



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

---

Judgment No. 2021-UNAT-1096

**Emile Abdel Rahman Dabbour  
(Appellant)**

**v.**

**The 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 John Raymond Murphy Judge Dimitrios Raikos
Case No.:	2020-1421
Date:	19 March 2021
Registrar:	Weicheng Lin

---

Counsel for Appellant: Self-represented

Counsel for Respondent: Rachel Evers

**JUDGE GRAEME COLGAN, PRESIDING.**

1. Emile Dabbour appeals against the remedies granted to him in the Judgment of the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT and UNRWA respectively). For the reasons set out below, we allow the appeal.

**Facts and Procedure**

2. Mr. Dabbour was, at material times, an Administrative Assistant “B” at Grade 10, Step 13, Lebanon Field Office (LFO). This was an “A Category” temporary appointment, *albeit* of indefinite duration. In September 2018, he applied as an internal applicant for a vacant post of Area Registration Officer (ARO). Of the 49 applicants, Mr. Dabbour was one of eight who were short-listed, and of four who were subsequently shorter-listed. He was not, however, selected for the ARO vacancy. The UNRWA DT’s Judgment sets this out in some detail, but it is unnecessary for us to again describe how and why he was unsuccessful in being appointed because UNRWA DT found that this was unlawful and there is no challenge to that conclusion by the Commissioner-General. This is an appeal only against remedies.

3. It is necessary for us first to deal with the Appellant’s motion, filed on 8 October 2020 and responded to by the Respondent on 23 October 2020, for additional pleadings to be admitted in the appeal. Following the UNDT’s Judgment, Mr. Dabbour appears to have heeded its opinion that he had not lodged proof of his claim for moral damages. Mr. Dabbour then obtained several medical certificates attesting to the medical effects on him of his failure to be appointed to the position for which he had applied. He seeks now to have these admitted as evidence in support of this claim that he has reiterated before us.

4. To do so, he must however establish extraordinary circumstances as to why this evidence could not have been adduced before the UNRWA DT, but Mr. Dabbour has failed to do so. This is one of many cases that we see in which particularly unrepresented litigants seek to bring forward evidence for the first time on appeal that was available to be put before the first instance tribunal but for some reason was not. The UNAT is an appellate tribunal fixed with only the power of review of the correctness of the first instance tribunal’s judgment. An appeal to the UNAT is not an opportunity to bolster or fix up evidential gaps, especially those which may be exposed by the impugned judgment. An appeal to the UNAT is not an

opportunity either to re-run the same case or to reinforce it with more or better evidence. It is only in truly exceptional circumstances that new pleadings will be permitted. Put colloquially, litigants should ensure that their first shot is their best shot. Mr. Dabbour's motion to introduce additional pleadings must be, and is, dismissed in these circumstances.

### **Submissions**

#### **The Appellant's Appeal**

5. The relief sought by the Appellant includes an order or direction that he be appointed to the post of ARO; that he be awarded moral damages in a sum equivalent to two years' salary; and that UNRWA be required to investigate the selection board's "[a]buse of [p]ower" in his first interview.

6. His grounds cited in support of these remedies include, first, that the UNRWA DT erred in fact and law at paragraph 50(ii) of its Judgement where it awarded the sum of USD 1,000 as compensation in lieu of rescission of the decision not to appoint him to the ARO role. The DT's errors are said to include that:

- a) the UNRWA DT's award did not equate with his loss "in reality";
- b) he lost the opportunity to work in Tripoli, where he lives with family and relatives, and the chance to have more and new responsibilities in a new environment;
- c) the post in question was probably his only opportunity to be promoted to a suitable post with UNRWA in Tripoli because, as a Palestinian living in Lebanon, he is denied the right to work; and
- d) he was one of the few staff members who could have reached the location of the post in case of emergency or road blockages.

7. The Appellant further contends that he has been affected by the unlawful decision in the following ways:

- a) he is experiencing bitter feelings of frustration, depression, disappointment, anxiety, and unfairness, which continue to persist;

- b) he is spending increased time commuting (20% of his day on the roads) and associated back and neck injury;
- c) he has a lack of time to spend with family;
- d) he is now unable to reach family within 10 minutes in case of unforeseen emergency;
- e) he is unable to take annual half-day leave given his commute if he has an urgent matter to which to attend;
- f) he is unable to take advantage of a monthly saving of USD 67.53 in transportation fees;
- g) there has been a loss of opportunity (1) for his wife to start a small business, (2) for him to take care of his children due to the commute, and (3) for his daughter to participate in various activities; and
- h) he is experiencing bitter feelings surrounding the fact that a member of the interview panel was not investigated for the questionable conduct.

8. The Appellant says that the UNRWA DT's award of in-lieu compensation was manifestly unreasonable (inadequate). It was said not to reflect factors which it should have including: he was not given the customary five days' notice of his second interview; it ignored his "clear and convincing" evidence of his moral distress suffering of having to undergo a second interview in contravention of usual practice, was without obvious justification and at a time when he was both on annual leave and was ill; it was in breach of Section 10.2, paragraph 1 of the Manual for the Applicant on the Staff Selection System, Article 101.3 of the United Nations Charter and Staff Regulation 4.2 governing the fair and objective principles of staff selection; he felt a sense of injustice and that he was being explicitly discriminated against and undervalued; and the UNRWA DT failed to request UNRWA to investigate who was abusing his or her power to support the selected candidate.

### **The Respondent's Answer**

9. The Respondent asks that the appeal be dismissed in its entirety. He says that the Judgment under appeal is free of error, whether of fact or law.

10. Specifically, the Respondent contends first that the plea for increased compensation instead of rescission is not receivable. That is because the Appellant has not challenged the methodology used by the UNRWA DT in assessing its award and that we should therefore not interfere in the exercise of the broad discretion that the UNRWA DT possesses within the correct methodology.

11. Next, the Respondent says that the Appellant's claims to lost benefits and earnings were not claims before the UNRWA DT even though the Appellant must have known of these alleged losses at the time of his hearing in that forum. To allow consideration of these, we would have to allow a new plea and new evidence which we should not do.

12. Furthermore, the Respondent says, in the alternative, that under Article 10(5)(a) of the UNRWA DT Statute, compensation in lieu of rescission cannot assuage all harms suffered as a result of the wrong(s) visited upon the Appellant.

13. As to the Appellant's claim to an award of moral damages, the Respondent says that the UNRWA DT was correct to conclude that no harm was established in evidence by the Appellant in accordance with Article 10(5) of its Statute. In any event, the new evidence in support of this claim cannot be admitted on appeal for the first time as it could, and ought to, have been put before the UNRWA DT at first instance.

14. The UNRWA DT did not err in declining to refer certain UNRWA officials for an accountability investigation.

### **Considerations**

18. Mr. Dabbour's strongest point on his appeal is that the amount of compensation the UNRWA DT awarded, as an alternative open to UNRWA at its unfettered discretion to continuing his employment with UNRWA, was manifestly unjust and inadequate in all the circumstances so that the UNRWA DT thereby erred in fact and/or law. Our concern, however, is not whether the sum awarded was just or correct (it may or may not have been), but rather the methodology used by the UNRWA DT to make that award.

19. Mr. Dabbour complains about what he says is the unfairness of a system that allows UNRWA to elect whether to engage him in the role he should have been offered so that he continues to work for it, or to not do so. The alternative, although requiring the payment of a

compensatory sum, deprives an affected staff member of the social and economic benefits that would otherwise attach to the new employment and in some cases potentially from a position of unemployment. In Mr. Dabbour's case, however, he continues to work for UNRWA as an Administrative Assistant at Grade 10, one grade below the position he would have been in had he been appointed to the Grade 11 role he sought.

20. However, the UNRWA DT had no alternative but to make this order because its Statute dictates such an outcome in cases such as this when UNRWA's appointment decision is rescinded. The final remedy is not left to the UNRWA DT to determine, but to the Commissioner-General. We note that we are not aware of any case like Mr. Dabbour's in which the Commissioner-General (or in other cases, the United Nations Secretary-General where, in law, he is the employer) has rescinded the appointment erroneously made and appointed the staff member who should have been appointed. So, the alternative remedy is invariably the default remedy. The wrong suffered by the staff member being the same, however, it is incumbent on the UNRWA DT to ensure that the remedies provided and from which the Commissioner-General selects one (invariably monetary compensation) have an equivalent beneficial compensatory effect for the staff member.

21. The UNRWA DT addressed the issue of compensation in lieu of rescission of the decision not to appoint him to another position with UNRWA, at paragraphs 42 – 47 of its Judgment. It set out, correctly, Article 10(5) of its Statute which we note is materially the same as for all United Nations staff. It reminded itself, also correctly, that such compensation was not to be an award of moral damages.

22. At paragraph 42 and following, the UNRWA DT reminded itself first of its remedial powers under Article 10(5) of its Statute. This empowers it, where the defective administrative decision concerns, among other things, appointment, that the UNRWA DT shall also “set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision ...”. Next, the UNRWA DT also reminded itself of the guidance given by this Tribunal as to setting that amount of compensation in *Chhikara*.<sup>1</sup> The applicable considerations include the nature of the procedural irregularities and the likelihood of the staff member being selected for the post in question had the irregularities not occurred. What is sometimes called this “loss of chance” can be expressed as

---

<sup>1</sup> *Chhikara v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-723.

a percentage of certainty of appointment having regard, among other things, to the number of short-listed candidates and the staff member's ranking among them. The UNAT Judgment is also authority for the proposition that consideration needs to be given to the nature of the appointment that did not eventuate for the staff member. In *Chhikara*, as in this case, that was a three-year contract. The Tribunal must take into account the possibilities of a shorter period having been completed if the appointment had been made. Non-exhaustively, the reasons for those contingencies may include abolition of the post, illness, resignation and the like. Next, the difference in income (if any) between the post previously or currently encumbered and that which was lost will form the basis of compensation for lost remuneration.

23. Finally, as *Chhikara* notes, these calculations are not “an exact science”.<sup>2</sup> Nevertheless, the Tribunal must make the best it can of the available evidence and, if necessary, seek that information from the parties in order to best and most fairly quantify such an alternative monetary remedy as it is obliged to provide.

24. Although the UNRWA DT in Mr. Dabbour's case recorded its conclusions on some of these considerations, it did not do so at all in respect of others making it difficult, if not impossible, to ascertain objectively how it reached the apparently modest figure of compensation in lieu of rescission of USD 1,000.

25. The UNRWA DT did conclude that, absent the appointment process errors, there would have been an “extremely high” likelihood of Mr. Dabbour being appointed.<sup>3</sup> The Tribunal also recorded that the appointment for which Mr. Dabbour was unsuccessful was graded for salary at 11 as compared to his current salary grade of 10. It also noted that, pursuant to Area Staff Rule 103.3, Mr. Dabbour as “a staff member in continuous service” was entitled to receive an increase in base salary “nearest to but not less than the value of two (2) salary steps in the higher grade”.<sup>4</sup> The UNRWA DT did not, however, define those figures. It did have before it, nevertheless, some documents specifying the salary and allowances for the higher graded position for which Mr. Dabbour was unsuccessful. There is nothing to indicate why it did not address these essential criteria and how it arrived at the compensatory figure it did.

---

<sup>2</sup> *Ibid.*, para. 56.

<sup>3</sup> Impugned Judgment, para. 45.

<sup>4</sup> Here, the UNRWA DT was quoting Area Staff Rule 103.3.

26. At paragraph 47 of its Judgment, the UNRWA DT only stated: “Taking into account the Applicant's significant chance of being selected, and the increase in base salary in the case of promotion, if the Agency chooses not to rescind the decision not to select the Applicant for the post of ARO, the Tribunal sets the compensation in lieu of rescission at the amount of USD 1,000”.

27. We conclude that the UNRWA erred in law or in failing to take into account in that calculation the probable length of Mr. Dabbour’s tenure of that role which was known to have been of a fixed duration of three years. Although a period of less than three years would need to have been used in the calculation, its length is otherwise unknown and there is insufficient evidence for this Tribunal on appeal to fix that.

28. We have tested hypothetically the likely accuracy of the compensation figure of USD 1,000 by applying the known quantities and probable variables to that sum. If we were to conclude that the very high likelihood of Mr. Dabbour’s appointment was set at 90% (that is, that he had a 90% loss of the chance of appointment), and that he would probably have worked for two years of the three-year term of the role to which he was not appointed, then a monthly salary increment of USD 37.50 would seem to under-represent the difference in salary scales between the two roles (24 months at 90% of \$1,000 for two years). We emphasise that this is not our calculation of what the UNRWA DT should have awarded Mr. Dabbour. Rather, it represents our assessment of the possible insufficiency of the USD 1,000 award in lieu of rescission. We acknowledge that sum may be a fair and accurate estimate; it is, however, impossible to say whether it is, and sufficient doubt exists for us to say that the UNRWA DT did not err in law and/or fact. In the absence of express and transparent reasoning, we cannot ourselves reach a conclusion on the appeal against this remedy. It will be necessary for that conclusion to be reached by the UNRWA DT upon evidence presented to it and its reasoning and conclusions presented in a further judgment.

29. In the circumstances, that part of Mr. Dabbopur’s appeal must be allowed. It is, however, regrettable but necessary that the case must be remitted to the UNRWA DT to quantify these figures and disclose them in its judgment.

30. Turning to Mr. Dabbour’s claim for moral damages, the UNRWA DT correctly reminded itself of the requirement under Article 10(5) of its Statute that an award of moral damages was to be supported by evidence. We have already declined Mr. Dabbour’s



motion for leave to augment the evidence in support of this claim. In the circumstances, it cannot be said that the UNRWA DT erred by failing to take into account information that was not before it. In this respect, we dismiss Mr. Dabbour's claim for an award of moral damages equivalent to two years' remuneration.

31. As did the UNRWA DT, we must dismiss Mr. Dabbour's plea that UNRWA be directed to conduct an inquiry into alleged abuse of power in the selection process. That is not a remedy that either the UNRWA DT or we are permitted by our Statutes to make. We note, however, that the UNRWA DT did find the UNRWA selection process flawed in Mr. Dabbour's case and we expect that UNRWA will be concerned not to repeat that in other cases.

32. Finally and for the sake of completeness, we note the UNRWA DT's direction that UNRWA was required to have paid the compensation in lieu of rescission to Mr. Dabbour within 60 days of the date of its judgment during which the US prime interest rate would apply and following which, if it was not paid, that prime interest rate + five per cent would apply until the date of payment. The same interest provisions should apply to any increased sum of compensation which the UNRWA DT may direct the Respondent to pay to Mr. Dabbour.

**Judgment**

33. The appeal against Judgment No. UNRWA/DT/2020/030 of the UNRWA Dispute Tribunal is hereby allowed and the Judgment is set aside in part. The amount of compensation awarded to the Appellant in lieu of rescission must be redetermined, fixed and stated with reasons for the amount awarded and this question is remitted to the UNRWA DT for this purpose.

Original and Authoritative Version: English

Dated this 19<sup>th</sup> day of March 2021.

*(Signed)*

Judge Colgan, Presiding  
Auckland, New Zealand

*(Signed)*

Judge Murphy  
Cape Town, South Africa

*(Signed)*

Judge Raikos  
Athens, Greece

Entered in the Register on this 22<sup>nd</sup> day of April 2021 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar