



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

Judgment No. 2023-UNAT-1402

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

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge Gao Xiaoli Judge Abdelmohsen Sheha
Case No.:	2023-1773
Date of Decision:	27 October 2023
Date of Publication:	13 December 2023
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Muhammad Mustafa Abdullah
Counsel for Respondent:	Natalie Boucly

JUDGE GRAEME COLGAN, PRESIDING.

1. Faten Hatim Al Dawoud, a staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency), contested two decisions of the Agency. Although to an event which happened later in time than the second event contested, her first challenge was to a decision to cancel an invitation to an interview for the post of Deputy Chief, Field Infrastructure and Camp Improvement Programme (D/C/FICIP), Grade 18, (cancellation decision). Ms. Al Dawoud's challenge filed second in time was to an implied decision of the Agency to approve irregularities allegedly committed during the recruitment process for the post of Chief, Field Infrastructure and Camp Improvement Programme (C/FICIP), Grade 20, which resulted in her non-selection (validation decision).

2. Despite having succeeded at first instance in part, Ms. Al Dawoud has appealed against Judgment No. UNRWA/DT/2022/031 (impugned Judgment) of the UNRWA Dispute Tribunal (UNRWA DT or Dispute Tribunal)¹. On her first-filed application, the UNRWA DT concluded that Ms. Al Dawoud had been wrongfully excluded from the recruitment process and rescinded the interview cancellation decision. The UNRWA DT directed the Agency to pay her compensation instead of rescission, equivalent to JOD (Jordanian Dinars) 1,700, and compensation for moral damages in the amount of JOD 1,500. It dismissed as unreceivable her second-filed application but referred one senior official in the Agency, and the circumstances of the case generally, for possible action to enforce accountability.

3. Ms. Al Dawoud lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).

4. For the reasons set forth below, the Appeals Tribunal grants the appeal in substantial part, modifies the impugned Judgment by adjusting the remedies granted, and remands the case in part.

Facts and Procedure

5. Because this is an appeal against only part of the UNRWA DT's lengthy and detailed Judgment which speaks for itself on related but un-appealed issues, we will summarise from the impugned Judgment only those facts and conclusions that are now relevant. Despite the different

¹ *Al Dawoud v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment dated 14 July 2022.

order in which her appeals were filed with the UNRWA DT referred to above, the following summary of relevant events will be in chronological sequence.

6. At material times, Ms. Al Dawoud was an Office Engineer in the Engineering Department, Infrastructure and Camp Improvement Programme (ICIP), Jordan Field Office (JFO), of UNRWA.² She applied for the post of C/FICIP and, although interviewed, she was informed on 17 July 2019 that she had not been selected. She was, however, ranked second among the applicants and consequently was placed on a roster for a 12-month period. This meant that she was in “a pool of assessed candidates (...) who [were] available for selection against a vacant position” but without having any expectation of or entitlement to selection or promotion.³ Ms. Al Dawoud did not then contest her non-selection for the C/FICIP post.

7. Only about a week later, on 24 July 2019, the Agency announced a vacancy for the post of D/C/FICIP.⁴ Ms. Al Dawoud applied for this position, was short-listed, and on 4 November 2019 was invited to undertake a written test to take place on 12 November 2019. She considered that the Director of FICIP (D/FICIP) who was both her direct supervisor and the hiring manager for the vacancy, was prejudiced against, and would not select, her and she declined to participate in the written test. Five candidates who scored above the passing grade in the written test were also invited to an interview. According to Ms. Al Dawoud, she was told that she would be invited to an interview because she was already rostered for the higher post of C/FICIP. Accordingly, it appeared to Ms. Al Dawoud that she was still in contention for the post of D/C/FICIP.

8. That was reinforced for her when, on 9 January 2020, Ms. Al Dawoud was invited to the interview part of the selection process to be conducted on 12 January 2020.⁵

9. On 12 January 2020, the day of the interview, Ms. Al Dawoud was told simply that her interview had been cancelled. She was not selected for the post of D/C/FICIP.

10. On 21 January 2020, Ms. Al Dawoud submitted a Request for Decision Review (RDR) of the decision not to select her for the post of D/C/FICIP. The Agency did not ever respond to her RDR.

² Impugned Judgment, para. 2.

³ See *Antonio Ponce-Gonzalez v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1197, para. 56.

⁴ *Ibid.*, para. 5

⁵ *Ibid.*, para. 9.

11. In the meantime but unknown to Ms. Al Dawoud, on 16 January 2020 the Acting Head, Field Legal Office (A/H/FLO), JFO, by memorandum addressed to the Director of UNRWA Affairs, JFO, had raised concerns about the propriety of the recruitment processes for both posts for which Ms. Al Dawoud had applied.⁶ This included the statement by the A/H/FLO that while Ms. Al Dawoud had initially been selected for the post of C/FICIP, the hiring manager, the D/FICIP, and a member of the interview panel had prevailed on the other members of the panel to adjust her grades downwards for the purpose of ensuring that she was not selected but was ranked second. It was also claimed by the A/H/FLO that another reason for doing this had been to avoid an anticipated complaint by the Staff Union were Ms. Al Dawoud to be selected.

12. The A/H/FLO's memorandum also alleged that in relation to her participation in the recruitment process for the post of D/C/FICIP, Ms. Al Dawoud had been excluded from the scheduled interview because she had declined to take the written test,⁷ despite having been invited subsequently to an interview.⁸

13. On 13 May 2020, Ms. Al Dawoud filed with the UNRWA DT her application contesting the interview cancellation decision.⁹ That application was registered as Case No. UNRWA/DT/JFO/2020/030. We will refer to it by its UNRWA DT case number 2020/030. There were a number of interlocutory steps before the UNRWA DT, which we do not need to detail because, except as to the remedies she was granted, Ms. Al Dawoud is not dissatisfied with the result. Her appeal does not turn on those interlocutory steps.

14. Although Ms. Al Dawoud was aware in July 2019 that she had not been selected for the post of C/FICIP, the UNRWA DT accepted that she did not find out about the A/H/FLO's memorandum or about the alleged events in the memorandum until 10 August 2020.¹⁰ On 23 August 2020, she filed another RDR, challenging her non-selection to the post of C/FICIP. Again, the Agency did not ever respond to this RDR.

15. Having first discovered on 10 August 2020 the allegations made by the A/H/FLO about the impropriety of both recruitment processes, on 24 September 2020 Ms. Al Dawoud filed her

⁶ *Ibid.*, para. 11.

⁷ *Ibid.*, para. 13; memorandum of 16 January 2020 (Annex 2 to the application in Case No. UNRWA/DT/JFO/2020/060).

⁸ Impugned Judgment, para. 78.

⁹ *Ibid.*, para. 16.

¹⁰ *Ibid.*, paras. 97–98.

second application with the UNRWA DT.¹¹ This related to the recruitment process for the post of C/FICIP. That application was registered as Case No. UNRWA/DT/JFO/2020/060 and we will refer to this application by its UNRWA DT case number 2020/060.

16. There was likewise a series of interlocutory motions and orders in this proceeding and we will only mention those that are germane to the appeal.¹² On 25 October 2020, the UNRWA DT declined, although expressly saying that it was “for the time being”, Ms. Al Dawoud’s motion requesting the Dispute Tribunal to require the Commissioner-General to provide written evidence from two named former staff members. That motion was reiterated by her on 23 November 2020 but that too was declined with the UNRWA DT then prohibiting her from filing any further such applications upon pain of being ordered to pay costs for abuse of procedure. That instruction was despite the UNRWA DT only recently having made its first decision “for the time being”, that is, at least implicitly allowing or even inviting her to re-apply as she did. In fairness to the UNRWA DT Judge who decided the cases now on appeal before us, the refusals to direct the production of evidence had been made by another Judge who then retired. The Judge whose decisions are now appealed, did not make that threat to award costs against Ms. Al Dawoud.

17. On 20 February 2022, the UNRWA DT ordered that the two cases be consolidated for hearing.¹³ In March 2022, the UNRWA DT encouraged the parties to attempt to resolve the cases informally but, by early July 2022, they had been unsuccessful in doing so. Ms. Al Dawoud subsequently filed a motion requesting consolidation of her two cases with a third application she had brought to the Dispute Tribunal contesting a disciplinary sanction against her (Case No. UNRWA/DT/JFO/2022/023). The motion for further consolidation was not granted. We say nothing about the merits of that third (disciplinary) case as it is not before us for decision.

18. The UNRWA DT considered the two cases on the papers filed by the parties.

The UNRWA DT’s Judgment

19. The UNRWA DT’s single Judgment, issued on 14 July 2022, decided the two applications by Ms. Al Dawoud, which the UNRWA DT had consolidated. Because there is no appeal against

¹¹ *Ibid.*, para. 25.

¹² *Ibid.*, paras. 26–56.

¹³ *Ibid.*, para. 40.

the finding of liability in the UNRWA DT number 2020/030 case, we will summarise that part of the impugned Judgment briefly.

20. Addressing the Agency's contention that the invitation to attend the interview, despite having not participated in the written test, was merely an error on its part, the UNRWA DT concluded that it was within the competence and discretion of the hiring directors to advance a rostered candidate to the interview stage without requiring what would have been a second written test following very soon after the candidate's previous participation in a closely-related recruitment process for a more senior role.¹⁴ The UNRWA DT determined that, once invoked, this "leap-frogging" process could not lawfully be revoked as the Organization purported to do: its revocation was not relevant to the purpose for which the process existed and was therefore irrational. Nor were any reasons for the decision given to Ms. Al Dawoud at the time of the very late cancellation of the interview. In these circumstances, the UNRWA DT found in Ms. Al Dawoud's favour on liability.

21. It is necessary to address in some more detail the UNRWA DT's reasoning for its compensatory awards because the adequacy of these has been challenged by Ms. Al Dawoud. The UNRWA DT, relying on *Mihai*,¹⁵ said that it was bound to decide the amount of compensation payable as an alternative to rescission of the contested decision, being the economic equivalent of a favourable administrative decision and its probable consequences.¹⁶ It examined the counterfactual of the probabilities of Ms. Al Dawoud having been selected for the DC/FICIP position.

22. The UNRWA DT assessed Ms. Al Dawoud's chances of selection as having been at least one in six, taking into account also that she was, as the second-ranked candidate, rostered for the higher position of C/FICIP, which increased significantly the chance of her selection for the post of D/C/FICIP.¹⁷ It accordingly shortened the odds to one in three, that is it assessed she had a one-third chance of selection.¹⁸

¹⁴ *Ibid.*, para. 82–83. The UNRWA DT referred to *Abu Khadra v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2022/001, para. 8.

¹⁵ *Mihai v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-724.

¹⁶ Impugned Judgment, paras. 90–91.

¹⁷ *Ibid.*, para. 92.

¹⁸ The UNRWA DT referred to *Emile Abdel Rahman Dabbour v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1096, para. 28.

23. Next, the UNRWA DT recorded that the recruitment for the D/C/FICIP was for a fixed-term appointment of three years with a one-year probationary period and with a minimum monthly salary of JOD 2,000.¹⁹ It compared that to Ms. Al Dawoud's then-current salary of JOD 1,570, a monthly difference of JOD 430. It allowed a sum representing one third of the salary differential for one year as compensation for lost remuneration. We infer that this presupposed cessation at the instigation of the Agency at the end of the post's one-year probationary period. The UNRWA DT did not consider the potential counterfactual of the post ceasing to exist for reasons other than the holder's performance. It awarded the sum of JOD 1,700, being a little less than 4 months' salary differential calculated at the rate of JOD 430 per month.

24. As to the award of moral damages of JOD 1,500, the UNRWA DT accepted Ms. Al Dawoud's expert evidence of the effects on her of the unexpected, unexplained and belated cancellation of her interview and of her non-selection to the post of D/C/FICIP.²⁰ The UNRWA DT concluded that she had suffered "severe mental depression". This compensatory award was said to represent approximately one month's salary.

25. We turn now to the UNRWA DT's decision of the second claim, that relating to the earlier selection exercise for the post of C/FICIP (application number 2020/o60). The UNRWA DT said that it was deciding Ms. Al Dawoud's claim that the Agency impliedly decided to approve the irregularities committed during the recruitment process for the post of C/FICIP, which irregularities resulted in her not being selected for that post.²¹ In particular, these irregularities were identified as the decision to change her interview performance rating, which constituted fraud and abuse of power. The UNRWA DT held, however, that such acts or omissions might have no direct impact on a staff member's terms or contract of employment and might, at best for her, only have been an act leading to the making of a final decision with direct legal consequences.²²

26. The UNRWA DT held that the implicit decision to approve the irregularities during the recruitment process leading to her non-selection, did not produce direct legal consequences affecting Ms. Al Dawoud's terms of appointment so that the application was not receivable.²³ Pursuant to Article 2(1)(a) of the UNRWA DT's Statute, the UNRWA DT is competent only to

¹⁹ Impugned Judgment, para. 92.

²⁰ *Ibid.*, paras. 93–94.

²¹ *Ibid.*, para. 95.

²² The UNRWA DT referred to *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902, para. 38.

²³ Impugned Judgment, para. 97.

decide applications contesting administrative decisions that are alleged to be in non-compliance with a staff member's terms of appointment or the contract of employment.

27. Alternatively, the UNRWA DT held that even if the application were to be construed as contesting a final decision of non-selection to the post of C/FICIP, it was time-barred: Ms. Al Dawoud had learned of her non-selection on 17 July 2019 but only submitted her RDR on 23 August 2020 after discovering the irregularities in the recruitment process.²⁴ The UNRWA DT said it was not empowered to extend the RDR deadline under Article 8(3) of its Statute and more than 60 days had elapsed after 17 July 2019.

28. The UNRWA DT refused the Agency's request to make an order for costs against Ms. Al Dawoud, referred case number 2020/060 to the Commissioner-General of the Agency for enforcement of accountability and made provision for interest on the monetary awards. There is no appeal against these aspects of the Judgment.

Procedure before the Appeals Tribunal

29. On 9 January 2023, Ms. Al Dawoud filed an appeal of the impugned Judgment with the Appeals Tribunal, to which the Commissioner-General filed an answer on 17 March 2023.

Submissions

Appellant's Appeal

30. Ms. Al Dawoud requests the Appeals Tribunal to either remand the matter to the UNRWA DT or to consider her appeal in respect of UNRWA DT case number 2020/060 on the merits; increase the amount of compensation instead of rescission in application number 2020/030 and award moral damages; impose costs on the Commissioner-General for manifest abuse of process; and refer both cases to the Commissioner-General for possible action to enforce accountability. She also requests the Appeals Tribunal to address the issue of the UNRWA DT having excessively delayed the production of a translation of the impugned Judgment into Arabic. She further requests the Appeals Tribunal to consolidate with the present cases her third application (Case No. UNRWA/DT/JFO/2022/023) contesting disciplinary sanctions against her.

²⁴ *Ibid.*, para. 98.

31. Ms. Al Dawoud submits that the UNRWA DT erred in fact and in law when it found that her application number 2020/060 was not receivable. She says that the UNRWA DT failed to hold an oral hearing, i.e. failed to exercise jurisdiction vested in it and committed a procedural error. Given also that the UNRWA DT repeatedly denied her motions to be provided with the written testimonies of two staff members, she was prevented from presenting her evidence.

32. Ms. Al Dawoud submits that the UNRWA DT erred in fact and in law when it denied her motion requesting a full reply from the Commissioner-General on the merits of the case and the imposition of costs for abuse of process. By not complying with Order No. 040 (UNRWA/DT/2022), paras. 8(1)(a), 8(1)(b) and 8(1)(c), and filing a reply containing only formal arguments, the Commissioner-General demonstrated “contempt” for the UNRWA DT. The UNRWA DT ignored the abuse of process. Information in the record is lacking, as affirmed in paragraph 107 of the impugned Judgment. Consequently, its conclusions cannot be accepted.

33. Ms. Al Dawoud contends that the UNRWA DT erred in fact and in law and failed to exercise its jurisdiction when it denied her motion to consolidate her third application (Case No. UNRWA/DT/JFO/2022/023) contesting the imposition of disciplinary sanctions. Had the UNRWA DT consolidated the third application with the present cases, it would have grasped the “inhumane treatment” suffered by her. She claims that “in a desperate attempt to make the [disciplinary case] moot in order to deprive [her] of her right to (...) remedies, the [Agency] rescind[ed] the disciplinary decision”.

34. Ms. Al Dawoud asserts that the UNRWA DT erred in fact and/or in law when it set the amount of compensation instead of rescission and particularly in determining the likelihood of selection at one third. That calculation was unreasonable and unjust. Had the Agency complied with the law, she would have been promoted to the post of D/C/FICIP automatically, the vacancy would not have been announced and there would not have been other candidates reaching the final stage. Furthermore, the calculation based on the period of one year is erroneous. There is no evidence that she would have performed poorly. The possibility of abolition of the post was non-existent; the post had been regularly renewed. Finally, even if the calculation was correct, the amount is unjust as it does not fully compensate the actual financial loss, including the lost income until her retirement and other benefits.

35. Ms. Dawoud submits that the UNRWA DT erred in setting an unreasonable sum for moral damages. The dignity of a staff member is not measured by the person’s salary. It is unclear why

the UNRWA DT was not guided by the appropriate principles in determining the amount.²⁵ The award could embolden the Agency to continue to commit violations. The method applied by the UNRWA DT of calculating compensation for material and moral damage needs to be reformed.

The Commissioner-General's Answer

36. The Commissioner-General requests the Appeals Tribunal to dismiss the appeal in its entirety.

37. The Commissioner-General agrees that the appeal is timely but submits that other issues raised in relation to the timing of the translations are not germane to the issue of receivability of her application number 2020/060 and should be rejected.

38. The Commissioner-General contends that the UNRWA DT did not err in its conclusion that her application number 2020/060 was not receivable. Ms. Al Dawoud has failed to demonstrate otherwise or even address the reasons for the UNRWA DT's conclusion.

39. The Commissioner-General maintains that the UNRWA DT did not err in law or fact when it did not hold an oral hearing. Clearly, as her application number 2020/060 was not receivable, there was no reason to hold an oral hearing. Ms. Al Dawoud's contentions about having been prevented from producing evidence and from receiving a full response from the Commissioner-General are misconceived as they relate to the merits of the application. The UNRWA DT did not err on a question of fact or as a matter of law when it rejected Ms. Al Dawoud's motion for consolidation. Given the different subject matter, it was reasonable not to consolidate the three cases.

40. Concerning application number 2020/030, the Commissioner-General submits that the UNRWA DT did not err in law or fact in awarding compensation of JOD 1,700 instead of rescission. The first-instance Tribunal is in the best position to decide on the quantum of compensation. The UNRWA DT followed a principled approach. The award is fair and

²⁵ Ms. Dawoud refers to *Rantisi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2014/005, para. 26, affirmed in *Rantisi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-528. In that paragraph 26, the UNRWA DT noted that the determination of an award for non-pecuniary damages was "not related to the status or seniority of the individual and an award should therefore not be related to the individual's earning or status", but each case was "to be assessed on its own facts and the unique characteristics of the individual, the manner in which s/he ha[d] been treated and the impact of the treatment on the individual concerned".

adequate, based on a reasonable and sound basis. The possibility of abolition of post is a relevant consideration. The likelihood of selection at one third has not been contradicted. Ms. Al Dawoud's arguments about income until retirement ignore the principle that there is no expectancy of renewal for a fixed-term appointment. Her contention about loss of income is misconceived as she did not seek compensation of loss of income as a specific remedy.

41. The Commissioner-General contends that the UNRWA DT did not err in law or fact in awarding compensation of JOD 1,500 as moral damages. Ms. Al Dawoud has not presented reversible errors to warrant intervention.

42. The Commissioner-General argues that the impugned Judgment is, therefore, as a matter of law, free of error and that there is no legal basis for the consideration or award of other relief sought.

Considerations

43. We address first our reasons for having declined Ms. Al Dawoud's request for an oral hearing of her appeal. She says that if she is successful on her points of appeal, the Appeals Tribunal should become, in effect, an evidentiary forum if we are to properly correct the procedural errors allegedly made by the Dispute Tribunal. One of those errors is said to have been the UNRWA DT's refusal to hold an in-person hearing of the case before it.

44. Article 8(2) of the Statute of the United Nations Appeals Tribunal states that the test whether, in our discretion, we direct an oral hearing, is one of necessity ("required"). The default position is therefore for appeals such as this to be dealt with on papers filed. The UNAT must be persuaded to depart from that default position.

45. Addressing Ms. Al Dawoud's wish to present evidence before us, Article 2(5) of the UNAT Statute prohibits the Appeals Tribunal from hearing or considering evidence that is other than documented in writing. Oral evidence can only be provided to the UNRWA DT and, on an appeal such as this, by a remand of the case to the Dispute Tribunal. Further, the appeal being based on contentions of procedural irregularities by the UNRWA DT, if these are established sufficiently to set aside the Judgment at first instance, the appropriate remedy will be to remand the case to the UNRWA DT for re-hearing including, if appropriate, by the hearing of evidence.

46. There is sufficient factual material in the Judgment and in the documents on the UNRWA DT's file to enable us to justly rectify any deficiency in the Dispute Tribunal's Judgment. In these circumstances, we decline to direct an oral hearing of the appeal before us.

47. That brings us to the associated issue of the Appellant's challenge to the UNRWA DT's decision (and its reasons for this) to deny her an oral hearing before it. Its reason for refusing an oral hearing was that Ms. Al Dawoud failed to establish that her appeal in 2020/060 was receivable. That reasoning was *ex post facto* and, thereby, erroneous. The Dispute Tribunal had to decide, as a preliminary issue, whether it would hold an oral hearing as Ms. Al Dawoud had requested, including calling nominated witnesses. It needed reasons for refusing to do so at the time the request was made and decided. It was wrong to have declined saying that its reason for declining was the outcome of the appeal, i.e. its non-receivability. That was a conclusion, as was the reasoning supporting it, that could only be reached, and was reached and recorded, after it had considered the receivability merits of the case. It was erroneous to apply *ex post facto* reasoning to a decision that was made before those merits were determined.

48. We deal next with the Appellant's challenge to the UNRWA DT's refusal to consolidate with her appointment-related applications, her challenge arising out of a separate disciplinary investigation. The UNRWA DT has broad discretion to make orders for the just and effectual disposal of litigation before it. While the consolidation of the two appointment-related cases now before us on appeal was appropriate because of their interlocking facts and common subject matter, we are not satisfied that Ms. Al Dawoud's disciplinary case is similarly associated with them. Her ground advanced in support of the challenge to the non-consolidation was that this was necessary to illustrate the injustice of her treatment by the UNRWA. If indeed she was so treated (and we venture no conclusion or views about that), it would be open to the UNRWA DT to reflect that in any remedies it considers granting to Ms. Al Dawoud in the disciplinary case if she is successful in it. There is no error of law shown in the Dispute Tribunal's decision refusing this further consolidation.

49. We decline to address the Appellant's concerns about the length of time she alleges the UNRWA DT took to produce an Arabic translation of its Judgment, and the broader criticisms affecting other judgments of the Dispute Tribunal. Any delay has not counted against Ms. Al Dawoud having her appeal considered on its merits. She has made her point eloquently

in submissions which will, no doubt have been noted by the Respondent which resources the Dispute Tribunal and nothing more needs be said by us in this regard.

50. We move now to the substantive appeals and address first the elements of the appeal against the remedies awarded in respect of UNRWA DT case number 2020/030.

51. There was an error in the UNRWA DT's calculation of in-lieu compensation, that is compensation in place of rescission of the decision not to appoint Ms. Al Dawoud to the D/C/FICIP role. This was to make the cut-off point for compensation one year, the end of the probationary period, which presupposes that the Agency would have found her unsuitable for the role at that point and terminated her tenure of it. There is not only no evidence supporting that conclusion, but the evidence before the UNRWA DT tended to confirm the probability of her full-term tenure of that admittedly fixed-term role.

52. It follows that the compensatory award for non-appointment should be the sum of JOD 5,160, being the monthly salary differential (JDO 430) over the period of 36 months but discounted by the loss of chance factor of one third as decided by the Dispute Tribunal to represent the proper fulfilment of that counterfactual.

53. It is unclear why the UNRWA DT fixed the award of moral damages at one month's salary. While such damages cannot, absent exceptional circumstances, exceed the equivalent of two years' remuneration, that is an expression of a rebuttable maximum award but does not otherwise dictate how such an award is calculated. The calculation of moral damages was set out in our Judgment in *Asariotis*:²⁶

(...) Following the identification of the moral injury by the UNDT (...), it falls to the Dispute Tribunal to assess the quantum of damages. This will necessarily depend on the magnitude of the breach that may arise [and] on the contents of any medical or other professional report or evidence before the Dispute Tribunal.

54. Except for setting a presumptive but exceedable maximum award for such damages, there is no logical causative or similar link in law between such loss or suffering, and the staff member's salary. Even if this had been the period that the staff member had been off work as a consequence of this effect of her maltreatment, that would more logically be compensated by an award of lost salary if this was not covered by paid sick leave. Assessing moral damages is

²⁶ *Asariotis v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-309, para. 38 (internal citations omitted).

not an exact science or quantifiable by reference alone to status and thereby remuneration. Rather, seductive though it may be to anchor this to a known monetary figure, such compensation must be fixed by reference to the harm caused to the staff member, but subject to the statutory constraint that if that figure is to be equivalent to more than two years' remuneration, there must be exceptional circumstances to justify a greater award. Subject to this statutory restriction, the UNRWA DT thus has significant latitude to make a broad assessment of that harm as established by evidence and to make a just award in all the relevant circumstances.

55. We have reviewed awards of moral damages made by the UNRWA DT during the last four years and a selection of awards of moral damages made by the United Nations Dispute Tribunal (UNDT) and the UNAT since 2018. The following statistics are taken from that review, bearing in mind the variability of fact-specific cases. They give a broad overview of awards to enable us to assess the general reasonableness of an award in this case and to ensure that it sits appropriately within the span of awards made in these jurisdictions.

56. First, the UNRWA DT has made 4 awards of moral damages during the applicable period. The lowest was in this (Ms. Al Dawoud's) case at the equivalent of USD 2,112.68. The highest UNRWA DT award was USD 5,000. The average UNRWA DT award was the equivalent of USD 3,278.17.

57. Second, the UNDT has made 31 moral damages' awards during the applicable period. The lowest award was USD 1,000 and the highest award in purely dollar terms was USD 20,000. Some awards were made up of a combination of a set dollar amount plus a period of net base salary, some simply of net base salary (in one case a year's net base salary). For the purposes of this exercise we have ignored those hybrid calculations, so that the average pure-dollar-amount award was USD 5,100.

58. Third, UNAT awards were five, one of which was 6 months' net base salary and the other four of which were USD 2,000, USD 3,000, USD 12,500 and USD 20,000 giving an average of a pure-dollar-term of USD 9,375. We acknowledge the possibility that at least some of these awards on appeal may be in the same cases as are accounted for in the first instance tribunals above. That does not, however, detract from the statistical comparative analysis which is the purpose of these figures.

59. We are satisfied that the UNRWA DT's methodology of fixing the moral damages was flawed and that the amount of the award (JOD 1,500) was manifestly inadequate for the proven mental suffering incurred by Ms. Al Dawoud as a consequence of her unlawful treatment by the Agency. Although each such award will be unique to and fashioned by the circumstances of the particular case, we have taken some guidance from those awards of moral damages within the United Nations internal justice system (as set out above) to attempt to assess some relativity with them. We have, in doing so, taken account of the USD (the currency in which most such awards are made in the United Nations internal justice system) value of the JOD (in which currency the award was made in this case). One USD was roughly equivalent to JOD 0.71 at the date of the UNRWA DT's Judgment in mid-2022, meaning that Ms. Al Dawoud's moral damages' award was then about USD 2,112.68.

60. While on its face the UNRWA DT's award of JOD 1,500 may appear modest when compared to others, analysis of the medical evidence supporting it reveals that this evidence was both scant and equivocal. On 14 January 2020, Ms. Al Dawoud's physician wrote that she had suffered from "a nervous breakdown, which has caused her severe psychological depression as a result of the accumulation of pressures and harsh conditions" and recommended that she be granted five days leave. While paying due respect to the benefits that the Dispute Tribunal Judge had at first instance, we do not consider that this evidence could be said to warrant an increase on appeal to the sum awarded by the UNRWA DT and we do not propose to interfere with it.

61. We address next that part of the impugned Judgment that we have referred to as the UNRWA DT's decision of the claims under case number 2020/060. There are also errors of law in the decision on receivability and the UNRWA DT's reasoning supporting its dismissal of this application.

62. We emphasise at the outset of this part of our Judgment that we are addressing a receivability threshold. An applicant need not succeed substantively for her or his application to be receivable by the UNDT or UNRWA DT. Conversely, and as happens not infrequently, an application may be receivable but unsuccessful on its merits, that is substantively. Receivability is a gateway test: assuming an applicant is correct on the merits, will this constitute non-compliance by the Administration with the terms of appointment or contract of the staff member's employment (Article 2(1)(a) of the Statute of the UNRWA

Dispute Tribunal)?²⁷ The principle is also illustrated in two further ways. First, it is notable that Article 2(1)(a) requires not the establishment of a contention, but rather only the allegation of it. Second, is the Dispute Tribunals' practice of granting a summary judgment against an applicant staff member in cases such as this. Even if, assuming the applicant's success on the merits of her or his claim, it can nevertheless be shown to have been unreceivable, the UNRWA DT or the UNDT may dismiss the application without consideration of its merits. This established jurisprudence also confirms that receivability is only a gateway test.

63. It cannot be correct, as the UNRWA DT concluded, that an allegedly corrupt dealing by the Agency's representatives with an application by an existing staff member for a vacant role, the consequence of which is to disentitle the staff member from being appointed on her merits, does not amount to taking an administrative decision (or an implied decision) that is non-compliant with the staff member's terms or contract of employment. A staff member's terms of employment are a bundle of mutual rights and obligations, many of them reciprocal, not simply those of the staff member alone. The Agency's promulgated rules, regulations and processes imposed by the Agency itself also bind it to act as it has committed itself to do in relation to staff members. If she was so treated, the Agency's actions affected directly her contractual right to be treated lawfully and not corruptly in her employment, including in applications made by her for other roles within the Organization. For receivability purposes, there is *prima facie* evidence that Ms. Al Dawoud was improperly treated leading up to, but separately from, the administrative decision not to appoint her. That is sufficient for receivability purposes, that is to enable her claims to be considered on their merits.

64. Under UNRWA Area Staff Regulation 11.1, those terms of appointment and contract of employment include "all pertinent regulations and rules" of the Agency. Those rules cover not only staff members, but the Organization itself and its representative managerial staff who are

²⁷ Article 2(1)(a) of the UNRWA DT Statute sets out:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Commissioner-General as the Chief Executive Officer of UNRWA:

(a) To appeal an administrative decision that is alleged to be in noncompliance 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[.]

the human embodiment of it. All must meet certain minimum standards of honest and ethical conduct in their dealings with one another.

65. For example, UNRWA Area Personnel Directive No. PD/A/4/Part II/Rev.7/Section 1 (UNRWA Area staff selection policy), paragraph 43, provides in relation to interviews for staff appointments that candidates are to be “evaluated (...) against the requirements set out in the post description and vacancy notice”. To apply unadvised, contradictory and secret criteria that defeat the-best-person-for-the-job principle is not only a breach of these requirements but the complete antithesis of them.

66. More specifically, paragraph 27 of Module 1 of the UNRWA Area Staff Selection Guidelines (Guidelines), which outline the recommended recruitment practices, states:

Candidates will be evaluated by the interview panel against the requirements established in the post description. The interview panel must evaluate each candidate using a scoring system of pre-determined criteria. Upon completion of the interview process, the interview panel will rank the candidates according to their performance score.

67. Likewise, Module 5 of the Guidelines sets out the interview process and provides materially:

1. The interview process will be guided by the following principles:
 - All candidates are treated and evaluated fairly throughout the interview process;
 - Interview questions are competency-based and reflect the required skills of the advertised post;
 - Interview panel members are experienced in competency-based interviewing techniques; and
 - Interview questions are non-discriminatory, diversity-sensitive and support a competitive recruitment process.

...

22. After each candidate is interviewed, the panel members shall evaluate and score the candidate using an interview assessment sheet provided in the interview packet. These sheets should allow the panel member to assess the candidate based on job related criteria such as technical expertise and required post competencies.

23. At the conclusion of the interview activities, the panel members shall review and discuss the candidates' performance and calculate an interview assessment score for each candidate.

24. Once the interview scores are calculated, the interview panel chairperson will review and discuss with the panel members technical test performance and references for each candidate. The panel members will then determine a final candidate score which includes this additional information and reflects the quality to the candidate's performance throughout the recruitment process.

25. Each interviewed candidate will be ranked in order by their overall score. (...)

68. The obligations of the Organization in its dealings with staff members are well established by case law.²⁸ These can be encapsulated as the Administration's duty to act fairly, justly and transparently in dealing with its staff members.

69. Although not a case about staff selection, but rather one about the related topic of staff assignment, the analogy is apposite. In *Hamayel*, this Tribunal said:²⁹

(...) The Commissioner-General has an obligation to act in good faith and comply with applicable laws. Mutual trust and confidence between the employer and the employee is implied in every contract of employment. And both parties must act reasonably and in good faith.

70. The UNAT in *Schepens*, noting ILOAT Judgment No. 2768 (2009), Consideration 4 (footnotes omitted), has explained the principle further as:³⁰

(...) The ILOAT [referred to] the principle of good faith owed by an employer to an employee. It stated: "The principle of good faith and the concomitant duty of care demand that international organisations treat their staff with due consideration in order to avoid causing them undue injury; an employer must consequently inform employees in advance of any action that may imperil their rights or harm their rightful interests (...). The duty of care is greater in a rather opaque or particularly complex legal situation. (...)"

...

(...) The duty of good faith in the contract of employment is an implied synallagmatic or mutual obligation, infusing the contract with moral content, by which the employee agrees to honestly and faithfully serve the employer, not to abuse confidence and to protect and advance the employer's interests by all reasonable means in respect to matters confided to the employee in the course of service. The reciprocal obligation

²⁸ *Obdejin v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-201, para. 33, and *Kallon v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742, para. 68.

²⁹ *Hamayel v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-459, para. 17.

³⁰ *Schepens v. United Nations Joint Staff Pension Board*, Judgment No. 2018-UNAT-830, paras. 29-30 (internal citation omitted).

consists in part in the employer informing employees in advance of any action that may harm their rightful interests.

71. Therefore, it is evident that the Agency's obligation to act lawfully, fairly and reasonably is implicit in the employment relationship and the staff member has the right to expect it. Compliance by the Agency with its rules and procedures relating to appointment processes is expected and non-compliance with these, certainly the engagement in what are alleged to have been deliberate and corrupt practices in an attempt to ensure an unprincipled and improper outcome, would affect adversely a staff member applicant's terms of employment.

72. What is alleged about the conduct of the appointment procedure and is supported, at least by *prima facie* evidence, establishes for receivability purposes a non-compliance with Ms. Al Dawoud's terms of employment. The UNRWA DT erred in deciding this element of receivability otherwise. We conclude that Ms. Al Dawoud's application was receivable in this regard.

73. Turning to the second ground for the UNRWA DT's dismissal of Ms. Al Dawoud's application at first instance, i.e. the lateness of her RDR, the factual position was as follows. In July 2019 she was aware that she had been unsuccessful in her quest for appointment to the C/FICIP role. There had been a decision made to appoint someone else and not her, and she was so advised. In the circumstances, Ms. Al Dawoud could reasonably have had no basis to think that there was anything so wrong with the procedure that led to that decision such that she would have had grounds to challenge it. So, she did not do so. She may have been disappointed at not being selected for the role, but without more, this did not provide her with proper grounds to undertake the significant step of challenging it. She was aware that she had come second in the selection process, reflected by her being rostered, but, in the absence of evidence to the contrary, she was entitled to assume that the processes followed by the Agency had been lawful and regular. She could justifiably have been criticised for bringing what would, at that time, have been a purely speculative challenge to those decisions.

74. It was only several months later that it came to her knowledge, as a result of the A/H/FLO's disclosure of alleged malpractice by the UNRWA representatives in the appointment process, that grounds of challenge emerged. This then came to Ms. Al Dawoud's attention for the first time. She then challenged in timely fashion from that point what she contended must have been a decision to adopt or accept the corrupt appointment methodology,

lodging an RDR which was not responded to by the Agency, and then applying to the UNRWA DT. Ms. Al Dawoud was particular to not challenge her non-appointment but rather the actual or implied but separate decision to adopt an allegedly unlawful practice to attempt to ensure the appointment of someone else.

75. There remains the issue whether that validation decision (decision to rely on the allegedly corrupt practice) was one alleging to be “in non-compliance with (...) her terms of appointment or contract of employment, including all pertinent regulations and rules and all relevant administrative issuances” pursuant to Area Staff Regulation 11.1(A). Although it might be thought to be very obvious that a decision to act in reliance on a corrupt practice was one that was non-compliant with a staff member’s contract of employment (including such implied terms as trust and confidence and adherence by the employer to honest and lawful practices), it is necessary to also consider what specific duty or prohibition might be said to underly the impugned decision. It is not, as we understand the UNRWA DT to have concluded, that an unlawful act leading to a decision that might be otherwise lawful, means that the focus must be on the latter and that the illegality of the former counts for nothing so far as receivability is concerned.

76. The legal position relating to this element of receivability is as follows. The Statute of the UNRWA DT is set out in Regulation 11.3 of Chapter XI of the UNRWA International Staff Regulations and UNRWA Area Staff Regulations. Article 8 of the UNRWA DT Statute sets out the requirements for receivability of appeals against administrative decisions. Article 8(1)(c) makes it a condition of receivability that the contested decision has previously been submitted for decision review. Article 8(3) prohibits the UNRWA DT from suspending, waiving or extending deadlines for decision review.

77. Rule 11.2 of the UNRWA International Staff Rules and UNRWA Area Staff Rules (Decision Review) provides, at sub-rule (3) that a request for decision review shall be submitted within 60 calendar days “from the date on which the staff member received notification of the administrative decision to be contested”. The UNRWA DT was correct to conclude that it had no power to extend or waive that time limit, but the receivability issue does not turn on that point.

78. The time limit for challenging an adverse administrative decision runs from the moment that the staff member becomes aware (“received notification”) of the administrative

decision. However, that begs the question in each case: what was the decision sought to be challenged? As her case made clear, this was the decision (perhaps implied, perhaps expressed) to adopt an allegedly unlawful strategy to ensure that Ms. Al Dawoud was not appointed. The existence of that decision came to her notice only on 10 August 2020 and the steps she took subsequently for RDR were well within time. The decision challenged by her was not her non-selection which was conveyed to her on 17 July 2019, but the validation decision which the whistle-blowing officer A/H/FLO identified in her disclosure of alleged institutional misconduct.

79. The UNRWA DT erred in determining the date of notification of the contested decision as being in July 2019 when Ms. Al Dawoud received notification of her non-selection, which was not the decision she challenged, albeit one connected to the contested validation decision.

80. It follows that the UNRWA DT erred in law in determining that Ms. Al Dawoud's appeal under application number 2020/060 was unreceivable and, except as to its referral of the case and a person or persons involved in it for possible action to enforce accountability, its Judgment must be set aside. Because the UNRWA DT did not consider the substantive merits of that appeal, it is necessary to remand the case to the UNRWA DT to decide the application on its merits. As the Dispute Tribunal did at an earlier stage, we recommend to the parties that they attempt first to resolve this complaint, perhaps with the assistance of a mediator.

81. For the assistance of the UNRWA DT, we note that should Ms. Al Dawoud be successful in her application on the merits of her claim in respect of the position of C/FICIP, any remedies awarded will need to take account of those remedies now awarded in respect of the role of D/C/FICIP so that she does not benefit twice for the same losses.

82. Judge Sheha, while agreeing with the remand of this claim to the UNRWA DT, disagrees with our reasoning behind doing so and prefers alternative reasoning to reach the same result. While we do not necessarily reject Judge Sheha's approach, it (essentially leading potentially to a declaration of fundamental nullity with a consequent remedy of nullification of the selection decision), we would prefer to have this novel ground of appeal argued by both parties rather than simply being adopted and applied judicially without the benefits of full argument.

83. We dismiss Ms. Al Dawoud's claim to award costs against the Commissioner-General. Such errors as we have identified were of the UNRWA DT and not the Agency but, in any event, the Respondent's conduct of the litigation has not been manifestly an abuse of process as to warrant an award against the Commissioner-General.

84. The UNRWA DT's referral to the Commissioner-General of the circumstances of the case for enforcement of accountability is unaffected by this Judgment but may be affected by the outcome of the remanded case number 2020/060 that the UNRWA DT will address on its merits.

85. We make the following observation for the benefit of the Agency and UNRWA staff members generally. We have done likewise in the past in relation to United Nations entities which have similar obligations, although differently named.³¹ In this case, Ms. Al Dawoud's request for RDR was not responded to at all by the Agency. Nor was any explanation for this absence of response apparently provided to her. The relevant rules do provide that in such situations, a staff member may then appeal the original contested administrative decision to the UNRWA DT, as Ms. Al Dawoud did. However, having established this process of RDR, the Agency is expected to comply with it and provide either a decision, or at least in circumstances in which it does not or cannot provide a decision, a reasonable explanation for that non-compliance. We do not consider that it was intended by the statutory drafters to allow the Agency to elect whether it would or would not comply with this process and it would indicate courtesy and respect towards staff members that this be done, or a reasonable explanation given as to why the Agency could not do so.

³¹ Pursuant to Staff Rule 11.2(d) of the United Nations, the Secretary-General's response, reflecting the outcome of the "management evaluation", shall be communicated to the staff member within 30 calendar days of receipt of the request for management evaluation if the staff member is stationed in New York, and within 45 calendar days of receipt of the request for management evaluation if the staff member is stationed outside of New York.

Judgment

86. Ms. Al Dawoud's appeal is granted in part, Judgment No. UNRWA/DT/2020/031 is modified and the case is remanded in part. The compensation in lieu of rescission awarded to Ms. Al Dawoud is set to JOD 5,160. Her claim in relation to the validation decision is receivable by the UNRWA DT and is remanded for decision on the merits with a recommendation to the parties that a mediated settlement be considered first. Ms. Al Dawoud's appeal against the amount of the award of JOD 1,500 for moral damages, as set by the UNRWA DT is dismissed.

Original and Authoritative Version: English

Decision dated this 27th day of October 2023 in New York, United States.

(Signed)

Judge Colgan, Presiding

(Signed)

Judge Gao

(Signed)

Judge Sheha

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

(Signed)

Juliet E. Johnson, Registrar

Concurring Opinion by Judge Abdelmohsen Sheha

1. I respectfully disagree with the reasoning of the Majority regarding the part of the Judgment related to the UNRWA DT Case No. 2020/060.
2. Case No. 2020/060 dealt with the ex-post implied act of the Commissioner-General of UNRWA approving procedural irregularities in the selection exercise for the position of C/FICIP. The implied act is apparently deducted from the position of the Commissioner-General not to open an investigation on the allegations raised by the A/H/FLO in her memorandum of 16 January 2020. The latter raised allegations of bias and abuse of power against the panel members in the selection exercise for the position of C/FICIP, for which Ms. Al Dawoud had applied and was notified on 17 July 2019 that her application had not been successful.
3. The Judgment of the Majority, in relevant parts, considered that what was alleged about the conduct of the appointment procedure and was supported, at least by *prima facie* evidence, established for receivability purposes a non-compliance with Ms. Al Dawoud's terms of employment. The Majority recognizes that the implied act of the Commissioner-General constituted an administrative decision, distinguishable from the non-selection decision, that had direct adverse consequences for the Appellant. Consequently, the UNRWA Dispute Tribunal was found in error when it dismissed the application challenging the alleged implied decision on grounds of receivability.
4. I disagree on this specific point.
5. The jurisprudence of this Tribunal is consistent in what constitutes reviewable administrative decisions. As we held in *Lee*,¹ following the jurisprudence of the former United Nations Administrative Tribunal, an act issued by the Administration cannot be considered an administrative decision unless it bears direct legal consequences for the staff member. Put differently, an administrative decision is the Administration's legal act that alters the normative setting in a manner that produces direct consequences for the legal situation of the staff member, i.e., directly affecting his or her rights or obligations. This Tribunal also held that a challenge cannot be raised against acts leading up to the final decision. Only the latter constitutes an administrative decision that has direct consequences for its addressee.²

¹ *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, para. 49.

² *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902, para. 38.

6. In the present case, the Appellant drew upon the allegations of bias and abuse of power in the concluded selection exercise to prove the consequent illegality of the non-selection decision. That decision of non-selection is the one that produced direct legal consequences for the Appellant, not the subsequent implied act of the Commissioner-General approving the alleged irregularities. The fact that the Appellant came to know about these allegations of irregularity after the issuance of the non-selection decision is immaterial to the identification of the contested decision as the decision of her non-selection. Considering otherwise would open the door for wide possibilities of contentions beyond the statutory time limits, not only for the present case, but also for future similar cases.

7. Therefore, I agree with the UNRWA DT's determination that the implied act of the Commissioner-General to approve procedural irregularities is not the administrative decision that had direct adverse consequences for the Appellant with regard to her non-selection.³

8. I also concur, in this context, in the UNRWA DT's decision to refer the matter for possible action to enforce accountability.⁴

9. I do however agree with the Majority on the outcome of this case. In my view, had the non-selection decision been identified as the contested decision, which is one of the judge's fundamental duties, the outcome would have been a necessary remand to the UNRWA DT for a decision on the merits.

10. The UNRWA DT held that the non-selection decision was not receivable *ratione materiae*.⁵ The non-selection decision was notified to the Appellant on 17 July 2019 and the Appellant did not submit an RDR at that time. The RDR was only submitted on 23 August 2020, i.e., more than 60 days after the notification of the non-selection decision. Hence, in accordance with UNRWA Area Staff Rule 111.2(c), the UNRWA DT considered that the RDR had been filed out of the statutory time limit and thus the application was not receivable.

11. Indeed, the UNRWA DT undertook a straightforward application of the forementioned rules, and it is to be recalled that time limits have their own rationale of ensuring legal certainty for the Administration. However, the present case is distinguishable from typical circumstances.

³ Impugned Judgment, para. 97.

⁴ *Ibid.*, para. 107.

⁵ *Ibid.* para. 98.

12. In normal circumstances, unlawfulness, if raised within the applicable time limits, implies rescission, i.e., retrospective removal of a contested administrative decision that has already existed in the normative order but was tainted by unlawfulness. Regardless of unlawfulness, a decision is allowed to subsist in the legal order once the time limits for RDR or judicial review elapse. The case is different when it comes to the declaration of nullity of administrative decisions (*recours en déclaration d'inexistence*). Nullity may be declared, only under exceptional circumstances, when an administrative act lacks the fundamental elements for its very existence as an administrative decision. It is a simple declaration of nullity of a quasi-decision rather than rescission, as the administrative decision is deemed not to have existed at all and therefore is not subject to any immunity whatsoever, even after time limits elapse. It is a matter of expunging from the legal order what may constitute, not just an anomaly, but an outrageous and shocking material act that ostensibly produces consequences for staff members. It involves the most serious defect of administrative acts that defies the fundamental basis of the rule of law. Therefore, declaration of nullity, unlike rescission, a well-established distinction in numerous administrative law traditions that does not seem to be recognized by our Tribunal thus far, is not bound by time limits.

13. The present case raises one of these issues of nullity. The selection process, leading up to the non-selection decision, appears *prima facie* to be tainted, not only of impropriety or unlawfulness, but above all of a deliberate, express, and unacceptable act of corruption. The fact that the panel members altered the final results of candidates *ex post facto*, if proven, amounts to an act of falsification of official records. In light of the gravity of such an act, the outcome cannot constitute a valid decision that warrants immunity at any time. The rule of *fraus omnia corrumpit* shall be applicable here and no protection whatsoever shall be granted to that act. In this case, where nullity is at play, the question of receivability becomes firmly intertwined with the question of merits. This means that the Tribunal must first establish the nullity and, second, draw the consequence of inapplicability of time limits. Vice versa, if the Tribunal finds no nullity, the challenge to the administrative decision shall be bound by applicable rules for receivability.

14. Accordingly, with my full respect for the decision of my colleagues, I would have overturned the impugned Judgment in relevant parts and remanded the case to the UNRWA DT to reexamine the receivability and the merits of case No. 2020/060, considering the possible nullity of the non-selection decision. If proven, the UNRWA DT, exercising its powers under Article 10(5)(a) of its Statute, may order specific performance to stop the concrete consequences of nullity for the Appellant, together with compensation in lieu of specific performance.

Original and Authoritative Version: English

Decision dated this 27th day of October 2023 in New York, United States.

(Signed)

Judge Sheha

Published and entered into the Register on this 13th day of December 2023 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar