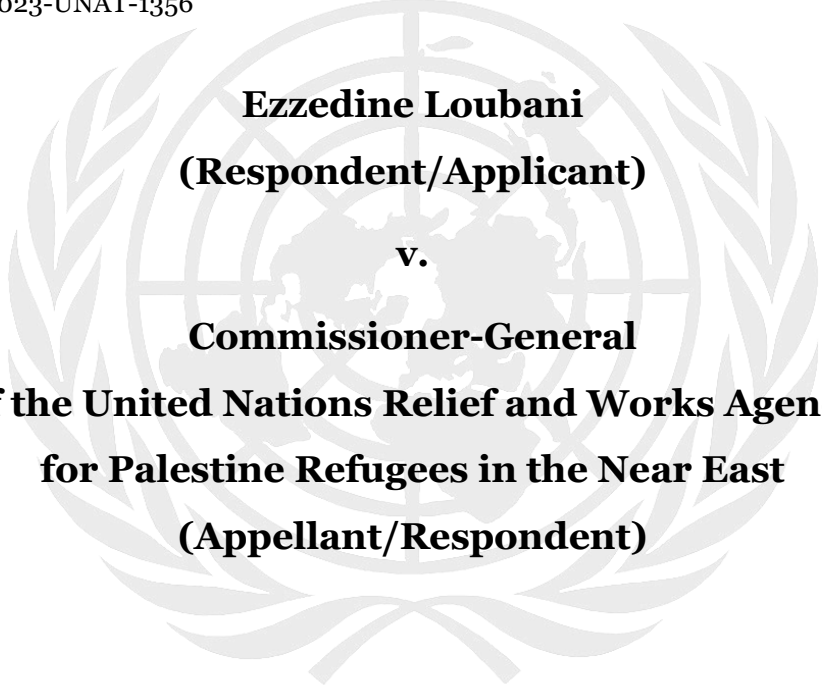




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2023-UNAT-1356



**Ezzedine Loubani**  
**(Respondent/Applicant)**

**v.**

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

**JUDGMENT**

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Before: Judge Sabine Knierim, Presiding  
Judge John Raymond Murphy  
Judge Gao Xiaoli

Case No.: 2022-1719

Date of Decision: 30 June 2023

Date of Publication: 17 July 2023

Registrar: Juliet Johnson

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Counsel for Mr. Loubani: Amer Abu-Khalaf, LOSA

Counsel for Commissioner-General: Natalie Boucly

**JUDGE SABINE KNIERIM, PRESIDING.**

1. By Judgment No. UNRWA/DT/2021/042, the UNRWA Dispute Tribunal (UNRWA DT) ordered the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) to take a new decision on Mr. Loubani's request for a special allowance (SA).<sup>1</sup> Subsequently, the Agency took another decision declining the request to grant an SA to Mr. Loubani. He filed an application for execution of Judgment No. UNRWA/DT/2021/042 with the UNRWA DT. By Judgment No. UNRWA/DT/2022/030<sup>2</sup> (impugned Judgment), the UNRWA DT granted Mr. Loubani's application and ordered the Agency to execute Judgment No. UNRWA/DT/2021/042 by upgrading Mr. Loubani's post or granting him an appropriate SA, and to pay him the amount of JOD 1000 in costs for manifestly abusing the proceedings before the UNRWA DT. The Commissioner-General lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).

2. For the reasons set out below, the Appeals Tribunal grants the appeal and reverses the impugned Judgment.

**Facts and Procedure<sup>3</sup>**

3. Mr. Loubani began service on 1 March 2011 on a fixed-term appointment as an Administrative Officer at UNRWA Headquarters in Amman, Jordan.<sup>4</sup> His Post Description (PD) indicated under the section of supervisory responsibilities that he has no supervisory responsibilities; in terms of budgetary tasks, he was only responsible for coordinating the preparations of the department's budget and its analysis, as well as monitoring of financial matters.<sup>5</sup>

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<sup>1</sup> *Loubani v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment dated 15 September 2021. Mr. Loubani's initial application had been dismissed earlier as not receivable *ratione materiae* by the UNRWA DT in Judgment No. UNRWA/DT/2020/025. On appeal by Mr. Loubani, the Appeals Tribunal rendered Judgment No. 2021-UNAT-1086 remanding the case to the UNRWA DT for consideration on the merits.

<sup>2</sup> *Loubani v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment dated 14 July 2022.

<sup>3</sup> Summarized from Judgment No. 2021-UNAT-1086 dated 19 March 2021, Judgment No. UNRWA/DT/2021/042, and the impugned Judgment as relevant to the appeal.

<sup>4</sup> *Ezzedine Loubani v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1086, para. 2.

<sup>5</sup> Judgment No. UNRWA/DT/2021/042, para. 3.

4. In October 2018, the division in which Mr. Loubani was serving,<sup>6</sup> was restructured, and his colleagues received new PDs showing their updated duties and responsibilities, but he did not receive the same.<sup>7</sup> Upon inquiry and discussion with his supervisor, on 19 January 2019, Mr. Loubani requested a copy of his PD from Human Resources (HR). On 20 January 2019, HR sent him his original PD, even though his tasks and responsibilities had changed. However, 20 minutes later on that same day, Mr. Loubani received another e-mail from HR asking him to ignore the previous correspondence and furnishing him with a new PD. His new PD indicated, *inter alia*, that the incumbent “supervises the administrative assistants team, assigns tasks and follows up on matters with deadlines” and “prepares divisional budget estimates, ensuring that financial resources are utilized to implement activities in accordance with the approved Programme Budget; monitors and reviews the divisional budget by conducting regular and special reviews and prepares Budget Allotment Adjustments (...) as necessary”.<sup>8</sup>

5. On advice of his supervisor, Mr. Loubani signed the new PD on 23 January 2019 and, on the same day, his supervisor made a recommendation to HR to grant him an SA.<sup>9</sup> By e-mail dated 24 February 2019, Mr. Loubani requested an update on the matter from HR, and the latter answered that the matter was still under review. On 6 March 2019, Mr. Loubani sent a reminder e-mail to HR. As he did not hear anything about the matter, on 20 March 2019, he sent a Request for Decision Review to the Director of Human Resources (D/HR), Amman, in which he challenged his new PD, the restructuring of his post and the assignment of additional duties without awarding him an SA or a promotion and the retitling of his post. On 18 April 2019, the Deputy Commissioner-General responded that “[a]s a result of [the] review, [there was] no basis to alter the decision not to pay [him] a special allowance”.

6. On 16 July 2019, Mr. Loubani filed an application with the UNRWA DT.<sup>10</sup> By Judgment No. UNRWA/DT/2020/025 dated 17 May 2020, the UNRWA DT dismissed the application as not receivable *ratione materiae*. However, on 19 March 2021, the Appeals Tribunal rendered Judgment No. 2021-UNAT-1086 remanding the case to the UNRWA DT for a consideration on the merits.

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<sup>6</sup> Central Support Services Division (CSSD) of UNRWA.

<sup>7</sup> Judgment No. 2021-UNAT-1086, para. 3.

<sup>8</sup> Judgment No. UNRWA/DT/2021/042, para. 6.

<sup>9</sup> Judgment No. 2021-UNAT-1086, para. 5.

<sup>10</sup> *Ibid.*, para. 9.

7. By Judgment No. UNRWA/DT/2021/042, the UNRWA DT rescinded the “decision to redefine [Mr. Loubani’s] duties and responsibilities without proper notification and without granting him a promotion or an SA” and ordered the Agency “to take a new decision with respect to [his] request in view of the increase in his managerial and budgetary duties and responsibilities”.<sup>11</sup> The UNRWA DT rejected his application in all other requests, claims and pleas.

8. In a letter dated 15 December 2021, in response to the request to grant an SA to Mr. Loubani, D/HR communicated the outcome of the reconsideration of that request and declined it.<sup>12</sup> D/HR concluded that the increase in his managerial and budgetary duties and responsibilities was minimal and did not justify granting an SA.

9. On 16 December 2021, Mr. Loubani filed a motion for execution of Judgment No. UNRWA/DT/2021/042 with the UNRWA DT.<sup>13</sup>

*The impugned Judgment*

10. By the impugned Judgment, the UNRWA DT (i) granted Mr. Loubani’s application for execution; (ii) ordered the Agency to execute Judgment No. UNRWA/DT/2021/042 “properly and fully by issuing another decision with respect to [his] request in view of [Judgment No. UNRWA/DT/2021/042] and the [impugned] Judgment, meaning a new decision upgrading [his] post or granting him an appropriate SA, on or before close of business on 14 August 2022”; and (iii) ordered the Agency to pay him on or before close of business on 14 August 2022, the amount of JOD 1000 in costs for manifestly abusing the proceedings before the UNRWA DT.

11. The UNRWA DT recalled that in paragraph 34 of Judgment No. UNRWA/DT/2021/042, the UNRWA DT had held that Mr. Loubani should be compensated in view of a “remarkable increase” in his managerial and budgetary duties and responsibilities, and referred to the comparison made between his old PD and his new PD in paragraphs 3, 6 and 7.<sup>14</sup> As noted in that Judgment, the fact that Mr. Loubani’s old PD indicated under the section of supervisory responsibilities that he had no such responsibilities and that his new PD stated that he supervises

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<sup>11</sup> Judgment No. UNRWA/DT/2021/042, para. 38.

<sup>12</sup> Annex 3 to the appeal.

<sup>13</sup> Impugned Judgment, para. 6.

<sup>14</sup> *Ibid.*, para. 30.

and provides technical guidance to a team of administrative assistants, along with paragraph 34 of that Judgment, are sufficient grounds to grant the application for execution.

12. The UNRWA DT proceeded nonetheless to provide a detailed comparison of the old PD and the new PD.<sup>15</sup> The UNRWA DT concluded that the responsibilities of supporting the development of new procedures for higher efficiency, developing and implementing internal controls for procurement, accounting and financial management purposes, providing guidance to colleagues and input and support to the senior management on financial matters, exchanging information with other United Nations agencies and host government authorities, administering orders of supplies, billings, receipts of payments and payments, and supervising a team of administrative assistants are all new additional duties arising from the new PD. Together with the aforementioned extended version of paragraph 4.1 of the old PD in paragraphs 3.1 and 3.2 of the new PD, the UNRWA DT found that one cannot reasonably conclude that all these additional duties and responsibilities represent a minimal increase and do not rise to the level of a substantive change in responsibilities.

13. The UNRWA DT found that Judgment No. UNRWA/DT/2021/042 could not reasonably have been understood other than that the Agency was to take a new decision reflecting the “remarkable increase in Mr. Loubani’s managerial and budgetary duties and responsibilities”, in other words, a new decision upgrading his post or granting him an appropriate SA.<sup>16</sup> It was thus predictable that the Agency’s new decision failing to properly execute that Judgment would produce additional litigation leading to ordering its execution and would prolong Mr. Loubani’s three-year-long quest to be compensated for the increase in his managerial and budgetary duties and responsibilities for another seven months. The Agency must have been aware of the superfluous nature of its new decision and is therefore fully accountable. The UNRWA DT determined that approximately one month’s salary was an appropriate award of costs against the Agency.

*Procedure before the Appeals Tribunal*

14. On 14 August 2022, the Commissioner-General filed an appeal of the impugned Judgment with the Appeals Tribunal, to which Mr. Loubani filed an answer on 28 August 2022.

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<sup>15</sup> *Ibid.*, paras. 32–38.

<sup>16</sup> *Ibid.*, para. 42.

## Submissions

### The Commissioner-General's Appeal

15. The Commissioner-General requests the Appeals Tribunal to vacate the impugned Judgment.

16. The Commissioner-General argues that Judgment No. UNRWA/DT/2021/042 was fully executed. The UNRWA DT erred in law by substituting its decision for that of the Agency, contrary to established jurisprudence.<sup>17</sup> In paragraph 34 of Judgment No. UNRWA/DT/2021/042, the UNRWA DT stated that it was “not in a position to determine whether or how [Mr. Loubani] is to be compensated”. That Judgment was construed as not restricting the Agency to make a particular decision but rather, as requiring it to revisit the matter. The 15 December 2021 letter from D/HR was within the scope and operative terms of the executable Judgment. D/HR reviewed the duties in the new PD, provided extensive explanations and attached a detailed analysis of the functions contained in both PDs.

17. The Commissioner-General submits that special allowances are not an entitlement but a discretionary benefit, subject to careful analysis and review, and granted on a case-by-case basis. The reconsideration by D/HR was transparent, objective and well-reasoned. Moreover, the UNRWA DT could not possibly have ordered the Agency to grant an SA—a proposition not legally feasible, given that none of the special allowances in UNRWA Area Staff Personnel Directive PD/A/3/Rev.1/Part XI/Amend.5 (Special Allowances) applied in Mr. Loubani's case.

18. The Commissioner-General contends that the UNRWA DT erred in law and fact in awarding costs against the Agency. The Agency interpreted the executable Judgment in good faith.

### Mr. Loubani's Answer

19. Mr. Loubani requests the Appeals Tribunal to dismiss the Commissioner-General's appeal in its entirety and uphold the impugned Judgment.

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<sup>17</sup> The Commissioner-General cites *Appellant v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1137, para. 48.

20. He underscores that the Commissioner-General did not appeal Judgment No. UNRWA/DT/2021/042. The UNRWA DT did not err in law. The Commissioner-General's arguments on appeal have already been examined on the merits in Judgment No. 2021-UNAT-1086, Judgment No. UNRWA/DT/2021/042 and the impugned Judgment.

21. Mr. Loubani submits that the UNRWA DT did not err in awarding costs against the Commissioner-General, whose arguments are without legal basis, manifestly unreasonable, misconceived and misleading. Litigation must come to an end. Appearing before the tribunals in the same case for nearly three years with the same subject matter, which has already been decided on, consumes the tribunals' resources and is not in the interests of justice. The UNRWA DT did not commit any error in procedure or in law or fact such as to affect the decision on the award of costs.

### **Considerations**

#### *Execution of Judgment No. UNRWA/DT/2021/042*

22. The question on appeal is whether in the impugned Judgment, the UNRWA DT committed an error of law or fact by granting Mr. Loubani's application for execution of Judgment No. UNRWA/DT/2021/042 and ordering the Commissioner-General to issue a new decision upgrading Mr. Loubani's post or granting him an appropriate SA.

23. We agree with the Commissioner-General that the impugned Judgment is erroneous.

24. By Judgment No. UNRWA/DT/2021/042, the Commissioner-General was ordered to "take a new decision with respect to [Mr. Loubani's] request in view of the increase in his managerial and budgetary duties and responsibilities." The Commissioner-General was not ordered to upgrade Mr. Loubani's post or to grant him an SA.

25. In paragraph 34 of Judgment No. UNRWA/DT/ 2021/042, the UNRWA DT elaborated:<sup>18</sup>

(...) it is recalled that, in cases of discretionary decisions, it is not for the Tribunal to substitute its own decision for that of the Agency. Therefore, the Tribunal is not in a position to determine *whether* and how the Applicant is to be compensated in view of a

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<sup>18</sup> Emphasis added, footnotes omitted.

remarkable increase in his managerial and budgetary duties and responsibilities, as shown above by a comparison between his initial PD and its present version. The only recourse is to order the Agency to take a new decision. Hence, *it is the Agency's responsibility to take a new decision with respect to the Applicant's request, especially, by giving a proper reconsideration to the Applicant's supervisor's letter dated 23 January 2019.*

26. It is evident from this reasoning that the UNRWA DT did not intend to order the Commissioner-General to upgrade Mr. Loubani's post or to grant him an SA. On the contrary, the UNRWA DT deemed it to be within the discretion of the Commissioner-General to decide whether or not Mr. Loubani should be compensated. The UNRWA DT made clear that it merely intended to order the Commissioner-General to issue a new decision on the matter, and gave some guidance with regard to which circumstances the Commissioner-General should consider when taking this new decision.

27. By the decision of 15 December 2021, the Commissioner-General fully complied with the order of Judgment No. UNRWA/DT/2021/042. The Commissioner-General issued a new decision, specifically referring to the 23 January 2019 letter of Mr. Loubani's supervisor and thoroughly reviewing Mr. Loubani's duties and responsibilities.

28. In this situation, it was erroneous of the UNRWA DT to order execution of the judgment which had already been executed.

29. As Mr. Loubani did not challenge this 15 December 2021 decision, the UNRWA DT did not have authority to review its legality in the impugned Judgment and order the Commissioner-General to either upgrade Mr. Loubani's post or grant him an appropriate SA.

*Abuse of process*

30. As the Commissioner-General did not abuse the proceedings before the UNRWA DT, it was erroneous to order the Agency to pay Mr. Loubani the amount of JOD 1000.



**Judgment**

31. The Commissioner-General's appeal is granted, and Judgment No. UNRWA/DT/2022/030 is hereby reversed.

Original and Authoritative Version: English

Dated this 30<sup>th</sup> day of June 2023 in New York, United States.

*(Signed)*

Judge Knierim, Presiding

*(Signed)*

Judge Murphy

*(Signed)*

Judge Gao

Judgment published and entered into the Register on this 17<sup>th</sup> day of July 2023 in New York, United States.

*(Signed)*

Juliet Johnson, Registrar