UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2022-UNAT-1290

Nael Mohammed Fares Jibril

(Appellant)

v.

Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East

(Respondent)

JUDGMENT

Before:	Judge Dimitrios Raikos, Presiding Judge Kanwaldeep Sandhu Judge Sabine Knierim
Case No.:	2021-1626
Date of Decision:	28 October 2022
Date of Publication:	16 December 2022
Registrar:	Juliet Johnson

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

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal or UNAT) has before it an appeal from Mr. Nael Mohammed Fares Jibril against Judgment UNRWA/DT/2021/034 of the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT), of 8 August 2021 (impugned Judgment), dismissing his application against a decision to place him on administrative leave from 16 to 29 June 2019 (contested decision).

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

Facts and Procedure

3. As explained in the summary of facts in the UNRWA DT Judgment,[1] Mr. Jibril was employed by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or the Agency), on a fixed-term appointment as Teacher "B", at Grade 8, Step 1, at Rusaifeh Preparatory Boys' School, Jordan Field Office (JFO), since 2 November 1996. At the time of his application to the UNRWA DT, he worked as a Senior Functional Expert – IT Training Coordinator and E-Learning, Grade 17, Step 12, at the Headquarters, Amman (HQA).

4. By e-mail dated 13 June 2019, a staff member informed the Chief of Staff (CoS) that he had witnessed two incidents of verbal and physical altercation involving Mr. Jibril, which had taken place during a meeting of the Area Staff Union (ASU) at the HQA. Due to the seriousness of these incidents, the Department of Security and Risk Management (DSRM) intervened.

5. By e-mail dated 14 June 2019, the CoS reported the incidents to, among others, the Director of Human Resources (DHR).

6. By letter dated 14 June 2019, the DHR placed Mr. Jibril on Administrative Leave Without Pay (ALWOP) pending the outcome of a disciplinary process, effective on the date Mr. Jibril received this letter.

[1] Impugned Judgment, paras. 2-11.

7. The DHR invited Mr. Jibril for a meeting during the weekend of 14 and 15 June 2019 in order to inform him of the decision to place him on ALWOP and serve him with the letter. However, Mr. Jibril was not available on the weekend, and he only signed the receipt of the decision on 16 June 2019.

8. On 26 June 2019, the Director of the Department of Internal Oversight Services authorized an investigation into the reported allegations.

9. On 30 June 2019, the Officer-in-Charge, Human Resources Department decided to end Mr. Jibril's ALWOP, effective 30 June 2019.

10. On 28 July 2019, Mr. Jibril submitted a request for review of the decision to place him on ALWOP from 16 to 29 June 2019.

11. On 11 February 2020, the Human Resources Officer (Entitlements) (HRO) informed Mr. Jibril that the Acting Commissioner-General (A/CG), had decided to amend the ALWOP he had been placed on from 16 to 29 June 2019, to Administrative Leave with Pay (ALWP). The HRO further explained that this decision would be reflected in Mr. Jibril's payroll of February 2020. At the end of February 2020, Mr. Jibril was paid all entitlements related to the period of his administrative leave. On 21 November 2019, Mr. Jibril filed an application with the UNRWA DT challenging the decision to place him on administrative leave from 16 to 29 June 2019. On 8 August 2021, the UNRWA DT by Judgment No. UNRWA/DT/2021/034 dismissed his application. On 8 November 2021 Mr. Jibril filed an appeal with the UNAT challenging the UNRWA DT Judgment.

12. On 9 January 2022, the UNAT received the Commissioner-General's response to the appeal.

Submissions

Mr. Jibril's Appeal

13. Mr. Jibril requests the UNAT to hold an oral hearing, overturn the ruling of the UNRWA DT in favour of the contested decision, order the contested decision to be removed from his official personnel files, and award him compensation for moral damage.

Alternatively, Mr. Jibril requests that the UNAT return the case to the UNRWA DT to be heard by a new judge.

14. Mr. Jibril submits that the UNRWA DT erred on procedure when it failed to hold an oral hearing. In that regard, he requests the UNAT to find that the true version of events involving him on 13 June 2019, is not beyond dispute. Had the UNRWA DT convened a hearing, including calling the decision-maker, it would have been able itself to determine that the decision to suspend Mr. Jibril had no justification.

15. Mr. Jibril also submits that the UNRWA DT erred in its conclusion that the decision to place Mr. Jibril on administrative leave was lawful. According to him, while it was true that he and the five other staff members who attacked him during the meeting were all local staff representatives, what would be more accurate is that Mr. Jibril was a member of the ASU at the HQA, while the other five employees who attacked him were members of a different union, the Jordan ASU. All of them had met at the HQA on a one-time basis and only briefly, and they were to return to their respective duty stations after the union meeting. The UNRWA DT therefore erred when it found that there was a possibility of continued dispute within the ASU and that there was a risk of repeated confrontation among the staff members concerned. According to Mr. Jibril, it would be hard to understand how the contested decision to suspend him from work – with or without pay – would have helped the UNRWA ensure a safe working environment for its staff, after all five of the staff members had returned to their respective duty stations in the Jordan operations area. Therefore, he claims that in fact and in law, his suspension from work, with or without pay, was arbitrary, and the UNRWA DT had erred in upholding that decision.

16. Mr. Jibril also submits that even though the UNRWA DT explicitly recognized in its Judgment that there was *prima facie* evidence to support the suspension of five others from work, it upheld the decision to suspend only him among those who were involved in the same verbal and physical altercations. The UNRWA DT justified that by saying that it seemed to be a common-sense approach to place one staff member on administrative leave, rather than five or six, in order to avoid further confrontations and to ensure a safe working environment, free of violence. According to Mr. Jibril, the contested decision subjected him and staff members who might come after him to discriminatory treatment, and if upheld, it could be conducive to an unsafe working environment for staff. Observing the highest standards of conduct does not depend on how many or few people there are. Such standards are obligatory and apply to all staff as individuals and collectively.

17. Mr. Jibril requests the UNAT to find that he was subjected to discriminatory treatment that has damaged his reputation and standing in his workplace and outside it, and based on that, to overturn the contested decision and the UNRWA DT Judgment under appeal, and to award him compensation for the moral damages he suffered as a result of that decision.

18. Mr. Jibril also claims that the UNRWA DT had erred when it found that suspension became moot after his salary and entitlements were restored at the end of February 2020, since a long period of time had actually passed from him being deprived of part of his wages until having them restored.

The Commissioner-General's Answer

19. The Commissioner-General requests dismissal of the appeal. He maintains that the UNRWA DT did not err on a question of fact, as a matter of law or in procedure, and that Mr. Jibril has not identified reversible errors warranting the interference of the UNAT. In view of the above, he submits that there is no legal basis for the consideration of the reliefs sought.

20. The Commissioner-General submits that the UNRWA DT did not err as a matter of fact or law on the issue of whether an oral hearing was necessary. According to him, pursuant to Article 11 of the UNRWA DT Rules of Procedure, the denial falls within the UNRWA DT's discretion in the management of its cases. In stating that Mr. Jibril did not produce any sufficient reason in support of the request for an oral hearing and that the evidence on file was sufficient to render a decision without an oral hearing, the UNRWA DT provided a reasonable explanation for not holding such a hearing. Also, Mr. Jibril had failed to establish that the UNRWA DT had erred on a question of procedure by denying his request for an oral hearing.

21. As regards Mr. Jibril's request that the UNAT conduct an oral hearing, the Commissioner-General submits that such a request be rejected. The rationale for the UNAT to grant an oral hearing would be that pursuant to Article 8(3) of the UNAT Statute and Article 18(1) of the UNAT Rules of Procedure, it would assist in the "expeditious and fair disposal of the case". In the present case, there is no indication that an oral hearing would do so. In this regard, the Commissioner-General recalls that an appeal before the UNAT is not a rehearing of the matter.[2]

[2] *Iyad Youssef Zaqout v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1183, para. 29.

22. As regards whether the UNRWA DT erred in its conclusion that the decision to place Mr. Jibril on administrative leave was lawful, the Commissioner-General maintains that as apparent from the UNRWA DT Judgment and all the evidence on record, Mr. Jibril was pitted against/caused the altercation with five other staff members. The UNRWA DT was therefore correct in opining that it seemed to be a common-sense approach to place one staff member on administrative leave, rather than five or six, in order to avoid further confrontations and to ensure a safe working environment, free of violence.

23. Regarding allegations of discrimination, the Commissioner-General submits that the contention is misconceived. Notably, "[d]iscrimination is commonly defined as unequal treatment on the basis of a prohibited ground"[3]. In the instant case, Mr. Jibril has not identified any prohibited ground to justify the alleged discrimination.

Considerations

Preliminary matters

Oral hearing

24. Mr. Jibril requests that the Appeals Tribunal hold an oral hearing. Oral hearings are governed by Article 8(3) of the Appeals Tribunal Statute, which states: "[t]he judges assigned to a case will determine whether to hold oral proceedings"; and by Article 18(1) of the Appeals Tribunal Rules of Procedure, which states: "[t]he judges hearing a case may hold oral hearings on the written application of a party or on their own initiative if such hearings would assist in the expeditious and fair disposal of the case." The factual and legal issues arising from this appeal have already been clearly defined by the parties and there is no need for further clarification. Moreover, we do not find that an oral hearing would "assist in the expeditious and fair disposal of the case", as required by Article 18(1) of the Rules of Procedure. Accordingly, the request for an oral hearing is denied.

[3] *Mashhour v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-483, para. 38.

Merits of the case

Whether the UNRWA DT erred by denying Mr. Jibril's request for an oral hearing of the case

25. Mr. Jibril takes issue with the UNRWA DT's rejection of his request for an oral hearing and summoning the witnesses of the 13 June 2019 incident as well as with the UNRWA DT's conclusion that the record before it was sufficient to render a decision without an oral hearing. In this regard, Mr. Jibril argues that the facts upon which the impugned Judgment was based were in dispute and that if a hearing had been held, the UNRWA DT would have found the contested decision was groundless.

26. Under Article 2(1)(d) of its Statute, the Appeals Tribunal is competent to hear and pass judgment on an appeal filed against a judgment rendered by the UNRWA DT in which it is asserted that the UNRWA DT has committed an error in procedure, such as to affect the decision of the case. It follows that a party, in order to be successful on appeal, not only has to assert and show that the UNRWA DT committed an error in procedure but also that this error affected the decision on the case.

27. Further, the UNRWA DT has broad discretion under its Rules of Procedure[4] to determine the admissibility of any evidence and the weight to be attached to such evidence. Our jurisprudence has consistently held that the Appeals Tribunal will not lightly interfere with the broad discretion conferred on the first instance tribunal in the management of its cases[5] to enable cases to be judged fairly and expeditiously and for dispensation of justice. We will intervene only in clear cases of denial of due process of law affecting a party's right to produce evidence.[6]

28. In the instant case, we do not accept Mr. Jibril's argument that this threshold has been met. As Mr. Jibril has given no convincing reason on appeal as to why and how an oral hearing before the UNRWA DT would have had an impact on the decision of the case, his appeal must

[4] See Article 14.
[5] *Abdeljalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-960, para. 43; *Lemonnier v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-762, para. 37, citing *Ljungdell v. Secretary-General of the United Nations,* Judgment No. 2012-UNAT-265, para. 26.
[6] *Abdeljalil* Judgment, *op. cit.*, para. 43; *Uwais v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-675, para. 27, citing *Wu v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-597, paras. 34 and 35.

fail on this ground. Furthermore, we do not find that by denying Mr. Jibril's request for an oral hearing, the UNRWA DT committed an error of procedure. The Judge lawfully exercised the discretion vested in her by Article 14 of the UNRWA DT Rules of Procedure. In stating that "In light of the evidence contained in the file, the Tribunal considers that this is a case where the record before it is sufficient to render a decision without an oral hearing"[7] the UNRWA DT has given a reasonable explanation for not holding an oral hearing.

29. At any rate, we repeat that this Tribunal considers that some degree of deference must be given to the discretion of the UNRWA DT as the court of first instance. As the Appeals Tribunal clarified, evidence can be established without an oral hearing in certain circumstances and this is in the discretion of the Dispute Tribunal.[8] In the present case, without an oral hearing, the determination was based entirely on the documentary evidence and written submissions before the UNRWA DT. In view of the adequacy and the consistency of the evidence on file, we find the UNRWA DT's decision not to hold an oral hearing was reasonable and was not an error of procedure "such as to affect the decision of the case" as per Article 2(1)(d) of the Appeals Tribunal Statute.

Whether the UNRWA DT erred in finding the administrative decision to place Mr. Jibril on ALWP was lawful

30. In the course of his appeal, Mr. Jibril submits that the UNRWA DT erred in fact and in law in finding that the decision to place him on administrative leave was lawful. In this regard, Mr. Jibril argues that none of the other five staff members involved in the altercation were working at HQA and as such, the UNRWA DT erred when it found that there was the risk of repeated confrontations among the concerned staff members.

Legal Framework

31. Area Staff Regulation 10.4 stipulates:

> If a charge of serious misconduct is made against a staff member and the Commissioner-General considers that the charge is 'prima facie' well founded or that the staff member's continuance in office pending an investigation of the charge would

[7] Impugned Judgment, para. 39.
[8] *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. 40; *Abu Osba v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East,* Judgment No. 2020-UNAT-1061, para. 40.

> prejudice the interests of the Agency, the staff member may be suspended, with or without pay, from his/her functions pending investigation, such suspension being without prejudice to the rights of the staff member.

32. Area Staff Rule 110.2 on administrative leave pending investigation provides, in relevant parts, as follows:

> 1. A staff member may be suspended pending investigation by being placed on administrative leave, subject to conditions specified by the Commissioner-General, at any time pending an investigation until the completion of the disciplinary process.
>
> 2. In determining whether to place a staff member on administrative leave pending an investigation, the Commissioner-General shall consider whether there is prima facie evidence in support of the allegation of misconduct and whether the staff member's continuance in the post and/or the duty station would be contrary to the interests of the Agency.
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> 3. Such administrative leave shall be with full pay except (i) in cases in which there is probable cause that a staff member has engaged in sexual exploitation and sexual abuse, or (ii) when the Commissioner-General decides that exceptional circumstances exist which warrant the placement of a staff member on administrative leave with partial pay or without pay.
>
> 4. The decision to place a staff member on administrative leave pending an investigation shall be communicated to the staff member in writing.
>
> 5. Such administrative leave shall be without prejudice to the rights of the staff member and shall not constitute a disciplinary measure.
>
> [...]
>
> 7. The decision to place a staff member on administrative leave pending investigation shall be within the discretionary authority of the Commissioner-General. Such authority is delegated to the Director of Human Resources for Headquarters staff, and Field Office Directors for Field staff.

33. Area Personnel Directive No. A/10/Rev.3 (Disciplinary Measures and Procedures), provides as follows:

> 13. Where there is prima facie evidence in support of an allegation of misconduct, and where the staff member's continuance in their post or duty station would be contrary to the interests of the Agency, the staff member may be placed on administrative leave at any time pending an investigation until the completion of the disciplinary process. Circumstances that may be considered when making such a determination include but are not limited to: the risk of repeated wrongdoing; the potential danger posed to other staff members or the Agency; and/or the risk of

> evidence being destroyed or concealed. A staff member placed on administrative leave is notified in writing of this determination.
>
> 14. Administrative leave is normally with pay unless the Commissioner-General decides that exceptional circumstances warrant administrative leave without pay, in both cases without prejudice to the staff member's rights. A staff member's placement on administrative leave is not a disciplinary measure.

34. In the present case, the UNRWA DT, upon assessment of the evidence on file, including the DSRM's 13 June 2019 Incident Response Report and the e-mail of 13 June 2019, found that there were seven individuals, including Mr. Jibril, present in the room where the ASU meeting at HQA was held. Specifically, the UNRWA DT Judge held that Mr. Jibril was one 'party' to the verbal and physical altercations, while five other individuals were the other 'party', and Mr. A. M., the sixth person, was trying to defuse the situation, but to no avail. Based on these findings, the UNRWA DT determined that there was *prima facie* evidence that Mr. Jibril "was involved in verbal and physical altercations, and this was, at the time of the contested decision, sufficient enough to place him on ALWP".[9]

35. The UNRWA DT noted further that

> [...] the Agency has an obligation to ensure a safe working environment, free of violence and in line with values of the United Nations. Given the Applicant's position as a member of the ASU and the continued dispute within the ASU, there was the risk of repeated confrontations among the concerned staff members. Therefore, the Tribunal has no doubt that the Applicant's continued presence at work would have been contrary to the interests of the Agency in the sense of the above-quoted Area Staff Rule 110.2, paragraph 2 Therefore, the Tribunal holds that the Agency's decision to place the Applicant on administrative leave was lawful.[10]

36. The Appeals Tribunal agrees with and upholds the view of the first instance Judge that, under the aforementioned legal and factual circumstances, the challenged administrative decision to place Mr. Jibril on ALWP was lawful. Notably, as correctly found by the UNRWA DT Judge, the condition of a *prima facie* well-founded charge was met based on the abovementioned material evidence, namely there objectively existed reasonable grounds (probable cause) to believe that there had been an incident of verbal and physical altercation in which Mr. Jibril was involved.

[9] Impugned Judgment, paras. 41-42.
[10] *Ibid*., para. 43.

37. Moreover, in the circumstances of the case, the Appeals Tribunal considers that, given the nature and seriousness of the incident, it was not unreasonable for the Administration to wish to avoid the risk of confrontation with other staff members entailed in Mr. Jibril's continued presence in the office, which would have been contrary to the interests of the Agency. Consequently, the UNRWA DT rightly came to the conclusion that the contested administrative decision to place Mr. Jibril on ALWP pending the outcome of the investigation, was properly and lawfully effected.

38. On appeal, Mr. Jibril contends that there were five other staff members involved and all of them were not based at HQA. As such, Mr. Jibril questions the lawfulness of his placement on administrative leave with a view to securing a safe working environment, as opined by the UNRWA DT, and therefore serving the interests of the Agency as established in the aforesaid rule. In this regard, Mr. Jibril asserts that he was discriminated against.

39. The UNRWA DT Judge addressed this issue in the impugned Judgment as follows. At first, the UNRWA DT indicated that "The Applicant might wonder why he was the one who was placed on administrative leave while there was also *prima facie* evidence that others were involved in the same verbal and physical altercations".[11] Then, the UNRWA DT made specific reference to the Appeals Tribunal's stable jurisprudence that it is not the function of the Tribunal to substitute its own decision for that of the Administration. Eventually, the UNRWA DT commented that it seemed to be a common-sense approach to place one staff member on administrative leave, rather than five or six, in order to avoid further confrontations and to ensure a safe working environment, free of violence. In this context, we infer the UNRWA DT to be holding that even if there were *prima facie* evidence for the Administration to also place those other staff members on ALWP or ALWOP, the Tribunal could not step in and supersede the Administration's authority in that regard, and, at any rate, it was a reasonable decision on the part of the Administration to take appropriate steps only with respect to Mr. Jibril, i.e. to place him on ALWP.

40. Again, we agree with the UNRWA DT's reasoning that it was reasonable and therefore lawful for the Administration to place Mr. Jibril on ALWP for the grounds set out above and it was not within its jurisdictional remit to place itself into the shoes of the Administration and

[11] *Ibid.,* para. 44.

enforce the law in terms of the latter's alleged omission to also place other staff members involved in the aforementioned altercation on ALWP.

41. As an aside, this Tribunal is of the view that, even assuming arguendo that there was also *prima facie* evidence that others were involved in the same verbal and physical altercation, as intimated by the UNRWA DT Judge, the fact that only Mr. Jibril was placed on ALWP does not, in and of itself, render the contested administrative decision unlawful, as Mr. Jibril incorrectly claims, namely on the ground that he was discriminated against.

Whether the UNRWA DT erred in finding Mr. Jibril's claim in terms of his placement on ALWOP to be moot

42. Mr. Jibril takes issue on appeal with the UNRWA DT's finding that his claim referring to his placement on ALWOP was moot. He argues that the UNRWA DT erred in law when it found that his suspension had become moot after his salary and entitlements were restored at the end of February 2020, as there was a long period of time between him being deprived of part of his wages and then having them restored.

43. On this specific issue, the UNRWA DT Judge stated:[12]

> On 11 February 2020, the Applicant was informed that the A/CG has decided to amend the ALWOP that he had been placed on to ALWP and that this would be reflected in his payroll of February 2020. By Order No. 061, the Tribunal inquired whether the Applicant had been compensated for the loss of his salary and benefits. The Applicant responded that he had received his salary and entitlements. As the Applicant has been paid the amount owed to him resulting from the decision to place him on ALWOP, the Agency fully satisfied this part of the Applicant's claim. Therefore, the Tribunal concludes that this claim of the Applicant is moot.

44. The Appeals Tribunal holds that UNRWA DT correctly determined that Mr. Jibril's application had become moot on this issue and therefore will dismiss the appeal on this ground. The administrative decision to place Mr. Jibril on ALWOP was superseded by the Commissioner-General's decision to place him on ALWP and Mr. Jibril conceded before the UNRWA DT that he had received the balance of his salary and entitlements. Thus, at the administrative stage, the alleged illegality was solved after the judicial procedure had begun, rendering the latter unnecessary, as the specific remedy sought was reached. Mr. Jibril was

[12] Impugned Judgment, para. 46.

unable to demonstrate to the UNRWA DT Judge how his rights remained adversely affected by a decision which had been superseded. Nor could he show that he was suffering any injury because of that decision.

Request for moral damages

45. Mr. Jibril's claim for moral damages is rejected. Since no illegality was found, there is no justification for the award of any compensation. As this Tribunal has stated before, "compensation cannot be awarded when no illegality has been established; it cannot be granted when there is no breach of the staff member's rights or administrative wrongdoing in need of repair".[13]

46. It follows that the appeal must fail.

[13] *Kule Kongba v. Secretary-General of the United Nations,* Judgment No. 2018-UNAT-849, para. 34, citing *Kucherov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-669, para. 33, in turn citing *Wishah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-537, para. 40 and citations therein; see also *Nwuke v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-508, para. 27; *Oummih v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-420, para. 20; *Antaki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-095, para. 23.

Judgment

47. The Appellant's appeal is dismissed, and Judgment No. UNRWA/DT/2021/034 is hereby affirmed.

Original and Authoritative Version: English

Dated this 28th day of October 2022 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Raikos, Presiding	Judge Sandhu	Judge Knierim

Judgment published and entered into the Register on this 16th day of December 2022 in New York, United States.

(Signed)

Juliet Johnson, Registrar