



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

Judgment No. 2022-UNAT-1222

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

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge Dimitrios Raikos Judge Martha Halfeld
Case No.:	2021-1531
Date:	18 March 2022
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Hannah Tonkin

JUDGE SABINE KNIERIM, PRESIDING.

1. Ahmad Ali Mudardas (Mr. Mudardas or Appellant) was a staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency). He was dismissed from service after the conclusion of a disciplinary process, which was premised upon the charge that he had engaged in fraudulent activities by *inter alia* submitting falsified invoices that did not relate to genuine purchases. He filed an application with the UNRWA Dispute Tribunal (Dispute Tribunal or UNRWA DT) challenging the dismissal decision, and on 3 December 2020, the Dispute Tribunal issued Judgment No. UNRWA/DT/2020/071,¹ rejecting his application and finding that the disciplinary measure was lawful.
2. Mr. Mudardas filed an appeal. For the reasons set out below, we uphold the UNRWA DT judgment.

Facts and Procedure

3. Mr. Mudardas began service with the Organization in November 2001 as a Teacher at the Irbid Camp Preparatory Boys' School. He eventually became a School Principal at the same school and served in that capacity until his separation.
4. The inquiry into Mr. Mudardas' misconduct began on 15 January 2018 when the Department of Internal Oversight Services (DIOS) received allegations of corruption against him. It was alleged that he had submitted false accounts, falsified invoices and by implication stolen part of the school budget. Specifically, Mr. Mudardas had allegedly presented invoices which falsely represented two vendors who later confirmed that such invoices were false and that they had never sold the purported items to him. In addition, Mr. Mudardas also allegedly submitted an edited bank statement as part of his mid-term audit submission.

¹ *Mudardas v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2020/071 dated 3 December 2020 (Impugned Judgment).

5. Following DIOS intake, Mr. Mudardas was placed on administrative leave with pay on 23 January 2018. An investigation followed thereafter and was completed on 31 July 2018. The Investigation Report concluded that there was sufficient evidence that Mr. Mudardas submitted false accounts, committed fraud by false representation and stole money from the school budget.

6. On 28 August 2018, the Head, Field Legal Office, transmitted a due process letter to Mr. Mudardas informing him of the findings of the investigation and inviting him to respond to the allegations.

7. On 11 September 2018, Mr. Mudardas responded to the due process letter denying the allegations, and on 5 February 2019, the Director of UNRWA Operations, Jordan, (DUO/J) imposed on Mr. Mudardas the disciplinary measure of separation from service without termination indemnity. The DUO/J also informed Mr. Mudardas of the decision to deduct from his separation benefits a sum of 1,548 Jordanian Dinars (JOD) as reimbursement to the Agency.

8. On 20 March 2019, Mr. Mudardas submitted a request for decision review, and on 26 March 2019, the Deputy Commissioner-General upheld the dismissal decision. Following such, Mr. Mudardas filed an application with the UNRWA DT on 6 June 2019 challenging the dismissal decision.

The UNRWA DT Judgment

9. On 3 December 2020, the Dispute Tribunal issued the Impugned Judgment, finding *inter alia* that the claim by Mr. Mudardas regarding the violation of his due process rights was without merit and second that the disciplinary measure was lawful. The tribunal also found that given Mr. Mudardas had failed to contest the decision to deduct the sum of JOD 1,548 from his separation benefits at the management evaluation level, any claim he subsequently brought in that regard was not receivable.

10. The tribunal first reviewed the allegations regarding the edited bank statement that Mr. Mudardas submitted for a regular audit in December 2017. The tribunal found the version of the bank statement that Mr. Mudardas submitted showed an amount of JOD 2,313 as closing balance whereas a new statement obtained in January 2018 showed that the true figure was actually only JOD 92. The UNRWA DT was unconvinced by Mr. Mudardas' explanations that some of the pages from the bank statement were stuck in a photocopy

machine. Instead, the tribunal believed the version of the bank statement Mr. Mudardas submitted actually showed a deliberate attempt on his part to conceal his fraud.

11. Second, regarding two invoices in the amounts of JOD 70 and JOD 80 from a local blacksmith, which Mr. Mudardas had submitted as genuine expenditures, the tribunal credited the statement the blacksmith had made to investigators that he did not do any such work. The tribunal was unconvinced by Mr. Mudardas' claims that the blacksmith was lying and that this was part of a conspiracy against him. Furthermore, given that Mr. Mudardas had admitted to handwriting the invoices, the tribunal held that it was established by clear and convincing evidence that Mr. Mudardas had submitted two false invoices in the name of the blacksmith.

12. The UNRWA DT also looked into three invoices from a construction company, which Mr. Mudardas allegedly falsified. Again, the tribunal credited the statement made by an authorized person from the construction company attesting that three of the invoices were not issued by him. The tribunal was not persuaded by the claim that the representative from the company had a motive to lie or was biased against Mr. Mudardas. The Dispute Tribunal thus concluded:² "It is evident that the Applicant prepared the invoices without any real purchases and that he kept the cash for himself. Consequently, the Tribunal also holds that it is established by clear and convincing evidence that the Applicant submitted at least three false invoices from A. for Constructions."

13. Additionally, the UNRWA DT also concluded that the established facts amounted to misconduct under the Agency's regulatory framework and that the disciplinary measure imposed on Mr. Mudardas was proportionate to the offense.

14. In conclusion, the Dispute Tribunal ruled:³

[H]aving determined that 1) the facts on which the disciplinary measure, i.e., separation from service without termination indemnity, was based have been established by clear and convincing evidence, 2) the facts legally support the conclusion of serious misconduct, 3) the disciplinary measure was proportionate to the offence, and 4) the Agency's discretionary authority was not tainted by evidence of procedural irregularity, prejudice or other extraneous factors, or error of law, the Tribunal finds that the present application must be dismissed.

² Impugned Judgment, para. 40.

³ *Ibid.*, para. 49.

Procedure before the Appeals Tribunal

15. On 3 March 2021, Mr. Mudardas filed an appeal against Judgment No. UNRWA/DT/2020/071, and the appeal was registered with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) as Case No. 2021-1531. On 7 May 2021, the Commissioner-General filed his answer.

16. By Order No. 443 (2022),⁴ the Appeals Tribunal ordered the Commissioner-General to submit all exhibits attached to the Investigation Report.

Submissions

Mr. Mudardas' Appeal

17. Mr. Mudardas first challenges the decision to deduct JOD 1,548 from his separation benefits. He submits that the above number is not based on any actual false invoices but is based on an estimate of the investigator. He claims all the items in the invoices were eventually delivered to the school in the regular course of business. He also adds that he needed the signatures of two other members of the Finance Committee before he could issue any cheques and as such, he could not singularly commit any fraud.

18. Second, Mr. Mudardas claims that he should have been provided with a copy of the minutes of his interview with the investigator and that the tribunal erred in not recognizing that he had a right to access these minutes.

19. Third, Mr. Mudardas argues that the tribunal failed to give adequate consideration to his proposed witnesses.

20. Fourth, Mr. Mudardas also submits that the Dispute Tribunal erred on a question of fact and that all the invoices he submitted were actually genuine.

21. Finally, Mr. Mudardas claims that the blacksmith harbored ill motive against him and that there were some personal issues between them. Regarding the invoices from the construction company, Mr. Mudardas argues they were issued by a different representative of the company and that the investigator did not interview the right person.

⁴ *Ahmad Ali Mudardas v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Order No. 443 (2022).

22. In conclusion, he submits the UNRWA DT has failed to properly assess the credibility of witnesses and the evidence before it. As such, he asks this Tribunal to vacate the Impugned Judgment and remand the case to the Dispute Tribunal for a *de novo* review.

The Commissioner-General's Answer

23. The Commissioner-General submits the UNRWA DT did not err as a matter of fact, law or procedure in its assessment of the evidence and that it was established by clear and convincing evidence that Mr. Mudardas had submitted false accounts and falsified invoices.

24. As a preliminary matter, the Respondent explains that the UNRWA DT properly disposed of the issue of the deduction of JOD 1,548 from the appellant's separation benefits as non-receivable because the latter never brought up this issue during the management evaluation process.

25. Regarding the issue that Mr. Mudardas was not provided with a copy of the minutes of his interview with the investigator and that his proposed witnesses were not given adequate consideration, the Respondent submits that the appellant is merely repeating arguments he had made below at the UNRWA DT, which have been duly considered and ruled upon. Furthermore, the Commissioner-General also notes that the UNRWA DT was correct to point out that Mr. Mudardas had ample opportunity to submit to the tribunal witness statements and that some of his proposed witnesses were in fact interviewed by the investigator.

26. Finally, regarding the issue of falsified invoices, the Respondent submits the claim by the appellant that he dealt with a different person at the construction company, and not the person interviewed by the investigator, is an argument that is being raised for the first time at the appellate level and as such should not be considered.

27. In conclusion, the Respondent argues the determinations of the UNRWA DT regarding the falsified invoices remain unassailed and therefore in the absence of any reversible errors, this Tribunal should dismiss the appeal in its entirety.

Considerations

Deduction of JOD 1,548

28. With regard to the deduction of JOD 1,548 from the Appellant's separation benefits, we cannot find any error in the Judgment of the UNRWA DT. The Dispute Tribunal correctly found that the application is not receivable as the Appellant had not requested management evaluation in this respect. By letter dated 5 February 2019, the DUO/J notified the Appellant of two administrative decisions. Firstly, he imposed on the Appellant the disciplinary measure of separation from service without termination indemnity. Secondly, he informed Mr. Mudardas of the decision to deduct from his separation benefits a sum of JOD 1,548 as reimbursement to the Agency. Under the applicable legal framework, the Appellant had to request decision review before filing an application. However, in his 20 March 2019 request for decision review, the Appellant only challenged the decision to separate him from service but not the decision to deduct JOD 1,548 from his separation benefits. Consequently, in this regard, his application is not receivable *ratione materiae*.

Separation from service without termination indemnity

Standard of review in disciplinary cases

29. In disciplinary cases, the Dispute Tribunal has to examine the following: (i) whether the facts on which the disciplinary measure is based have been established (by a preponderance of evidence, but where termination is a possible sanction, the facts must be established by clear and convincing evidence); (ii) whether the established facts amount to misconduct; (iii) whether the sanction is proportionate to the offense; and (iv) whether the staff member's due process rights were respected.⁵

Whether there is clear and convincing evidence

30. The UNRWA DT held there was clear and convincing evidence for the allegations made against Mr. Mudardas, namely for producing false accounts to the Irbid Field Office on 21 December 2017 and for submitting falsified invoices that did not relate to genuine purchases.

⁵ *Nadasan v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-918, para. 38.

i. Production of false accounts

31. With regard to the production of false accounts, the UNRWA DT found that on 21 December 2017, the Appellant submitted to the Irbid Area Office the statement of the school's bank account for a regular audit. The submitted version of the bank statement indicated an amount of JOD 2,313 as the closing balance of the school's account. A new statement was obtained in January 2018, which showed the true figure should have been JOD 92. In addition, the Appellant had not disclosed some pages of the bank statement and concealed information from the bank statement by editing it. The UNRWA DT rejected the Appellant's explanations that "all financial transactions appear clearly in the statement" and that the financial statement "got stuck in the machine" while photocopying it.

32. On appeal, the Appellant submits that "the tribunal did not deny the fact that the bank statement was genuine and real and it wasn't hide [sic] any data and all the transactions were appear [sic] clearly in the statement and they [sic] weren't any missing information in the submitted statement and the Appellant confirmed that he haven't [sic] submitted any false accounts to Irbid area office".

33. This allegation does not demonstrate any error on the part of the UNRWA DT. The Appellant does not dispute the findings of the Dispute Tribunal, namely that the 21 December 2017 bank statement did not indicate the correct amount and that parts of the bank statement were missing. He does not show why this finding of the UNRWA DT could be erroneous.

*ii. Submission of falsified invoices that did not relate to genuine purchases**a. Three false invoices in the name of the company A. for Constructions*

34. The UNRWA DT held there is clear and convincing evidence that the Appellant submitted three false invoices in the name of the company A. for Constructions without any real purchases and kept the cash for himself. Mr. K. A. from A. for Constructions had confirmed to the investigator that three invoices, which Mr. Mudardas had submitted as genuine expenditures, were not issued by him. Mr. Mudardas submitted a statement issued in the name of the company A. for Constructions refuting the statement of Mr. K. A. However, no evidence has been adduced to indicate that Mr. K. A. had a motive to lie or was biased against Mr. Mudardas.

The UNRWA DT concluded that the company's statement was not convincing and did not render Mr. K. A.'s statement doubtful.

35. On appeal, Mr. Mudardas contends that he usually dealt with Mr. L. A. and that the three invoices were issued not by Mr. K. A. but by Mr. L. A.

36. We agree with the Commissioner-General that Mr. Mudardas' claim is an argument that is being raised for the first time at the appellate level and as such should not be considered. As we have stated in *Abu Salah*:⁶

... Finally, in his appeal, Mr. Abu Salah submits, *inter alia*, that: (i) none of the Medical Board members are psychologists, in the sense that they are not qualified to diagnose his medical situation; and (ii) the Chair of the Medical Board refused to keep on file the report from the Governmental Psychiatric Hospital.

... However, these issues were not raised before the UNRWA DT, and thus cannot be introduced for the first time on appeal for consideration by the Appeals Tribunal.[] It is quite unreasonable for Mr. Abu Salah to assert that the UNRWA DT erred on questions of fact and law with respect to the allegations which were not raised before the UNRWA DT for its consideration and hence were not part of his case before the lower court.[] Therefore, we find that Mr. Abu Salah's appeal in this regard is not receivable.

37. We have reviewed Mr. Mudardas' 20 March 2019 request for decision review and his 6 June 2019 application to the UNRWA DT and find that he did not make this argument at that point but indeed presented it for the first time before the Appeals Tribunal. Consequently, it has to be rejected.

38. Further, Mr. Mudardas does not show on appeal that the UNRWA DT erred in finding the written witness statement not convincing as no evidence has been adduced to indicate that Mr. K. A. had a motive to lie or was biased against Mr. Mudardas. On appeal, Mr. Mudardas does not present any reason why Mr. K. A. should have such a motive to lie or was biased against him. Further, the written statement has no probative value because it is not written by a person but by A. for Constructions. A. for Constructions is not a person who can give a witness testimony. It does not become clear from the statement who wrote it and whether this person has any relevant function at A. for Constructions.

⁶ *Abu Salah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-974, paras. 46 – 47 (internal footnotes omitted).

b. Two false invoices in the amounts of JOD 70 and JOD 80

39. The UNRWA DT held there is clear and convincing evidence that the Appellant submitted two false invoices in the amounts of JOD 70 and JOD 80 in the name of a local blacksmith. The blacksmith had stated to the investigator that he did not conduct any of the work mentioned in said invoices. He added that, after he had inadvertently left his invoice book and stamp at the school on an earlier occasion, he noticed that the blank version of these two invoices had been removed from his invoice book. The UNRWA DT considered that the Appellant failed to provide any facts that would render the blacksmith's statement doubtful, and he also did not present any evidence to indicate that the blacksmith had a motive to lie or was biased against him. The Dispute Tribunal found the written testimonies supplied by Mr. Mudardas not convincing and without probative value, as the authors are the Appellant's former subordinates and they do not state any credible basis for their claims that the blacksmith is lying. In addition, the Appellant admitted to having handwritten the invoices.

40. On appeal, the Appellant submits that all the works mentioned in said invoices were undertaken by the blacksmith and that what he said in his statement was a malicious complaint for personal reasons. All the witnesses had stated that the blacksmith did not leave any books or stamps at the school. As such, Mr. Mudardas argues that the UNRWA DT erred in holding that he failed to provide any facts and that the written witness statements were not convincing and without value. Mr. Mudardas claims that the UNRWA DT should have conducted an oral hearing and interviewed him and the witnesses.

41. These submissions do not show that the UNRWA DT erred in fact or law.

42. Mr. Mudardas' allegation that the blacksmith's statement was a malicious complaint for personal reasons is unsubstantiated. As the UNRWA DT already pointed out, Mr. Mudardas does not provide any evidence or even a reason to allow the Appeals Tribunal to assume that the blacksmith could have been biased against him or wished him ill.

43. As to the written witness statements, Mr. Mudardas does not show, on appeal, that contrary to the UNRWA DT's findings, they form a credible basis for the claim that the blacksmith is lying. Mr. Mudardas does not explain where his former colleagues could have received knowledge that the blacksmith did not leave his books and stamps at the school.

The witnesses' statements that they never heard about the blacksmith having left his books and stamps at the school is not sufficient to put the UNRWA DT's findings in doubt.

44. Regarding the obligation of the Dispute Tribunal to hold an oral hearing in disciplinary matters, the Appeals Tribunal held:⁷

... While this Tribunal is not without sympathy for the constraints under which the UNDT is compelled to operate, the UNDT might have done better in this instance to have engaged in a fuller trial of the issues. It conducted a limited hearing at which neither the complainant (despite her availability to testify) nor any of the material witnesses were properly examined. It remanded the matter to the Administration to resume the disciplinary process and obtain additional evidence.

... Article 16(2) of the UNDT Rules of Procedure provides that a hearing shall *normally* be held following an appeal against an administrative decision imposing a disciplinary measure. The reasons for that provision are obvious. Firstly, cases of alleged misconduct typically require determination of disputed factual issues. This is best done in an oral hearing involving an adversarial fact-finding process which tests the credibility, reliability and probabilities of the relevant testimony. Secondly, factual findings of misconduct are of far-reaching import. A judicial finding that a staff member has committed sexual harassment, fraud, theft or the like has life-altering consequences. Hence, the determination of misconduct should preferably be done in a judicial hearing by conventional adversarial methods.

...

... However, that said, there will be cases where the record before the UNDT arising from the investigation may be sufficient for it to render a decision without the need for a hearing. Much will depend on the circumstances of the case, the nature of the issues and the evidence at hand. Should the evidence be insufficient in certain respects, it will be incumbent on the UNDT to direct the process to ensure that the missing evidence is adduced before it.

... Thus, while there may be occasions where a review of an internal investigation may suffice, it often will be safer for the UNDT to determine the facts fully itself, which may require supplementing the undisputed facts and the resolution of contested facts and issues arising from the investigation. The UNDT ordinarily should hear the evidence of the complainant and the other material witnesses, assess the credibility and reliability of the testimony under oath before it, determine the probable facts and then render a decision as to whether the onus to establish the misconduct by clear and convincing evidence has been discharged on the evidence adduced.

⁷ *Mbaigolmem v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-819, paras. 25 - 29.

45. It follows from Article 12 UNRWA DT Rules of Procedure and the above-mentioned jurisprudence that the UNRWA DT has some degree of discretion whether or not to hold an oral hearing.

46. Mr. Mudardas does not show, on appeal, that the UNRWA DT erred in its assessment of the probative value of his written witness statements. Further, he does not challenge the UNRWA DT's finding that he had admitted having handwritten the invoices.

47. Finally, as elaborated above, the appeal does not put in doubt the UNRWA DT's finding that Mr. Mudardas produced false bank accounts and submitted three false invoices in the name of A. for Constructions. Whether Mr. Mudardas produced three or even five false invoices does not have any impact on the degree of his wrongdoings and is therefore legally irrelevant for the disciplinary sanction.

48. For these reasons, we find that the UNRWA DT was not obliged to hear Mr. Mudardas or his witnesses.

Due process

49. The UNRWA DT held that Mr. Mudardas' due process rights were not violated (by not sending him a copy of the minutes of his interview before the investigator) because he was provided with the Investigation Report, which included a summary of his responses to the allegations during the interview. Also, Mr. Mudardas failed to demonstrate how the alleged violations of his due process rights prejudiced him within the context of the present case.

50. On appeal, this finding of the UNRWA DT is not put in doubt. Mr. Mudardas does not address the reasoning of the UNRWA DT but merely claims that his due process rights were violated because he was not provided with a copy of the minutes of his interview with the investigator.

Misconduct and proportionality

51. Mr. Mudardas does not submit, and we cannot see that the UNRWA DT erred in holding that the established facts qualify as misconduct and that the sanction is proportionate to the offense.

Judgment

52. Mr. Mudardas' appeal is dismissed, and Judgment No. UNRWA/DT/2020/071 is upheld.

Original and Authoritative Version: English

Dated this 18th day of March 2022.

(Signed)

Judge Knierim, Presiding
Hamburg, Germany

(Signed)

Judge Raikos
Athens, Greece

(Signed)

Judge Halfeld
Juiz de Fora, Brazil

Entered in the Register on this 6th day of May 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar