



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

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Judgment No. 2024-UNAT-1463

**AAW<sup>1</sup>**  
**(Appellant)**  
**v.**  
**Commissioner-General**  
**of the United Nations Relief and Works Agency**  
**for Palestine Refugees in the Near East**  
**(Respondent)**

**JUDGMENT**

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Before: Judge Nassib G. Ziadé, Presiding  
Judge Leslie F. Forbang  
Judge Abdelmohsen Sheha

Case No.: 2023-1828

Date of Decision: 28 June 2024

Date of Publication: 2 August 2024

Registrar: Juliet E. Johnson

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Counsel for Appellant: Mohammad Mustafa Abdullah

Counsel for Respondent: Non-represented

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<sup>1</sup> This unique three-letter substitute for the party's name is used to anonymize the Judgment and bears no resemblance to the party's real name or other identifying characteristics.

**JUDGE NASSIB G. ZIADÉ, PRESIDING.**

1. AAW,<sup>2</sup> a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency), contested a decision to terminate his appointment in the interest of the Agency due to having been convicted of burglary and sentenced to one year of imprisonment (contested decision).
2. By Judgment No. UNRWA/DT/2023/014, the UNRWA Dispute Tribunal (UNRWA DT) dismissed the application on the merits and awarded costs against the Commissioner-General in the amount of USD 4,000 for abuse of process in favour of AAW (impugned Judgment).<sup>3</sup>
3. AAW lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).
4. For the reasons set out below, the Appeals Tribunal grants the appeal, modifies the impugned Judgment in respect of the award of costs for manifest abuse of process by increasing the award, reverses the impugned Judgment in the remaining part and remands the case to a different judge of the UNRWA DT for a review on the merits.

**Facts and Procedure<sup>4</sup>**

5. Effective 28 November 2012, AAW was employed by the Agency on a fixed-term appointment as Teacher, Grade 9, Step 1, at Taibeh Preparatory Boys' School No. 2 (Taibeh School), Jordan Field Office (JFO).<sup>5</sup>
6. On 15 June 2015, AAW visited, for the first time, a Consultant Psychiatrist (CP).<sup>6</sup>
7. By e-mail to the Area Education Officer (AEO), dated 10 November 2015, AAW's supervisor, the School Principal (SP) of Taibeh School, raised several concerns with respect to AAW's actions at the school.<sup>7</sup> On the request of the Agency, AAW was instructed by his line manager to have his condition evaluated by the Head Health Centre A (HHCA). On 12 November

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<sup>2</sup> Anonymity was granted by the UNRWA Dispute Tribunal (Judgment No. UNRWA/DT/2023/014, para. 1).

<sup>3</sup> *Applicant v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment dated 22 March 2023.

<sup>4</sup> Summarized from the impugned Judgment as relevant to the appeal.

<sup>5</sup> Impugned Judgment, para. 5.

<sup>6</sup> *Ibid.*, para. 6.

<sup>7</sup> *Ibid.*, paras. 7-9.

2015, AAW visited HHCA. HHCA referred him to a psychiatrist at Al Bashir Government Hospital. AAW did not consult that psychiatrist. By another e-mail to the AEO, dated 16 November 2015, the SP urged the AEO to immediately suspend AAW from work until he was medically fit for continued service with the Agency.

8. On 17 November 2015, the Chief of Area Office of South Amman verbally informed AAW of the decision to place him on administrative leave with pay due to his medical condition.<sup>8</sup>

9. On 26 November 2015, AAW committed a burglary at his neighbour's house.<sup>9</sup>

10. On 28 November 2015, AAW was arrested on allegations of burglary and was subsequently released on 28 December 2015.<sup>10</sup>

11. On 13 November 2016, the CP issued a medical report with respect to AAW's case (R1/CP).<sup>11</sup> Among other concerns, the CP noted that AAW suffered from bipolar disorder and added that on the date of the R1/CP he was stable.

12. On 29 November 2016, during the proceedings before the Jordanian judicial authorities, AAW was referred to the National Centre for Mental Health (NCMH) for a one-month observation to better assess his mental condition.<sup>12</sup> On 26 January 2017, NCMH issued its report (R/NCMH) indicating that AAW suffered from bipolar disorder and that he had been given necessary medication in 2015. The R/NCMH further indicated that during the period of observation at NCMH, AAW had been stable and had showed no symptoms of his condition. The R/NCMH concluded that AAW was able to appear before the Jordanian judicial authorities and understand their proceedings.

13. On 7 February 2017, AAW was transferred by the Agency to the Amman New Camp School and resumed his duties.<sup>13</sup>

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<sup>8</sup> *Ibid.*, para. 10.

<sup>9</sup> *Ibid.*, para. 11.

<sup>10</sup> *Ibid.*, para. 12.

<sup>11</sup> *Ibid.*, para. 13.

<sup>12</sup> *Ibid.*, paras. 14-15.

<sup>13</sup> *Ibid.*, para. 16.

14. On 18 June 2017, the CP issued a second medical report with respect to AAW's case (R2/CP), indicating that he could resume his work.<sup>14</sup>

15. On 18 December 2017 and 3 January 2018, AAW's lawyer requested the Amman Court of First Instance (Amman Court) to hear the testimony of the CP with respect to the medical report the CP had prepared in AAW's case.<sup>15</sup> The Amman Court denied the request.

16. On 31 January 2018, the Amman Court convicted AAW of the crime of burglary and sentenced him to one year of imprisonment.<sup>16</sup> On 18 September 2018, the Jordanian Appeal Court dismissed his appeal and endorsed the conviction. On 31 December 2018, the Court of Cassation dismissed his appeal and endorsed the conviction.

17. On 3 March 2019, the Deputy, Head of the Field Legal Office, Jordan, interviewed AAW about the conviction.<sup>17</sup>

18. By the Termination Letter dated 10 April 2019, the Deputy, Director of UNRWA Operations (D/DUO), JFO, informed AAW of the contested decision.<sup>18</sup> It was noted in the Termination Letter that the court judgment, produced by AAW, had declared that he had been found guilty of burglary and accordingly sentenced to one year of imprisonment, and that AAW had "failed to provide the Agency with any corroborating evidence that [he had been] innocent".<sup>19</sup> Referring to the UNRWA Policy in respect of staff arrested, detained or brought to trial (Detained Staff Policy)<sup>20</sup> and UNRWA Area Staff Regulation 9.1 and Area Staff Rule 109.1, the Termination Letter stated that the Commissioner-General had decided to "terminate [his] service in the interest of the Agency" effective 7 April 2019.

19. Accordingly, AAW was separated from the Agency effective 7 April 2019, before the anticipated expiry of his fixed term on 27 November 2021.<sup>21</sup>

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<sup>14</sup> *Ibid.*, para. 17.

<sup>15</sup> *Ibid.*, para. 18.

<sup>16</sup> *Ibid.*, paras. 19-21.

<sup>17</sup> *Ibid.*, para. 22.

<sup>18</sup> *Ibid.*, para. 23.

<sup>19</sup> Termination Letter dated 10 April 2019 (Annex 20 to AAW's application before the UNRWA DT).

<sup>20</sup> Extract of PER/GEN/1(A) of 1 February 1984.

<sup>21</sup> Impugned Judgment, para. 23; November 2018 Extension Letter (Annex 16 to AAW's application before the UNRWA DT).

20. On 12 June 2019, AAW submitted a Request for Decision Review.<sup>22</sup> The Agency did not respond to the request.

21. On 9 October 2019, AAW filed his application with the UNRWA DT.<sup>23</sup>

22. On 11 February 2021, the UNRWA DT issued a decision, titled Judgment No. UNRWA/DT/2021/007, (Instruction) in which it made the following orders:<sup>24</sup>

i) The Tribunal orders each party to nominate a psychiatrist on or before 28 February 2021;

ii) The parties' psychiatrists are ordered to designate a third psychiatrist [Ps3], on or before 15 March 2021, who will be in charge of reviewing [AAW]'s case;

iii) The designated psychiatrist will describe [AAW]'s mental condition and will provide his/her medical opinion regarding the influence of his condition on his actions at the time he had committed the burglary;

iv) The designated psychiatrist is to provide his/her medical opinion to the parties on or before 30 April 2021;

v) The fees of the designated psychiatrist will be covered by the Agency;

vi) The Tribunal suggests to the parties to seek mediation following the receipt of the designated psychiatrist's medical opinion and suspends the proceedings of the present case until 30 June 2021; and

vii) No later than 30 June 2021, the parties are to send a joint submission reporting on their progress in resolving the case, without going into specific details. In the event that they consider that reasonable progress is being made towards a resolution and that they require a further extension of time to conclude the discussions, they should submit the appropriate motion.

23. On 8 March 2021, AAW communicated the name and the phone number of his nominated psychiatrist (Ps/A) to the UNRWA DT Registry.<sup>25</sup> The Commissioner-General did not communicate a psychiatrist within the prescribed time limit to the Registry nor to AAW. On 8 July 2021, the Commissioner-General communicated to the Registry the name of its nominated psychiatrist (Ps/R) without his or her contact details.

24. On 15 July 2021, the UNRWA DT issued Order No. o80, instructing both parties to duly monitor that there would be established contact between the nominated psychiatrists as soon as

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<sup>22</sup> Impugned Judgment, para. 24.

<sup>23</sup> *Ibid.*, para. 25.

<sup>24</sup> *Ibid.*, para. 27.

<sup>25</sup> *Ibid.*, paras. 28-29.

possible and underscored that both parties had an obligation to monitor the execution of the procedure as outlined in the Instruction.<sup>26</sup> On 18 July 2021, AAW communicated the name and the phone number of the Ps/A directly to the Commissioner-General together with the address of the Ps/A.

25. On 21 September 2021, AAW submitted a motion informing the UNRWA DT that the Commissioner-General had not responded to Order No. 080 and stated that no communication had been received about the contact details of the Ps/R and, accordingly, no contact had been established between the parties and hence no contact between the nominated psychiatrists.<sup>27</sup> The Commissioner-General did not respond to the motion.

26. In Order No. 135 dated 25 October 2021, the UNRWA DT reiterated Order No. 080 and ordered both parties to provide an overview showing each step they had taken to comply with the Instruction, along with supporting evidence.<sup>28</sup> In response to Order No. 135, dated 8 November 2021, the Commissioner-General did not communicate the contact details of the Ps/R but annexed nine documents, none of which however were evidence of any communication between the parties about the contact details of the Ps/R.

27. On 24 May 2022, AAW requested the UNRWA DT to refer the case to the Ombudsman for mediation.<sup>29</sup> On 30 May 2022, the UNRWA DT suspended the proceedings to allow the parties to pursue settlement discussions. On 25 July 2022, the UNRWA DT denied the Commissioner-General's motion for an extension of the suspension of the proceedings and granted AAW's request to resume the proceedings.<sup>30</sup> The mediation was never initiated.<sup>31</sup>

28. By Order No. 020 dated 26 January 2023, the UNRWA DT allowed the parties to file closing arguments: AAW on 5 February 2023 at the latest and the Commissioner-General within ten days from the receipt of AAW's submission.<sup>32</sup> On 16 February 2023, the Commissioner-General filed its closing arguments, which were transmitted to AAW on the same day.<sup>33</sup> By Order No. 035 dated 20 February 2023, the UNRWA DT granted AAW's "motion to

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<sup>26</sup> *Ibid.* paras. 30-31.

<sup>27</sup> *Ibid.*, para. 32.

<sup>28</sup> *Ibid.*, paras. 33-35.

<sup>29</sup> *Ibid.*, paras. 36-37.

<sup>30</sup> Annex A to the impugned Judgment, para. 38.

<sup>31</sup> Impugned Judgment, para. 43.

<sup>32</sup> Annex A to the impugned Judgment, para. 41; Order No. 020, para. 9.

<sup>33</sup> Annex A to the impugned Judgment, para. 43.

receive the Arabic translation of the Respondent's closing arguments" and ordered "the Respondent to file the requested Arabic translation on or before 12 March 2023".<sup>34</sup> By Order No. 039 dated 6 March 2023, the UNRWA DT granted the Commissioner-General's motion for an extension of time and ordered that the Commissioner-General was to file the Arabic translation of its closing arguments on or before 31 March 2023.<sup>35</sup>

*The impugned Judgment*

29. By Judgment No. UNRWA/DT/2023/014 dated 22 March 2023, the UNRWA DT dismissed the application, ordered the Commissioner-General to pay AAW USD 4,000 for abuse of process and provided directions on the interest.

30. Referring to the orders and considerations included in the Instruction, the UNRWA DT noted that since the third psychiatrist (Ps3) was never designated, it was never provided with an opinion of an independent medical expert about AAW's mental health at the time he committed the burglary.<sup>36</sup> There is no forecast that Ps3's opinion will ever be available. Furthermore, it is highly questionable that a reliable psychiatric assessment about AAW's condition on 26 November 2015 by a psychiatrist can be provided after seven years have passed. Therefore, in the absence of a medical expert opinion confirming that AAW committed the burglary under the influence of his condition (bipolar disorder), there is no need to re-examine the legality of the contested decision in that respect.

31. The UNRWA DT maintained that the Commissioner-General had discretionary authority in terminating convicted staff members in the interest of the Agency.<sup>37</sup> No relevant matters were ignored. The Detained Staff Policy indicates that "normally" an appointment will be terminated in case of a conviction including a prison sentence of three months or more is imposed. As AAW was convicted to one year of imprisonment, the contested decision is proportionate. Absent indications of procedural deficiencies, it is also procedurally correct. The decision is legal, rational and correct. There are no reasons to consider this measure as absurd, arbitrary or tainted by extraneous reasons or bias.

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<sup>34</sup> *Ibid.*, para. 45; Order No. 035, para. 9.

<sup>35</sup> Annex A to the impugned Judgment, para. 47; Order No. 039, para. 7.

<sup>36</sup> Impugned Judgment, paras. 55-58.

<sup>37</sup> *Ibid.*, paras. 59-61.

32. Turning to AAW's request to impose costs against the Commissioner-General, the UNRWA DT found that the Commissioner-General had not acted timely and had put itself in a position of not being able to comply with the Instruction.<sup>38</sup>

33. The UNRWA DT observed that the Commissioner-General had not nominated the Ps/R on or before 28 February 2021.<sup>39</sup> Furthermore, in the period from 11 February 2021, i.e. the date of the Instruction, until 8 July 2021, the Commissioner-General did not communicate the name of the Ps/R. Moreover, in the period after 8 July 2021, the Commissioner-General continued to rely on the delegation of its responsibility to the Ps/R, apparently without checking or following up, despite the clear instructions in Order Nos. 080 and 135. Although the Ps/R is an independent expert, and therefore not under the Agency's command, the Commissioner-General did not act appropriately. It remains unclear why the Commissioner-General had not simply shared the Ps/R's contact details.

34. The UNRWA DT found that the Commissioner-General's failure had a significant impact: it ultimately resulted in depriving AAW of the possibility to proffer evidence that he had committed the burglary under the influence of his condition.<sup>40</sup> The Commissioner-General had obstructed the proceedings and that constituted abuse of process.

35. The UNRWA DT held that costs for abuse of process should be imposed on the Commissioner-General.<sup>41</sup> Considering that it is not certain that the Ps3 would have concluded that AAW had committed the burglary under the influence of his condition, the costs are established at USD 4,000.

36. With regard to mediation, as *obiter dictum*, the UNRWA DT noted "with concern" that the Commissioner-General had remained silent after it had suspended proceedings to allow the parties to pursue settlement negotiations.<sup>42</sup> The Commissioner-General, without prior consultation with AAW, even requested an extension of time to conclude settlement negotiations while these negotiations apparently had not even been initiated.

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<sup>38</sup> *Ibid.*, paras. 62-63. The UNRWA DT referred to the 1 April 2021 e-mail by which the Instruction was circulated internally within the Agency (Annex 1 of the Commissioner-General's response to Order No. 135).

<sup>39</sup> *Ibid.*, paras. 63-65.

<sup>40</sup> *Ibid.*, para. 67.

<sup>41</sup> *Ibid.*, para. 68.

<sup>42</sup> *Ibid.*, para. 69.



*Procedure before the Appeals Tribunal*

37. On 24 July 2023, AAW filed an appeal of the impugned Judgment with the Appeals Tribunal, to which the Commissioner-General did not file an answer.

**Submissions****AAW's Appeal**

38. AAW requests the Appeals Tribunal to reverse the impugned Judgment, rescind the contested decision, set the amount of compensation in lieu of rescission at four years' net base salary, order the Commissioner-General to pay for all material losses,<sup>43</sup> award a fair amount of compensation for moral damage, increase the award of costs for manifest abuse of process by the Commissioner-General or, in the alternative, remand the case to the UNRWA DT.

39. AAW submits that the UNRWA DT committed an error in procedure, such as to affect the decision of the case.<sup>44</sup> As he was awaiting 31 March 2023, the deadline specified in Order No. 039 for the filing by the Commissioner-General of the Arabic translation of his closing arguments, the UNRWA DT went ahead and handed down the impugned Judgment on 22 March 2023. In the interest of his case, he needed to petition the UNRWA DT to be allowed to comment on and challenge the Commissioner-General's closing arguments, based on an accurate Arabic translation.<sup>45</sup> By enabling him to have the final word in the proceedings, the UNRWA DT placed the Commissioner-General in an advantageous position. With such preferential treatment of the Commissioner-General, the UNRWA DT violated the principle of equality of opportunity for the parties.<sup>46</sup>

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<sup>43</sup> The material losses are said to include "end-of-service indemnity" (termination indemnity) to which AAW was entitled until the date of termination, as well as the same indemnity to which he would have been entitled to, had the Agency honoured the terms of his contract until the date of the final disposition of the present case, and full salaries, salary raises and the Agency's contributions to the Provident Fund until the same date.

<sup>44</sup> Appeal brief, pp. 8-12.

<sup>45</sup> AAW cites *Tayseer Salah Salameh Abu Fardeh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2020-UNAT-1011, para. 53.

<sup>46</sup> AAW notes that it was unfair that, in contrast, on 8 February 2023, the UNRWA DT provided the Commissioner-General with a high-level "courtesy copy" of a translation into English of his closing arguments, produced by a linguist of the UNRWA DT with the utmost speed.

40. AAW argues that by failing to make sure that he received the Arabic translation within the time limit set in Order No. 039, the UNRWA DT also failed to exercise its authority.<sup>47</sup>

41. Turning to the material facts of his case, AAW contends that the UNRWA DT failed to exercise its jurisdiction.<sup>48</sup> It is unacceptable that the UNRWA DT as a court of evidence with wide discretionary powers in case management admitted powerlessness in not having been provided with an opinion of an independent medical expert about AAW's mental health at the time of committing the burglary. Likewise, it is not acceptable to find that there was no forecast of the Ps3's opinion ever becoming available. The UNRWA DT could have obtained a medical evaluation from "a third doctor" if not for its lax manner of conducting the proceedings.

42. AAW submits that by calling into question the reliability of a potential psychiatric assessment to be carried out seven years after the event, the UNRWA DT exceeded its jurisdiction.<sup>49</sup> However, even if the UNRWA DT did not set itself up as a medical authority or expert, it failed to support that assumptive opinion, which is merely a speculation, without any medical evidence, such as a scientific study.

43. AAW argues that the UNRWA DT erred on the facts and the law when it addressed the lawfulness of the contested decision.<sup>50</sup> One might reasonably wonder what prevented the UNRWA DT from requesting a psychiatrist of its own choice to provide an opinion on the feasibility of assessing AAW's mental state at the time of the burglary and from holding a case management discussion as well as why it ignored in the impugned Judgment his visit to the CP, concerns raised by his supervisor, suspension due to not being medically fit for service and placement on administrative leave due to his medical condition.<sup>51</sup>

44. Turning to the amount of costs imposed on the Commissioner-General, AAW contends that the UNRWA DT failed to characterize the abuses correctly.<sup>52</sup> In addition to deliberately disregarding the Instruction, the Commissioner-General also maliciously and in bad faith manipulated the mediation process. By deceptively and frivolously agreeing to explore mediation but without taking it seriously, the Commissioner-General prolonged the dispute. The UNRWA

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<sup>47</sup> Appeal brief, p. 12.

<sup>48</sup> *Ibid.*, pp. 13-15.

<sup>49</sup> *Ibid.*, p. 15.

<sup>50</sup> *Ibid.*, pp. 15-16.

<sup>51</sup> AAW refers to the Instruction, paras. 3-6.

<sup>52</sup> Appeal brief, pp. 16-19.

DT erred in failing to find the manipulation of the mediation process, in and of itself, a manifest abuse of process. Furthermore, it deserved significant consideration in determining the amount of costs. In any event, the amount is absurd and not even close to the financial and moral consequences incurred by AAW.

45. Lastly, AAW submits that the UNRWA DT committed an error by not awarding him compensation for material and moral damage.<sup>53</sup>

### Considerations

46. This case presents fundamental issues regarding the authority of the UNRWA DT in matters over which it has jurisdiction, and the corresponding obligations of the Commissioner-General in regard to the internal justice system.

47. We recall at the outset that it is incumbent upon this Tribunal to determine whether the UNRWA DT exceeded, or failed to exercise, its jurisdiction, or erred on a question of law, procedure or fact to the extent it was exercising its jurisdiction.<sup>54</sup>

48. AAW claims that the UNRWA DT committed an error of procedure, which affected the decision in the case, by issuing the impugned Judgment prior to providing him with the Arabic translation of the Commissioner-General's closing arguments. The record confirms that AAW filed his closing arguments on 5 February 2023, and that the Commissioner-General filed his closing arguments on 16 February 2023. On 6 March 2023, the UNRWA DT granted the Commissioner-General an extension of time until 31 March 2023 to file the Arabic translation of his closing arguments. However, the UNRWA DT did not wait until the Arabic translation was provided to AAW before issuing the impugned Judgment in the case on 22 March 2023.

49. The UNRWA DT's action in that regard did not comport with the standards of good practice. It would have been more considerate of "[t]he fundamental right of the staff member to a full participation in the justice proceedings"<sup>55</sup> if the UNRWA DT had waited until AAW received the Arabic translation of the other party's closing arguments before issuing the Judgment in the case. However, this did not impair AAW's procedural rights as he did not have a right to respond to the Commissioner-General's closing arguments, nor has he shown

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<sup>53</sup> *Ibid.*, p. 19.

<sup>54</sup> UNAT Statute, Article 2(1).

<sup>55</sup> *Abu Fardeh* Judgment, *op. cit.*, para. 53.

on appeal how his response would have altered the outcome. This procedural failure, while an error, did not amount to an “error in procedure, such as to affect the decision of the case” implicating Article 2(1)(d) of the UNAT Statute. The error did not affect the substance of the decision and does not constitute by itself a ground to reverse that Judgment.<sup>56</sup>

50. There remains the issue of whether the UNRWA DT was correct in holding that the Commissioner-General had engaged in an abuse of process and, if so, whether the costs of USD 4,000 awarded by the UNRWA DT were appropriate. Article 10(6) of the UNRWA DT Statute provides: “Where the Dispute Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against that party.” Article 9(2) of the UNAT Statute similarly provides: “Where the Appeals Tribunal determines that a party has manifestly abused the appeals process, it may award costs against that party.”

51. The record confirms that the Commissioner-General of UNRWA elected to obstruct these proceedings at all levels.

52. On 12 June 2019, AAW submitted a Request for Decision Review of the contested decision of 10 April 2019 to terminate his appointment in the interest of the Agency. There was no response to AAW’s Request.

53. Before the UNRWA DT, the Commissioner-General made many requests for extensions of time. On 11 November 2019, he requested an extension of time to file his reply. On 19 December 2019, he made a further request for an extension of time to file his reply. On 11 February 2020, he requested an extension of time to file the Arabic translation of the reply. On 14 January 2022, he requested an extension of time to file the Arabic translation of his response to Order No. 135. On 22 February 2023, he requested an extension of time to translate his closing arguments. All these requests were granted by the UNRWA DT.<sup>57</sup>

54. The UNRWA DT also expressed concern with the Commissioner-General’s silence after it had suspended the proceedings to allow the parties to pursue settlement negotiations. It further pointed out that the Commissioner-General, without consulting with AAW, had

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<sup>56</sup> *Jafar Mohammad Hekmat Al Ashhab v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2020-UNAT-1046, para. 31.

<sup>57</sup> Annex A to the impugned Judgment, paras. 2, 3, 4, 5, 7, 8, 26, 28, 46 and 47.

requested an extension of time to conclude settlement negotiations at a time when they were not even initiated.<sup>58</sup>

55. The UNRWA DT Statute authorizes the UNRWA DT to “order production of documents or such other evidence as it deems necessary”, and further provides that its judgments “shall be binding on the parties”.<sup>59</sup> In furtherance of these powers, the UNRWA DT Rules of Procedure authorize the UNRWA DT to “require any person to (...) provide information that appears to the Tribunal to be necessary for a fair and expeditious disposal of the proceedings”, and to “make any order or give any direction which appears to the judge to be appropriate”.<sup>60</sup>

56. The record here establishes that the UNRWA DT exercised its jurisdiction by ordering each party to nominate a psychiatrist, who in turn were to designate a third psychiatrist to review AAW’s case.<sup>61</sup> However, the Commissioner-General did not comply with that Instruction, nor with subsequent Orders directing him to monitor compliance with the Instruction by the nominated psychiatrists.<sup>62</sup> The UNRWA DT attributed the failure of the two psychiatrists nominated by the parties to get in contact with each other to the Commissioner-General. It noted that the Commissioner-General had “decided not to communicate the contact details [of his or her nominee to] the Tribunal and/or [AAW]’s representative”, and correctly faulted the Commissioner-General for “fail[ing] to properly execute” the Instruction.<sup>63</sup>

57. At the Appeals Tribunal’s level, the Commissioner-General did not even file an answer to the appeal, thus depriving this Tribunal of the benefit of his position on these issues of substantial importance.

58. This non-compliance by the Commissioner-General is not acceptable and is tantamount to obstruction of the UNRWA DT proceedings. Instead of acting diligently and efficiently while avoiding unnecessary delays in the conduct of the proceedings, the Commissioner-General has clearly and manifestly abused the proceedings by a series of intentional acts and serious omissions which had the effect of significantly obstructing and

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<sup>58</sup> Impugned Judgment, para. 69.

<sup>59</sup> UNRWA DT Statute, Articles 9(1) and 11(3); see also *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-121, para. 39.

<sup>60</sup> UNRWA DT Rules of Procedure, Articles 13(2) and 14.

<sup>61</sup> Impugned Judgment, para. 27.

<sup>62</sup> *Ibid.*, paras. 52-54, 64-65.

<sup>63</sup> *Ibid.*, paras. 53-54.

delaying the proceedings brought by a staff member suffering from mental health issues. The Commissioner-General's conduct thus not only delayed the proceedings—it directly interfered with the UNWRA DT's ability to answer the core question presented to it regarding the propriety of AAW's termination and deprived him of his right to substantive justice.

59. The amount of USD 4,000 awarded to AAW by the UNRWA DT is disproportionate to the gravity of the Commissioner-General's abuse of the proceedings. The UNAT increases the amount to USD 15,000.

60. The Commissioner-General's obstruction was unfortunately compounded by the UNWRA DT's inexplicable decision not to take appropriate corrective action which could have resolved the core underlying issue. Most notably, while recognizing that the Commissioner-General "did not act properly" in connection with the UNRWA DT's Orders, that he "failed to properly execute" its Instruction without explanation, and thereby left it with "no medical information available about [AAW]'s mental condition at the date of the burglary", the UNWRA DT then paradoxically concluded that "there [wa]s no need to re-examine the legality of the contested decision" and upheld the termination.<sup>64</sup> This conclusion improperly penalized AAW on account of a fault committed by the Commissioner-General.

61. This reasoning cannot be sustained on review. As noted above, the UNWRA DT was correct regarding the predicate facts establishing the Commissioner-General's unacceptable obstructive conduct. But it erred, fundamentally, by then making crucial inferences in favour of the obstructing party. To the contrary, when a party to an administrative or judicial proceeding fails to comply with an order regarding the production of evidence or to comply with orders regarding the formation of a record for decision, the appropriate consequence is the making of inferences adverse to that party or estopping that party from maintaining a factual position on the subject. Basic procedural fairness and institutional integrity require that approach. The contrary approach taken by the UNWRA DT here effectively, and improperly, rewarded the Commissioner-General for his obstructive behaviour.

62. Accordingly, we uphold in part and vacate in part the findings of the UNWRA DT. We affirm that the Commissioner-General obstructed the proceedings but reverse the UNRWA DT's determinations with respect to both the amount of costs to award and with

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<sup>64</sup> *Ibid.*, paras. 54-58.

regard to the challenge to the contested decision. The obstruction of proceedings was severe, undefended and indefensible, and warrants an award of costs in the amount of USD 15,000.

63. With respect to the review of the contested decision, we remand this matter to the UNRWA DT for further proceedings consistent with this opinion because further findings of fact are necessary.<sup>65</sup> We further order that the case be considered by a different judge of the Dispute Tribunal.<sup>66</sup>

64. The assigned judge shall consider it within his or her jurisdiction to directly appoint a psychiatrist to conduct an appropriate examination and provide the UNRWA DT with the medical opinion which originally was to be provided under the Instruction.

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<sup>65</sup> UNAT Statute, Article 2(4)(b). In this regard, the UNWRA DT should be guided by the UNRWA Detained Staff Policy, para. 10, which provides: “If a staff member is brought to trial and convicted and a prison sentence of three months or more is imposed, his appointment will *normally* then be terminated in the interests of the Agency *unless the facts of the case are such that the Agency considers that the staff member has not been at fault.* (...)” (emphasis added).

<sup>66</sup> UNAT Statute, Article 2(6).

**Judgment**

65. AAW's appeal is granted, Judgment No. UNRWA/DT/2023/014 is modified in respect of the award of costs and reversed in the remaining part, and the case is remanded to a different judge of the UNRWA DT for a review on the merits.

Original and Authoritative Version: English

Decision dated this 28<sup>th</sup> day of XXX 2024 in New York, United States.

*(Signed)*

Judge Ziadé, Presiding

*(Signed)*

Judge Forbang

*(Signed)*

Judge Sheha

Judgment published and entered into the Register on this 2<sup>nd</sup> day of August 2024 in New York, United States.

*(Signed)*

Juliet E. Johnson, Registrar