UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2024-UNAT-1458

Islam Isam Hafiz Said

(Appellant)

v.

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

(Respondent)

JUDGMENT

Before:	Judge Nassib G. Ziadé, Presiding Judge Kanwaldeep Sandhu Judge Leslie F. Forbang
Case No.:	2023-1839
Date of Decision:	28 June 2024
Date of Publication:	26 July 2024
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Muhammad Mustafa Abdullah
Counsel for Respondent:	Stephen Margetts

JUDGE NASSIB G. ZIADÉ, PRESIDING.

1. Before the Dispute Tribunal (DT) of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) (UNRWA DT), Ms. Islam Isam Hafiz Said filed two applications contesting: (a) the Agency's decision to issue her a letter of reprimand in relation to Investigation #303 (first application); and (b) the purported decision to place adverse material in her Official Status File (OSF) in relation to Investigation #101 (second application).

2. On 30 March 2023, the UNRWA DT issued a consolidated Judgment disposing of both applications, Judgment No. UNRWA/DT/2023/015 (impugned Judgment). The UNRWA DT rescinded the decision to issue Ms. Said a letter of reprimand and declined to award her moral and material damages in respect of that application. The UNRWA DT found not receivable *ratione materiae* her application challenging the purported decision to place adverse material in her OSF.

3. Ms. Said filed an appeal.

4. For the reasons that follow, we dismiss the appeal and affirm the impugned Judgment.

Facts and Procedure[1]

5. At the time material to this case, Ms. Said was employed by the Agency on a temporary indefinite appointment as Teacher, Grade 11, Step 16, at Irbid Preparatory Girls' School No. 4, Jordan Field Office (JFO).[2]

Investigation #101

6. On 19 August 2019, an investigation was opened against Ms. Said for allegedly publishing internal documents related to school formations on a Facebook page.[3]

7. By Interoffice Memorandum (IOM) to the Director of UNRWA Affairs, Jordan (DUA/J) dated 9 February 2020, the Field Legal Office, JFO (FLO/J) recommended (a) a management intervention with Ms. Said to advise her to abide by the Agency's regulatory framework, and (b)

[1] Summarized from the impugned Judgment as relevant to the appeal.
[2] Impugned Judgment, para. 6.
[3] *Ibid.*, para. 7.

closing Investigation #101 because Ms. Said was "not solely responsible for the misconduct and the published documents were not confidential".[4]

8. On 9 February 2020, the DUA/J approved the FLO/J's recommendations, and Investigation #101 was closed. However, Ms. Said was never informed of the outcome of the investigation. No management intervention was held, nor was any other action taken against her.[5]

Investigation #303

9. On 11 October 2019, Ms. Said published on Facebook an assessment test used by the Agency during a 2016 recruitment for the post of Sanitation Labourer/School Attendant.[6]

10. On 13 October 2019, a Human Resources Career Management Officer, JFO alleged that Ms. Said had breached the Agency's confidentiality and social media policies by: (a) publishing a test previously used in 2016, which constituted confidential information; and (b) providing incorrect information regarding the time of a 13 October 2019 written exam for a recruitment for the post of Sanitation Labourer.[7]

11. On 22 January 2020, the DUA/J formally assigned an investigator to investigate the allegations that Ms. Said had published the recruitment test on Facebook and had given candidates the wrong time for the written assessment.[8]

12. According to the Investigation Report dated 13 February 2020, Ms. Said admitted that on 11 October 2019 she had published the written test for Sanitation Labourer/School Attendant but argued that the test that she had shared was for the year 2016; she also admitted sharing the said document via WhatsApp. She had received the document through previous posts on Facebook and shared it to help candidates familiarize themselves with the written test. The Investigation Report concluded that the allegation of misconduct was substantiated.[9]

13. By letter dated 4 June 2020, the Acting Head, FLO/J (A/H/FLO/J), informed Ms. Said about the findings of Investigation #303 and issued her an Opportunity to Respond (OTR) letter. The A/H/FLO/J stated in the OTR letter that Ms. Said could provide her response within 15 days

[4] *Ibid.*, para. 9.
[5] *Ibid.*, para. 10.
[6] *Ibid.*, para. 11.
[7] *Ibid.*, para. 12.
[8] *Ibid.*, para. 14.
[9] *Ibid.*, paras. 15 and 16.

of receipt of the OTR letter, and that if she needed additional time, she should send a written request before the deadline.[10]

14. By e-mail to the A/H/FLO/J dated 14 June 2020, Ms. Said requested a copy of the 13 October 2019 written exam for the Sanitation Labourer recruitment in order to compare it with the test she published on Facebook. Her request was denied.[11]

15. By e-mails to the A/H/FLO/J dated 14 and 15 June 2020, Ms. Said requested the Arabic translation of a prior e-mail from the A/H/FLO/J and that all further communications be in Arabic. By e-mail dated 16 June 2020, the A/H/FLO/J advised Ms. Said that the official languages of the Agency were both Arabic and English and that she could use Google Translate or ask for someone's help if she needed translation assistance. The A/H/FLO/J further stated that Ms. Said was not entitled to the investigation file and that she had already received "enough extensions".[12]

16. On 13 July 2020, Ms. Said responded to the OTR letter.[13]

17. By IOM to the Officer-in-Charge, Deputy DUA/J (Operations) dated 26 July 2020, the FLO/J recommended serving Ms. Said with a written reprimand letter. The IOM also referred to Investigation #101 as Ms. Said's "past disciplinary record".[14]

18. On 2 November 2020, the Officer-in-Charge, Deputy DUA/J (Operations), served Ms. Said with a letter entitled "Disciplinary Measure Letter". The letter stated that the DUA/J had found by a preponderance of evidence that Ms. Said had "published confidential documents on social media, and posted exam questions on [a Facebook group]", which constituted willful misconduct. The letter noted that as a mitigating factor, the DUA/J had considered her service with the Agency since 2002, and as aggravating factors, the DUA/J had considered that she had failed to review the UNRWA policy on the use of social media, as well as her "past disciplinary record, including prior instances of misuse of social media and disclosure of Agency's information". The letter concluded that Ms. Said would be issued a "written letter of reprimand".[15]

[10] *Ibid.*, para. 17.
[11] *Ibid.*, para. 18.
[12] *Ibid.*, paras. 19-20.
[13] *Ibid.*, para. 22.
[14] *Ibid.*, para. 23.
[15] *Ibid.*, paras. 24-25.

19. On 2 January 2021, Ms. Said submitted a request for decision review of the Agency's decision to issue her a letter of reprimand for publishing confidential documents on social media. By letter dated 24 January 2021, the DUA/J upheld the contested decision.[16]

20. On 16 November 2021, Ms. Said submitted a request for decision review of "the Agency's decision to place adverse materials in [her] OSF at the end of [a] properly authorised investigation into a complaint filed against [her] for an alleged violation of neutrality". The Agency did not respond to her request.[17]

21. Ms. Said challenged both decisions before the UNRWA DT.

22. On 30 March 2023, the UNRWA DT issued the impugned Judgment.

The impugned Judgment

23. With respect to the first application challenging the Agency's decision to issue her a letter of reprimand in relation to Investigation #303, the UNRWA DT found that the Agency's determination that Ms. Said had committed willful misconduct or misconduct could not stand. The UNRWA DT noted that there was no applicable rule or regulation that expressly designated recruitment exams as confidential, and the document itself included no designation of confidentiality. Even if the UNRWA DT were to accept the confidential status of the document, the UNRWA DT could not find that Ms. Said herself knew or reasonably should have known that the exam was confidential and could not be published. The UNRWA DT thus rescinded the contested decision.[18]

24. The UNRWA DT further found that the Agency erred in its assessment of aggravating factors and did not respect Ms. Said's due process rights, which constituted separate grounds for rescission. First, while the failure to review a rule did not excuse a failure to comply with it, that did not turn such failure into an aggravating factor. This was particularly true when the rules at issue did not actually forbid the behavior in question.[19]

25. Second, the UNRWA DT found that the Agency had erroneously relied on Investigation #101 as an aggravating factor, referring to it as Ms. Said's "past disciplinary record, including prior

[16] *Ibid.*, paras. 28-29.
[17] *Ibid.*, paras. 36-37.
[18] *Ibid.*, paras. 55-58.
[19] *Ibid.*, paras. 59-60.

instances of misuse of social media and disclosure of Agency's information". Moreover, giving any weight to such a factor was inconsistent with Ms. Said's due process rights. Investigation #101 had been closed without Ms. Said even being notified of the outcome, although the Agency had found she was at least partially responsible for misconduct. As a result, Ms. Said had had no opportunity to respond or defend herself. In such circumstances, the prior investigation should not have been considered at all.[20]

26. The UNRWA DT denied Ms. Said's request for compensation for moral and material damages in the absence of sufficient evidence of harm.[21]

27. Turning to Ms. Said's second application, the UNRWA DT dismissed it as not receivable *ratione materiae*. The Agency had never placed any material in Ms. Said's OSF related to Investigation #101, and as such there was no appealable administrative decision.[22]

28. Ms. Said filed an appeal on 4 August 2023, and the Commissioner-General filed his answer on 9 October 2023.

Submissions

Ms. Said's Appeal

29. In relation to the first application, Ms. Said contends that there was a "gap" between, on the one hand, the UNRWA DT's rescission of the Agency's decision to impose a reprimand on her on the ground that the decision was unlawful, and, on the other hand, the denial of her request for compensation. In addition, while the UNRWA DT acknowledged that the Agency had violated certain of her due process rights in its consideration of aggravating circumstances, it failed to exercise its substantive jurisdiction to address and review all of her arguments which resulted in the UNRWA DT committing an error by not granting her moral damages.

30. In relation to the second application, the UNRWA DT erred in procedure when it adjudicated the case without considering and adjudicating her motions seeking translations of documents into Arabic. Ms. Said recalls that her own motions and submissions were written in Arabic and were translated into English and passed on to the Administration. While that

[20] *Ibid.*, para. 61-62.
[21] *Ibid.*, para. 64.
[22] *Ibid.*, paras. 67-68.

translation was primarily for use by the UNRWA DT, the end result was that the Administration, without even having to file a request, obtained during the course of the proceedings high-level English translations produced by the UNRWA DT's linguist of all documents submitted by Ms. Said during the course of the proceedings. Thereby, the Administration and the UNRWA DT were afforded an early understanding of the content of the Administration's submission written in English and Ms. Said's submissions while Ms. Said was deprived of receiving an Arabic translation of the Commissioner-General's submissions, despite her express written request. Ms. Said contends that this constitutes a "grave breach of the Tribunal's adherence to the principle of equality of opportunity for all parties".

31. Moreover, Ms. Said contends that, on 22 February 2023, her counsel had e-mailed the UNRWA DT Registrar to inquire about the status of her translation request and the Registrar responded that it was under consideration. However, the UNRWA DT went ahead and issued the impugned Judgment, a "sudden and hasty verdict, completely ignoring [Ms. Said's] requests for translations". Moreover, the fact that the Agency never responded to her request for decision review reveals that it was not dealing with her in good faith.

32. Ms. Said further contends that the UNRWA DT erred in finding her second application not receivable *ratione materiae*. She contends that paragraphs 59, 61 and 62 of the impugned Judgment provide evidence that the damaging documents were indeed in her file, that these documents were an administrative decision subject to judicial review, and that the UNRWA DT failed to exercise its jurisdiction to review it. This error led in turn to the UNRWA DT's erroneous decisions not to award Ms. Said compensation for financial and moral damages, not to award costs against the Agency for the Agency's manifest abuse of proceedings before the UNRWA DT, and not to refer the officials responsible for the contested decisions to the Commissioner-General to enforce accountability.

33. Ms. Said asks that the Appeals Tribunal award compensation for the moral damages she suffered as a result of the first contested decision and for the violation of her due process rights in relation to that decision. Ms. Said further asks that the Appeals Tribunal reverse the UNRWA DT Judgment regarding the inadmissibility of the second part of the case. Ms. Said seeks compensation for material and moral damages suffered as a result of the second contested decision. Ms. Said requests that the UNAT refer responsible individuals to the Commissioner-General for enforcement of accountability, and she seeks an award of costs for

manifest abuse of proceedings. In the alternative, Ms. Said asks that the Appeals Tribunal remand the case to the UNRWA DT to be heard by a different judge.

The Commissioner-General's Answer

34. The Commissioner-General contends, in relation to the first application, that the UNRWA DT properly exercised its jurisdiction and correctly dismissed the request for damages. The UNRWA DT recalled that an award of compensation for harm must be supported by evidence. In the present case, there was only Ms. Said's own testimony about her alleged damages which was insufficient to establish that she had suffered compensable harm. In the absence of sufficient evidence of harm, it would not be appropriate to award any compensation.

35. The UNRWA DT's consideration of the issue of moral and material damages was correct. Effective January 2018, the UNRWA DT Statute was amended to include the requirement that, to receive an award of compensation, harm must be "supported by evidence". It has since been established that the UNRWA DT may only award compensation for harm where the staff member has presented evidence other than his or her own testimony that he or she suffered moral injury due to the contested decision. It is incumbent on a claimant to submit specific evidence to sustain an award of moral damages, predominantly by way of a medical or psychological report of harm, stress or anxiety caused to the employee, which can be directly linked, or reasonably attributed, to a breach of his or her substantive or procedural rights and where the Tribunal is satisfied that the stress, harm or anxiety is such as to merit a compensatory award.

36. Turning to the second contested decision, the Commissioner-General submits that the UNRWA DT did not err in procedure when it adjudicated the case without first considering and adjudicating Ms. Said's motions. The UNRWA DT disposed of the two motions in the impugned Judgment and denied the motions considering the outcome of the case – the dismissal of the case finding that the second application was not receivable *ratione materiae*. Notably, Ms. Said has not established how the error in procedure affected the decision of the case. As such, there is no merit in the contention that the UNRWA DT erred in procedure with regard to the handling of the motions prior to the issuance of the impugned Judgment.

37. To the extent that Ms. Said is also challenging the UNRWA DT's conclusion that the application was not receivable *ratione materiae*, the Commissioner-General submits that the UNRWA DT correctly found that the Agency had never placed any adverse material in

Ms. Said's OSF. In this regard, Ms. Said's contention that the impugned Judgment reveals that the "harmful papers are already present in [her] file" is wholly misconceived. The referenced paragraphs relate to the UNRWA DT's consideration of the aggravating factors and due process issue by the Agency and had no relevance to the issue of whether adverse material had been placed in Ms. Said's OSF. Ms. Said has thus not demonstrated any error in the UNRWA DT's conclusion.

38. The Commissioner-General contends that the UNRWA DT did not err on a question of law and fact by not referring officials to the Commissioner-General for possible action to enforce accountability. This is not an appropriate case for possible action to enforce accountability. The findings on due process violations are not so egregious to warrant a referral.

39. Ms. Said has failed to establish reversible errors by the UNRWA DT, and there is thus no basis for the consideration of her request for relief. Specifically, with regard to the plea for award of costs for abuse of proceedings, apart from the consideration that this plea appears not to have been put forth before the UNRWA DT and therefore, it did not rule on it, there is no evidence that the Commissioner-General abused proceedings and therefore no basis for the consideration of the claim for abuse of proceedings. The Commissioner-General requests the Appeals Tribunal to dismiss the appeal in its entirety.

Considerations

40. Ms. Said, having prevailed on her first application challenging the letter of reprimand, contends that the UNRWA DT erred in not providing the additional relief of compensation for moral damages.

41. The UNRWA DT is authorized, in appropriate cases, to award "[c]ompensation for harm supported by evidence".[23] Our jurisprudence provides that there are three fundamental prerequisites for an award of compensatory relief, including for moral damages: the harm; an illegality; and a nexus between the illegality and the harm.[24] Moreover, before moral damages

[23] UNRWA DT Statute, Article 10(5)(b).
[24] *Boubacar Dieng v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1118, para. 68; *Kebede v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-874, para. 20; *Sirhan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-860, para. 19.

may be awarded, there must generally be a medical or psychological report or other evidence of the harm.[25]

42. Ms. Said produced no such evidence of harm, much less harm caused by the illegality. Absent such a showing, an award for damages would be in effect an award of exemplary or punitive damages, which we do not have authority to award.[26] Accordingly, the request for damages must be denied.

43. With regard to her second application, which contested the outcome of Investigation #101, Ms. Said challenges the UNRWA DT's failure to address her motions seeking translation of documents before adjudicating the case, and also appeals the determination that this application was not receivable *ratione materiae*. Ms. Said seeks reversal of the finding regarding receivability, an award of compensation for damages, and an order referring responsible individuals to the Commissioner-General to enforce accountability.

44. We agree with Ms. Said that the UNRWA DT erred, as a matter of procedure, in adjudicating the case without first ruling on her motions seeking translation of documents. Fundamental principles of fairness and equality of access to the internal justice system lead to the conclusion of determining such issues and providing translations, if called for, prior to resolving the merits of the matter. However, we do not find any ground to conclude that this procedural error seriously affected the substance of the decision, implicating Article 2(1)(*d*) of the UNAT's Statute. As we discuss below, the UNRWA DT was correct in finding that the second application was not receivable *ratione materiae*, and Ms. Said has presented no basis for this Tribunal to find that her access to translated material would have affected the outcome of the matter.

45. With respect to that substantive determination of receivability, Investigation #101 had been closed with no action taken, and no adverse material from that Investigation was placed in Ms. Said's Official Status File.[27] An application is receivable only if it contests an administrative decision that produces direct legal consequences affecting a staff member's terms or conditions of appointment.[28] No such administrative action occurred here in

[25] *Claude Cahn v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1329, para. 69; *Boubacar Dieng* Judgment, *op. cit.*, para. 74.
[26] UNAT Statute, Article 9(3).
[27] Impugned Judgment, paras. 9-10.
[28] *Ngokeng v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-460, paras. 26-27.

connection with Investigation #101. That investigation was dismissed, and no adverse action was taken against Ms. Said. We find Ms. Said's claim in this respect to be speculative. To the extent that Investigation #101 was cited as an aggravating factor in Investigation #303, the letter of reprimand resulting from Investigation #303 was rescinded. The UNRWA DT was correct in finding that the second application was not receivable *ratione materiae*.

46. To the extent that Ms. Said seeks damages in connection with her second application, the only irregularity we have found was the procedural error of failing to rule on the motions for translation. Ms. Said has presented no evidence of damages caused by that error and, accordingly, we deny the request for such damages.[29]

47. Finally, we find no grounds for this Tribunal to reverse the decision of the UNRWA DT not to refer any individuals to the Commissioner-General to enforce accountability. The UNRWA DT does have discretion to make such a referral,[30] but such power is to be exercised sparingly and only when the evidence discloses serious flaws in the underlying conduct.[31] The second application did not result in a finding of misconduct, but rather in a determination that the application was not receivable *ratione materiae*; accordingly, there are none of the types of serious irregularities or potentially intentional misconduct which might give rise to an obligation to make such a referral in this matter.[32]

[29] *Claude Cahn* Judgment, *op. cit.*, para. 69; *Boubacar Dieng* Judgment, *op. cit.*, para. 74.
[30] UNRWA DT Statute, Article 10(8).
[31] *Francis N. Fultang v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1403, paras. 131-134.
[32] *See, e.g., Virendra Singh Chhikara v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1014, paras. 36-39.

Judgment

48. Ms. Said's appeal is dismissed, and Judgment No. UNRWA/DT/2023/015 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 28th day of June 2024 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Ziadé, Presiding	Judge Sandhu	Judge Forbang

Judgment published and entered into the Register on this 26th day of July 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar