



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

Judgment No. 2021-UNAT-1158

**Hussam Abd AlRhman Al Dirawi
(Appellant)**
v.
**Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East
(Respondent)**

JUDGMENT

Before:	Judge Jean-François Neven, Presiding Judge Dimitrios Raikos Judge Sabine Knierim
Case No.:	2020-1480
Date:	29 October 2021
Registrar:	Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Ms. Rachel Evers

JUDGE JEAN-FRANÇOIS NEVEN, PRESIDING.

1. Mr. Hussam Abd AlRhman Al Dirawi¹ filed an application with the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA Dispute Tribunal or UNRWA DT, and UNRWA or Agency, respectively), challenging the disciplinary sanction of separation from service without termination indemnity that was imposed on him. It was alleged that he had inflicted corporal punishment on a disabled student. On 27 August 2020, the UNRWA DT issued a Judgment dismissing the application. Mr. Al Dirawi appeals the UNRWA DT Judgment.

2. For the reasons set out below, we dismiss the appeal and affirm the UNRWA DT decision.

Facts and Procedure

3. Mr. Al Dirawi joined the Agency on 9 September 2009 as an Arts and Crafts Teacher in the Education Department, Gaza Field Office (GFO). He was employed on a fixed-term appointment at the time of the events of this case.

4. On 7 November 2018, a student's father submitted a complaint to UNRWA's Field Legal Office, Gaza (FLO), alleging that the Appellant had severely beaten his disabled son.

5. On 8 November 2018, the Director of UNRWA Operations, Gaza (DUO/G) commenced a misconduct investigation into the allegations against the Appellant.

6. On 27 November 2018, the DUO/G placed the Appellant on administrative leave with pay, pending the outcome of the investigation. The administrative leave with pay was subsequently converted to the administrative leave without pay effective 7 February 2019.

7. On 10 December 2018, the FLO concluded the investigation and issued the GFO Misconduct Investigation Report (Investigation Report). The Investigation Report detailed serious acts of violence by the Appellant against the student, who suffered from cancer and had one leg amputated. The Investigator found that the Appellant had committed several acts of corporal punishment against the student and failed to help after the

¹ In the UNRWA Dispute Tribunal's Judgment and the correspondence from the Director of UNRWA Operations, Gaza, the Appellant's name was spelled "El Dirawi". But we adopt the English spelling of the last name (Al Dirawi) that the Appellant has provided in his appeal form.

student had been hurt. The Investigation Report included as evidence witness interviews with several students and school staff members, a review of the medical report, and the Appellant's interview.

8. By letter dated 13 January 2019 (Opportunity to respond (OTR) letter), the DUO/G informed the Appellant of the findings of the investigation and invited him to respond to the allegations. The letter informed the Appellant that if the investigation's findings were confirmed, his conduct may amount to misconduct and result in disciplinary measures.

9. On 23 January 2019, the Appellant responded to the OTR letter and rejected the allegations against him. He characterized the investigation's findings as an "exaggeration" and described the student as a "troublemaker". The Appellant stated that he was defending himself, and that the student had inflicted some of the injuries on himself. He alleged that the student's family had attempted to "blackmail" him by asked for money in return for dropping the complaint.

10. On 16 May 2019, the DUO/G upheld the investigation's findings and imposed the disciplinary sanction of separation from service without termination indemnity on the Appellant. The Appellant was paid compensation equal to one month's salary in lieu of notice.

11. The DUO/G found that several aggravating factors warranted separation from service without termination indemnity, including the fact that the Appellant's misconduct involved violence against a vulnerable child; the trust and responsibility incumbent on classroom teachers; the fact that the Appellant had never admitted wrongdoing or shown remorse; and the potential for the Appellant's misconduct to cause significant reputational harm to UNRWA.

12. On 13 July 2019, the Appellant submitted a request for decision review. On 9 October 2019, he filed an application with the UNRWA Dispute Tribunal.

UNRWA DT Judgment

13. On 27 August 2020, the UNRWA Dispute Tribunal issued the impugned decision in Judgment No. UNRWA/DT/2020/052, in which it dismissed the Appellant's application.

14. The UNRWA Dispute Tribunal found that the following facts, as reported in the Investigation Report, were established by clear and convincing evidence. The Appellant asked the victim to come to the front of the classroom after the latter had failed to answer a question. The Appellant then hit the victim's hand with a hose and slapped him on the face. The victim tried to leave the classroom to find the School Principal, but the Appellant pushed the victim, and he fell to the floor and hit his head on a desk. The victim returned to his desk crying, and the Appellant told him to stop crying and raise his head. When the victim did not do as asked, the Appellant hit the back of his head, causing the victim's head to hit a desk again. As a result, his nose began to bleed.

15. The UNRWA Dispute Tribunal found that the Appellant's actions were in clear violation of the UNRWA regulations, and thus that the Appellant's actions constituted misconduct.

16. The UNRWA Dispute Tribunal determined that the disciplinary sanction of "separation from service without termination indemnity" was proportionate to the Appellant's misconduct. It acknowledged that this disciplinary sanction was one of the most severe that the Agency could impose on a staff member, but found that it was proportionate in view of the nature and gravity of the Appellant's actions.

17. Lastly, the UNRWA Dispute Tribunal found there was no evidence that the Agency's decision was tainted by procedural irregularity, prejudice, or other extraneous factors or errors.

Procedure before the Appeals Tribunal

18. On 25 October 2020, the Appellant appealed the UNRWA DT Judgment to the United Nations Appeals Tribunal (Appeals Tribunal or UNAT). On 26 December 2020, the Commissioner-General of UNRWA submitted his answer, which was registered on 6 January 2021.

Submissions

Mr. Al Dirawi's Appeal

19. The Appellant submits that the UNRWA Dispute Tribunal erred in fact and law, in basing its findings on contradictory evidence from witnesses and in finding that UNRWA had established his misconduct by clear and convincing evidence. He argues that there were numerous inconsistencies in the witness testimony and other evidence.

20. The Appellant requests that the Appeals Tribunal vacate the UNRWA Dispute Tribunal's Judgment and reverse his separation from service. He additionally requests an unspecified amount of compensation for the psychological and moral impact resulting from his separation from service.

The Commissioner-General's Answer

21. The Commissioner-General submits that the UNRWA Dispute Tribunal did not err in law, fact or procedure when rendering its Judgment. The Respondent contends that the UNRWA Dispute Tribunal sufficiently considered the facts and correctly held that they were established by clear and convincing evidence.

22. The Commissioner-General submits that the errors alleged by the Appellant in his appeal are either unproven or do not warrant intervention by the Appeals Tribunal. The Respondent maintains that the Appellant is using his appeal to impermissibly repeat arguments that failed before the UNRWA Dispute Tribunal.

23. The Commissioner-General requests that the Appeals Tribunal uphold the UNRWA DT Judgment and dismiss the appeal in its entirety.

Considerations

24. The Appeals Tribunal's authority in reviewing the Dispute Tribunal's judgments is set out in Article 2(1) of its Statute. It provides that the Appeals Tribunal is competent to hear and pass judgment on an appeal of the Dispute Tribunal's judgment in which it is asserted that the Dispute Tribunal

a) exceeded its jurisdiction or competence;

- b) failed to exercise jurisdiction vested in it;
- c) erred on a question of law;
- d) committed an error of procedure, such as to affect the decision of the case; or
- e) erred on a question of fact, resulting in a manifestly unreasonable decision.

Standard of review in disciplinary cases

25. This Tribunal has consistently held:²

In disciplinary matters, we follow the settled and unambiguous case law of this Tribunal, as laid down in *Mizyed* quoting *Applicant*, and others: Judicial review of a disciplinary case requires the UNRWA DT to consider the evidence adduced and the procedures utilized during the course of the investigation by the Administration. In this context, the UNRWA DT 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”.

26. Therefore, the UNRWA DT has first to ascertain whether the facts on which the sanction was based have been established by clear and convincing evidence:³

Disciplinary cases are not criminal. Liberty is not at stake. But when termination might be the result, we should require sufficient proof. We hold that, when termination is a possible outcome, misconduct must be established by clear and convincing evidence. Clear and convincing proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt—it means that the truth of the facts asserted is highly probable.

27. The principle of proportionality of disciplinary measures was set out in *Sanwidi*:⁴

When judging the validity of the [the Commissioner-General’s] exercise of discretion in administrative matters, the [UNRWA] Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider

² *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. 11, citing *Mizyed v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-550, para. 18; *Applicant v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-302, para. 29 (internal citations omitted).

³ *Molari v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-164, para. 30.

⁴ *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 40.

whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the [Commissioner-General] amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the [Commissioner-General].

28. In the present case, the UNRWA DT examined:

- whether the facts on which the disciplinary measure was based were established (by a preponderance of evidence, but where termination was a possible sanction, the facts must be established by clear and convincing evidence);
- whether the established facts legally supported the conclusion of misconduct;
- whether the sanction was proportionate to the offence; and
- whether the Agency's discretionary authority was not tainted by evidence of procedural irregularity, prejudice or other extraneous factors, or error of law.

29. We find that, in the present case, the standard of review was correctly applied.

The UNRWA DT did not err in considering that the alleged facts were established by clear and convincing evidence

30. The UNRWA Dispute Tribunal found that the statements of the victim and the other students were not contradicted by the statements of the School Principal, the School Counsellor and the School Secretary, all of whom had dealt with the victim in the aftermath of the incident. Consequently, it found that, in the present case, the alleged facts were established by clear and convincing evidence.

31. The Appellant alleges that the UNRWA DT should not have referred to the medical report which, according to the Investigation Report, was dated 26 October 2018 when the incident occurred on 28 October 2018. This was clearly an inconsequential date error made in the Investigation Report. Since the medical report itself indicated that, it was written on 28 October 2018, the UNRWA Dispute Tribunal did not err in referring to it.

32. The Appellant also alleges contradictions between the medical report and the witnesses' statements and maintains that the UNRWA Dispute Tribunal should not have ignored those contradictions. We do not agree. The fact that the medical report, which was written a few hours after the incident, did not indicate the presence of bleeding or traces of blood on the nose and face did not contradict the evidence supporting the facts as determined by the UNRWA DT. Indeed, the medical report found "effects of bruise with redness on the cheek [sic], and effects of bruise with redness on the right loser [sic]", and stated that necessary action had been taken.

33. The other minor differences between the witness statements and the medical report are inconsequential and do not establish that the UNRWA DT erred on a question of fact, resulting in a manifestly unreasonable decision.

The UNRWA DT did not err in considering that the facts amounted to misconduct

34. In assessing the seriousness of misconduct and reviewing the proportionality of a disciplinary sanction, the Appeals Tribunal has consistently granted extensive discretion to the Secretary-General, (and the Commissioner-General here), to determine whether a staff member's conduct amounted to misconduct, and to weigh aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose. The Appeals Tribunal's role is to determine whether such exercise of discretion was reasonable in the circumstances.

35. UNRWA's Area Staff Regulations 9.1, 10.2 and 10.3 give the Commissioner-General a wide discretion to impose disciplinary sanctions, including termination, for misconduct. The Educational Technical Instruction No. 1/08 (ETI No. 1/08) clearly prohibits corporal punishment as misconduct that is subject to severe disciplinary measures including termination.

36. Article 1.3 of ETI No. 1/08 states:

g. Corporal punishment, other cruel and degrading forms of punishment and all violence against children or students are strictly forbidden in all UNRWA schools and Training Centres, at all times, and under all conditions and circumstances. This prohibition must be observed without exception by UNRWA Education Department staff.

h. Corporal punishment is defined as any punishment involving the application of physical force or the issuance of orders or instructions to a student with the intention of causing physical pain, discomfort or humiliation. In this ETI, the term "corporal punishment" includes other cruel or degrading forms of punishment referred to in this definition.

i. Corporal punishment may take a number of forms and includes, but is not limited to, hitting, slapping, smacking, spanking, punching, kicking, pinching and causing physical discomfort to the student [...].

37. Article 4.1(b) of ETI No. 1/08 states:

Corporal punishment constitutes misconduct as provided for in UNRWA rules and regulations. UNRWA staff proven to have been involved in administering, aiding, or concealing corporal punishment will be liable to severe disciplinary measures as stipulated in UNRWA Staff Regulations Cod/A/59/Rev. 25 and Personnel Directive No. A/10/REV.1. These measures include written censure, suspension without pay, demotion, termination and dismissal.

38. Consequently, the UNRWA Dispute Tribunal did not err in deciding that the Appellant's actions were in clear violation of the provisions of ETI No. 1/08 on corporal punishment, and that his actions constituted misconduct.

The UNRWA DT did not err in confirming the proportionality of the disciplinary measure

39. The UNRWA Dispute Tribunal acknowledged that the imposed disciplinary measure of separation from service without termination indemnity is one of the most severe disciplinary measures that the Agency can impose on a staff member. Nevertheless, it decided that, given the Appellant's misconduct in committing corporal punishment to a disabled and highly vulnerable child, and the Agency's clear zero-tolerance policy towards corporal punishment, the disciplinary measure imposed on the Appellant appeared to be neither absurd nor arbitrary; nor was there any evidence that the measure taken had been tainted by extraneous reasons or bias. Accordingly, the UNRWA Dispute Tribunal held that the imposed disciplinary measure was proportionate to the nature and gravity of the misconduct.

40. The Appellant did not identify any error in this finding.

Consequence

41. For the foregoing reasons, we determine that the UNRWA DT did not err in law or fact, resulting in a manifestly unreasonable decision, when it dismissed the application.

Judgment

42. The appeal is hereby denied and Judgment No. UNRWA/DT/2020/052 is hereby affirmed.

Original and Authoritative Version: English

Dated this 29th day of October 2021.

(Signed)

Judge Neven, Presiding
Brussels, Belgium

(Signed)

Judge Raikos
Athens, Greece

(Signed)

Judge Knierim
Hamburg, Germany

Entered in the Register on this 14th day of December 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar