



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

Judgment No. 2021-UNAT-1183

**Iyad Youssef Zaqout
(Appellant)**
v.
**Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East
(Respondent)**

JUDGMENT

Before:	Judge Kanwaldeep Sandhu, Presiding Judge Graeme Colgan Judge Dimitrios Raikos
Case No.:	2020-1489
Date:	29 October 2021
Registrar:	Weicheng Lin

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

JUDGE KANWALDEEP SANDHU, PRESIDING.

1. Iyad Youssef Zaqout (Appellant), a Senior Mental Health Psychosocial Support Specialist at the Gaza Field Office (GFO) of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency), contested the decision of the Administration to impose on him disciplinary measures, following a complaint of harassment and abuse of power. On 23 September 2020, the UNRWA Dispute Tribunal (UNRWA DT or Dispute Tribunal) issued Judgment No. UNRWA/DT/2020/056 and dismissed the Appellant's application contesting the decision.¹

2. For reasons set out below, we dismiss the appeal.

Facts and Procedure

3. The Appellant began service with UNRWA on a Special Service Agreement as a Manager, Community Mental Health Programme (CMHP), in September 2006.

4. On 1 June 2016, the Appellant was appointed Senior Mental Health Psychosocial Support Specialist at Grade 17, Step 4, in the GFO.

5. On 14 June 2017, the Head of CMHP, who served as the Appellant's supervisor, issued a written reprimand to the Appellant for unprofessional conduct on the basis that the latter had addressed him in an inappropriate and unprofessional manner, in relation to two incidents that occurred on 13 June 2017.

6. On 5 July 2017, a complaint of harassment and abuse of power was filed by a staff member (Complainant) against the Appellant.

7. On 6 December 2017, the Director of UNRWA Operations, Gaza, (DUO/G) authorized an investigation into the reported allegations, and on 20 March 2018, the investigation was concluded, followed by a Report of Investigation (Investigation Report).

¹ *Zaqqout v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2020/056 dated 23 September 2020 (Impugned Judgment).

8. The Investigation Report confirmed eight witnesses were interviewed in addition to the Appellant. The investigators reported the following:

- The Appellant was the Complainant’s supervisor.
- The Complainant alleged she was treated with disrespect when she joined. In 2008, the Complainant was assigned as Acting Administrative Officer. The Complainant, however, alleged that the Appellant refused to proceed with the appointment and appointed someone else. The Appellant allegedly transferred the Complainant because she refused to write a false performance report on another employee.
- In 2010, the Complainant alleged the Appellant verbally attacked her for allowing another staff member to enter his office. In addition, she alleged the Appellant would threaten staff members of the Mental Health Program and say things like “I collected you from the street”.
- In June 2017, interviewed witnesses reported that the Appellant spoke to his supervisor in an inappropriate and unprofessional manner in the presence of other colleagues.

After reviewing the allegations and the testimonies, the investigation found that there was evidence the Appellant used abusive, inappropriate and unprofessional language not only toward the Complainant but also toward other colleagues.

9. On 5 June 2018, the Appellant received his due process letter informing him of the findings of the investigation. He responded to the letter on 1 July 2018.

10. On 23 July 2018, the DUO/G upheld the findings in the Investigation Report that the Appellant engaged in harassing, abusive and inappropriate behavior towards the Complainant and other colleagues and that constituted a “pattern of unprofessional behaviour”. However, the DUO/G did not agree with the investigation’s findings that the Appellant had also retaliated against the Complainant. As such, the DUO/G imposed disciplinary measures on the Appellant that included a written censure and a loss of one grade, which effectively demoted him to Grade 16, Step 9 (Contested Decision).

11. The Appellant requested a decision review on 20 September 2018, and on 10 January 2019, he filed an application to the UNRWA DT challenging the Contested Decision.

The UNRWA DT Judgment

12. In the Impugned Judgment, the UNRWA DT dismissed the Appellant's application and held that: (i) the facts on which the disciplinary measures were based have been established; (ii) the facts legally support the conclusion of misconduct; (iii) the disciplinary measures were proportionate to the offence, and (iv) the Respondent's discretionary authority was not tainted by procedural irregularities or other errors. Accordingly, it dismissed the application.

Submissions

The Appellant's Appeal

13. The Appellant submits that the UNRWA DT erred in fact when it assessed the evidence before it and when it concluded that a ten-year delay in time did not have an impact on the fact finding of the case. He says the whole process and the assessment of the credibility of witnesses were impacted by the lapse of time.

14. The Appellant contends the UNRWA DT made several errors in the assessment of the evidence and that it gave more weight to inconsistent evidence, opinions and hearsay. The Appellant reviews the specific evidence of certain witnesses to highlight contradictions in their testimonies. He argues that official records demonstrate that his conduct is one of a supportive and a positive team member.

15. Also, the Appellant avers that the statements of his supervisor, the Head of CMHP, regarding his relationship with the Complainant are of no probative value because the supervisor was not employed at the Agency at the time of the complaint in 2007. The supervisor joined the Organization much after in September 2015.

16. In addition, the Appellant also submits that the tribunal ignored other evidence, such as the statements from another witness, who had personal knowledge of his relationship with the Complainant at the relevant time, attesting to the fact that they had a normal relationship.

17. The remainder of the Appellant's submissions focusses on other alleged inaccuracies and errors made by the UNRWA DT in failing to properly assess the credibility of witnesses and other evidence. The central claim of Appellant is that "the UNRWA DT did not follow standard of proof and gave more weight to opinions and hearsays despite having more direct[] and documented evidence[] before it".

18. Finally, the Appellant argues that the UNRWA DT ought not to have considered the written reprimand that the Head of CMHP issued on 14 June 2017. He says the tribunal should have invited other witnesses to assess the credibility of the letter. He submits the process was manipulated so that the letter of reprimand could no longer be challenged and yet it was used as a crucial piece of evidence against him.

19. The Appellant requests the Impugned Judgment be reversed and his application to the UNRWA DT be entertained *de novo*.

The Commissioner-General's Answer

20. The Commissioner-General or Respondent submits that the UNRWA DT did not err as a matter of fact, law or procedure when it dismissed the application on the merits.

21. The Respondent says the Appellant is merely repeating arguments he had already made at the UNRWA DT. The Respondent explains the Appellant is merely disagreeing with the outcome of the case and has not demonstrated how the findings were not supported by the evidence or were unreasonable.

22. Regarding the Appellant's contention relating to the passage of time before the complaint was submitted, the UNRWA DT was alive on this issue.

23. Regarding the allegation that the Head of CMHP was not employed at the Agency at the time of the complaint in 2007, the Commissioner-General submits that the statement of the supervisor was not about the work relationship at the time of the incident but was his current observation that the relationship between the Appellant and the Complainant was "unsupportive and at times abusive".

24. In response to the Appellant's allegation that the UNRWA DT relied heavily on hearsay, the Respondent argues that there is no prohibition on the use of hearsay evidence if there is other corroborative evidence of misconduct. In the same vein, the UNRWA DT properly relied on the written reprimand for purposes of strengthening the credibility of the witnesses.

25. Finally, the Respondent argues the tribunal had ample evidence before it in support of the allegations against the Appellant and the fact that the Appellant's position or evidence is not adopted in the Investigation Report does not imply that the burden of proof had improperly shifted.

26. As such, the Respondent submits the Appellant has not identified any reversible error, which warrants intervention by this Tribunal. The appeal should thus be dismissed.

Considerations

Request for oral hearing

27. The Appellant's request for an oral hearing before the United Nations Appeals Tribunal (Appeals Tribunal) is denied. Under Article 8(3) of the Appeals Tribunal Statute (Statute) and Article 18(1) of the Appeals Tribunal Rules of Procedure (Rules), the Appeals Tribunal may grant an oral hearing if it would "assist in the expeditious and fair disposal of the case".

28. The Appellant makes the request for an oral hearing on the basis that the UNRWA DT had missed most of the argument presented by him in writing and that it did not adequately "capture" the extensive writing and cross referencing. He says he would "highly prefer" to make an oral presentation to ensure that his argument is correctly reflected.

29. The rationale for the Appeals Tribunal to grant an oral hearing is that it would assist in the "expeditious and fair disposal of the case". In the present case, there is no indication that an oral hearing would do so. The record before the UNRWA DT is extensive and comprehensive. An appeal before this Tribunal is not a rehearing of the matter but gives the parties the ability to appeal on narrow bases, such as errors of law, fact and jurisdiction of the first instance tribunal, not to further explain the evidence. Therefore, we find that an oral hearing would not assist in expeditiously and fairly resolving the issues on appeal.

*Merits of the Appeal**(a) Relevant legal framework in disciplinary cases*

30. As provided for by Article 2(1) of the Statute, the role of the Appeals Tribunal is to determine if the Dispute Tribunal has made errors of fact, law or procedure or exceeded or failed to exercise its jurisdiction or competence. An appellant has the burden of showing the impugned judgment is defective in the manner required by Article 2(1), not simply to set out how they disagree with the outcome or to attempt to have the matter retried.²

31. A judicial review of disciplinary cases requires consideration of the evidence adduced and the procedures utilized during the course of the investigation by the Administration.³ In *Samandarov*,⁴ the Appeals Tribunal expounded on the tests the Dispute Tribunal must undertake in evaluating the legality of a disciplinary sanction. They include: (i) whether the facts on which the sanction is based have been established; (ii) whether the established facts qualify as misconduct under the Staff Regulations and Rules, and (iii) whether the sanction is proportionate to the offence. Furthermore, the Administration has the burden of proof to establish that the alleged misconduct for which a disciplinary measure has been taken occurred.⁵ When termination is a possible outcome, the misconduct must be established by clear and convincing evidence, which means that the truth of the facts asserted is highly probable.⁶

32. However, the Appeals Tribunal has also generally held that the Administration has a broad discretion in disciplinary matters which will not be lightly interfered with on judicial review.⁷ This discretion, however, is not unfettered and can be reviewed to determine whether the exercise of discretion is lawful, rational, procedurally correct and proportionate.⁸ This includes considering whether relevant matters have been ignored and irrelevant matters considered, whether the decision is absurd or perverse or affected by bias.⁹ It is not the role of

² See *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-691, para. 19; *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29.

³ *Applicant v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-302, para. 29, citing *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123.

⁴ *Samandarov v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-859, para. 21.

⁵ *Mizyed v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-550, para. 18, citing *Applicant v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-302, para. 29.

⁶ *Ibid.*

⁷ See *Ladu v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-956, para. 39.

⁸ *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 40.

⁹ *Ibid.*

the Dispute Tribunal to consider the correctness of the choice made by the Administration amongst the various courses of action open to it or to substitute its own decision for that of the Administration.¹⁰

33. In the present case, we find that the UNRWA DT did not err such as to vitiate its Judgment, and it correctly found the Contested Decision was a lawful exercise of the Administration's discretion.

(i) Whether the facts on which the sanction is based have been established

34. The UNRWA DT examined the facts underlying the allegations made against the Appellant and found corroborating evidence supporting them. We find no fault in its conclusion that the facts on which the sanction is based have been established.

35. We find no merit in the Appellant's submission that the lapse of time regarding some of the complained behavior or the hearsay nature of the evidence undermines the credibility of the process. The Appellant made this same argument not only to the Dispute Tribunal but also in his 5 June 2018 response to the investigation. Both the Dispute Tribunal and the DUO/G considered this argument. The UNRWA DT acknowledged that the credibility of testimonies can be disputed due to the lapse of time or based on the hearsay nature of the evidence, however, there is no period of limitations with respect to investigation of allegations of misconduct or any prohibition against admitting hearsay evidence. The DUO/G also stated that all evidence had to be weighed, and he carefully considered the date of the allegations and the potential impact of the recollection of all persons interviewed. Therefore, although the lapse of time and the hearsay nature of the evidence are factors in assessing credibility, both the UNRWA DT and the DUO/G considered them and found that there was corroborating evidence, which in the view of the Dispute Tribunal and the Administration rendered the Complainant's testimony sufficiently credible.

36. The UNRWA DT reviewed the Complainant's allegations and found the facts underpinning the Appellant's harassing, abusive, and inappropriate behavior against the Complainant between the period of 2007 and 2017 had been established through eyewitness statements. The Appellant says that the UNRWA DT gave more weight to inconsistent evidence, opinions and hearsay, despite the contrary and more direct evidence he submitted. However, it is

¹⁰ *Ibid.*

entirely within UNRWA DT's role to review and assign weight to evidence before it in order to determine if the facts of the allegations have been established and the truth of the facts asserted were highly probable. This does not mean there is a shifting of the burden of proof as argued by the Appellant. The Administration still has the burden to establish the facts of the allegations based on the evidence submitted. The UNRWA DT found this was done and the Administration discharged that burden.

37. The Dispute Tribunal found that the facts supporting the allegations of the Appellant's harassing, abusive and inappropriate conduct towards other CMHP colleagues were also factually established. It reviewed and weighed all the evidence, including several witness statements and the written reprimand of unprofessional conduct that the Head of CMHP issued on 14 June 2017, before making this finding.

38. Therefore, the UNRWA DT did not err when it stated:¹¹

... While it is true that some witnesses testified that they have never heard the Applicant using inappropriate language, the majority of the persons interviewed, including the Applicant's supervisor and subordinates, testified experiencing or observing harassing, abusive and inappropriate behaviour.

... In view of the above considerations, the Tribunal holds that the facts of the Applicant's harassing, abusive and inappropriate behaviour towards the Complainant and other CMHP colleagues have been established.

(ii) *Whether the established facts qualify as misconduct under the Staff Regulations and Rules*

39. The relevant regulatory framework regarding misconduct is set out in the UNRWA Staff Regulations, in particular Area Staff Regulation 10.2 which provides that “[t]he Commissioner-General may impose disciplinary measures on staff members who engage in misconduct”. Area Staff Rule 110.1 further provides that: “[f]ailure 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

¹¹ Impugned Judgment, paras. 56 - 57.

misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct”.

40. Specific to the allegations herein, misconduct involving harassment and abuse of authority is explicitly defined in General Staff Circular No. 06/2010 (Prohibition of discrimination, harassment - including sexual harassment - and abuse of power) (GSC No. 06/2010), which provides in relevant part:¹²

2. Discrimination, harassment, and abuse of power are unacceptable, and will not be tolerated under any circumstances. The Agency will also not accept any conduct that is offensive, humiliating, embarrassing or intimidating. The Agency is committed to a ‘zero tolerance’ approach to such behaviour, which means that any complaints will be dealt with promptly in accordance with the Agency’s Staff Regulations and Rules and the procedures set out in this Circular.

...

Definitions of Prohibited Conduct

6. (b) Harassment is any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person. Harassment may take the form of words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment.

...

6. (d) Abuse of power is the improper use of a position of influence, power or authority against another person. This is particularly serious when a person uses his/her influence, power or authority to improperly influence the career or employment conditions of another, including, but not limited to, appointment, assignment, contract renewal, performance evaluation or promotion. Abuse of power may also include conduct that creates a hostile or offensive work environment which includes, but is not limited to, the use of intimidation, threats, blackmail or coercion. Discrimination and harassment, including sexual harassment, are particularly serious when accompanied by abuse of power.

41. Based on this regulatory framework, the UNRWA DT held the Appellant’s conduct qualified as misconduct under GSC No. 06/2010. We again find no fault in the Dispute Tribunal’s findings in this regard. The Dispute Tribunal reasoned that as a supervisor, the Appellant had the responsibility to ensure a harmonious workplace based on mutual respect, but he instead created

¹² General Staff Circular No. 06/2010 (Prohibition of discrimination, harassment - including sexual harassment - and abuse of power), paras. 2; 6(b) and 6(d).

an intimidating and offensive work environment. This conduct met the definition of “harassment” and “abuse of power”, namely improper conduct that caused offence or humiliation to another person or improper use of a position of influence, power or authority against another person. We therefore have no reason to differ with the UNRWA DT that the behavior, as established by the facts, constitute misconduct under the applicable law.

(iii) *Whether the sanction is proportionate to the offence*

42 Finally, the Dispute Tribunal correctly determined that the disciplinary sanctions of written censure and loss of one grade were not the most severe measures available and were proportionate to the offence, especially in light of the clear pattern of abusive behavior exuded by the Appellant.

43 Area Staff Rule 110.1(4) provides that the decision to impose a disciplinary measure is within “discretionary authority of the Commissioner-General”. The exercise of this discretion, however, should not be “absurd, arbitrary or tainted by extraneous reasons or bias, which would otherwise be grounds for judicial review, if proven”.¹³ The UNRWA DT correctly held that the disciplinary measures imposed were neither absurd nor arbitrary. Also, the tribunal did not find any evidence that the decision to impose such measures was tainted by extraneous reasons or bias. We agree that the measures were indeed proportionate and reasonable given the nature of the misconduct.

44 In conclusion, as exposed in Abbassi, “[i]t is the duty of an appellant to demonstrate that the UNDT’s judgment is defective”. In the present case, the Appellant has not satisfied this burden that the UNRWA DT erred in law, fact or jurisdiction when it held that the test in *Samandarov* had been met, namely that (i) the facts on which the sanction is based had been established, (ii) the established facts qualified as misconduct under the Staff Regulations and Rules, and (iii) the sanction was proportionate to the offence.¹⁴

¹³ *Mousa v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-431, para. 30.

¹⁴ *Samandarov* Judgment, *op. cit.*

(iv) *Whether there was any violation of the Appellant's due process rights*

42. As stated by the Appeals Tribunal in *Negussie*:¹⁵

To observe a party's right of due process, especially in disciplinary matters, it is necessary for the Dispute Tribunal to undertake a fair hearing and render a fully reasoned judgment. Although it is not necessary to address each and every claim made by a litigant, the judge has to take the party's submissions into consideration and lay down, in its judgment, whether the above-mentioned criteria are met.

43. Regarding the Appellant's allegation that his witnesses were not interviewed, the Dispute Tribunal explained there is no requirement to interview all proposed witnesses, and furthermore, the Dispute Tribunal reiterated that not all interviewees actually testified that they witnessed inappropriate behavior by the Appellant.

44. However, the UNRWA DT reasoned:¹⁶ "[T]he fact that some witnesses claim that they had not witnessed any inappropriate behaviour on the part of the Applicant does not mean that this behaviour never occurred. The majority of the witnesses' statements support the Complainant's allegations, and the Applicant has not produced any evidence to cast doubt on these witnesses' credibility." The Appellant had the opportunity to respond to the case against him, which he did during both the investigation phase and before the Dispute Tribunal. Specific to the Dispute Tribunal's proceedings, the Appellant was granted leave to file observations to the Respondent's reply, submit supplementary evidence and file comments on the Investigation Report.

45. Therefore, we find there was no violation of the Appellant's due process rights. Accordingly, we find the Dispute Tribunal did not err in its Judgment.

¹⁵ *Negussie v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-700, para. 19 (internal footnotes omitted).

¹⁶ Impugned Judgment, para. 66.

Judgment

46. The appeal is dismissed, and the UNRWA DT Judgment is upheld.

Original and Authoritative Version: English

Dated this 29th day of October 2021.

(Signed)

Judge Sandhu, Presiding
Vancouver, Canada

(Signed)

Judge Colgan
Auckland, New Zealand

(Signed)

Judge Raikos
Athens, Greece

Entered in the Register on this 7th day of January 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar