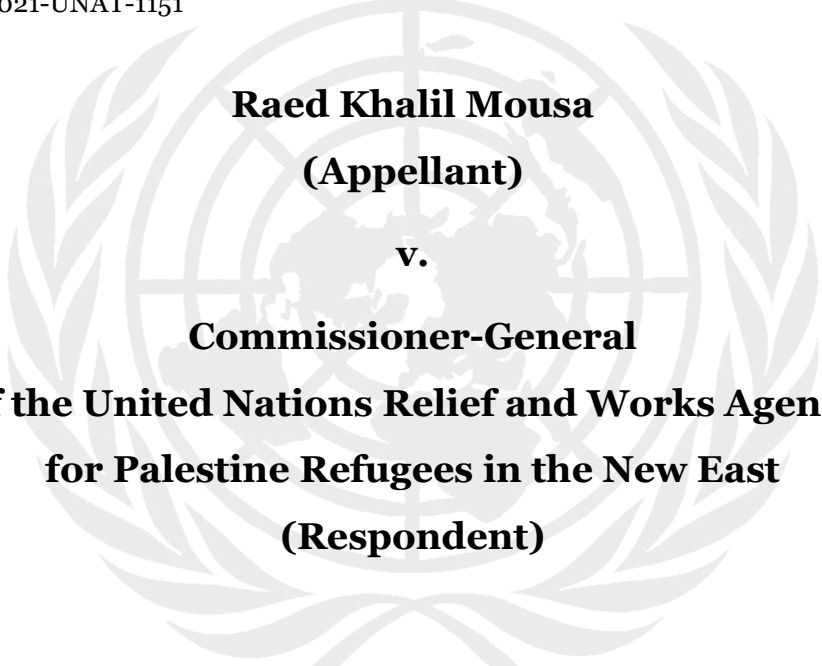




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2021-UNAT-1151



**Raed Khalil Mousa
(Appellant)**
v.
**Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the New East
(Respondent)**
Judgment

Before:	Judge John Raymond Murphy, Presiding Judge Graeme Colgan Judge Kanwaldeep Sandhu
Case No.:	2021-1506
Date:	29 October 2021
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Rachel Evers

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. Mr. Raed Khalil Mousa appeals Judgment No. UNRWA/DT/2020/067 of 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), which dismissed his application challenging the decision of the Commissioner-General of UNRWA to impose on him the disciplinary measures of written censure and a suspension without pay for one month.
2. For the reasons set out below, we dismiss the appeal and affirm the UNRWA DT Judgment.

Facts and Procedure

3. Effective 5 August 2002, Mr. Mousa was employed by the Agency on a fixed-term appointment, Level 4C, Step 1 as Ophthalmologist, Gaza Field Office (GFO). At the time of Mr. Mousa's application to the UNDT, Mr. Mousa occupied the post of Ophthalmologist, Level L8.
4. On 15 June 2019, the Director of UNRWA Operations, Gaza (DUO/G) obtained information through social media that, on 13 June 2019, some patients received an avastin injection at the International Eye Centre (IEC), one of the Agency's contracted hospitals. These patients developed complications known as endophthalmitis as a result of the injection.
5. The UNRWA Health Programme conducted a preliminary investigation and subsequently constituted a Board of Inquiry (BoI). The BoI's report established, and Mr. Mousa concedes, that Mr. Mousa performed the avastin injections on 13 June 2019.
6. By letter dated 6 August 2019, the DUO/G instructed the Senior Field Investigator to conduct an investigation into allegations that Mr. Mousa had been working at the IEC while on sick leave from UNRWA, that he had been working without valid authorisation and that he had contributed to malpractice.

7. By letter dated 7 August 2019, the DUO/G placed Mr. Mousa on administrative leave without pay pending the outcome of the investigation. By letter dated 27 October 2019, the DUO/G invited Mr. Mousa to respond to the allegations and Mr. Mousa provided his response on 7 November 2019.

8. By letter dated 22 January 2020, the DUO/G informed Mr. Mousa that it had been determined that Mr. Mousa had engaged in misconduct by working at the IEC while on sick leave from UNRWA and without a valid authorization; and that therefore the disciplinary measures of written censure and suspension without pay for one month would be imposed on him. The letter specified that the allegation that Mr. Mousa had contributed to malpractice leading to complications for patients during his work at the IEC had not been established.

9. On 3 March 2020, Mr. Mousa filed an application with the UNRWA DT challenging the decision to impose on him disciplinary measures.

10. On 16 November 2020, the UNRWA DT issued Judgment No. UNRWA/DT/2020/067 dismissing the application. The UNRWA DT found that while Mr. Mousa's contentions were related to the allegation of malpractice, malpractice had not been established during the Agency's investigation and it was therefore not one of the bases for the disciplinary measures imposed on him. The UNRWA DT noted that Mr. Mousa did not contest the facts upon which the disciplinary measures were based – namely that he was working at the IEC while on sick leave from UNRWA and without a valid authorization. He thus also did not contest that the established facts constituted misconduct or the proportionality of the disciplinary measures. The UNRWA DT concluded that it had no contentions to address pertaining to the impugned decision and therefore dismissed the application.

11. On 8 January 2021, Mr. Mousa filed an appeal and the Commissioner-General filed his answer on 19 March 2021.

Submissions

Mr. Mousa's Appeal

12. In his appeal, Mr. Mousa concedes that he has been working “per case” in the IEC “in [his] outside activity” and that his activity in question had not been approved by UNRWA. However, over a period of one and a half years he sought to get his outside activity “revalidated” and twice he got rejected and one request is still pending.

13. He also returns to the question of malpractice. According to him, UNRWA had no authority to accuse him and investigate him for malpractice for his non-UNRWA related medical practice. The UNRWA health department is not the licensing medical regulatory body and had not right to evaluate his outside activity performance as a doctor.

14. Mr. Mousa emphasizes that the issue is his performance of the outside activity, not UNRWA's permission that Mr. Mousa perform the outside activity.

15. The investigation by the BoI was not performed in accordance with the UNRWA rules as Mr. Mousa was denied his right to sign the BoI investigation record and one of the members of the BOI had a conflict of interest.

16. The accusation of malpractice put serious stress on Mr. Mousa as a result of which he suffered from hypertension.

17. Mr. Mousa alleges misconduct by UNRWA officials in relation to the allegations of malpractice raised against him and claims that no action had been taken in response to his request for “administrative action or investigation”.

18. Mr. Mousa requests that the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) order that UNRWA issue a letter of apology for the physical, moral and professional harm he suffered resulting from the accusations of malpractice and avow its responsibility for any consequences resulting from these accusations; award compensation for any - moral, professional or health related - damage suffered; order that UNRWA remove any references to accusations of malpractice from his personnel file and hold accountable those who caused this damage; and order that he obtain another position with the United Nations to be agreed upon by himself and the Organization.

The Commissioner-General's Answer

19. Mr. Mousa has failed to identify the grounds for his appeal under Article 2(1) of the Appeals Tribunal Statute, and as such, the appeal is defective. Mr. Mousa has not demonstrated in what respect the UNRWA DT, by dismissing his application, exceeded or failed to exercise its jurisdiction, erred in law or procedure or erred in fact resulting in a manifestly unreasonable decision. Instead, he appears to restate the facts of his claim with regard to allegations of malpractice and to reargue his case before the Appeals Tribunal. Failure to raise claims under the Appeals Tribunal Statute and to demonstrate how the UNRWA DT erred in deciding his claims is a sufficient basis for the Appeals Tribunal to dismiss the appeal.

20. The UNRWA DT Judgment was, as a matter of law, free of error. On appeal and before the UNRWA DT, Mr. Mousa raised contentions regarding the allegations of malpractice. The UNRWA DT correctly addressed Mr. Mousa's contentions when it found that, as reflected in the letter imposing the sanctions, Mr. Mousa had been disciplined based on the finding that he had been working at the IEC while on sick leave from the Organization and without valid authorization and that therefore his contentions related to malpractice are irrelevant to the application and without merit.

21. Mr. Mousa does not challenge the UNRWA DT's finding that before the UNRWA DT, he did not contest the facts upon which the disciplinary measures were based, the finding that the established facts amounted to misconduct or the proportionality of the disciplinary measures. He even appears to admit in his appeal brief the substance of the bases for the imposition of the disciplinary measures against him when he asserts that he has been trying to "revalidate [his] outside activity" and that he worked with the IEC "in [his] outside activity".

22. While Mr. Mousa, in his appeal brief, contends that he did not sign the BoI report and asserts a possible conflict of interest on one of the members of the Investigation Committee, an issue the UNRWA DT did not address, that failure is of no consequence considering the findings that Mr. Mousa did not dispute the material facts. The argument on conflict of interest was not raised before the UNRWA DT and cannot now be raised on appeal. As the Appeals Tribunal held, a party who fails to raise an issue at trial cannot later raise it on appeal.

23. Lastly, the Commissioner-General contests pursuant to Article 10(2) (*sic.*) of the Appeals Tribunal Rules of Procedure the admission of several annexes to Mr. Mousa's appeal. Mr. Mousa has not demonstrated exceptional circumstances warranting the admission of additional evidence on appeal nor has he sought leave to present such additional evidence. The Commissioner-General requests that the Appeals Tribunal not consider this evidence.

24. The Commissioner-General requests that the Appeals Tribunal dismiss the appeal in its entirety.

Considerations

25. As the Commissioner-General argues, Mr. Mousa has failed to identify the grounds for his appeal under Article 2(1) of the Appeals Tribunal Statute, and as such, the appeal is defective. Mr. Mousa merely restates the facts of his claim, mostly with regard to allegations of malpractice, and fails to demonstrate in what respects the UNRWA DT erred in deciding his claims. The appeals procedure is of a corrective nature. An appellant has the burden of satisfying the Appeals Tribunal that the judgment he or she seeks to challenge is defective. It follows that an appellant must identify the alleged defects in the impugned judgment and state the grounds relied upon in asserting that the judgment is defective.¹ Mr. Mousa has not done this. But even allowing some leeway, the impugned Judgment is in any event without error.

26. Mr. Mousa on appeal again focuses on the allegations of malpractice. As reflected in the letter communicating the contested decision and imposing the disciplinary sanctions, Mr. Mousa was disciplined for working at the IEC while on sick leave from the Organization and without valid authorization. He was not disciplined for malpractice. Therefore his contentions related to malpractice are irrelevant.

27. Mr. Mousa does not challenge the UNRWA DT's finding that he failed to contest the facts upon which the disciplinary measures were based, the finding that the established facts amounted to misconduct or the proportionality of the disciplinary measures. As stated, he appears to concede that he did the work during his sick leave and without permission. In paragraph 16 of his appeal brief he states: "During a year and a half I am trying to revalidate my

¹ *Abdulhamid Al Fararjeh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1136, para. 37.

outside activity and again two tr[ies] I got dis[a]pproval and last request still pending with no response from 25/07/2020”.

28. The statement is tantamount to an admission that he had done that of which he was accused. Other statements in the appeal brief further indicate that Mr. Mousa was aware of the nature of the misconduct in respect of which the disciplinary measures were imposed. There is no dispute that the performance of outside work without permission during sick leave constitutes misconduct. There is furthermore no challenge to the proportionality of the sanction imposed.

29. As regards Mr. Mousa’s contention on appeal that he did not sign the BoI report and his assertion of a possible conflict of interest on the part of one of the members of the Investigation Committee, the failure to sign the report is of no consequence considering that the material facts are not contested and the conflict of interest was not raised before the UNRWA DT. A party who fails to raise an issue or lead evidence about it at trial cannot later raise it on appeal.

30. Mr. Mousa’s attempt to introduce additional documentary evidence cannot be sustained. He has not demonstrated exceptional circumstances warranting the admission of additional evidence on appeal nor has he sought leave to present such additional evidence as he was required to do in terms of Article 2(5) of the Statute of the UNAT. The evidence is not admissible on appeal.

Judgment

31. In the premises, the appeal is dismissed and the Judgment of the UNRWA DT is affirmed.

Original and Authoritative Version: English

Dated this 29th day of October 2021.

(Signed)

Judge Murphy, Presiding
Cape Town, South Africa

(Signed)

Judge Colgan
Auckland, New Zealand

(Signed)

Judge Sandhu
Vancouver, Canada

Entered in the Register on this 3rd day of December 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar