



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

Judgment No. 2021-UNAT-1153/Corr.1

**Ali Abdel Mon'em Aref Al Khatib
(Appellant)**
v.
**Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East
(Respondent)**

JUDGMENT

Before: Judge Dimitrios Raikos, Presiding
Judge Kanwaldeep Sandhu
Judge John Raymond Murphy

Case No.: 2020-1497

Date: 29 October 2021

Registrar: Weicheng Lin

Counsel for Appellant: Amer Abu Khalaf, LOSA
Counsel for Respondent: Rachel Evers

Reissued for technical reasons on 21 April 2022

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. Mr. Al Khatib, a Registrar and Alumni Officer at the Amman Training Center (ATC), Grade 12, Step 1, Jordan Field Office (JFO), was separated from service without termination indemnity for fraud committed against a beneficiary. 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) in Judgment No. UNRWA/DT/2020/063 dismissed Mr. Al Khatib's application against the separation decision, finding that the Administration had made the case of misconduct against him by clear and convincing evidence. For the reasons set out below, we affirm the UNRWA DT's Judgment.

Facts and Procedure

2. Mr. Al Khatib joined the Agency on 1 May 2013 as Registrar and Alumni Officer with the ATC, JFO.

3. On 31 August 2016, a Syrian national and a student at the ATC (Complainant) filed a complaint by e-mail to the Chief Area Office, South Amman, against Mr. Al Khatib, accusing the latter of attempting to defraud her out of her assistance money, which was provided to students from Syria, by delaying giving her the assistance money and refusing to give her the receipts of the payments already made.

4. The following chronology of events was set forth in a Preliminary Assessment Report (PAR) dated 20 November 2016 prepared by an Area Education Officer, who had been appointed by the Director of UNRWA Operations, Jordan (DUO/J) on 7 November 2016 to conduct a preliminary assessment of the complaint against Mr. Al Khatib. The PAR was based on the interviews that the Area Education Officer had had with the Complainant and two witnesses, and it contained a summary of the Complainant's statement as follows.

i) on 24 August 2016, Mr. Al Khatib phoned the Complainant that a cheque in the amount of 1,097 Jordanian Dinars (JD) in her favor had been received and that she should come to his office to get it. But when she went to his office, Mr. Al Khatib refused to give the cheque to her. Instead, Mr. Al Khatib told the Complainant that he would take her by an UNRWA vehicle to the bank for her to cash the cheque, as his way of showing help.

ii) on 29 August 2016, Mr. Al Khatib phoned the Complainant and came in an UNRWA bus to pick her up at a place near her house. There were Mr. Al Khatib, the Complainant and the driver in the bus. They arrived at the bank, which the PAR did not name. The Complainant went into the bank and cashed the cheque while Mr. Al Khatib waited in front of the bank door. “Once she arrived to the bank door, [Mr. Al Khatib] pulled out the money from her hand and took her identification documents. He gave her JD 200 and asked her to go to the bus until he pays [sic] the bank the remaining amount owed for the second year [of her tuition]. After 10 minutes, [Mr. Al Khatib] came back and gave the complainant another JD 30 as the rest of the original amount of the money without giving her any receipt and he said: “you should pay JD 100 as fees of the comprehensive examination only.”¹

iii) On 30 August 2016, the Complainant went to Mr. Al Khatib’s office for the receipts, upon the advice of a school counselor, who was interviewed by the Area Education Officer as the second witness. Mr. Al Khatib told the Complainant that the receipts were not with him, but they were with the manager who was on sick leave. And he told her that it was not her right to get the receipts and she should submit an official request to get them. After the Complainant had left Mr. Al Khatib and sat in the ATC yard, Mr. Al Khatib suddenly came to her and questioned her why she had talked to the school counselor and others and told her to “just wait two days until the manager comes back and I (Mr. Al Khatib) will call you. I (Mr. Al Khatib) am telling you (the Complainant) that money is available.”² The Complainant was waiting for a taxi in front of the main gate when a guard came to fetch her because Mr. Al Khatib wanted to see her. When she saw Mr. Al Khatib again, the latter said: “Nothing. It’s all about the same old issue. We will meet tomorrow.”³

iv) On 31 August 2016, the Complainant and her husband went to the bank to check whether Mr. Al Khatib had deposited any money under her name, but she did not find anything. She then phoned Mr. Al Khatib and the latter told the former that the money was ready. So, she and her husband went to the ATC. They met Mr. Al Khatib outside his office, where Mr. Al Khatib gave her JD 865 in cash and she signed on the receipt of the payment of JD 1,097.

5. The Area Education Officer recommended that the case be investigated. A JFO Intake Committee met on 13 December 2016 and also recommended an investigation. On 22 January 2017, the DUO/J appointed a school Principal, South Amman Area, and an Associate Principal, North Amman, to a panel to conduct a formal investigation into the allegations against Mr. Al Khatib.

¹ PAR, para. VI (c).

² *Ibid.*, para. VI (e).

³ *Ibid.*, para. VI (f).

6. The Investigation Panel reviewed the PAR and interviewed the Complainant, Mr. Al Khatib and five other witnesses, including the driver, the School Counselor and the guard.

a) Mr. Al Khatib accepted that he placed a call on 24 August 2016 to the Complainant informing her that a cheque was in his office for her to pick up, and that she signed for the receipt of the cheque on 31 August 2016, but he denied having accompanied the Complainant to the bank in an UNRWA vehicle or having taken any funds from her. He accused the Complainant of having filed a “malicious” complaint against him.

b) A copy of a bank cheque shows that a non-negotiable cheque drawn on the Arab Jordan Investment Bank (AJIB) in the amount of JD 1,095 dated 23 June 2016 was issued in the name of the Complainant.

c) An UNRWA transport requisition form (No. 325990 0105) dated 29 August 2016 shows that a vehicle was requested for or by “Registrar (Mr. Al Khatib)” for destination “Yasmeen Bank” for “financial issues”.⁴

d) But the driver denied having driven any student to the bank using the ATC transportation vehicle. He also told the investigators that he had not gone with Mr. Al Khatib to the bank.

e) An undated table with a handwritten “UNRWA JFO/AJIB/JOD Account” on the left margin lists deposits, withdrawals and transfers on 28 and 29 August 2016. One entry reads: on 29 August 2016, there was a cash withdrawal of 1,095, presumably in Jordanian Dinars (No. 6525). The entry does not indicate who withdrew the cash or at what time of the day the withdrawal took place. The Agency submitted the undated table to the UNRWA DT in subsequent proceedings *ex parte*; it was thus not available to the Investigation Panel.

f) According to the second witness (School Counselor), on 30 August 2016, the Complainant told him that on the previous day Mr. Al Khatib had taken her to the bank to cash her cheque, and Mr. Al Khatib had withheld monies that she allegedly owed to the ATC for tuition. The School Counselor then told the Complainant that the

⁴ Yasmeen Bank here refers to Dahyet Alyassmeen Branch of the AJIB.

Agency did not take upfront fees, all the Jordanian Dinars on the cheque belonged to her and she was entitled to the entire amount. The Complainant prepared a complaint against Mr. Al Khatib afterwards.

g) According to an employee at the Balqa Applied University, the host government authority supervising the ATC, on 29 August 2016, Mr. Al Khatib, accompanied by an ATC colleague, visited his office for business purposes at 10:00 am and his meeting with them lasted until 2:30 pm. The statement by the employee was dated 21 April 2019 and it was thus not available to the Investigation Panel.

7. In its report of investigation dated 10 April 2017, the Investigation Panel found that the claim made by the Complainant was true, having considered the facts, which the Investigation Panel essentially adopted from the PAR. It concluded that there was a solid evidence to support the allegations of misconduct of general fraud against Mr. Al Khatib.

8. On 22 June 2017, the Head, Field Legal Office, issued Mr. Al Khatib a due process letter, charging him with having “engaged in general fraud against the Complainant, a beneficiary, by fraudulently withholding her cash assistance in order to obtain an unauthorized benefit [himself]”, in violation of Area Staff Regulations 1.1 and 1.4, paragraph 3 of Annex IV of the Revised Standards of Conduct for the International Civil Service (General Circular 07/2014), the Standards of Conduct Applicable to UNRWA Personnel (2010), and “Serving ethically”, a handbook on ethics and the standards of conduct applicable to UNRWA personnel. The factual basis of the charge was the same as those set forth in the Investigation Report, but with the following three factual differences. According to the due process letter, Mr. Al Khatib had taken the Complainant to the Cairo Amman Bank, rather than “the bank”, to cash her cheque. The Transport Requisition form dated 29 August 2016 evidenced a trip to the Cairo Amman Bank, rather than the AJIB Yasmeeen Branch. Again, according to the due process letter, Mr. Al Khatib gave the Complainant JD 230 and took JD 870 from her on 29 August 2016, and he returned JD 860 to the Complainant on 31 August 2016.

9. On 16 July 2017, Mr. Al Khatib responded to the due process letter and denied the allegations of misconduct against him.

10. On 19 March 2018, the Officer-in-Charge for UNRWA Operations, Jordan, imposed on Mr. Al Khatib the disciplinary measure of separation from service without termination indemnity for the serious misconduct of deliberately misinforming the Complainant of her entitlements to cash assistance in order to obtain an unauthorized benefit. In the view of the Agency, there was evidence on record that, on 29 August 2016, a driver drove Mr. Al Khatib to the “Cairo Amman Bank (Yasmeen)” in an UNRWA vehicle. Moreover, there was clear evidence that, on that day, the Complainant cashed Cheque No. 6525 for JD 1,095 at the “Arab [Jordan] Investment Bank (AJIB) Yasmeen Branch”, but Mr. Al Khatib pulled the money out of her hands, took her identification documents, gave her JD 200 back, and went into the Yasmeen Branch to pay tuition for her with all the money that he had snatched from the Complainant. There was also clear evidence that, on 31 August 2016, Mr. Al Khatib gave the Complainant JD 860 and had the Complainant sign receipt of the payment of JD 1,095, outside his office.

11. On 17 May 2018, Mr. Al Khatib submitted a request for decision review, and on 10 September 2018, he filed an application with the UNRWA Dispute Tribunal.

12. In Judgment No. UNRWA/DT/2020/063 dated 10 November 2020, the UNRWA Dispute Tribunal dismissed Mr. Al Khatib’s application. A hearing was originally scheduled on 16 March 2020, but it had to be postponed several times partly because of due process reasons and eventually cancelled due to serious health concerns with respect to the conduct of the hearing in the UNRWA DT’s courtroom in the midst of the Covid-19 pandemic. The UNRWA Dispute Tribunal subsequently offered, and the parties agreed to, the option of deciding the case on the papers. The UNRWA DT also allowed the parties to submit written testimonies from the four witnesses listed in its Notice of Hearing of 24 September 2020, as well as to submit their closing statements. The UNRWA DT found Mr. Al Khatib’s contentions about the violation of his due process rights during the investigative and disciplinary processes to be without merit. Having reviewed the Complainant’s account of the events and Mr. Al Khatib’s rebuttal, the statements of other witnesses including the driver and the School Counselor, and documentary evidence, the UNRWA DT concluded that the Complainant’s statement was “sufficiently credible” and the facts were “established”.⁵ “Given the aforementioned clear and convincing evidence establishing the Complainant’s credibility, there is no need for the [UNRWA Dispute] Tribunal to review the remaining

⁵ Impugned Judgment, paras. 64 & 66.

contentions raised by [Mr. Al Khatib].”⁶ The UNRWA Dispute Tribunal was convinced that Mr. Al Khatib’s actions constituted serious misconduct, that the contested decision was proportionate to the nature and gravity of his serious misconduct, and that the Agency’s discretionary authority had not been tainted by evidence of procedural irregularity, prejudice or other extraneous factors, or errors of law.

13. Mr. Al Khatib appealed the UNRWA DT Judgment to the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) on 1 December 2020. The Commissioner-General filed an answer on 1 February 2021.

Submissions

Mr. Al Khatib’s Appeal

14. Mr. Al Khatib requests that the Appeals Tribunal vacate the UNRWA DT Judgment, reinstate him to his former post with the same conditions and compensate him “for all financial losses such as salaries resulting from the decision until the issuance of the Judgment”.

15. Mr. Al Khatib submits that the UNRWA DT erred in failing to analyze the facts and evidence of his case or to review all his contentions, resulting in a manifestly unreasonable decision. The UNRWA DT disregarded the nature of his daily activities as the Registrar of the ATC, the inconsistencies in the Complainant’s version of facts, the Investigation Report, and the sanction letter, the value of the testimonies of his witnesses including the employee of the Balqa Applied University, the Dean of the ATC and the driver, and the facts that he had presented in his response to the due process letter and his closing arguments. Moreover, the UNRWA DT took the hearsay statement of the School Counselor without verifying his credibility and failed to look into the Complainant’s motivation to file a complaint against him. The Agency has not tendered any evidence to prove that he accompanied the Complainant to the AJIB on 29 August 2016. The Complainant has not called any witness to testify that money was taken from her. Thus, contrary to the findings of the UNRWA DT, the facts have not been established.

⁶ *Ibid.*, para. 66.

16. Mr. Al Khatib also submits that the UNRWA DT erred in failing to properly analyze, or apply the law to, the facts of his case resulting in a manifestly unreasonable decision. The Investigation Report was erroneous and violated the UNRWA Investigation Policy in 02/2016. The procedure followed was fundamentally flawed from a due process perspective, and there was a complete absence of cogent evidence to form a sufficient basis for the separation decision. The UNRWA Dispute Tribunal was not neutral; it acted as counsel for the Agency.

The Commissioner-General's Answer

17. The Commissioner-General requests that the Appeals Tribunal dismiss the present appeal in its entirety and affirm the UNRWA DT's Judgment.

18. The Commissioner-General submits that Mr. Al Khatib's appeal is not well founded on any of the grounds set out in Article 2(1) of the Statute of the Appeals Tribunal. He has failed to assert, let alone establish, that the UNRWA DT erred in procedure or on a question of fact resulting in a manifestly unreasonable decision.

19. The Commissioner-General also submits that Mr. Al Khatib restates on appeal many of the arguments that he raised in his UNRWA DT application and the UNRWA DT considered and rejected, including the inconsistencies in the Complainant's version of facts, the unsubstantiated nature of the Agency's version of facts and the violation of his due process rights.

20. Contrary to Mr. Al Khatib's criticism, there was no need for the UNRWA DT to address each and every claim made by a litigant, especially when the claim had no merit. The Commissioner-General states that the UNRWA DT carried out a detailed review of the facts that the Agency had relied on and Mr. Al Khatib's submissions and evidence but concluded that the facts had been established by clear and convincing evidence. The UNRWA DT found there were no due process failures during the investigation and disciplinary proceedings. Moreover, it offered Mr. Al Khatib every opportunity to present his case and evidence and make additional submissions, the written testimonies for the witnesses after the cancellation of the planned hearing, and the closing statements.

21. The Commissioner-General maintains that Mr. Al Khatib's accusation of the UNRWA DT for acting as a counsel for the Respondent and lacking in neutrality is no more than a mere assertion without factual support.

Considerations

Standard of review in disciplinary cases

22. In disciplinary matters, we follow the settled and unambiguous case law of this Tribunal, as laid down in *Mizyed*⁷ quoting *Applicant*,⁸ and others:⁹

Judicial review of a disciplinary case requires the UNDT to consider the evidence adduced and the procedures utilized during the course of the investigation by the Administration. In this context, the UNDT is "to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct [under the Staff Regulations and Rules], and whether the sanction is proportionate to the offence". And, of course, "the Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred". "[W]hen termination is a possible outcome, misconduct must be established by clear and convincing evidence", which "means that the truth of the facts asserted is highly probable".

Clear and convincing evidence of misconduct, including serious misconduct, imports two high evidential standards. The first ("clear") is that the evidence of misconduct must be unequivocal and manifest. Separately, the second standard ("convincing") requires that this clear evidence must be persuasive to a high standard appropriate to the gravity of the allegation against the staff member and in light of the severity of the consequence of its acceptance. Evidence, which is required to be clear and convincing, can be direct evidence of events, or may be of evidential inferences that can be properly drawn from other direct evidence.¹⁰

23. In determining whether these evidential standards have been established in any case, the UNDT must consider and weigh not only the evidence put forward by witnesses produced for the Secretary-General, but also any countervailing evidence adduced for the staff member,

⁷ *Mizyed v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-550, para. 18.

⁸ *Applicant v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-302, para. 29.

⁹ See also *Ladu v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-956, para.15; *Bagot v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2017-UNAT-718, para. 46; *Negussie v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-700, para. 18.

¹⁰ *Neguisse, supra*, para. 45.

and any relevant and probative documentary evidence which may either corroborate or cast doubt on the recollections of witnesses. Such an analysis has to be applied by the UNDT not only to each individual piece of disputed evidence, but it must then be applied likewise to the totality of the evidence in support of the allegation of misconduct. The judge can only then answer the fundamental question: “Is there clear and convincing evidence to enable the Tribunal to conclude that the allegation(s) of misconduct have been established?”¹¹

24. The UNAT’s task on appeal is to determine whether the UNDT did not apply the correct tests and whether the Dispute Tribunal could reasonably have reached the decisions it did about what happened.¹²

25. Furthermore, this Tribunal has held that in a system of administration of justice governed by law, the presumption of innocence has to be respected.¹³

26. It is in the context of these definitions and principles that the present appeal against the UNRWA DT’s conclusions must be assessed.

Clear and convincing evidence established that Mr. Al Khatib committed the offences

27. Applying the above-mentioned standards and criteria to the present case, we find that the facts on which the Administration based its decision to dismiss Mr. Al Khatib from service were established, in full respect of his due process rights. The records show clear and convincing evidence establishing facts which amount to misconduct and these facts have not been successfully rebutted by Mr. Al Khatib. The UNRWA DT did not err as there was clear and convincing evidence that Mr. Al Khatib indeed committed fraud against a beneficiary of UNRWA; neither did it err in concluding that the disciplinary sanction of separation from service without termination indemnity was proportionate and lawful.

28. As the UNRWA DT provided thorough and convincing reasoning, we do not find it necessary to repeat each and every detail except to refer to paragraphs 61 to 66 of its Judgment. We will, however, present the most important pieces of evidence on record

¹¹ *Ibid.*, paras. 46-47.

¹² *Ibid.*, para. 48.

¹³ *Ladu op. cit.* Judgment, para. 16, citing *Bagot, op. cit.* Judgment, para. 47; *Hallal v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-207, para. 28.

and highlight those factual findings which clearly demonstrate that Mr. Al Khatib committed misconduct.

29. At the outset, it is necessary to give some context to the events that led to Mr. Al Khatib's separation from service.

30. There was no dispute that, on 24 August 2016, Mr. Al Khatib contacted the Complainant, an UNRWA beneficiary, to tell her that she was entitled to cash assistance and asked her to visit the ATC to collect her cash assistance cheque.

31. The Complainant alleged that when she visited the ATC's office Mr. Al Khatib refused to give her the cheque, but offered to help by accompanying her to the bank in order to cash the cheque. She further claimed that, on 29 August 2016, Mr. Al Khatib and a driver picked her up near her house in a vehicle of the ATC, that they went to the bank together, and that she cashed the cheque and received JD 1097. The Complainant contended that Mr. Al Khatib snatched the cash out of her hands and gave her only JD 230 without any receipt. She added that, two days later, on 31 August 2016, she and her husband met with Mr. Al Khatib outside of his office and he gave her the remaining amount from the cheque as well as a receipt.

32. In reviewing the Administration's decision, the UNRWA DT had before it the documentary evidence on the record, including the Investigation Report and the testimonies of the various witnesses together with that of Mr. Al Khatib before the investigators.

33. Regarding the material facts of the case, the UNRWA DT Judge made *inter alia* the following observations and findings:

34. First, the UNRWA DT found on the documentary evidence¹⁴ that, on 29 August 2016, an amount of JD 1,095 was cashed at the AJIB, Al-Yasmeen Branch, while on the same day, Mr. Al Khatib requisitioned an UNRWA vehicle with the Driver, Mr. J.D., to go to "Yasmeen Bank" for "financial issues".

35. The UNRWA DT was clearly not convinced either by Mr. Al Khatib's different story that he did not go to "Yasmeen Bank", but rather he went to the Cairo-Amman Bank, or the driver's story that he had never driven a student to a Bank with Mr. Al Khatib. The reasoning provided by the UNRWA DT Judge for discounting the probative value of their testimonies is

¹⁴ Impugned Judgment, para. 63.

set forth in clear and unambiguous words in paragraph 64 of his Judgment, wherein he informed that

The Tribunal is not convinced by the Applicant's and the Driver's statements. The Applicant wants the Tribunal to believe that the day on which the Complainant actually cashed her cheque at the AJIB, Al-Yasmeen Branch, the Applicant had "financial issues" to handle at another bank in the same neighbourhood. This scenario is highly improbable because the Complainant would [have] had to have known about the particular details of the Applicant's whereabouts on that day, in order to fabricate her story to coincide with the fact that the Applicant requisitioned an UNRWA vehicle to go to a bank in the same vicinity as the AJIB, Al-Yasmeen Branch. Therefore, the Tribunal considers that the Complainant's statement, on its own, is sufficiently credible.

36. Next, the UNRWA DT took into consideration the following facts. First, on 30 August 2016, the day after the alleged incident, the Complainant complained about Mr. Al Khatib's actions to Mr. J. G., the School Counsellor, and the latter advised her to submit an official complaint. Second, another witness, Mr. S. B., told the Investigators that Mr. Al Khatib had shown him a receipt with respect to the Complainant's cheque and that the date of the receipt was 31 August 2016. The UNDT Judge observed that these statements were consistent with the Complainant's account. In assessing the credibility of Mr. J. G.'s and S. B.'s witness statements, the UNRWA DT Judge underscored that there had been no evidence presented that either Mr. J. G. or Mr. S. B. harbored any ill will towards Mr. Al Khatib or any reason to lie about what they had heard and seen.¹⁵

37. Finally, after carefully and thoroughly considering the evidence on which the Administration had based the sanction, along with its own observations and findings thereupon, the UNRWA DT concluded that the facts on which the impugned disciplinary measure was based were established by clear and convincing evidence.

38. The UNRWA DT also considered Mr. Al Khatib's argument that his due process rights had not been respected during the investigation and disciplinary proceedings, but dismissed it as being without merit.

¹⁵ *Ibid.*, para. 65.

39. These are accurate conclusions from the evidence on record and common knowledge and we find no reason to differ from them. The UNRWA Dispute Tribunal has broad discretion under its Rules of Procedure to determine the admissibility of any evidence and the weight to be attached to such evidence. The findings of fact made by the UNRWA DT can only be disturbed under Article 2(1)(e) of the Appeals Tribunal Statute when there is an error of fact resulting in a manifestly unreasonable decision, which is not the case here. We are satisfied that the UNRWA DT's conclusion is consistent with the evidence. Mr. Al Khatib has not put forward any persuasive grounds to warrant interference by this Tribunal.

40. In all the circumstances of the case, this Tribunal is satisfied with the detailed analysis of the totality of the evidence by the UNRWA DT and agrees with its well-reasoned conclusion. Having regard to the factual findings made by the trial Judge, the chronology of the critical events and the overall deductive reasoning process of his, this Tribunal shares the UNRWA DT's view that the only reasonable conclusion available to the trial Judge, resulting from the evidence against Mr. Al Khatib, uncovered by the investigation and the documentary evidence before the first instance Judge, was that the latter had engaged in a fraudulent action towards an Agency's beneficiary.

41. Indeed, it is common cause that, on 24 August 2016, Mr. Al Khatib contacted the Complainant and told her that she was entitled to cash assistance and asked her to visit the ATC to collect her cash assistance cheque. As the Complainant reported and then testified before the investigators, when she visited the ATC's office Mr. Al Khatib refused to give her the cheque, but offered to help by accompanying her to the bank in order to cash the cheque; on 29 August 2016, Mr. Al Khatib and a driver picked her up near her house in a vehicle of the ATC, and together they went to the bank, where she cashed the cheque and received JD 1,097. Mr. Al Khatib snatched the cash out of her hands and gave her only JD 230 without any receipt, which he subsequently returned to her. The minimal arithmetical differences, reflected in the PAR, the due process letter and the sanction letter, in terms of the specific amounts of cash that Mr. Al Khatib allegedly returned to the Complainant on 29 August 2016, i.e., JD 230 according to the PAR and the due process letter, but JD 200 according to the sanction letter, did not impact the evidentiary assessment of the first instance Tribunal—as transpires at paragraph 62 of the impugned Judgment, where it held that Mr. Al Khatib gave the Complainant “the remaining amount from the cheque”—nor did it

affect the established conviction of this Tribunal that Mr. Al Khatib had engaged in the above fraudulent actions towards the Complainant.

42. Further, it is not disputed that the Complainant made a complaint about the incident at the first reasonable opportunity to Mr. J. G., the School Counsellor, on the very next day of the event, on 30 August 2016, and the latter advised her to submit an official complaint, which she did. It is common knowledge that it is typical in this kind of disputes concerning fraudulent actions that the alleged conduct most of the times takes place in private, without direct evidence other than from the complainant, and that the evidentiary questions in such cases center on the credibility of the complainant's testimony. In the circumstances, we find, as the UNRWA DT did, that the Complainant's account of the material events was coherent, detailed, and consistent and was of considerable evidentiary weight. In this respect, we share the UNRWA DT Judge's assessment that it would be improbable for the Complainant to have fabricated the whole story to coincide with the fact that Mr. Al Khatib had requisitioned an UNRWA vehicle to go to a bank in the same vicinity as the AJIB, Al-Yasmeen Branch, on the same day of the event (29 August 2016), since that presupposed that the Complainant had known about the particular details of Mr. Al Khatib's whereabouts on that day.

43. The credibility of the Complainant's account of events has not been damaged by any countervailing evidence. On the contrary, its detailed content was confirmed by the above-mentioned testimonies of Mr. J. G. or Mr. S. B. before the Investigators, in which they relayed the version of the Complainant with a consistency that added to their credibility. By contrast, Mr. Al Khatib failed to provide any sound explanation or material facts that would render the Complainant's allegations doubtful, and his statements were mere allegations and conjectures not supported by any evidence.

44. In fact, Mr. Al Khatib attempted to discredit the Complainant's testimony. But he did not succeed in this attempt before the UNRWA DT. On appeal, he argues, or reargues, that he did not accompany the Complainant to the bank to do a cash withdrawal, that the transport requisition bore only his and the driver's name, and that some of the witnesses' statements, tendered by him, pertinent to the Complainant's motivation to file the complaint against him, were ignored by the UNRWA DT. In this respect, he cites a statement dated 9 September 2018 provided by Mr. Majd Suleiman Mahmoud Aryan, Assistant Registrar at the ATC, in which he stated that he had contacted the Complainant by phone asking her about the reason that had led her to file the complaint, and she "told [him] that she did not

want to file the complaint but some people in the college convinced her to file the complaint. ... She also said that she was afraid to withdraw the complaint because the people who convinced her to file it told her that in case she withdrew the complaint the assistance provided to her by UNRWA would be stopped.”

45. Mr. Al Khatib is also invoking several other persons’ witness statements aimed at diminishing, directly or indirectly, the probative value and credibility of the Complainant’s account of events, as for example that Mr. Al Khatib was at the Balqua Applied University at the time the alleged facts occurred on 29 August 2016, or that “as per the applicable instructions at UNRWA, it is prohibited to pick up students, their parents or any person who is not an ATC staff member in UNRWA vehicles used by ATC. Drivers and vehicles are not to leave anywhere in an official business except by an official travel requisition. The requisition shall contain the names of persons using the vehicles.”¹⁶

46. We note again that the UNRWA DT has broad discretion under its Rules of Procedure¹⁷ to determine the admissibility of any evidence and the weight to be attached to such evidence.¹⁸ Our jurisprudence has consistently held that the Appeals Tribunal will not lightly interfere with the broad discretion conferred on the first instance tribunal in the management of its cases to enable cases to be judged fairly and expeditiously and for dispensation of justice. We will intervene only in clear cases of denial of due process of law affecting a party’s right to produce evidence.¹⁹

47. In the instant case, we do not accept Mr. Al Khatib’s argument that this threshold has been met.

48. First, it is not accurate that the UNRWA DT Judge ignored this specific kind of evidence. As evident, on the face of the impugned Judgment, read as a whole, he simply found those statements unconvincing and impliedly rejected them by putting more evidential

¹⁶ Statement by the Dean of the ATC, dated 19 October 2020.

¹⁷ See Article 14 titled “Case management” of the UNRWA DT Rules of Procedure.

¹⁸ Article 13 titled “Evidence” of the UNRWA DT Rules of Procedure. *Abdeljalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-960, para. 43; *Lemonnier v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-762, para. 37, citing *Ljungdell v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-265, para. 26.

¹⁹ *Abdeljalil, supra.*, para. 43; *Uwais v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-675, para. 27, citing *Wu v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-597, paras. 34 and 35.

weight on the credibility and consistency of the Complainant's account of events and the pertinent corroborative witness testimonies of Mr. S. B. or Mr. J. G., to whom notably the Complainant had first turned after the incident, which the Judge found persuasive.

49. Moreover, even if the Complainant's name did not show on the relevant UNRWA transport requisition form dated 29 August 2016, or picking up students and other non-ATC staff members in UNRWA vehicles used by the ATC was a prohibited conduct, these facts alone did not *eo ipso* preclude in advance the perpetration of the actions that constituted the factual basis of the alleged misconduct by Mr. Al Khatib. Besides, common knowledge dictates that such a showing on the relevant transport requisition form would be improbable.

50. Obviously, along the same line of reasoning, the UNRWA DT Judge did not find convincing Mr. Aryan's witness statement, Mr. Al Khatib's supervisee at that time. In any case, this statement refers mainly to the Complainant's alleged motive and intention for filing or withdrawing her complaint against Mr. Al Khatib, but it offers no evidence at all in terms of the actual perpetration of the charged misconduct by Mr. Al Khatib. The same goes for the statement dated 21 April 2019 by an employee of the Balqa Applied University that Mr. Al Khatib had visited his university on 29 August 2016. That statement was not available to the Investigation Panel but was presented *ex post facto* for the first time to the UNRWA DT, in stark contrast to the evidential material from the Complainant, the two main witnesses and the relevant transport requisition of 29 August 2016, evidencing otherwise.

51. Moreover, the Complainant had no reason whatsoever to wrongly accuse Mr. Al Khatib and the same goes for Mr. J. G. and Mr. S. B., whose statements' credibility was not damaged by any countervailing evidence to that effect, as the UNRWA DT correctly found. It was, therefore, unlikely, objectively speaking, that the Complainant would have conspired with them against Mr. Al Khatib.

52. Consequently, we see no error in that approach and the determination of the material facts. As already noted, we are satisfied that the UNRWA DT's conclusions are consistent with the evidence. Mr. Al Khatib has not put forward any persuasive grounds to warrant interference by this Tribunal. Therefore, we reject the arguments that he has advanced to the contrary.

53. In sum, the documentary evidence on file, as well as the strong circumstantial evidence and the inherent probabilities of the situation given the potential harm that the Complainant, a beneficiary of the Agency, could suffer as a result of her reporting such an incident, taken cumulatively, suggest to the appropriate evidentiary standard of clear and convincing evidence, as correctly held the UNRWA DT, that Mr. Al Khatib had committed the alleged misconduct. Therefore, his contentions to the contrary are rejected as being without merit.

The established facts qualify as misconduct

54. This Tribunal agrees with the finding of the UNRWA DT that the established facts amounted to serious misconduct on the part of Mr. Al Khatib.

Applicable provisions

55. Area Staff Regulations provide:

REGULATION 1.1

Staff members, by accepting appointment, pledge themselves to discharge their functions with the interest of the Agency only in view.

REGULATION 1.4

Staff members shall conduct themselves at all times in a manner befitting their status as employees of the Agency. They shall not engage in any activity that is incompatible with the proper discharge of their duties with the Agency.

REGULATION 10.2

The Commissioner-General may impose disciplinary measures on staff members who engage in misconduct.

Area Staff Rule 110.1 titled “Disciplinary measures and procedures” stipulates:

1. Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the UNRWA Area Staff Regulations and UNRWA Area Staff Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct.

56. In view of the foregoing, Mr. Al Khatib, by engaging in such actions, violated his obligations under the above-mentioned provisions, and did not conduct himself in a manner befitting his status as an employee of the Agency and notably his capacity as Registrar and Alumni Officer responsible for handling cash assistance cheques of the beneficiaries. As the UNRWA DT Judge correctly observed, *inter alia*, “it was seriously inappropriate and egregious for the Applicant to have abused his authority in an attempt to obtain an unauthorised benefit from a student’s cash assistance”.²⁰

The sanction of separation from service was proportionate to the offence

57. Area Staff Rule 110.1 gives the Commissioner-General the discretion to impose a disciplinary measure:

4. The decision to impose a disciplinary measure shall be within the discretionary authority of the Commissioner-General. For the imposition of disciplinary measures other than summary dismissal, such authority is delegated to the Director of Human Resources for Headquarters staff and Field Office Directors for Field staff. The authority to further define the conditions and procedures concerning the imposition of disciplinary measures is delegated to the Director of Human Resources.

Disciplinary measures

5. Disciplinary measures under Area Staff Regulation 10.2 may take one or more of the following forms only:

- A) written censure;
- B) loss of one or more steps in grade;
- C) deferment, for a specified period, of eligibility for salary increment;
- D) suspension without pay for a specified period;
- E) fine;
- F) deferment, for a specified period, of eligibility for consideration for promotion;
- G) demotion with deferment, for a specified period, of eligibility for consideration for promotion;
- H) separation from service, with notice or compensation in lieu of notice, notwithstanding Area Staff Regulation 9.3, with termination indemnity;

²⁰ Impugned Judgment, para. 71.

- I) separation from service, also known as termination for misconduct, with notice or compensation in lieu of notice, notwithstanding Area Staff Regulation 9.3, and without termination indemnity pursuant to Area Staff Rule 109.9;
- J) summary dismissal.

58. The matter of the degree of the sanction is usually reserved for the Administration, which has discretion to impose a measure that it considers adequate in the circumstances of the case and for the actions and conduct of the staff member involved. This appears as a natural consequence of the scope of administrative hierarchy and the power vested in the competent authority. It is the Administration that carries out the administrative activity and procedure and deals with the staff members. Therefore, the Administration is best suited to select an adequate sanction able to fulfil the general requirements of these kinds of measures such as a sanction within the limits stated by the respective norms, sufficient to prevent repetitive wrongdoing, punish the wrongdoer, satisfy victims and restore the administrative balance. That is why the Tribunals will only interfere and rescind or modify a sanction imposed by the Administration where the sanction imposed is blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity. This rationale is followed without any change in the jurisprudence of this Tribunal.²¹ The Secretary-General also has the discretion to weigh aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose.²²

59. Further, as we stated in *Samandarov*,²³

... due deference [to the Administration's discretion to select the adequate sanction] does not entail uncritical acquiescence. While the Dispute Tribunal must resist imposing its own preferences and should allow the Secretary-General a margin of appreciation, all administrative decisions are nonetheless required to be lawful, reasonable and procedurally fair. This obliges the UNDT to objectively assess the basis, purpose and effects of any relevant administrative decision. In the context of disciplinary measures, reasonableness is assured by a factual judicial assessment of the elements of proportionality. Hence, proportionality is a jural postulate or ordering principle requiring teleological application.

²¹ *George M'mbetsa Nyawa v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1024, para. 89; *Ganbold v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-976, para. 58; *Ladu, op cit.* Judgment, para. 39; *Sall v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-889, para. 41.

²² *George M'mbetsa Nyawa, supra*, para. 89; *Ladu, supra*, para. 40.

²³ *Samandarov v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-859, paras. 24-25.

... The ultimate test, or essential enquiry, is whether the sanction is excessive in relation to the objective of staff discipline. As already intimated, an excessive sanction will be arbitrary and irrational, and thus disproportionate and illegal, if the sanction bears no rational connection or suitable relationship to the evidence of misconduct and the purpose of progressive or corrective discipline. The standard of deference preferred by the Secretary-General, were it acceded to, risks inappropriately diminishing the standard of judicial supervision and devaluing the Dispute Tribunal as one lacking in effective remedial power.

60. In the present case, given the seriousness and degree of Mr. Al Khatib's misconduct, the sanction of separation from service without termination indemnity was not unreasonable, absurd or disproportionate. The Appeals Tribunal finds that it was a reasonable exercise of the Commissioner-General's discretion to determine that intentionally abusing a position of power and trust against a beneficiary of UNRWA in a vulnerable situation rendered Mr. Al Khatib unfit for further service with the Agency, and is satisfied that separation from service without termination indemnity was neither unfair nor disproportionate to the seriousness of the offence. As the UNRWA DT correctly held, Mr. Al Khatib violated the relationship of trust that had existed between him and the Agency. His conduct was particularly grave in light of the position he occupied as Registrar and Alumni Officer responsible for handling cash assistance cheques of the beneficiaries, which involved interactions with vulnerable beneficiaries, and the fact that, he abused his authority in an attempt to obtain an authorized benefit from a student's cash assistance. As such, the Appeals Tribunal finds that imposing the sanction of separation from service without termination indemnity was a reasonable exercise of the Administration's broad discretion in disciplinary matters, a discretion with which it will not lightly interfere. The UNRWA DT thus did not err in finding the sanction proportionate to the disciplinary offense in the present case.

Whether the UNRWA DT committed an error in procedure such as to affect the decision of the case

61. Mr. Al Khatib raises a variety of challenges to the correctness of the UNRWA DT's conclusions and additionally criticizes the fairness of the UNRWA DT's general approach and management of his case, i.e., by submitting that the UNRWA DT erred in law by not analyzing that the Investigation Report was erroneous and violated the DIOS Technical Instruction 02/2016: the UNRWA Investigation Policy. During the investigation, he

(Mr. Al Khatib) was not given sufficient time to explain himself as he was not notified 24 hours in advance of the interview, per the DIOS technical instruction. Furthermore, the investigation did not prove or show any causal link that any fraud had allegedly been committed by him; the procedure was fundamentally flawed from a due process perspective and there was complete absence of cogent evidence during the investigation as a sufficient enough basis for the Agency to have issued him a letter of separation of service without termination indemnity. In addition, most of the evidence, which had no causal link with him, was tendered by the Respondent only after he had submitted an application to the UNRWA DT.

62. The Appeals Tribunal emphasizes that the appeals procedure is of a corrective nature and, thus, is not an opportunity for a dissatisfied party to reargue his or her case. A party cannot merely repeat on appeal arguments that did not succeed before the lower court. The function of the Appeals Tribunal is to determine if the Dispute Tribunal made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as prescribed in Article 2(1) of the Appeals Tribunal Statute. 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.²⁴ Mr. Al Khatib has failed to do so in the present case.

63. Be that as it may, this Tribunal has gone by itself through the evidence on file and found the UNRWA DT's reasoning and conclusions to be correct.

64. Further, we share the UNRWA DT's view²⁵ that Mr. Al Khatib has failed to demonstrate in what way the alleged violations of the Agency's regulatory framework prejudiced him within the context of the present case and impacted the outcome of his case. Additionally, we take note that due process rights of a staff member are complied with as long as s/he has a meaningful opportunity to mount a defense and to question the veracity of the statements against him. The Appeals Tribunal is satisfied that the key elements of Mr. Al Khatib's right to due process were met and that the interests of justice were served in this case. Consequently, we find no error in the UNRWA DT's finding that there were no breaches of Mr. Al Khatib's due process rights during the investigation and disciplinary

²⁴ *Cherneva v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-870, para. 30; *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, para. 19.

²⁵ Impugned Judgment, para. 58.

process. Indeed, there is no evidence that Mr. Al Khatib's rights were infringed in any way during the investigation. The Administration diligently undertook the investigation, Mr. Al Khatib was fully informed of the charges against him and was able to mount a defense and had ample opportunities to make his case. He was provided with the allegations of misconduct and was given, and availed himself of, the opportunity to answer them. Therefore, we agree with the UNRWA DT that there was no merit in Mr. Al Khatib's argument that the investigation was procedurally defective.

Request for compensation

65. Mr. Al Khatib's claim for compensation is rejected. Since no illegality was found, there was no justification for the award of any compensation. As this Tribunal stated before, "compensation cannot be awarded when no illegality has been established; it cannot be granted when there is no breach of the staff member's rights or administrative wrongdoing in need of repair".²⁶

66. For the foregoing reasons, we find that Mr. Al Khatib has failed to establish that the UNRWA DT made any error of law or fact in its review of the disciplinary measure imposed by the Commissioner-General. It follows that the appeal must fail.

²⁶ *Verma v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-829, para. 33, citing *Kucherov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-669, para. 33.

Judgment

67. The appeal is dismissed and Judgment No. UNRWA/DT/2020/063 is hereby upheld.

Original and Authoritative Version: English

Dated this 29th day of October 2021.

(Signed)

Judge Raikos, Presiding
Athens, Greece

(Signed)

Judge Sandhu
Vancouver, Canada

(Signed)

Judge Murphy
Cape Town, South Africa

Entered in the Register on this 6th day of December 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar