



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

Judgment No. 2023-UNAT-1322

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

JUDGMENT

Before:	Judge Kanwaldeep Sandhu, Presiding Judge Sabine Knierim Judge Martha Halfeld
Case No.:	2022-1674
Date of Decision:	24 March 2023
Date of Publication:	13 April 2023
Registrar:	Juliet Johnson

Counsel for Appellant: Amer Abu-Khalaf, LOSA
Counsel for Respondent: Natalie Boucly

JUDGE KANWALDEEP SANDHU, PRESIDING.

1. Ms. Ronahi Majdalawi contested the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) to serve her with an advisory letter and place a copy in her Official Status File (OSF) (the contested decision).
2. By Summary Judgment No. UNRWA/DT/2022/006¹ (the impugned Judgment), the Dispute Tribunal of UNRWA (UNRWA DT or UNRWA Dispute Tribunal) concluded that the contested decision was not an appealable administrative decision pursuant to UNRWA Area Staff Regulation 11.1 and therefore rejected Ms. Majdalawi's application as not receivable *ratione materiae*.
3. Ms. Majdalawi appeals and for the reasons set out below, the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) grants the appeal, reverses the impugned Judgment, and remands the case to the UNRWA DT for consideration of the application on the merits.

Facts and Procedure

4. The facts in the appeal are not in dispute.
5. Ms. Majdalawi serves as an Assistant Professor, grade 14, step 9, at the Faculty of Educational Sciences and Arts/UNRWA (FESA).
6. In March 2021, she filed several complaints against the Dean of FESA (D/FESA) with the Director of UNRWA Affairs in Jordan (DUA/J).
7. On 15 April 2021, the Senior Field Investigator in the Jordan Field Office (SFI/J) conducted a virtual management intervention regarding the complaints against the D/FESA.

¹ *Majdalawi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2022/006.

8. On 2 June 2021, the Head, Field Human Resources Office in Jordan (H/FHRO/J) transmitted to Ms. Majdalawi by e-mail an invitation to a second management intervention that would be held on 8 June 2021. She was further informed that her presence and collaboration with the process were mandatory and that failure to cooperate might be considered misconduct.

9. On 8 June 2021, the SFI/J conducted the second management intervention during which Ms. Majdalawi says that the SFI/J did not allow her to take the floor. She says that she was “forced” to send an e-mail confirming that she was acknowledging and abiding by the UNRWA’s regulatory framework. She sent this e-mail on 10 June 2021. In this e-mail, she also requested a copy of the final decision regarding her complaints against the D/FESA.

10. On 17 August 2021, the SFI/J informed Ms. Majdalawi by e-mail that an investigation had been opened following her complaints against the D/FESA.

11. On the same day, the H/FHRO/J served Ms. Majdalawi with an advisory letter stating that: “Further to the management intervention meeting dated 8 June 2021, I would like to remind you of Area Staff Regulation 1.1 and 1.4 and your obligation as a staff member working with this Agency to fully adhere to the Agency’s Regulations and Rules and to behave all the times in a manner befitting your status as a staff member of the Agency. (...) A copy of this letter will be placed in your official personnel file.”²

12. On 21 October 2021, Ms. Majdalawi requested a decision review of the H/FHRO/J’s decision to serve her with an advisory letter and to place a copy of this letter in her OSF. There was no response to Ms. Majdalawi’s request for a decision review.

13. On 5 January 2022, Ms. Majdalawi filed an application with the UNRWA Dispute Tribunal contesting the decision to serve her with an advisory letter and to place a copy of this letter in her OSF.

² In its advisory letter of 17 August 2021, the H/FHRO/J is referring to Ms. Majdalawi’s official personnel file, while the UNRWA DT is referring to her OSF. The Appeals Tribunal will refer to Ms. Majdalawi’s OSF.

Impugned Judgment

14. On 15 February 2022, the UNRWA Dispute Tribunal issued the impugned Judgment by way of summary judgment. It rejected the application as not receivable *ratione materiae* because the contested decision to serve Ms. Majdalawi with an advisory letter and place a copy in her OSF was not an appealable administrative decision affecting her terms or conditions of appointment or imposing a disciplinary measure pursuant to UNRWA Area Staff Regulation 11.1(A)(i) and (ii).³

Submissions**Ms. Majdalawi's Appeal**

15. Ms. Majdalawi requests that the Appeals Tribunal vacate the impugned Judgment and order the H/FHRO/J that the advisory letter be removed from her OSF.

16. First, she submits that the UNRWA DT failed to exercise jurisdiction vested in it and erred by issuing a summary judgment on its own initiative without considering the arguments of both parties.

17. Second, she submits that the UNRWA DT erred in fact when it concluded that the decision to serve her with an advisory letter placed in her OSF was not an administrative decision subject to judicial review. She contends that the letter placed in her OSF was not a simple reminder and produced direct legal consequences affecting her terms and conditions of appointment. Therefore, it constitutes an appealable administrative decision pursuant to Chapter XI of the UNRWA Area Staff Rules and Article 2 of the UNRWA DT Statute.

18. Relying on *Ngokeng*⁴ and *Andronov*⁵, Ms. Majdalawi recalls that an administrative decision does not necessarily have to impose a disciplinary measure. Therefore, she argues that the decision to serve her with an advisory letter was an administrative decision, as it was a decision taken by the Administration that had the legal consequence of being placed in her OSF.

³ Impugned Judgment, paras. 18-19, 21, 24 and 26.

⁴ *Ngokeng v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-460.

⁵ Former Administrative Tribunal Judgment No. 1157, *Andronov* (2003).

19. Third, she submits that the UNRWA DT erred in law by considering that the letter placed in her OSF was a “simple reminder”.⁶ Ms. Majdalawi argues that this letter was an “advisory letter” and that UNRWA’s regulatory framework does not allow the placement of advisory letters into the staff members’ OSFs. She says that the Administration “cannot create ad hoc rules to justify its unlawful acts” and argues that the only such authority which exists within the United Nations (but not the UNRWA) system is in Section 9.7 of Administrative Instruction ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process), where it is stated that a note can be placed in the file of a former staff member who left the Organization before the end of an investigation or disciplinary process. She submits that this provision implies that the investigation was conducted until the end, which is different from the present situation, where she is still a staff member and the advisory letter was issued without completing the investigation process.

20. Lastly, regarding the investigation process, Ms. Majdalawi argues that the UNRWA DT erred in fact since there was an ongoing investigation and she was not informed of the outcome of this investigation or given an opportunity to respond. She submits that there was therefore no legal basis upon which to serve her the advisory letter.

21. In conclusion, Ms. Majdalawi submits that the UNRWA DT not only erred in fact, but also in law and failed to exercise jurisdiction vested in it by not verifying if her due process rights had been respected and identifying which provision of UNRWA’s legal framework the Administration had considered before placing the advisory letter in her OSF.

The Commissioner-General’s Answer

22. The Commissioner-General submits that the UNRWA Dispute Tribunal did not err in fact, law or failed to exercise jurisdiction vested in it when it dismissed the application as not receivable *ratione materiae*.

23. The Commissioner-General argues that the UNRWA Dispute Tribunal was correct to issue a summary judgment on its own initiative and, by doing so, was exercising its jurisdiction pursuant to Article 5 of the UNRWA DT Rules of Procedure.

⁶ Impugned Judgment, para. 25.

24. Relying on *Kennes*⁷, the Commissioner-General submits that the UNRWA Dispute Tribunal correctly concluded that such letters could not be considered as appealable administrative decisions, as they did not produce direct legal consequences affecting the staff members' terms or conditions of appointment.

25. The Commissioner-General submits that Ms. Majdalawi's argument that there is no UNRWA rule allowing the placement of an advisory letter in the staff members' OSFs is a new element that was not put forward before the UNRWA DT and cannot be introduced for the first time on appeal.⁸ The Commissioner-General requests that the Appeals Tribunal find this aspect inadmissible.

26. In any event, the Commissioner-General contends that the placement of the letter in Ms. Majdalawi's OSF is not an appealable administrative decision as it did not have direct legal consequences affecting the terms or conditions of her appointment. The letter was not adverse material.

27. The Commissioner-General says that Ms. Majdalawi's arguments regarding the investigation and due process, including that she was given no opportunity to respond, are "wholly misconceived". The Commissioner-General notes that no due process rights are attached prior to the issuance of the letter, and that the letter formed part of a managerial action and not a disciplinary process.

28. The Commissioner-General submits that the application was not receivable, as correctly determined by the UNRWA Dispute Tribunal. Ms. Majdalawi failed to identify reversible errors and the UNRWA Dispute Tribunal did not err on a question of fact, as a matter of law, or failed to exercise jurisdiction vested in it in dismissing her application.

29. Finally, the Commissioner-General submits that the reliefs sought have no legal basis and requests that the Appeals Tribunal dismiss the appeal.

⁷ *Erik Kennes v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1073, paras. 47-49.

⁸ *Planas v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-049, para. 13.

Considerations

30. The issues for consideration and determination in the present case are whether the UNRWA Dispute Tribunal erred by proceeding by summary judgment and by finding that the application was not receivable *ratione materiae*, since the placement of the advisory letter in Ms. Majdalawi's OSF was not an appealable administrative decision.

Summary Judgment

31. Article 5 of the UNRWA DT Rules of Procedure provides that: "A party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law. The Tribunal may determine, on its own initiative, that summary judgement is appropriate." The latter occurred in this instance.

32. Ms. Majdalawi argues that the UNRWA Dispute Tribunal erred by issuing a summary judgment on its own initiative without considering the arguments of both parties and, therefore, it failed to exercise jurisdiction vested in it.

33. We find no merit in this argument. The decision to proceed by way of summary judgment is not tainted by any of the errors set forth in Article 2(1) of the Appeals Tribunal Statute, particularly a failure to exercise jurisdiction vested in the UNRWA Dispute Tribunal.

34. Further to Article 5 of the UNRWA DT Rules of Procedure, the UNRWA Dispute Tribunal has the discretion, on its own initiative, to proceed by way of summary judgment when there is no factual dispute and the judgment is a matter of law. As previously stated in *Kazazi*⁹, summary judgment is an appropriate tool to deal with issues of receivability which are matters of law and not of fact. Therefore, in accordance with the established jurisprudence of the Appeals Tribunal as well as "with the principles of judicial economy and efficiency [...] [and] in the interest of expeditious disposal of the case"¹⁰, the UNRWA Dispute Tribunal "in assessing its own competence, [...] can choose to proceed by way of summary judgment without taking any argument or evidence from the parties"¹¹. This is the case here, where there is no

⁹ *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, paras. 41-42.

¹⁰ *Koumoin v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-833, para. 24.

¹¹ *Kazazi* Judgment, *op. cit.*, para. 42.

dispute as to the material facts of the case and the issue of receivability is to be determined as a matter of law.

35. Therefore, the Appeals Tribunal finds that the UNRWA Dispute Tribunal exercised its discretion to proceed by summary judgment lawfully and appropriately.

Receivability of the contested decision

36. The present case is almost identical in its facts and submissions to *Abed & Abed*¹². In both appeals, the H/FHRO/J served the appellants with a reminder letter as a result of management intervention, which letters stated that the appellants should comply with UNRWA Area Staff Regulations 1.1 and 1.4, and that a copy of the letter would be placed in their respective OSFs.

37. The issue in both cases is whether these letters were appealable administrative decisions receivable by the UNRWA Dispute Tribunal.

38. Article 2(1) of the UNRWA DT Statute provides that it is competent to hear and determine an application against the Commissioner-General: “(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms ‘contract’ and ‘terms of appointment’ include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance; (b) To appeal an administrative decision imposing a disciplinary measure.”

39. In the impugned Judgment, the UNRWA Dispute Tribunal found that “reminder letters cannot be considered as a disciplinary measure, as no sanction was imposed in accordance with the exhaustive list of disciplinary measures provided for in Area Staff Rule 110.1”.¹³ The list includes: a) written censure; b) loss of one or more steps in grade; c) deferment, for a specified period, of eligibility for salary increment; d) suspension without pay for a specified period; e) fine; f) deferment, for a specified period, of eligibility for consideration for promotion; g) demotion with deferment, for a specified period, of eligibility for consideration for promotion;

¹² *Osama Abed & Eman Abed v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2022-UNAT-1297.

¹³ Impugned Judgment, para. 21.

h) separation from service, with notice or compensation in lieu of notice with or without termination indemnity; and i) summary dismissal.

40. However, UNRWA's legal framework establishes a difference between certain measures, which are considered to be of a disciplinary nature such as in UNRWA Area Staff Rule 110.1 and other lighter administrative measures, which are not considered disciplinary as set out below.¹⁴

41. Paragraphs 42 and 43 of UNRWA Area Personnel Directive No. A/10/Rev.3 (PD A/10) regulate administrative decisions that are not disciplinary measures. They state that:

42. Administrative decisions that are not disciplinary measures include: reprimands, recovery of monies owed to UNRWA, allowing an appointment to expire, termination in the interests of the Agency, and administrative leave with or without pay pending an investigation.

43. Reprimands are oral or written communications by the immediate supervisor or higher authority to a staff member, drawing his/her attention to minor breaches of the UNRWA Staff Regulations, Rules, or other administrative issuances or to relatively unsatisfactory work performance. Documentation of an oral reprimand or a written reprimand is included in the staff member's official status file. The reprimand may include a provision prescribing a time period after which it is removed from the official status file. As a reprimand is not a disciplinary measure, it should not normally be used to address established misconduct at the conclusion of a disciplinary process.

42. The UNRWA Dispute Tribunal found that the contested letter was a simple reminder of the Agency's existing rules and constituted a lawful exercise of the Agency's authority to issue reminders or warnings when it notices that a staff member may be disregarding UNRWA's regulatory framework.¹⁵

43. However, consistent with *Abed & Abed*¹⁶, we find that the contested decision was an appealable administrative decision. The placement of the contested letter in Ms. Majdalawi's OSF amounted to a reprimand, which was an administrative decision that is not a disciplinary measure, since it contained an "element of reproach, admonition or at least criticism in order to avoid further breaches of the applicable rules and regulations.

¹⁴ *Osama Abed & Eman Abed Judgment, op. cit.*, para. 37.

¹⁵ *Impugned Judgment, para. 25.*

¹⁶ *Osama Abed & Eman Abed Judgment, op. cit.*

Reprimands are used to address minor infractions and they contain all the key elements to characterize them as reviewable administrative decisions”.¹⁷

44. The established definition of an appealable administrative decision is:¹⁸

...a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.

45. Therefore, the key element of an appealable administrative decision is that it must “produce direct legal consequences” affecting a staff member’s terms or conditions of appointment. What constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision.¹⁹

46. On the nature of the letter in this appeal, the Commissioner-General submits that whether the contested letter is advisory or a reminder is immaterial and that a review of the letter reveals that it was informative and instructive in nature, lacking direct adverse consequences on Ms. Majdalawi’s terms and conditions of appointment. Therefore, the Commissioner-General submits that it is not an appealable administrative decision. The Commissioner-General further points out that the mere placement of a letter in

¹⁷ *Osama Abed & Eman Abed* Judgment, *op. cit.*, para. 39.

¹⁸ Former Administrative Tribunal Judgment No. 1157, *Andronov* (2003). See also *Osama Abed & Eman Abed* Judgment, *op. cit.*, para. 34; *Ngokeng* Judgment, *op. cit.*, para. 26; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-365, para. 14; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-313, para. 19; *Al Surkhi et al. v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-304, paras. 26-28.

¹⁹ *Osama Abed & Eman Abed* Judgment, *op. cit.*, para. 35. See also *Kazazi* Judgment, *op. cit.*, para. 28; *Bauzá Mercére v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-404, para. 18; *Wasserstrom v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-457, paras. 34-35 and 41; *Ngokeng* Judgment, *op. cit.*, para. 27; *Andati-Amwayi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-058, paras. 17-19.

Ms. Majdalawi's OSF is also not sufficient to constitute a direct adverse impact on her terms and conditions of appointment.

47. However, we recall our finding in *Abed & Abed*, that “a reminder in an official personnel file cannot be considered a ‘neutral’ action, but rather a ‘warning’ of any ‘possible disregard of the Agency’s regulatory framework’”²⁰, which amounts to a reprimand. Further, we agree with Ms. Majdalawi that there is nothing in the UNRWA’s regulatory framework that authorizes the Agency to issue and place “reminder letters” in a staff member’s OSF. As a result, such reminders can be interpreted as being a reprimand based on their content, and therefore, constitute administrative decisions, given their direct adverse impact on the staff member’s terms or conditions of appointment.²¹

48. As we previously stated: “This reasoning stands even in the absence of any sanction permissible as a disciplinary measure, since this is the essence of any administrative or managerial measure which is non-disciplinary. In the present case, the direct legal consequence of the letters will be their placement in the Appellants’ OSFs with possible impact on their future career prospects.”²²

49. The Commissioner-General recalls that it is the duty of managers to bring to the attention of staff issues regarding their performance or conduct, and to remind them of the applicable regulatory framework. The Commissioner-General further submits that the letter also served as an undertaking by the UNRWA that an investigation would be initiated regarding the complaints filed by Ms. Majdalawi.

50. We disagree. As previously held, we consider that the letter was placed in Ms. Majdalawi’s OSF with the purpose of an admonition rather than a general reminder, or even a performance evaluation.²³ Moreover, it has not been established that there was sufficient evidence to justify the issuance and placement of the letter in Ms. Majdalawi’s OSF. The Appeals Tribunal notes that the Commissioner-General, in his appeal submissions, acknowledges that the letter was part of “managerial action”. It was a formal letter issued and placed in Ms. Majdalawi’s OSF in the context of a complaint made by her against the D/FESA.

²⁰ *Osama Abed & Eman Abed* Judgment, *op.cit.*, para. 40.

²¹ *Ibid.*, para. 41.

²² *Ibid.*

²³ *Ibid.*, para. 42.

The Commissioner-General didn't provide any explanation as to why the Agency felt it was necessary to issue and place the contested letter in her OSF in the absence of any wrongdoing by Ms. Majdalawi.

51. By placing a letter in Ms. Majdalawi's OSF reminding her of her obligation "to behave [at] all (...) times in a manner befitting [her] status as a staff member of the Agency", any reader would infer that she had not behaved befitting her status and reasonably interpret the letter as a reprimand. This, therefore, carried direct legal consequences to Ms. Majdalawi's terms and conditions of employment.

52. Therefore, we find that the UNRWA Dispute Tribunal erred when it found that the application was not receivable *ratione materiae* due to the fact that the contested decision was not an appealable administrative decision.

53. Accordingly, we remand the case to the UNRWA Dispute Tribunal, under Article 2(10) of the Appeals Tribunal Statute, for a decision on the merits, which will include a review of the challenge to the issuance of the contested letter and its placement in Ms. Majdalawi's OSF.

Judgment

54. Ms. Majdalawi's appeal is granted, Judgment No. UNRWA/DT/2022/006 is hereby reversed, and the case is remanded to the UNRWA DT for consideration on the merits.

Original and Authoritative Version: English

Decision dated this 24th day of March 2023 in New York, United States.

(Signed)

Judge Sandhu, Presiding

(Signed)

Judge Knierim

(Signed)

Judge Halfeld

Judgment published and entered into the Register on this 13th day of April 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar