



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

Judgment No. 2021-UNAT-1185

Nadine Kaddoura
(Respondent and Appellant on Cross-Appeal)

v.

Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East
(Appellant and Respondent on Cross-Appeal)

JUDGMENT

Before:	Judge Martha Halfeld, Presiding Judge Graeme Colgan Judge Kanwaldeep Sandhu
Case No.:	2021-1507
Date:	29 October 2021
Registrar:	Weicheng Lin

Counsel for Nadine Kaddoura:	Priyanka Chirimar
Counsel for Commissioner-General:	Daijo Yuki, Ana Peyro-Llopis

JUDGE MARTHA HALFELD, PRESIDING.

1. Before 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), Ms. Nadine Kaddoura contested the decision of the Commissioner-General of UNRWA to impose on her the disciplinary measure of separation from service with termination indemnity, for serious misconduct. The UNRWA DT *inter alia* rescinded the contested decision, awarded in-lieu compensation in the amount of two years' net base salary and ordered that the former Commissioner-General be referred to the current Commissioner-General for possible action to enforce accountability. The Commissioner-General has appealed and Ms. Kaddoura has filed a cross-appeal.

2. For the reasons set out below, we partly uphold the appeal, vacate the order to refer the former Commissioner-General for accountability and dismiss the cross-appeal.

Facts and Procedure

3. Effective 7 October 2014, Ms. Kaddoura was employed by the Agency under a fixed-term appointment as Head, Field Human Resources Office (H/HRO), Grade P-4, Step 3, Jordan Field Office (JFO).

4. Effective 1 February 2017, after a competitive recruitment process, Ms. Kaddoura was promoted to the post of Chief, Human Resources Operational Services Division, Grade P-5, Step 1, Headquarters, Amman (HQA).

5. Sometime in June 2017, the Head, Recruitment Section (H/RS) informed Ms. Kaddoura that an UNRWA staff member, Ms. CK., did not possess a university degree.

6. By e-mail dated 23 July 2017, Ms. Kaddoura instructed the then Head, International Personnel Services Section (former H/IPSS) to verify whether the university degrees of all international staff members were filed in their Official Status Files (OSF). The H/IPSS responded that this task would be undertaken between October and November 2017.

7. Sometime between the end of July and beginning of August 2017, during a phone call the JFO Area Chief purportedly mentioned to Ms. Kaddoura that JFO staff were talking about the experience of Mr. DP. This prompted Ms. Kaddoura to access and review the online personnel file of the Complainant whereupon she identified certain alleged inconsistencies

between the Complainant's Personal History Profiles, which he had previously submitted for various job openings within the Agency.

8. From 30 July to 5 August 2017, Ms. Kaddoura was designated as Officer-in-Charge (OiC) of the Human Resources Department (HRD), in the absence of Mr. BG, the then Director of Human Resources, HQA (former DH).

9. By e-mail dated 2 August 2017 to Ms. SM, the then Deputy Commissioner-General (former DCG), Ms. Kaddoura presented the case of Mr. DP (Complainant), including a list of alleged discrepancies in his Personal History Profiles (PHPs) that he had submitted to the Agency for various job openings.

10. On 6 August 2017, a meeting was held between the former DCG, the then Director of UNRWA Operations, Jordan (former DUO/J) and Ms. Kaddoura. During the meeting, it was agreed that the former DUO/J, who was the Complainant's direct supervisor at that time, should meet with the Complainant, in the presence of a representative from the HRD, to discuss with him directly the alleged discrepancies in his PHPs. That same day, following the meeting with the DCG, Ms. Kaddoura sent an e-mail to the former DUO/J and provided him with further information about the case of the Complainant, including the details of the alleged discrepancies in his PHPs.

11. On 9 August 2017, in the presence of the H/IPSS, the former DUO/J met with the Complainant with respect to his professional and educational backgrounds that he had listed in his PHPs. By letter to the Complainant dated 10 August 2017, the H/IPSS requested him to provide by close of business, on 14 August 2017, his comments on and clarifications to the alleged discrepancies in his PHPs.

12. Similarly, by letter to Ms. CK dated 10 August 2017, the former Director of Human Resources (DHR) confronted her with the fact that she did not possess a first level university degree, despite the Agency's regulatory framework in that respect, and that she was required to obtain a university degree before her contract expiry date.

13. On 13 August 2017, the then Director, Department of Internal Oversight Services (D/DIOS) e-mailed the then DHR and DUO/J advising he was made aware that HRD was auditing staff files and verifying previously lodged staff applications. He expressed concerns

regarding this process, requested all activity cease immediately and that further information be provided.

14. By e-mail to the former D/DIOS dated 15 August 2017, the former DHR responded that the actions with respect to the auditing of staff files were ceased.

15. On 15 September 2017, Ms. Kaddoura submitted a complaint of harassment, abuse of authority, gender discrimination and retaliation against the former DHR and former D/DIOS and requested protection against retaliation.

16. By e-mail to the former D/DIOS dated 7 October 2017, the Complainant submitted a formal complaint containing allegations of retaliation against him by Ms. Kaddoura.

17. On 27 October 2017, the Investigations Division of the United Nations Office of Internal Oversight Services (OIOS) received a request from the DIOS to investigate a report of possible misconduct implicating Ms. Kaddoura.

18. By e-mail dated 12 December 2017, the then Chief, Investigations Division, DIOS, informed Ms. Kaddoura that OIOS was conducting an investigation on the DIOS' behalf and that OIOS wanted to speak with her.

19. On 13 December 2017, Ms. Kaddoura was formally notified of an investigation into the allegations of misconduct against her and that she was going to be interviewed as a subject of the investigation. On 18 January 2018, Ms. Kaddoura was interviewed by OIOS.

20. By letter dated 13 November 2018, Ms. Kaddoura's appointment was extended from 1 February 2019 to 31 January 2022. On 12 December 2018, the investigation was concluded, followed by the Investigation Report. OIOS recommended that the Agency take appropriate action against Ms. Kaddoura.

21. On 19 December 2018, the former Commissioner-General informed Ms. Kaddoura about the outcome of her complaint of harassment, abuse of authority, gender discrimination and retaliation against the former DHR and former D/DIOS.

22. By e-mail dated 2 April 2019, the former Commissioner-General issued Ms. Kaddoura an Opportunity to Respond (OTR) letter, informing her of the findings of the OIOS investigation and inviting her to respond to the allegations.

23. On 25 April 2019, Ms. Kaddoura met with the former Commissioner-General. A note for the record describing what had transpired during the meeting was later signed by Ms. Kaddoura on 12 June 2019. By letter dated 30 April 2019, Ms. Kaddoura submitted her response to the OTR letter.

24. In response to an e-mail from the former Commissioner-General dated 9 May 2019, Ms. Kaddoura, on 16 May 2019, provided her supplementary response to the OTR letter with additional documentary evidence.

25. On 9 July 2019, the former Commissioner-General found that Ms. Kaddoura had committed abuse of power and misrepresentation amounting to serious misconduct and that in light of aggravating factors, the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity was warranted. The former Commissioner-General found that there was clear and convincing evidence that Ms. Kaddoura, during her time as OiC, HRD, on her own accord, examined the Complainant's various PHPs, compared them in search of discrepancies and prepared a detailed list of such perceived discrepancies; that she failed to inform her direct supervisor, but rather initiated a formal process against the Complainant by raising the matter with the former DCG on 2 August 2017; she misled the former DCG, the former DUO/J and the former H/RS into believing that there was an ongoing HR auditing process; she falsely represented that she had been deliberately instructed by the former DCG to exclude the former DHR on the Complainant's matter and that she had instructed the former H/RS to send to the Complainant the letter dated 10 August 2017. In overall terms, Ms. Kaddoura was found to have used her role as OiC, HRD to "strike a blow" against the Complainant, given the alleged existence of "bad blood" between her and the Complainant.

26. On 10 July 2019, while Ms. Kaddoura was addressing her staff about her termination, the OiC, HRD, on behalf of the former Commissioner-General, served Ms. Kaddoura with a letter instructing her to immediately leave the Agency's premises.

27. On 11 July 2019, the Arabic Spokesperson and Director of Communications, (AS/DC) posted on Facebook a statement with respect to Ms. Kaddoura's separation from the Agency.

28. By letter to Ms. Kaddoura dated 15 July 2019, the OiC, HRD noted that her actions in the context of her termination were damaging the reputation of the Agency.

29. On 28 July 2019, following Ms. Kaddoura's inquiry, the Acting H/IPSS, informed her that, as part of her termination indemnity, she was entitled to one-month salary in lieu of notice and "one half of the [termination] indemnity of the maximum as per Annex II (c)". Following e-mails from Ms. Kaddoura requesting clarification with respect to her termination indemnity, on 13 August 2019, the DHR informed Ms. Kaddoura that, "based on the consultations with the Department of Legal Affairs and the [former] Commissioner-General [...] the calculation for reduced termination indemnity applies".

30. On 4 September 2019, Ms. Kaddoura submitted her request for decision review to the DCG. On 4 November 2019, the DCG informed Ms. Kaddoura that he did not have the authority to review decisions made by the Commissioner-General and advised her to proceed with the filing of her application to the UNRWA DT.

31. On 29 December 2019, Ms. Kaddoura filed an application with the UNRWA DT. She also filed a motion for anonymity.

32. By Order No. 031 (UNRWA/DT/2020) dated 5 March 2020, the UNRWA DT *inter alia* decided that Ms. Kaddoura's request for anonymity would be addressed in the Judgment.

33. On 7 May 2020, Ms. Kaddoura filed a motion for leave to file observations on the Commissioner-General's reply and requested the UNRWA DT to order the Commissioner-General to produce additional evidence.

34. By Order No. 083 (UNRWA/DT/2020) dated 4 June 2020, the UNRWA DT *inter alia* ordered the Commissioner-General to produce the annexes to the Investigation Report dated 12 December 2018, but denied Ms. Kaddoura's motion for production of other documents.

35. By Order No. 127 (UNRWA/DT/2020) dated 9 August 2020, the UNRWA DT decided not to transmit to Ms. Kaddoura the annexes of the Investigation Report dated 12 December 2018. Also in Order No. 127, the UNRWA DT allowed one of Ms. Kaddoura's proposed witnesses to be heard *viva voce* and permitted her to submit written testimonies of the remainder of her proposed witnesses.

36. On 3 September 2020, a scheduled hearing took place. The UNRWA DT heard from Ms. Kaddoura, the Commissioner-General and one witness, the former DUO/J.

37. On 10 November 2020, the UNRWA DT issued Judgment No. UNRWA/DT/2020/066.

38. As a preliminary matter, the UNRWA DT denied Ms. Kaddoura's motion for anonymity finding that the case required transparency and the inclusion of her name in the Judgment, as the impugned decision had been brought to the public's attention via mainstream and social media coverage.

39. Turning to the issue of evidence, the UNRWA DT deemed it "unnecessary" to include in the case record, and to rely upon, the Investigation Report pertaining to Ms. Kaddoura's complaint of harassment, abuse of authority, gender discrimination and retaliation against the former DHR and former D/DIOS and the annexes of the 12 December 2018 Investigation Report. The UNRWA DT ordered that the annexes of the 12 December 2018 Investigation Report be stricken from the case record.

40. Moreover, the UNRWA DT emphasized that since the events in July-August 2017, the individuals and most of the senior managers involved in the case had left the Agency.¹ Based on the documentary evidence in the case record, the UNRWA DT found that several irregularities had been committed for at least two to three years by certain senior managers of the Agency, and it therefore had serious doubts about the veracity of statements and testimonies. The UNRWA DT therefore decided to hear from only one witness, namely the former DUO/J. With respect to Ms. Kaddoura, the UNRWA DT granted the Commissioner-General's request to strike out her "oral evidence". The UNRWA DT noted that while the Judge asked questions of Ms. Kaddoura, and she was allowed to argue her case, the Judge had not relied on any "oral evidence" given by her.

41. The UNRWA DT established that Ms. Kaddoura had reviewed the Complainant's PHPs and reported the irregularities to the former DCG, without informing her direct supervisor, the former DHR. The UNRWA DT also found established that the 10 August 2017 letter signed by the former H/RS, had, in fact, been drafted by Ms. Kaddoura, and that therefore, Ms. Kaddoura had played a primary role in informing the Complainant that "any misrepresentation or material omission made on a Personal History Form renders one liable to termination".²

¹ Ms. CK resigned effective 1 October 2017; the Complainant resigned effective 10 September 2018; the former DHR left the Agency effective 1 January 2018; the former D/DIOS left the Agency effective 18 May 2018; the former DCG left the Agency on 25 July 2019 and the former Commissioner-General resigned on 6 November 2019.

² Impugned Judgment, para. 113.

42. The UNRWA DT however concluded that the evidence clearly showed that there was a legitimate ongoing auditing process, that Ms. Kaddoura had not extended the scope of said auditing process in the Complainant's case by verifying his work experience and that she had not misled the former DCG, the former DUO/J and the former H/RS in that regard. The UNRWA DT also found no merit in the accusation that by making a "veiled threat" of dismissal to the Complainant and giving him an unreasonably short deadline for responding to the letter, Ms. Kaddoura had turned the Complainant's matter into something more akin to a formal misconduct investigation, thus violating the Complainant's due process rights. The UNRWA DT found that it was clear from the Complainant's 9 August 2017 e-mail to his direct supervisor and former H/RS that not only was Ms. Kaddoura not involved at any stage with respect to the deadline set for the Complainant to respond, but the Complainant himself had agreed to provide his response within a short period of time.

43. The UNRWA DT further concluded that the Agency had failed to establish by clear and convincing evidence Ms. Kaddoura's alleged ill-intent to cause harm to the Complainant. It found that the evidence regarding Ms. Kaddoura's alleged ill-intent to cause harm to the Complainant was not "unequivocal and manifest" and "persuasive" enough to constitute abuse of power. Rather, after having learned that the Complainant had moved from a P-2 to a P-5 post in less than 18 months, it was reasonable to suspect that the Complainant might not have been eligible for the position he held.

44. The UNRWA DT found that there was clear evidence of an auditing process and that therefore the allegation that Ms. Kaddoura committed misrepresentation had not. The UNRWA DT concluded that none of the established facts amounted to misconduct. The UNRWA DT rescinded the decision to impose on Ms. Kaddoura the disciplinary measure of separation from service with termination indemnity; and awarded in-lieu compensation in the amount of two years' net base salary. The UNRWA DT ordered the Agency to disburse to Ms. Kaddoura the entirety of her termination indemnity; and to place the Judgment in her Official Status File. The UNRWA DT ordered that Ms. Kaddoura's "oral evidence" be struck from the record; and ordered that the former Commissioner-General be referred to the Commissioner-General for possible action to enforce accountability.

Submissions

The Commissioner-General's Appeal

45. The UNRWA DT erred in fact resulting in a manifestly unreasonable decision. The UNRWA DT, in its review of the evidence and consideration of whether the facts on which the sanction was based had been established, erroneously concluded that it was not established that Ms. Kaddoura had misled the then DCG, the then DUO/J and the then H/RS into believing that there was an internal HR audit process. The UNRWA DT's finding that the then DHR decided to initiate an internal Agency-wide HR auditing process in and around July 2017 and that a legitimate ongoing HR auditing process was being conducted manifestly disregards substantial evidence which directly contradicts such a conclusion. The testimonial evidence of Ms. Kaddoura, the then DHR and the H/RS submitted to OIOS establishes that the verification process was initiated by Ms. Kaddoura.

46. Ms. Kaddoura asserted that she had requested that the H/IPSS check the personnel file of Ms. CK for verification, that she reviewed Ms. CK's personnel file and learned Ms. CK was promoted to a P-4 position through an internal automatic process permitted by the UNRWA rules though she did not have a bachelor's degree; and that at the end of July or beginning of August 2017, Ms. Kaddoura had a phone call with the JFO Chief Area Officer in which he mentioned to her that JFO staff had been talking about the Complainant's level of experience. This conversation prompted her to access and review the Complainant's personnel file whereupon she compared the PHPs and identified inconsistencies.

47. The testimonial evidence of the DHR that Ms. Kaddoura tasked the H/IPSS with conducting the audit in relation to the Complainant and that he had not been informed about it is corroborated by the testimonial evidence of the H/RS who stated that Ms. Kaddoura initiated the audit of the Complainant's PHPs and then instructed her to accompany the then DUO/J to the 9 August 2017 meeting with the Complainant to discuss the discrepancies. Indeed, this fact is attested to in the Judgment which established that Ms. Kaddoura had reviewed the Complainant's PHPs and reported the irregularities to the then DCG, without informing her direct supervisor, the then DHR.

48. The UNRWA DT's holding that there was a legitimate ongoing auditing process appears predicated on the UNRWA DT's considerations of the then DHR's letter of 10 August 2017 and his e-mail dated 15 August 2017, both of which Ms. Kaddoura had drafted. Moreover, prior to any involvement of the then DHR, the H/IPSS confirmed in her e-mail of 23 July 2017 that verification of international staff files would occur from October to November. It is therefore clear that Ms. Kaddoura undertook a number of actions unrelated to any internal audit purportedly ongoing and without the knowledge of her direct supervisor, the then DHR. Notably, the UNRWA DT failed to consider the findings of OIOS which stated that it could find no evidence that HRD was carrying out a verification of staff files as part of an UNRWA HR auditing process to ensure compliance with HR requirements nor that a formal review was being conducted of all international staff; that it was a standard HRD verification process; and, that consultation had been undertaken with HRD for this verification process to be commenced.

49. The UNRWA DT erred in concluding that the alleged misrepresentation committed by Ms. Kaddoura was not established. Subsumed with the issue of whether there was an auditing process is the discreet issue as to whether the scope of the "audit" included substantiating information in staff members' PHPs. In this regard, the UNRWA DT held that Ms. Kaddoura's alleged extending of the audit scope to include verifying the Complainant's work experience was not established. Ms. Kaddoura's instruction to the H/IPSS on 23 July 2017 was limited in scope to verifying that copies of university degrees were filed in the respective OSFs of all international personnel. However, the 10 August 2017 letters to Ms. CK and the Complainant, and the 15 August 2017 e-mail to DIOS, both drafted by Ms. Kaddoura, advise that the scope of the audit included substantiating information listed in staff members' PHPs, setting a broader scope for the audit. Ms. Kaddoura took the initiative to conduct *ad hoc* PHP audits into the Complainant and Ms. CK and then sought to create *post facto* cover by stating, per the letter and e-mail that this was part of an ongoing audit.

50. At the time Ms. Kaddoura met the DCG, and when the letters were sent to the Complainant and Ms. CK, the legitimate verification process had not yet commenced and implying that there was an ongoing audit at the relevant time to the DCG, the DUO/J, and H/RS was misleading. Additionally, though Ms. Kaddoura advised the H/RS to sign the 10 August letter to the Complainant because "the Head of Recruitment Unit is the one who handles such matters", she concealed the true reasons for this, namely, that she wanted the appearance of having recused herself from the matter due to her own conflict of interest with the Complainant. It is also further

evidence of her unwillingness to involve the DHR in the matter of the Complainant despite involving him in the matter of Ms. CK. The compelling conclusion is that Ms. Kaddoura misled the H/RS, the then DCG and DUO/J with regards to the purported ongoing HR audit process.

51. The UNRWA DT erred in concluding that the allegation that Ms. Kaddoura turned the Complainant's matter into something akin to a formal misconduct investigation had not been established. The meeting of 9 August 2017 and the subsequent letter gave the impression, as described by the then D/DIOS in his e-mail of 13 August 2017, of an investigative or audit process having been launched. The UNRWA DT's conclusion overlooks the fact that at the 6 August meeting between Ms. Kaddoura, the then DUO/J and DCG, the possibility of the Complainant's termination was discussed. In view of the above, there is clear and convincing evidence which contradicts the findings of the UNRWA DT that an "internal HR auditing process" existed which was initiated by the then DHR in and around July 2017. There was clear and convincing evidence that Ms. Kaddoura had made misrepresentations relating to the existence of an ongoing internal HR auditing process as justification for her actions against the Complainant and Ms. CK.

52. The UNRWA DT erred in law and fact in its conclusion that Ms. Kaddoura's conduct could not be considered an abuse of power. The UNRWA DT's finding that the Agency failed to establish by clear and convincing evidence Ms. Kaddoura's alleged ill-intent to cause harm to the Complainant manifestly disregards substantial evidence in the case record which directly contradicts such a conclusion, especially when considered in light of the definition of abuse of power per the provisions of General Staff Circular No. 6 of 2020, paragraph 53 of the Handbook on Ethics and Standards of Conduct applicable to UNRWA personnel, and applicable jurisprudence.

53. The testimonial evidence of Ms. Kaddoura, the Complainant and the then DUO/J provided to OIOS establishes a clear pre-existing conflict between Ms. Kaddoura and the Complainant which motivated Ms. Kaddoura to target the verification of the Complainant's PHPs, as a result, engaging in an abuse of power by improperly using her position. This is particularly placed in sharp focus when considering that, as demonstrated above, an HR auditing process was not ongoing nor authorized at the time Ms. Kaddoura raised the issue of the alleged inconsistencies in the Complainant's PHPs in August 2017. The Complainant's allegations of being targeted by Ms. Kaddoura as a result of their pre-existing conflict is consistent with the concerns raised in his formal complaint of 7 October 2017 to the D/DIOS.

54. Moreover, the UNRWA DT's conclusions that, based on UNAT jurisprudence in *Neocleous* and *Cicek*, and regardless of whether there was an ongoing internal HR auditing process, Ms. Kaddoura as the CHROSD was entitled to verify the Complainant's eligibility for the position for which he had been selected; and that Ms. Kaddoura's conduct cannot be considered as abuse of power but, rather, reflected actions undertaken as part of her duties, are flawed.

55. First, in contrast to the clear provisions set forth in the DIOS Charter on the authority to conduct internal audits, the Agency's then applicable International Staff Selection Policy (PD I/4) provided for a much more limited role for the CHROSD, notably, "responsibility for monitoring and evaluating Agency compliance with set staff selection targets, standards, and processes". Second, the referenced UNAT judgments are visibly distinguishable on the facts. The judgments dealt with questions of eligibility of candidates for the positions they applied for during the recruitment process, not post facto. Additionally, Ms. Kaddoura's actions were not limited to "verifying the Complainant's eligibility for the position for which he had been selected" as stated by the UNRWA DT and in the 10 August 2017 letter to the Complainant; they were driven by alleged discrepancies in the Complainant's PHPs which she considered may have amounted to misrepresentation and fraud.

56. The UNRWA DT committed an error in procedure such as to affect the decision of the case by excluding evidence from the case record. While the Dispute Tribunal has broad discretion to determine the admissibility of any evidence under Article 18(1) of its Rules, in the instant case, the UNRWA DT exercised its discretion not to admit the annexes of the OIOS Investigation Report - sources of evidence that went directly to the basis upon which the Agency instituted the contested disciplinary measure - without explaining its rationale for the exclusion of this evidence (other than that it was not "necessary") which conflicts with established jurisprudence. Notably, the UNRWA DT failed, first, to admit the sources of evidence and, second, to analyze its probative value. This is important given that within its judgment, the UNRWA DT did not rely on the findings from the independent investigation of OIOS, including the finding that Ms. Kaddoura provided "inconsistencies in her account" and engaged in "surreptitious" behaviour. Had the Investigation Report annexes been included in the case record it would have led to different findings of fact particularly regarding the reliability and credibility of Ms. Kaddoura and the former DUO/J, who was the only witness permitted before the UNRWA DT.

57. Further, the UNRWA DT failed to establish that it excluded the evidence on the basis it was considered irrelevant, frivolous, or lacking in probative value as stipulated under Article 13(5) of its Rules of Procedure. “Unnecessary” is not one of these grounds for evidentiary exclusion. The UNRWA DT thus introduced new criteria outside the UNRWA Regulatory Framework, thereby exceeding its jurisdiction. Annex 23 to the appeal brief outlines evidence excluded by the UNRWA DT and their import. Had the UNRWA DT admitted and weighed the excluded evidence it would have concluded that Ms. Kaddoura, not the DHR, initiated of her own motion the audit activities targeted against the Complainant; that there was no ongoing agency-wide HR audit; that the audit of the Complainant’s PHPs was ill-motivated and predicated on animus; and that, based on the instruments availed to OIOS and included in the Investigation Report annexes, the acts occasioned by Ms. Kaddoura were clearly contrary to the Agency’s Regulatory Framework. In addition, the trial judge would have concluded that the testimony of the DUO/J at the hearing regarding the working relationship between Ms. Kaddoura and the Complainant was not credible given its inconsistency with the DUO/J’s testimony to OIOS. Ultimately, the UNRWA DT would have concluded, as indeed determined by OIOS, that Ms. Kaddoura’s conduct was driven by something other than the Agency’s best interests.

58. The Commissioner-General is concerned by comments of the UNRWA DT Judge made during the 3 September 2020 hearing regarding “bad things that happened” in the Agency, that there “is a lot of problem” within the Agency and that the Respondent “can lie” freely in her testimonial evidence because witnesses “are often lying”. The comments of the trial judge (both orally and in the judgment) evince an element of pre-judgment on the merits of the case and are prejudicial towards the Agency, especially since his conclusion on the veracity of statements and testimonies did not apply to Ms. Kaddoura’ witness, the former DUO/J, whose testimony was taken by the UNRWA DT and deemed credible despite the aforementioned inconsistencies in his testimony when compared with his recorded interview with OIOS. In the instant case, the expressions of the trial judge during the hearing coupled with conclusion on the veracity of witnesses cumulatively evince an element of prejudgment.

59. Finally, the UNRWA DT erred in law and fact in referring the then Commissioner-General to the Commissioner-General for possible action to enforce accountability. The rationale for the referral - that “the option of resigning and receiving a positive recommendation” was made to Ms. Kaddoura - was not proven. Moreover, since the former Commissioner-General resigned, a referral would have no effect thereby serves no purpose.

60. The Commissioner-General requests that the UNRWA DT allow the appeal, vacate the UNRWA DT Judgment and affirm the decision to separate Ms. Kaddoura. In the alternative, the Commissioner-General requests that the case be remanded to the UNRWA DT for a *de novo* determination.

Ms. Kaddoura's Answer

61. The UNRWA DT did not err in fact, resulting in a manifestly unreasonable decision. The UNRWA DT correctly found that there was an ongoing legitimate audit process.

62. Contrary to the Commissioner-General's contention, Ms. Kaddoura initiated an HR verification process that was within her authority, on 23 July 2017, following a confirmation by Ms. CK that she did not possess the minimum educational qualification for her P-4 position. The H/IPSS confirmed to Ms. Kaddoura that a full HR verification process would be undertaken in October-November 2017. Within a week, Ms. Kaddoura further learned that Mr. DP's recruitment suffered from irregularities and, acting in accordance with her duty and authority, she verified this information. Ms. Kaddoura updated the DCG simultaneously on both the records of Mr. DP and Ms. CK, and then prepared the exact same letter to be sent to both on 10 August 2017. Her consistent response to both reports of HR irregularities with respect to Ms. CK and Mr. DP, eventually Sam Rose, systematically depict that Ms. Kaddoura always acted within her authority to fulfil her duty keeping the interest of the Agency as paramount.

63. Having found two cases where the HR practices at UNRWA were not rule compliant, Ms. Kaddoura, as Chief HR, with full authority and oversight over the sections of Recruitment, International Personnel Section and explicitly vested with the authority to ensure compliance with HR rules and regulations, initiated an HR audit. The DHR reviewed, expressed his full satisfaction with the draft and the process outlined, and signed the letter. The letter referred to an "internal UNRWA HR auditing process verifying the information listed in the P11 and confirming the eligibility for the position... by comparing the verified information to the requirements of the job opening." Further, the DHR fully acknowledged his involvement in the internal HR audit to the investigators. Having briefed the DCG, Ms. Kaddoura as well as the DUO/J acted upon the DCG's instructions to conduct the meeting with Mr. DP without involving the DHR.

64. The Commissioner-General ignores the investigation findings that the DHR and the D/DIOS had mounted a joint campaign of harassment, discrimination and abuse of authority against Ms. Kaddoura during the entire time relevant to these events. Ms. Kaddoura continued to find ways to perform her functions with diligence and integrity despite the many obstacles and hostility created by her immediate supervisor and the office meant to ensure ethics and conduct investigations in UNRWA. Ultimately, fearing exposure of the origin of the already identified irregularities and potentially more cases of non-compliance, the D/DIOS directed that all HR audit activities be ceased forthwith. The D/DIOS then informed Mr. DP of this blatant attempt at shielding him. Despite ceasing all audit activities at the D/DIOS' orders, Ms. Kaddoura faced escalation of the prohibited conduct against her by the DHR and D/DIOS, with respect to which she filed ultimately a formal complaint on 15 September 2017.

65. The UNRWA DT correctly held that there was clear and convincing evidence of a legitimate audit and accordingly found that the question of Ms. Kaddoura engaging in misrepresentation was moot. The UNRWA DT correctly concluded that the language used in the letter to Ms. CK followed the standard language included in PHPs, and as such was not intended as threat or intimidation.

66. The exclusion of the DHR from the matter of Ms. CK was at the DCG's direction. Further, Ms. Kaddoura never sought to conceal that she drafted both the letters issued to Ms. CK and Mr. DP, which were then signed by the H/RS and the DHR respectively, to ensure consistency of approach and content.

67. The UNRWA DT did not err in law and fact in its conclusion that Ms. Kaddoura's conduct could not be considered as abuse of power and that her conduct was part of her duties. Ms. Kaddoura did not conduct an investigation nor was she in receipt of any complaint. She received credible information on HR irregularities, and acted within the ambit of her authority to verify the details by conducting a spot verification. She promptly acted to ensure consistent compliance with the UNRWA staff selection policy by initiating a PHP verification process for all international staff, in accordance with UNAT jurisprudence in *Neoclous* and *Cicek* which, along with *Walden* and *Rajan* demonstrate the role and authority of a Chief HR in handling HR irregularities.

68. Additionally, Ms. Kaddoura was not informed of the basis of the allegations against her by Mr. DP during the investigation. When she received finally received Mr. DP's complaint during the UNRWA DT proceedings, she rebutted every single claim and demonstrated that he was lying

in his letter of 7 December 2017. Ms. Kaddoura did not conceal her personal dislike of Mr. DP, but she harboured no ill-intention towards him and had only ever had a single professional disagreement with him. Notably, Ms. Kaddoura has repeatedly reaffirmed that she carried out the HR verifications in an objective and consistent manner, devoid of any other motivations. The HR verification of Ms. CK preceded that of Mr. DP by two months, and Ms. Kaddoura maintained an excellent professional relationship with Ms. CK.

69. The UNRWA DT did not commit an error in procedure such as to affect the decision of the case. The Commissioner-General's claim that the UNRWA DT erred in procedure when it did not admit and order the transmittal of the Annexes of the 2018 OIOS Report is disingenuous and without merit. The Commissioner-General had in his sole possession the entire 2018 OIOS Report together with annexes; he submitted 10 pieces of selected, truncated evidence from the 61 Annexes of the 2018 OIOS Report which were disclosed to Ms. Kaddoura for response and admitted by the UNRWA DT; when Ms. Kaddoura requested the production of all annexes of the 2018 OIOS Report, the Commissioner-General objected; following Order No. 083, the Commissioner-General purposefully delayed the transmittal of the annexes to the Judge for two months; the UNRWA DT reviewed and considered all annexes before ruling, in Order no. 127, that it had received sufficient evidence from the parties to render its Judgment and that there was no need to transmit the annexes to Ms. Kaddoura. The Commissioner-General had every opportunity to submit these 16 documents to the UNRWA DT, but it strategically chose not to. The Commissioner-General should be estopped from tendering these annexes at the appellate stage.

70. The Commissioner-General's quoting from pages of the transcript of the hearing and placing them out of context is misleading. The Judge's comments were based on clear documentary evidence that were presented throughout the UNRWA DT proceedings. It is undisputed that the Commissioner-General, the DCG and the entire senior management of UNRWA were all charged with misconduct following the OIOS investigation and each of them chose to swiftly resign to evade accountability. The Judge also noted the findings of misconduct against the DHR and D/DIOS, both of whom also resigned instead of facing disciplinary proceedings. Mr. DP and Ms. CK elected to resign as well. Each of these were based, either in part or whole, on significant wrongdoing and irregularities that Ms. Kaddoura had denounced since her appointment. It is also noteworthy that following the hearing, the Commissioner-General submitted a motion to present a last-minute written testimony from the former Chief Ethics Office, who lied under oath to the Tribunal. The Commissioner-General asked the Judge to deny

Ms. Kaddoura's request for a hearing, to deny her request to respond to the 2018 OIOS Investigation Report, and to deny her request for production of annexes. The Judge's statements during the hearing were not indicative of prejudice, instead they were based on the totality of evidence, credibility and conduct of parties, and developments in the case before him.

71. The UNRWA DT did not err in law and fact in referring the then Commissioner-General for possible accountability. The Commissioner-General's claim that the "rationale for the referral" was not proven is a misrepresentation of previously established facts. It is undisputed that the Commissioner-General offered Ms. Kaddoura the chance to resign with a good performance record, positive recommendation along with the "bribe of USD 300,000", provided she tendered a voluntary resignation in place of being terminated for serious misconduct. The Commissioner-General of course presumed that she would accept this rather favourable deal and spent a considerable amount of time trying to convince her to take it during the meeting of 9 July 2019. Ms. Kaddoura detailed the "blackmail and bribery" by the Commissioner-General and supported it with significant documentary evidence before the UNRWA DT. The Commissioner-General had ample opportunity to rebut this assertion with evidence to the contrary, but failed or intentionally neglected to do so. The Commissioner-General has never responded to, challenged, or refuted the Respondent's statements and evidence in this regard with any evidence to the contrary.

72. The contention that the referral is without purpose since the former Commissioner-General resigned is disingenuous. Firstly, the Commissioner-General does not satisfy a permissible ground of appeal in Article 2 of the UNAT Statute and makes no attempt to demonstrate that the UNRWA DT erred in referring the Commissioner-General for accountability. Secondly, the Commissioner-General resigned two hours after the Secretary-General of the UN placed him on administrative leave following a high-level OIOS investigation into allegations of serious misconduct by senior management at UNRWA. The resignation was designed to escape accountability and disciplinary proceedings – after they had been initiated while he was a current staff member. To allow senior UN officials to evade accountability by merely tendering a well-timed resignation would embed a culture of impunity for serious misconduct and mismanagement.

73. Ms. Kaddoura requests that UNAT affirm the UNRWA DT Judgement, with the exception of the reliefs sought in her cross-appeal, and to deny the Commissioner-General's appeal in its entirety.

Ms. Kaddoura's Cross-Appeal

74. The UNRWA DT erred in fact by not referring the D/DLA, the DHR and the Spokesperson for accountability, resulting in a manifestly unreasonable decision.

75. The UNRWA DT erred in law and fact when it did not consider Ms. Kaddoura's case as exceptional warranting compensation beyond two years. The demonstrated circumstances meet the threshold warranting consideration of this case as exceptional; rescission must at the very minimum parallel the tenure of Ms. Kaddoura's confirmed and current contract at the time of separation; and the UNRWA DT failed to take into account that Ms. Kaddoura held a permanent appointment and had every legitimate expectation of renewal until the age of retirement.

76. Ms. Kaddoura requests that the Appeals Tribunal refer the D/DLA, the DHR and the Spokesperson for accountability; award two and a half years' net base salary; award education grant amounting to further eight months' salary; award damages for moral and reputational harm; and award costs, for both the UNRWA DT and UNAT proceedings.

The Commissioner-General's Answer to Ms. Kaddoura's Cross-Appeal

77. The Commissioner-General opposes the cross-appeal. The UNRWA DT did not err in not referring the D/DLA, DHR and Spokesperson for accountability. They did not take the impugned decision and the UNRWA DT made no finding of wrongdoing against any of them. The decision not to refer was reasonable and comports with the sparing use of the statutory power of referral. Moreover, the UNRWA DT did not err in law or fact when it did not consider Ms. Kaddoura's case as exceptional warranting compensation beyond two years' net base salary.

Considerations

Preliminary matters

78. As a preliminary matter, the Appeals Tribunal deals with the Commissioner-General's allegation that the UNRWA DT committed errors in procedure such as to affect the decision of the case.

79. Firstly, the Commissioner-General contends that the UNRWA DT should not have excluded the annexes of the OIOS investigation report from the case record. Had they been in the record, they would have led to different findings of fact, particularly regarding the reliability

and credibility of Ms. Kaddoura and the former DUO/J, the only witness permitted before the UNRWA DT at its hearing.

80. The Appeals Tribunal finds no error in the UNRWA DT Judgment. There are two issues to be dealt with in this respect. Firstly, the admissibility of the evidence before the UNRWA DT. Article 13(1) of the UNRWA DT Rules of Procedure provides that the Tribunal shall determine the admissibility of any evidence. This is because, as established by the jurisprudence, the trial judge is better placed to assess and determine the value of any specific evidence.³ Secondly, whether this evidence that was excluded before the UNRWA DT should be admitted on the appeal. Only in exceptional circumstances can any additional evidence be received by the Appeals Tribunal and the Commissioner-General has not demonstrated any exceptional circumstance which would be sufficient to reverse the exclusion ordered by the UNRWA DT. Therefore, in the present case, Ms. Kaddoura was not afforded the opportunity to be appraised of these annexes, not to mention to comment on them.⁴ It follows that they could not have been considered in the UNRWA DT Judgment in light of the adversarial principle, i.e. that Ms. Kaddoura should have had an opportunity to address the evidence.

81. Furthermore, at the Commissioner-General's request, Ms. Kaddoura's "oral evidence" was stricken from the record and not considered by the UNRWA DT in its Judgment.⁵ In this regard, the Appeals Tribunal finds it inconsistent that the Commissioner-General requests Ms. Kaddoura's interview at the investigation phase to be considered in the Judgment, whereas the Commissioner-General had requested that her "oral evidence" before the UNRWA DT be stricken from the record. The UNRWA DT was then correct not to consider either of Ms. Kaddoura's accounts, neither the interview nor the oral evidence, in its Judgment. Moreover, in the present case, only the annexes of the report were removed from the record, not the report itself, which reproduced most of the evidence on which it was based. The annexes to the report were indeed unnecessary in light of the totality of the evidence. Neither the UNRWA DT nor this Appeals Tribunal would have reached different findings of fact had the investigation report annexes been included in the case record. The Appeals Tribunal will therefore not admit and consider annexes 18 and 19 to the appeal.

³ *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. 25.

⁴ Impugned Judgment, para. 84.

⁵ *Ibid.*, para. 92.

82. Having said the above, the Commissioner-General also annexed to his appeal an index of the annexes of the OIOS report, which includes the key extracts and the evidentiary value of each of the annexes. Since Ms. Kaddoura did not manifest any objection to this index being part of the record, the Appeals Tribunal is aware of its content.

83. Secondly, the Commissioner-General maintains that certain comments of the UNRWA DT Judge during the 3 September 2020 hearing and in the Judgment coupled with the conclusion on the veracity of the witnesses cumulatively evince an element of prejudgment. The Commissioner-General further argues that the Judgment was not fully reasoned. However, these claims have no merit. The unofficial transcript of the hearing held before the UNRWA DT reveals that the Judge afforded both parties an opportunity to respond to each other's arguments and also to clarify certain aspects of the case. In any oral hearing, particularly in the ones relating to disciplinary cases, it is ordinary that the parties answer the Judge's questions, aiming to clarify the factual circumstances of the case. The Judge pointed out the difficulties in hearing some of the witnesses who had left the Agency, sometimes in the arduous context following a significant financial crisis.

84. There was no objection from the parties, who were represented by experienced counsels, to those judicial remarks at the time of the hearing. The Commissioner-General did not object to the continuation of the hearing and even asked questions to the witness. Now, after the Judgment has been issued, he cannot raise this argument by virtue of the principle of estoppel. Otherwise, a party would be allowed to put forward his or her arguments only in the case of the judgment being contrary to his or her ultimate interests. Ordinarily, any error of procedure which could affect the outcome of the case shall be highlighted at the first opportunity by the party who is or could be prejudiced by such an error. The Commissioner-General did not do so in the hearing. He is now barred from raising this argument.

Merits of the appeal

85. The main issue for consideration and determination in this appeal is whether the UNRWA DT erred when it rescinded the contested administrative decision on grounds that neither the facts upon which the disciplinary measure was imposed were established by clear and convincing evidence, nor did the established facts constitute misconduct. Moreover,

the UNRWA DT found that the aggravating factors, not specified in the OTR letter, were vague and unsubstantiated.⁶

86. The UNRWA DT found that, among the various allegations against Ms. Kaddoura, only three of them had been established by clear and convincing evidence. However, none of them constituted misconduct in accordance with the Agency's regulatory framework. The UNRWA DT therefore rescinded the contested administrative decision to separate Ms. Kaddoura from service for misconduct with termination indemnity.

87. In his appeal, the Commissioner-General requests that this Appeals Tribunal vacate the UNRWA DT Judgment and affirm the decision to separate Ms. Kaddoura or, alternatively, remand the case to the UNRWA DT for a *de novo* determination. The Commissioner-General firstly maintains that the UNRWA DT erred when it failed to consider that it was Ms. Kaddoura who initiated the audit process of Mr. DP's PHPs, without any advice, instruction or knowledge of her direct supervisor, the then DHR, as found by the OIOS report. Moreover, Ms. Kaddoura undertook a number of actions unrelated to any internal ongoing verification process, which was limited to the verification of academic degrees and did not involve substantiating information listed in staff members' PHPs. The Commissioner-General also submits that the "legitimate" verification process only began in October, thus Ms. Kaddoura misled the DCG, the DUO/J and the H/RS by implying the existence of an ongoing audit at the time the letters were sent seeking clarification in August.

88. The Commissioner-General's claims considerably distort the evidential findings of the UNRWA DT in the present case and should be dismissed, as the UNRWA DT correctly assessed the factual issues in the present case.

89. According to the letter of the former Commissioner-General dated 11 March 2019 to Mr. Kaddoura, offering her an opportunity to respond, the OIOS investigation and consequent report dated 12 December 2018 were initiated following an allegation that she might have abused her authority by initiating an "audit" of the PHPs of specific international staff, namely the former Deputy Director of UNRWA Operations at the JFO, the former SAP Applications Coordinator (HR) and the former H/IPSS.

⁶ *Ibid.*, paras. 143 and 145.

90. This conduct would have contravened the Agency's regulatory framework provisions cited in the letter, which included eight full pages of legislation, including General Staff Circulars on the Revised Standards of Conduct for the International Civil Service, on Prohibition of Discrimination, Harassment-including Sexual Harassment and Abuse of Power, and on Allegations and Complaints Procedures and Protections Against Retaliation for Reporting Misconduct and Cooperating with Audits or Investigations, to some International Personnel Directive, the International Staff Rules, DIOS Technical Instruction and Handbook on Ethics and the Standards of Conduct Applicable to UNRWA Personnel.

91. This is why Ms. Kaddoura was given an opportunity to respond to the allegations of misconduct and produce evidence of her arguments. The minutes of the meeting Ms. Kaddoura held with the former Commissioner-General on 25 April 2019⁷ in order for her to have an opportunity to speak with him on the matter of the OTR, show a complete disparity of approach with regard to the tensions in the work environment. While the former Commissioner-General expressed apprehensions about the importance of respectful and conducive team environment and with de-escalation of the tensions, particularly in light of the concerns expressed by staff members about Ms. Kaddoura's interaction with others, which was leading to continued issues in the team dynamics, Ms. Kaddoura felt retaliated against, frustrated, backstabbed, having a sense of being the target of non-conducive conduct. For her, the problem was with the DCG and the DHR, and thus she felt disorientated and in need of protection. Ms. Kaddoura could not understand why she could be considered to have engaged in misconduct when she reported issues that she deemed to be inconsistent with the Agency's regulatory framework. She also denounced breaches of Agency rules, which she believed was in line with her professional integrity.

92. In her written "Opportunity to Respond" dated 30 April 2019, Ms. Kaddoura reiterated her objection against the fact that she was accused of abuse of authority for having reported irregularities within the Agency and against the subjective conclusions drawn by the OIOS report. She maintained that she was the subject of retaliation after having complied with her duties performed in her capacity of OiC at the time.

93. International Staff Rules 1.2(c) and 1.2(f) provide that:

(c) Staff members have the duty to report any breach of the Agency's regulations and rules to the officials whose responsibility it is to take appropriate action and to cooperate with

⁷There is a typographical error in the year, which shows 2018.

duly authorized audits and investigations. Staff members shall not be retaliated against for complying with these duties.

...

(f) Any form of discrimination or harassment, including sexual or gender harassment, as well as abuse in any form at the workplace or in connection with work, is prohibited.

94. The applicable legal framework thus stipulates that it is the duty of a staff member to report any breach of the Regulations and Rules and that staff members shall not be retaliated against for having reported those breaches. The evidence on the record shows that, contrary to the Agency's contentions, Ms. Kaddoura might well have been the first source of information of the irregularities and played a primary role in the drafting of the 10 August 2017 letters.⁸ Nevertheless, she did not sign any written formal correspondence for the staff members who were asked to present explanations on the discrepancies or alleged misrepresentations in their personal files or even complete their university degree required for the post they were encumbering. Nor did Ms. Kaddoura participate in any meeting with those staff members, as she recused herself, having been previously supervised by the staff member concerned.⁹ She complied with the directions of the former DCG that the matters should be addressed internally through discussion for clarification and correction, since they were "routine".¹⁰

95. Moreover, contrary to the Commissioner-General's contentions, already as early as 23 July 2017, the Head, Department of HR sent an e-mail to Ms. Kaddoura, according to which "[i]n addition to the two cases discussed last week where it is known that they did not have the required university degree at the time of joining the Agency [L.B and C.K), we will initiate the *verification of all international staff members' files* after the finalization of the Personal Accounts cleaning exercise. Therefore, we anticipate to begin with this task in the beginning of October and finalize before mid November."¹¹

96. It is clear thus that the process of verification had already been triggered at the time Ms. Kaddoura met the former DCG and the former DUO/J, just before the letters dated 10 August 2017 were issued. The UNRWA DT did not err in concluding that it had not been established that Ms. Kaddoura had misled the then DCG, the then DUO/J and the then H/RS into

⁸ Impugned Judgment, para. 113.

⁹ Oral evidence provided by the former DUO/J in the hearing before the UNRWA DT, on 3 September 2020.

¹⁰ Paras. 6 and 9 of the 11 March 2019 letter from the former Commissioner-General to Ms. Kaddoura on the OTR.

¹¹ Emphases added.

believing that there was an internal HR audit process in July 2017. It also results from this e-mail that Ms. Kaddoura's actions were related to the internal audit purportedly ongoing and that Ms. Kaddoura did not extend the scope of the "audit" to include substantiating information listed in staff members' PHPs, since they were part of the staff member's files. The UNRWA DT did not err in concluding that Ms. Kaddoura's conduct could not be considered as abuse of power but, rather, reflected actions undertaken as part of her duties.¹²

97. With regard to the legitimate scope of the audit, the UNRWA DIOS guide to Conducting Investigations dated December 2010 stipulates that "all investigations including all types of related inquiries can be defined as a legally based and analytical process designed to gather information to determine whether wrongdoing occurred and, if so, the persons or entities responsible". It provides further, on the authority to conduct an investigation, that "[i]nvestigations into reports of misconduct can only be initiated by field and department directors, the Director of the Department of Internal Oversight Services (DDIOS) and the Commissioner-General. In initiating an investigation, the manager will provide clear terms of reference for the investigation."¹³

98. Annex 23 of the OIOS investigation report on Ms. Kaddoura's conduct concluded that Ms. Kaddoura had committed abuse of power by acting outside her authority in commencing an investigation of Mr. DP's PHPs. However, the plain wording of the correspondence addressed to Mr. DP dated 10 August 2017 signed by the then Head, Recruitment Section, specified that the dual purpose of the letter was i) to substantiate the information listed on his P-11 and ii) to confirm his eligibility for the position that he had been selected for by comparing the verified information to the requirements of the job opening. Even though there was a reminder that any misrepresentation in his application form could render him liable to termination, the very end of this correspondence reiterated that that was an opportunity for comments of clarifications Mr. DP might have been able to provide. The UNRWA DT thus correctly held that it was not an opening of a formal misconduct "investigation" in the sense of the above definition of the term.¹⁴

99. Moreover, the conclusion that the purpose of the letter was routine checks and reviews of the requirements for the encumbered posts by staff members within the Agency is in keeping with the oral evidence given by the former DUO/J, in the hearing before the UNRWA DT. On

¹² Impugned Judgment, para. 124.

¹³ Pg. 16 (internal footnote omitted).

¹⁴ Impugned Judgment, para. 115.

that occasion he informed that Ms. Kaddoura had been leading a pilot study of reviewing the administrative structures of the Agency and how they function for Jordan field and, if successful, this study would be rolled out into all five fields. Because of this study, periodic meetings were held between the RD, the DCG and Ms. Kaddoura and, in one of them, she had presented the inconsistency in Mr. DP's professional profile.

100. The oral evidence also clarified that Ms. Kaddoura initially suggested that this matter be undertaken by DIOS, but the DCG preferred the issue be reviewed quickly, as she considered it to be routine and not in need of a lengthy investigation by DIOS. Therefore, following the directions received from the then DCG, the former DUO/J, who was the direct supervisor of Mr. DP, held a meeting with him, in the presence of a HR representative, who ultimately signed the letter requesting comments and clarifications. During the meeting, Mr. DP. admitted to having changed his grading in this professional profile, but the process was shortly afterwards ceased after a determination to this end by the former D/DIOS.

101. In this regard, the UNRWA DT was cognizant of the entirety of the situation at stake in the present case and did not err in its findings that there was no wrongdoing or misrepresentation on Ms. Kaddoura's part. In particular, the UNRWA DT correctly held that "the verification of professional/work experience would have been necessary, as part of the auditing process, in order to substantiate all the information in the staff members' PHPs and confirm their eligibility for their positions. Therefore, the Tribunal holds that the allegation that the Applicant extended the scope of the auditing process in the Complainant's case by verifying his work experience is not established."¹⁵

102. All in all, what Ms. Kaddoura was accused of and investigated for was having instigated a review of the PHPs of two staff members who did not possess the required qualifications for the posts they were in. Her instigation was in keeping with the applicable legal framework cited above and echoed by the then DCG who gave instructions on how to proceed informally. Thereafter, meetings were held and informal correspondence was exchanged, with other high positioned staff members taking part in the review. In this sense, the UNRWA DT correctly found that the evidence clearly shows that there was a legitimate ongoing auditing process.¹⁶

¹⁵ *Ibid.*, para. 107.

¹⁶ *Ibid.*, para. 105.

103. After having participated in meetings and received written correspondences for explanation or correction of the irregularity, both staff members under scrutiny resigned, while Ms. Kaddoura was found to have engaged in misconduct for abuse of power. Her suspicions, however, were proven to be correct with regard to the lack of necessary standardized qualifications of the staff members concerned.¹⁷ Moreover, the investigation into Ms. Kaddoura's complaint corroborated the allegation of abuse of authority and harassment by the D/DIOS and DHR against her.¹⁸

104. As discussed, the evidence in this record did not show that the UNRWA DT erred when it held that Ms. Kaddoura did not commit misconduct when she i) verified, by substantiating the information listed in the complainant's PHPs and his eligibility for the position for which he had been selected;¹⁹ ii) failed to inform her direct supervisor about the discrepancies she had discovered in the staff member's PHPs, having gone directly to the former DCG²⁰; and iii) played a primary role in including a paragraph in the 10 August 2017 letter to Mr. DP informing that any misrepresentation or material omission could render the contract open to termination.²¹ The Commissioner-General's appeal thus must fail insofar as it relates to the impugned administrative decision concerning Ms. Kaddoura.

105. There is one element here which needs clarification. It relates to the alleged extraneous motives of Ms. Kaddoura's conduct, possibly deriving from zeal or surreptitious behaviour, particularly linked with some hostility towards both staff members concerned, which was not compatible with the Agency's best interests. In this regard, as indicated on the record, the verification of the academic credentials included all staff members and did not have any specific target from the outset.²² Therefore, the UNRWA DT was correct in its assertion that the former DHR decided to initiate an internal HR auditing process in and around July 2017.²³ While there is evidence that Ms. Kaddoura needed to improve her communication and diplomatic skills and the way she performed her leadership,²⁴ there is no evidence on the record of any extraneous

¹⁷ See correspondences dated 10 August 2017, annex 7 to the appeal.

¹⁸ Letter from the former Commissioner-General to Ms. Kaddoura dated 19 December 2018.

¹⁹ Impugned Judgment, para. 124.

²⁰ *Ibid.*, paras. 120 and 133.

²¹ *Ibid.*, para. 136.

²² *Ibid.*, paras. 99-102.

²³ *Ibid.*, para. 102.

²⁴ Former DUO/J's evidence before the UNRWA DT.

motives in her attitude under examination. Nor is there evidence of abuse of power by improperly using her position to target the staff members concerned.

106. The Appeals Tribunal recalls the delicate and complicated work environment which seemed to have spread in the Agency at the time of the events. The incidents portrayed in the present case reveal some of the struggles and challenges which the Agency has been through, particularly with regard to the compliance with requirements related to the staff selection policy, having as background the significant financial and funding crisis of the Agency in recent years. This could have been at the origin of the separation of high officials, including the former Commissioner-General.

107. The UNRWA DT's order to refer the former Commissioner-General for accountability seems to have been based on some notes of a meeting held by Ms. Kaddoura with her staff.²⁵ Notwithstanding the fact that this document was signed by a HR Policy and Legal Officer on 11 July 2019, its content portrays an account of what Ms. Kaddoura said to her staff in a meeting in which she briefed them about a meeting that she had had with the former Commissioner-General, when he "offered her a deal" in "payment for her silence". The source of this account is a staff member who attended the meeting with Ms. Kaddoura and her staff and whose identity was kept confidential in light of his or her concerns about retaliation.

108. In light of the above, it is clear that this evidence constitutes mere hearsay of something which Ms. Kaddoura said in a meeting with her staff. Even in such a complicated environment of the Agency at the time of the events, which could have made it difficult to provide evidence of suspicious behaviour amongst the factual obscurity, it is not adequate to rely on hearsay to refer a former staff member, be it the former Commissioner-General or any other, to accountability.

109. Moreover, in light of our jurisprudence, there is no possibility of imposing a disciplinary measure on a former staff member,²⁶ any such referral would be ineffectual. This is the only aspect of the UNRWA DT Judgment which needs to be rectified in order to vacate the order of referral of the former Commissioner-General for accountability.

²⁵ There is no precise indication of the evidence in the UNRWA DT's Judgment (see para. 164 of the impugned Judgment).

²⁶ *Hamdan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-839, para. 41.

The cross-appeal

110. Ms. Kaddoura firstly contends that the UNRWA DT erred in fact resulting in a manifestly unreasonable decision by not referring the Director of the Department of Legal Affairs (D/DLA), the DHR and the Spokesperson for accountability .

111. Article 10 of the UNRWA DT Statute provides that: “The Dispute Tribunal may refer appropriate cases to the Commissioner-General for possible action to enforce accountability.” Article 9(5) of the UNAT Statute stipulates that: “The Appeals Tribunal may refer appropriate cases to the Secretary-General of the United Nations or executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability.”

112. The Appeals Tribunal refers to what has been decided above to dismiss the cross-appeal on this ground (no evidence of wrongdoing so as to warrant such a referral). Moreover, its jurisprudence has required a higher standard of evidence in order for the referral to accountability to be considered valid. In *Chhikara*, the findings of the Tribunal were that “someone intended to manipulate the test results and therefore also the selection process with regard to the lack of anonymity of candidates when grading the test responses”, findings which were “serious and troubling” enough to warrant an investigation.²⁷ In the present case, however, the findings of the Appeals Tribunal were limited to assess whether the UNRWA DT had erred in its appreciation of the present case and do not involve any appraisal of the broader internal challenges faced by the Agency at the time of the events.

113. Further, Ms. Kaddoura claims that the UNRWA DT erred in law and fact when it did not consider her case as exceptional warranting compensation beyond two years’ salary. However, in light of the Appeals Tribunal jurisprudence, there is no error in the UNRWA DT Judgment in this matter, considering that, apart from the cap of 24 months’ net-base salary, Ms. Kaddoura will receive the entirety of her termination indemnity.²⁸ Therefore, Ms. Kaddoura has already been awarded extensive compensation in respect of the decision to rescind the administrative decision of her separation from service. It would be excessive to go beyond the maximum equivalent of two years’ net base salary in this instance.

²⁷ *Virendra Singh Chhikara v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1014, paras. 38 and 39.

²⁸ *Haroun v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-909, para. 39.

114. Regarding the remedies, Ms. Kaddoura further contends that the UNRWA DT erred when it did not award i) education grant amounting to a further eight months' net base salary; ii) compensation for damages for moral and reputational harm; and iii) legal costs for both the UNRWA DT and UNAT proceedings. Notwithstanding Ms. Kaddoura's reasoning in the cross-appeal, the Appeals Tribunal has no reason to differ from the UNRWAD DT's judgment in these issues. The education grand and the legal costs are considered to have been included in the award of compensation in lieu of the rescission, whose "very purpose is to place the staff member in the same position he or she would have been in had the Organization complied with its contractual obligations".²⁹ As discussed above, there are no exceptional circumstances to justify an award beyond the statutory cap. Moreover, there is no finding of abuse of proceedings justifying an award of costs. There has been no manifest abuse of the appeals process, as required by Article 9(2) of the Appeals Tribunal Statute, so as to justify any award of costs against the Agency.

115. Lastly, on the issue of compensation for moral damages, the Appeals Tribunal first takes note of the fact that Article 10(5)(b) of the UNRWA DT Statute was amended effective 1 January 2018 and is now identical to the United Nations Dispute Tribunal's Statute, requiring that harm be supported by evidence.³⁰

116. As required by the Appeals Tribunal Statute and our jurisprudence, there is no evidence in the record so as to justify any award of compensation for moral damages ensuing directly from the decision to separate Ms. Kaddoura from service. The fact that Ms. Kaddoura might have suffered the harsh effects of losing her appointment, while deserving of sympathetic consideration, is of itself insufficient basis for an award of moral damages

117. In this respect, it is not enough to demonstrate an illegality to obtain compensation: to be entitled to damages, the claimant bears the burden of proof to establish the existence of negative consequences, and in a cause and effect relationship, resulting from the illegality on a cause-effect lien. Our case law requires that the harm be directly caused by the administrative decision in

²⁹ *El-Kholy v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-730, para. 38.

³⁰ Statute of the UNRWA Dispute Tribunal, Cod./A/59/Rev.25/Amend.155.

question.³¹ If these other two elements of the notion of responsibility are not justified, the illegality can be declared but compensation cannot be awarded.³²

118. The UNRWA DT was thus correct in its decision on the matter.³³ The cross-appeal should accordingly be dismissed.

Final remarks

119. The Appeals Tribunal could not finish this Judgment without a reflection provided with the benefit of hindsight. The factual background of the situation portrayed in the present case presented challenges related to management which involved a number of staff members, including at the high level of the Agency. Perhaps certain misunderstandings and tensions raised could have been alleviated had mediation been attempted in this case at an early stage. Even seemingly irreconcilable points of view can sometimes concede on a common framework which can establish the path to a better understanding between those involved in a dispute. Although this Judgment is the final chapter in the present case, similar situations in the future might be dealt with differently, with alternative dispute resolution strategies based on good faith, transparency, rule of law, open and kind dialogue among management and staff members to the benefit of all and the Agency.

³¹ *Mihai v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-724, para. 21, citing *Diatta v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-640; *Israbhakdi v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-277.

³² *Sirhan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-860, para. 19; *Israbhakdi v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-277, para. 24.

³³ Impugned Judgment, para. 159.

Judgment

120. The appeal is upheld in part and the cross-appeal is dismissed. Judgment No. UNRWA/DT/2020/066 is modified only to vacate the order to refer the former Commissioner-General for accountability.

Original and Authoritative Version: English

Dated this 29th day of October 2021.

(Signed)

Judge Halfeld, Presiding
Juiz de Fora, Brazil

(Signed)

Judge Colgan
Auckland, New Zealand

(Signed)

Judge Sandhu
Vancouver, Canada

Entered in the Register on this 12th day of January 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar