and, as presented, repetitive and non-sequential, we will structure our decision of the appeal as follows. First, we will make some general remarks about the scope of our powers on an appeal such as this. Second, we will address those aspects of the appeal challenging the UNRWA DT's methodology in deciding her case. Third, we will determine her challenges to the Tribunal's decision about the lawfulness of her dismissal including Medical Board issues. Finally, we will deal with the grounds relating to how her claims to compensation arising from her disability were dealt with by the Tribunal.

32. Addressing the Appellant's grounds of appeal generally, it is necessary to state that the UNRWA DT was bound only to decide the case presented to it by Ms. Mansour. It cannot be criticised now for failing to address issues that were not then before it. And it follows that the parties are not now entitled to raise additional issues that they could have, but for whatever reason did not, put before the Dispute Tribunal. Nor do we substitute our views for those of UNRWA as to what should or should not have been done with Ms. Mansour. Our task is to identify and correct error on the part of the Dispute Tribunal if that is established.

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[4] *Namrouti v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-593, para. 33.
[5] *Planas v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-049, para. 13.

33. Ms. Mansour's first particular ground of appeal challenging the UNRWA DT's methodology is that, in effect, it simply copied and pasted the Agency's submissions to form its judgment and did not address factual issues raised by her or consider her case. However, the Appellant's submissions do not identify any instances of these alleged deficiencies. If the UNRWA DT had done as Ms. Mansour contends, then it would not have been acting judicially. It is not, however, for the Appeals Tribunal to attempt to divine the particulars supporting a very broad submission such as this: there is an onus on an appellant making such a serious submission to persuade us, under Article 2(1)(b) of our Statute that the Dispute Tribunal failed to exercise the jurisdiction vested in it, that it made an error of law (Article 2(1)(c)), or that it committed a procedural error affecting the decision of the case under Article 2(1)(d)). A reading of the Appellant's submissions to the UNRWA DT and of its Judgment does not support the submission for the Appellant of a "cut and paste" of the Respondent 's submissions into the impugned Judgment. The Appellant's case focussed, first but not exclusively, on her contention that she should have been appointed to an Administrative Assistant post in the Irbid area which she claimed had been advertised at the time of the termination of her employment. Ms. Mansour had also claimed that she was given insufficient notice of her separation from service and did not receive her full monetary entitlements upon termination.

34. We do not agree that, in general, the UNRWA DT failed to exercise its jurisdiction to address the principal complaints she brought to it. There are, however, some instances where we conclude it did fail unjustifiably to address some issues that were before it and in respect of which Ms. Mansour was and is entitled to a reasoned decision.

35. It is difficult to escape the assumption that the Tribunal responded very promptly to Ms. Mansour's repeated requests of the Tribunal and especially after the last of these made in September 2019. That had been for an expedited hearing in view of the long delays by the Agency in deciding whether her injury was work-related and therefore whether she was entitled to relevant compensation. The Tribunal responded to that motion by delivering its compact Judgment on 30 September 2019.

36. The Appellant says that contrary to the conclusion of the UNRWA DT, she did indeed contest the termination of her appointment alleging that it was hasty, arbitrary and premature. That is said by her to be illustrated by the fact that the Agency only concluded that her injury was work-related long after she had been dismissed and had challenged that decision in the UNRWA DT. However, an examination of her application to the Dispute Tribunal does not

reveal a viable ground of challenge. Further, even if that ground had been advanced, it would not have succeeded. The Medical Board process was not to consider how her injury occurred or in what circumstances (work-related or not) but rather whether she was fit to resume work as a teacher and, indirectly, whether she might be eligible for compensation. Whether the injury was work-related concerned primarily issues of compensation. It cannot be said that the Medical Board's assessment, report and recommendations made more than a year after the injury event were premature or hasty. Nor, given the clear disability reported on, could it be said to have been arbitrary. This ground of appeal must be and is dismissed.

37. As to Ms. Mansour's complaint that the UNRWA DT wrongly refused to afford her an in-person hearing, that it did not respond to her motion filed on 5 December 2018 to initiate the hearing of the case, and that immediately after she reiterated that motion in September 2019 it issued its less-than-comprehensive decision, we decide as follows. First, the Tribunal has a broad discretion whether to hold a hearing in person or to decide a case on the papers as happened here. Although broad, that discretion is not absolute or unfettered. Among other tests, it must be exercised in the interests of justice, not arbitrarily or perversely and it must take account of relevant considerations and not of irrelevant ones. Although the UNRWA DT's Judgment sets out, in chronological sequence, some of the steps taken to bring the case to decision, there is no reference to those relied on by the Appellant except that it records that her motion for an expedited hearing filed in September 2019 was referred to the Respondent on the same date. There is no reference to whether the Respondent replied and if so, what the Agency said. If it did not reply, there is no reference as to why the UNRWA DT did not wait for its response.

38. There is no explanation why a case filed on 14 May 2018 and to which the Agency responded comprehensively on 13 June 2018, waited unheard for some 15 months until late September 2019. We recognise that there may be a logical and acceptable explanation for this delay and how it came to be decided, as it was, a day after a second motion was filed for an expedited hearing. Unfortunately, no explanation is contained in the Judgment and has not been elucidated by the Respondent.

39. The answer to the Appellant's contention that these steps breached Article 9(1) and (2) of the Tribunal's Statute requires consideration of those provisions. They are:

> **Article 9**
>
> 1. The Dispute Tribunal may order production of documents or such other evidence as it deems necessary.
>
> 2. The Dispute Tribunal shall decide whether the personal appearance of the applicant or any other person is required at oral proceedings and the appropriate means for satisfying the requirement of personal appearance.

40. These address the production of evidence, including documents (paragraph 1) and whether an applicant or "any other person" (who may potentially include an applicant's representative or counsel) is required at "oral proceedings" (a hearing in person as opposed to a consideration of the case solely on papers filed). Whether a case is to be the subject of such an oral hearing is governed by Article 7 of the Statute which refers the question to Staff Regulation 11.5 (UNRWA DT Rules of Procedure). This provides relevantly:

> **Article 11 Hearing**
>
> 1. The Judge hearing a case may hold oral hearings.
>
> 2. The Registrar shall notify the date and time of a hearing to the parties in advance, and confirm the names of witnesses or expert witnesses for the hearing of a particular case.
>
> 3. In case of an oral hearing, the parties or their duly designated representatives must be present either in person or by video-link, telephone or any other electronic means.

41. This provision is likewise broadly discretionary but subject to the same fetters as we have outlined at paragraph 37. There is no suggestion that Ms. Mansour, through her counsel, expressly requested an oral hearing but nor is there any indication that the UNRWA DT made a decision not to convene an oral hearing and conveyed this to the parties. We note the default position in this Appeals Tribunal that unless a party seeks an oral hearing (in which case this Tribunal will give a decision in response, usually with brief reasons), hearings are on papers. But the UNRWA DT is a first instance tribunal before which the usual expectation is that there will be an in-person hearing, even if not of evidence, then at which a party or that party's representative has an opportunity to make submissions and answer questions from the Tribunal arising from their submissions.

42. In answer to the submission relating to the UNRWA DT's failure or refusal to hold an in-person hearing, the Respondent relies on the discretion afforded to the Dispute Tribunal and on the jurisprudence on the subject illustrated by the case of *Namrouti*. Although that case emphasises the broad discretion allowed to the UNRWA DT in case and hearing management, which we accept, it is distinguishable in the sense that it was a case in which a full oral in-person hearing was allowed. At issue in *Namrouti* was the Tribunal's ability to direct its procedure within that hearing.

43. We consider the Dispute Tribunal erred in declining Ms. Mansour's clearly implicit request for a hearing in person, at least without having considered it and giving reasons why it should not occur. But the just course, in view of our decision to remand some matters to the UNRWA DT for reconsideration, will be the allowing of an opportunity to rectify that error, at least for those remanded matters, by making a direction as we do that the Dispute Tribunal is to consider any express application Ms. Mansour may make for an oral hearing and to decide such application including with reasons.

44. The Commissioner-General's response generally to the complaint that the UNRWA DT failed to address a number of Ms. Mansour's claims is to say, in reliance on the *Abu Jarbou* judgment, that it does not need to do so, especially when such claims are unmeritorious. We note, however, that the statement ("It is not necessary for any court, whether a trial or appellate court, to address each and every claim made by a litigant, especially when a claim has no merit."[6]) relied on by the Respondent was preceded in that judgment with a reference to the complaint that not every claim had been addressed "in detail". The Appeals Tribunal in that case relied on an earlier statement in *Ahmed*. In that case, the Appeals Tribunal noted simply at the conclusion of its Judgment that the Appellant made "other assertions which do not merit any reasoned opinion, as they are ill-founded, and we have the discretion to summarily dismiss them".

45. While we (and the Dispute Tribunal) have the ability to treat repetitive and patently argumentative and meritless submissions in this manner, serious, substantive claims advanced by counsel for a party should not generally be ignored completely. Nor should this be an *ex post facto* excuse for a refusal or a failure to address a claim that should have been dealt with, even briefly. We do not think those claims the UNRWA DT elected or failed to

[6] *Abu Jarbou v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-292, para. 47.

address in this case fall into the class of patently rejectable submissions covered by these authorities. A failure to address a matter in issue may amount to a reviewable failure to exercise jurisdiction.

46. But, having identified error on the part of the Tribunal in this regard, we do not consider any other remedy is appropriate than to express our expectation that the case will be dealt with properly by the Tribunal upon remand.

47. We move now to the challenge to the Tribunal's disposal of Ms. Mansour's claims about her dismissal. These necessarily include references to the role and report of the Medical Board. Before the UNRWA DT, Ms. Mansour did not contest the gravamen of the Medical Board's assessment that, more than a year after her workplace injury, she was unfit for continued work as a teacher. Her own medical report substantially agreed with this diagnosis. The UNRWA DT's Judgment focussed rather on her complaint of non-appointment to an alternative role.

48. The Appellant says that the Respondent both ignored the recommendations of the Medical Board and did not wait for the availability of an administrative office post to which she could be appointed. She says that the Agency should have weighed the countervailing effects of waiting for a post to become available suited to her qualifications and experience, with the effects of acting as and when it did on her and her family Connected to this also, the Appellant says that she was not given access to the Medical Board's report and, thereby, an opportunity to contest its findings by reference to a report from her own physician and that her employment was terminated during a period of sick leave and before completion of her treatment.

49. The Agency asserted that Ms. Mansour did not fulfil the qualifications for the administrative post which was then vacant (an Administrative Assistant Grade 07). These were the successful completion of a two-year post-secondary course in office and business practice "or related discipline" plus three years' experience of administrative work. Her application to UNRWA asserted that Ms. Mansour held the following qualifications and experience: BSc and an MA degrees in Mathematics; 11 years' experience with UNRWA including in administrative tasks; she was the holder on an ICDL certificate from Cambridge University in the UK with marks at a rate of 96.29 per cent; she was said to have mastered "Latex and Mat Lab [systems]"; scored highly in "TOEFEL, ITP"; she had completed a course in communication in English; she was also said to have passed optional courses in "EP" and school health. She asserted that these qualified her to fill the vacant post of Administrative Assistant she identified. As we

understand her case, it is that UNRWA was aware of these qualifications and experience. The UNRWA DT appears to have found in favour of the Agency on the ground that Ms. Mansour did not have three years of administrative work experience. Although it did not make specific findings about this, the UNRWA DT did not contradict the Agency's additional conclusion set out in its letter rejecting her review application. This was that the position was available only to staff of the Irbid Area Office.

50. Despite the Dispute Tribunal not addressing this evidence, it is also clear to us from the documents adduced to it, that the position to which Ms. Mansour wished to be appointed was not only restricted to staff working at the Irbid Area Office, but, importantly, that applications for the vacancy closed on 15 August 2017, that is more than a month before the Medical Board determined that she was not fit to return to her teaching role. By the time the Agency made its decisions about her future later in 2017, any chance of that appointment, irrespective of her qualifications for it, had passed. That having been the only administrative position identified evidentially to the UNRWA DT, it cannot now be said that Ms. Mansour was wrongly deprived of it. The UNRWA DT was entitled to reach the conclusion it did on this issue, albeit for different reasons to ours. We conclude that the UNRWA DT's decision about this claim has not been shown to have been wrong.

51. It is correct that the Dispute Tribunal did not address Ms. Mansour's claim that she had been given insufficient notice of her separation from service as she says was required by Area Staff Rule 109.7. It should have done so. Had it addressed this claim however, we are confident it would have found that the letter to her of 21 November 2017 advising her of the termination of her services acknowledged that she was to be paid for the balance of the required 30-day period. Area Staff Regulation 9.3(B) permitted this. In the absence of evidence that she was not so paid, this ground of appeal must fail despite the UNRWA DT's absence of reference to it in the Judgment.

52. Next, is the question whether the UNRWA DT erred in considering that Ms. Mansour did not contest the Medical Board's conclusions. While she did contend that she did not see those conclusions until the Respondent filed his reply in the UNRWA DT, we do not understand that the Appellant alleged that the Board's conclusions were wrong. By the time she came to present her case to the UNRWA DT, Ms. Mansour had a copy of the Medical Board's assessments and recommendations. So, the UNRWA DT was correct at paragraph 25 of its Judgment that there was no contest about this. It is too late for the

Appellant to now, for the first time, launch an attack as she does on the Board by alleging that it was wrongly constituted of general medical practitioners rather than specialists, and that it did not refer to a report that had been submitted to it from Jordan Hospital which concluded that Ms. Mansour was partially disabled by a 50 per cent loss of occupational functioning of her affected limb.

53. Next, the Appellant says that there were several suitable administrative posts available to her and although some of these arose before the Medical Board reported, some remained open, and others arose, after the decision was made to end Ms. Mansour's role as a teacher. However, only one position was identified by the Appellant and even if she may have been qualified for it, this was both restricted to staff working at the Irbid Area Office (apparently affected by a potential restructuring) and, in any event, closed before the Medical Board's assessment was known and the decision was made about Ms. Mansour's future as a teacher.

54. The Appellant's case is that Ms. Mansour was disqualified from being appointed to this position because, after her service as a teacher was terminated, she was no longer considered to be "local staff". We do not agree. The restriction on applicants for that position was not by reference to whether someone was "local staff" but rather that they worked at the Irbid Area Office which was the subject of a staff review. So, the preference was for people affected, at least potentially, by that event and not to other persons including the Appellant. This ground of appeal is likewise without merit.

55. On the point whether the Agency should have waited until a suitable administrative post became available to her before terminating her employment, we conclude (again because we have said so in other cases recently[7]) that there is no regulatory obligation on the Agency to find an alternative position for a disabled staff member or even to delay any finality of dismissal to enable one to be found for the disabled staff member. Whether that should be so, especially for long-serving staff for whom and on whose family the effects of unemployment will be severe, is not for us to determine. In these UNRWA circumstances however, this ground of Ms. Mansour's appeal must fail.

[7] See, for example, *Abu Fardeh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2020-UNAT-1011.

56. On the point of access to the Medical Board, the evidence shows that Ms. Mansour was notified in writing of the establishment of the Board and of her opportunity to submit her own medical assessment(s) to it. Likewise, she was informed of the Board's assessment in its report after that was submitted to the Agency, although it appears she was not given a copy of the report. The Agency did not ignore the recommendations of the Board – it accepted the recommendation about Ms. Mansour's continuing unfitness to work as a teacher and also accepted that she could work in an office administrative role. The Board, appropriately, did not go further and the decisions arising from those medical recommendations were for the Agency to make and, if necessary, to answer for. It seems clear that the Board did take into account Ms. Mansour's own medical assessment from the hospital: it referred to it in its report to the Agency and there does not appear to be a significant difference between the two assessments of Ms. Mansour's disabled condition and medical prognosis. Finally, any termination of employment for medical reasons is likely, perhaps inevitably, to be during a period of sick leave and perhaps also before any surgical treatment for this condition of disablement. In Ms. Mansour's case, there was no suggestion that treatment for the consequences of her injury might have restored her to sufficient health to have enabled her to return to teaching within a reasonable period. These grounds of challenge likewise must fail.

57. We turn next to Ms. Mansour's claims to entitlements to compensation for injury. The Agency accepted before the UNRWA DT that these were still pending but were expected to be made "in due time". We infer that, even at this time 12 months after her injury, after her unsuccessful decision review and after she had filed in the Dispute Tribunal, a decision had not been made by the Agency whether the injury had been incurred in the course of her work for UNRWA. In the absence of a rejoinder to the Agency's vague assertion of possible future payment, the UNRWA DT assumed that this claim was no longer in issue and did not decide it. We return to this procedural step and the consequences of its absence later in this Judgment. That was despite, in September 2019 and only very shortly before the Tribunal issued its Judgment, Ms. Mansour filing a motion for expedited consideration of her case[8] reiterating that no decision had even then been made whether the injury was work-related. The UNRWA DT mentioned that a letter from the Agency dated February 2018 had confirmed that the accident was provisionally regarded as service-incurred, but this could not reasonably have been interpreted as a final decision of the question which was still awaited by

[8] It appears that this must have been granted both unilaterally and very promptly as the UNRWA DT's Judgment was issued almost immediately.

Ms. Mansour and upon which payment of compensation depended. In any event, the Tribunal held that any claim about the provenance of the injury was not for decision in its proceedings.

58. Ms. Mansour's claims to the Dispute Tribunal included for a number of payments to which she said she was entitled but had not been paid. Again, we conclude that the UNRWA DT should have addressed these but did not, even briefly and succinctly. When one has regard to the Agency's letter to Ms. Mansour of 13 February 2018 declining her application for review of the decision to terminate her services, it is apparent that she had raised these matters with the Agency. They were addressed in that letter by a combination of concessions, explanations and refusals. It appears, however, that the Appellant's pleadings were drawn and put before the UNRWA DT without regard to the contents of that letter which contradicted those claims. We use two examples: first, although her claim to the UNRWA DT included an assertion that her membership of the Agency's medical insurance scheme had been cancelled without consultation or explanation, the letter of 13 February confirmed the Agency's decision to allow her to continue to participate in the scheme, albeit at her own expense. Second, although her claims to the Dispute Tribunal included one for an incremental allowance which it was discovered had been overlooked as the result of a technicality, the Agency had assured her that this would be paid to her. It was nevertheless the subject of her written claims to the Tribunal. While, therefore, the UNRWA DT should have addressed these, even briefly in its Judgment, we are not satisfied there was any loss to Ms. Mansour by its failure to do so. Despite the Tribunal failing to address issues put before it, the evidence of their inevitable failure on their merits causes this ground of appeal to be likewise unsuccessful.

59. Did the UNRWA DT fail, erroneously, to determine the amount of compensation payable to Ms. Mansour including particularly a dependency allowance payable because of her husband's disabled health status and her children's dependence on her? Unfortunately for the Appellant, a claim to a disability allowance does not appear in the comprehensive application filed by her with the UNRWA DT. Although she may (or may not) be entitled to that, it was not an issue before the Dispute Tribunal and so cannot now be introduced as a claim on appeal.

60. Next is the submission that the UNRWA DT wrongly excluded from consideration Ms. Mansour's claims to disability compensation entitlements because, it said, she had not filed a rejoinder to the Agency's defence which included that these claims were still under consideration. Such is the very brief and generalised dismissal of this claim by the UNRWA

DT, that decision of this point necessitates a close examination of the state of the pleadings there and the Tribunal's pleadings process.

61. First, we analyse the pleading process. Pursuant to Article 7 of the Statute of the UNRWA Dispute Tribunal, this is set out in Staff Regulation 11.4 which in turn refers to the UNRWA DT Rules of Procedure set out in Staff Regulation 11.5. There is no reference whatsoever in these Regulations to a "rejoinder" process as referred to by the UNRWA DT by which an applicant who disagrees with assertions made by a respondent in the respondent's reply filed under Article 6 of Staff Regulation 11.5, must or even may, file a "rejoinder" challenging the reply. A litigant in person or counsel representing a party looking for and at the relevant rules of procedure will find no reference to a rejoinder, let alone a requirement to file one or a presumption in law if one is not filed. It must follow, therefore, that the disputed issues as set out in the primary pleadings (the Article 4 application and the Article 6 reply) defined what was for decision by the Tribunal. If there had been doubt about that, it was incumbent on the Tribunal to enquire of the parties, either in writing or at the hearing, although in this case we note that the Tribunal declined the applicant her wish for a hearing in person. In any event, the UNRWA DT held against the Appellant the fact that she had not challenged by rejoinder matters asserted by the Respondent with which she disagreed.

62. Next we examine what was actually pleaded by the Respondent against the backdrop of that process we have just described. The Agency's response to Ms. Mansour's claims for compensation for injury was, in effect and summary, to say, "we are still working out your entitlement to these". It follows that at that time, that she may or may not have expected to receive her entitlements and even if she had received these, that they would have been her correct entitlements.

63. In these circumstances, it was wrong of the UNRWA DT to have treated Ms. Mansour's claims in this regard as having been abandoned or settled because she failed to file a pleading for which there is no regulatory provision or presumption in law of acceptance of the pleaded reply in the absence of a rejoinder. In our conclusion, the Appellant was entitled to have her claims decided by the Tribunal on the pleadings that were before it and if there was any doubt about them, the Tribunal ought to have resolved that doubt by enquiry.

64. The UNRWA DT erred in law in applying the flawed assumption that because she had not filed a rejoinder, Ms. Mansour had accepted both the Agency's assurance that she would be paid and that what she would be paid would be correct. It is difficult from the material we have to ascertain whether, now, Ms. Mansour still claims these sums from the Agency. The just way to address the UNRWA DT's error and the uncertainties about the continued existence of this claim, is to remand this issue to the UNRWA DT with recommendatory suggestions. These will be set out in the penultimate paragraph to our considerations.

65. Not unassociated with this point, is the Appellant's next one, that the UNRWA DT held wrongly at paragraph 29 of its Judgment that the question whether her injury was service-related, was not contested. Rather than being uncontested, we would describe it as unresolved at that point. However, the fact of the matter is that the Agency subsequently accepted that it was a work injury so that this point is now moot.

66. Next, and following on from the previous point, the Appellant submits that the termination of her employment was effected in breach of Area Staff Rule 106.4 and/or in breach of the Social Security Law of Syria. Paragraph 1 of Area Staff Rule 106.4 states relevantly: "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 ...". There are exceptions to this principle relating to the injury or death arising from willful misconduct or self-infliction, but these do not apply to Ms. Mansour's situation.

67. There is now no dispute that Ms. Mansour's injury was attributable to the performance of her official duties for the Agency so that she would seem to be entitled to compensation for that disability. Paragraph 3 of the Rule deals with amounts of such compensation. In essence, these are determined "under the workmen's compensation or labour law applicable in the Syrian Arab Republic..." subject to certain qualifications. These include, relevantly, at (B):

> [T]he Agency will continue an incapacitated staff member in full pay status for a period not exceeding six months from the date of the injury or illness or until he/she is declared able to return to work or is offered a settlement for permanent disability whichever is earlier. Such payment of salary and allowances shall be in lieu of the payments of salary or partial salary which are provided by law for the period. Should temporary incapacity extend beyond six months, compensation payments for such further period will be determined in accordance with the workmen's compensation or labour law applicable in accordance with this rule.

68. In the Appellant's circumstances as we are aware of them and according to the relevant rules, Ms. Mansour may have been entitled to be on full pay for the first six months after her injury and thereafter compensation payments should have been determined "in accordance with the workmen's compensation or labour law applicable in accordance with [the] rule". When the Agency belatedly determined that her injury was service-related, any payments to which she was then entitled should have been made retrospectively if they had not been made at the time, and Ms. Mansour "offered a settlement for permanent disability", given that she was not able to return to her original, or any, work.

69. The Social Security Law of Syria is referred to specifically in the Area Staff Rules of the Agency, and the Appellant's claims encompassed it, but it was not referred to by the UNRWA DT in its Judgment. There is simply no information, even now, provided by the Appellant about the content and effect of this body of law, and the Respondent has not addressed its applicability in UNRWA's submissions in reply. It is unclear whether these requirements were followed by the Agency. Even were we minded to consider these provisions ourselves, it would be unwise for us to do so without the opportunity for the parties to make submissions about their applicability and interpretation. These matters and our current uncertainties can be dealt with as we have directed as remedies for Ms. Mansour.

70. We offer the parties and the UNRWA DT the following advice as to how the case may now be finalised. First, we recommend that the UNRWA DT gives consideration to offering the parties an opportunity for mediation or other method of alternative dispute resolution of this issue before it re-determines the case if such alternative dispute resolution is unavailing. Second, the UNRWA DT should ascertain from Ms. Mansour whether she still makes her original claims to compensation for disability. Third, if not, the UNRWA DT may then treat the proceeding as at an end. Fourth, if Ms. Mansour continues to advance these claims, the UNRWA DT may wish to timetable the making of submissions in relation to them, first from Ms. Mansour and then from UNRWA. Fifth, if Ms. Mansour seeks an oral hearing of her remaining claims, she should consider applying accordingly to the UNRWA DT which, after hearing from UNRWA, can decide such application including with reasons.

71. Finally, and by way of observation, we express our concern that, according to the Respondent's submissions, Ms. Mansour did not receive a copy of the Medical Board's report to the Agency until mid-June 2018, almost nine months after it was provided to the Agency and used as the basis for terminating her employment. It was only then received by her as part

of the Respondent's reply that the Agency filed in response to Ms. Mansour's claims in the Dispute Tribunal. Although the Respondent asserts that this then gave Ms. Mansour the opportunity to contest the Medical Board's conclusions, that overlooks the facts that her employment was terminated on 7 December 2018 without an opportunity to know the information that was the basis for that termination. It is hardly surprising in these circumstances that Ms. Mansour's claims then focussed on the Agency's failure to appoint her to an administrative office post and not on the Medical Board's conclusions. That is because although she was aware from her letter of dismissal that no administrative office job had been identified for her, she was unaware of the more fundamental grounds why that was even necessary, namely her prognosis for a sufficient recovery from her disability.

Judgment

72. We allow the appeal in part (relating to issues of compensation for disability) and remand these issues to the UNRWA DT for decision, but otherwise dismiss Ms. Mansour's appeal.

Original and Authoritative Version: English

Dated this 27th day of June 2020 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Colgan, Presiding Auckland, New Zealand	Judge Knierim Hamburg, Germany	Judge Neven Brussels, Belgium

Entered in the Register on this 11th day of August 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar