



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

Judgment No. 2024-UNAT-1467

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

JUDGMENT

Before:	Judge Abdelmohsen Sheha, Presiding Judge Nassib G. Ziadé Judge Kanwaldeep Sandhu
Case No.:	2023-1851
Date of Decision:	28 June 2024
Date of Publication:	7 August 2024
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Stephen Margetts

JUDGE ABDELMOHSEN SHEHA, PRESIDING.

1. Before the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or UNRWA Dispute Tribunal and UNRWA or Agency, respectively), Mr. Qasem Abdelilah Mohammed Qasem contested the Agency's decision to exclude from consideration his application for the post of Acting, Head Health Centre A (AHH), Grade L8, at the Amir Hassan Quarter Health Centre-Zarqa Area, Jordan Field Office (JFO) (first contested decision), as well as the decision not to provide him with the outcome of the investigation of his complaints against a Health Centre Clerk (HCC) who was a subordinate (second contested decision).

2. The UNRWA DT consolidated the applications and by Summary Judgment No. UNRWA/DT/2023/033 dated 31 August 2023, dismissed the applications as non-receivable (impugned Judgment).

3. Mr. Qasem filed an appeal before the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).

4. For the reasons set out below, we grant the appeal in part, reverse the impugned Judgment in respect of Case No. UNRWA/DT/JFO/2023/050, and dismiss the case on the merits. In relation to Case No. UNRWA/DT/JFO/2023/104, we dismiss the appeal, and affirm the impugned Judgment.

Facts and Procedure¹

5. Effective 21 May 2016, Mr. Qasem was appointed as Medical Officer B, Grade 15, Step 1, in Jerash Camp Health Centre, JFO on a fixed-term appointment for three years. Mr. Qasem is a medical doctor.²

6. At the time material to this case, Mr. Qasem was employed by the Agency as Head Health Centre B, Grade HLA7, Step 7, at Suf Camp Health Centre, JFO.³

¹ The facts are taken from the impugned Judgment where uncontested and relevant, unless indicated otherwise.

² Impugned Judgment, para. 6.

³ *Ibid.*, para. 7.

7. On 6 December 2021, Mr. Qasem was placed on Administrative Leave With Pay (ALWP) pending investigation following an altercation with the HCC.⁴

Facts relevant to the first contested decision (Case No. UNRWA/DT/JFO/2023/050)

8. On 12 October 2022, the Agency internally advertised a vacancy announcement for the post of Acting HHC at the Amir Hassan Quarter Health Centre – Zarqa Area, JFO.⁵

9. That same day, Mr. Qasem submitted his application for the post. On 8 November 2022, he received an e-mail from the Human Resources Department (HRD) informing him that his application for the post was excluded as long as he was under investigation.⁶

10. On 16 November 2022, Mr. Qasem requested decision review of the decision (RDR).⁷ He did not receive a response to his request.⁸

11. On 18 February 2023, Mr. Qasem filed an application before the UNRWA DT challenging the first contested decision.⁹

Facts relevant to the second contested decision (Case No. UNRWA/DT/JFO/2023/104)

12. In 2021, Mr. Qasem submitted several complaints against the HCC.¹⁰

13. By e-mail dated 8 December 2021, the Senior Field Investigator at JFO (SFI/JFO) informed Mr. Qasem that the Director UNRWA Affairs, Jordan (DUA/J) had authorized an investigation into some, but not all, of the complaints.¹¹

14. By e-mail dated 20 April 2023, Mr. Qasem inquired with the SFI/JFO about the outcome of the investigation into his complaints. He copied ten staff members including senior management on the e-mail.¹²

⁴ *Ibid.*, para. 8.

⁵ *Ibid.*, para. 10.

⁶ *Ibid.*, paras. 11 and 12.

⁷ Annex No. 84 to Mr. Qasem's application before the UNRWA DT.

⁸ Impugned Judgment, para. 13.

⁹ *Ibid.*, Annex A, para. 51.

¹⁰ *Ibid.*, para. 25.

¹¹ *Ibid.*, para. 26.

¹² *Ibid.*, para. 27.

15. By e-mails dated 25 April 2023 and 2 May 2023 to the Head Field Legal Office, Jordan (HFLO/J), Mr. Qasem repeated his request to be informed of the outcome of the investigation into his complaints.¹³

16. By e-mail dated 7 May 2023, the HFLO/J quoting the Department of Internal Oversight Services (DIOS) Guide to Conducting Investigations, informed Mr. Qasem that he should submit his request to the SFI/JFO but that Mr. Qasem was generally not entitled to the investigation findings.¹⁴

17. On 8 May 2023, the SFI/JFO replied to Mr. Qasem's e-mail dated 20 April 2023 and informed him that the investigation had not been started yet.¹⁵

18. Between 9 May 2023 and 14 May 2023, Mr. Qasem sent several e-mails to the SFI/JFO requesting additional information. On 9 May 2023, the SFI/JFO informed Mr. Qasem by e-mail that the investigations in two of his complaints were concluded and sent to the legal office. On 14 May 2023, the SFI/JFO replied by e-mail to Mr. Qasem stating that the investigation office does not discuss the investigation report once submitted to the legal office for review either with the subject or the complainant.¹⁶

19. On 3 July 2023, Mr. Qasem filed an RDR of the second contested decision.¹⁷

20. On 26 July 2023, the Agency informed him that his request was not receivable because the decision not to inform him of the investigation outcome was not an administrative decision alleged to be in non-compliance with his terms of appointment.¹⁸

21. On 11 August 2023, Mr. Qasem filed an application with the UNRWA DT, contesting the second contested decision.¹⁹

¹³ *Ibid.*, para. 28.

¹⁴ *Ibid.*, para. 29.

¹⁵ *Ibid.*, para. 30.

¹⁶ *Ibid.*, para. 31.

¹⁷ *Ibid.*, para. 34.

¹⁸ *Ibid.*, para. 35.

¹⁹ *Ibid.*, Annex B, para. 1.

Impugned Judgment and Appeal

22. By Judgment No. UNRWA/DT/2023/033 issued on 27 June 2023, the UNRWA DT decided to consolidate both cases, as they were filed by the same applicant, and to adjudicate them in one judgment, in the interest of judicial economy.²⁰

23. The UNRWA DT dismissed Mr. Qasem's application challenging the first contested decision as not receivable *ratione materiae* on grounds that Mr. Qasem had failed to submit an RDR. Mr. Qasem had been informed of the contested decision on 8 November 2022. Accordingly, under Area Staff Rule 111.2, he had until 2 January 2023 to file his RDR. The UNRWA DT found that Mr. Qasem's e-mail dated 16 November 2022 was addressed to an HRD staff member and not, as required by Area Staff Rule 111.2, to the UNRWA Field Office Director. Accordingly, it held that his e-mail did not constitute an RDR, and his application was thus not receivable *ratione materiae*.²¹

24. Turning to the second contested decision, the UNRWA DT found that UNRWA staff members' terms and conditions of appointment did not provide for a right to the outcome of an investigation into a complaint against another staff member. On the contrary, Section VI.F.2 of the UNRWA DIOS Guide to Conducting Investigations indicates that "there is usually no requirement to discuss case findings and facts with any party". The UNRWA DT found that Mr. Qasem had not pointed to any term or condition of his employment affected by the Agency's election not to provide the information he sought, nor had he explained how this decision would have a direct legal consequence on the terms or conditions of his appointment. The UNRWA Dispute Tribunal concluded that Mr. Qasem had not challenged an appealable administrative decision, and his application was therefore not receivable *ratione materiae*.²²

25. On 5 September 2013, Mr. Qasem filed an appeal, and on 11 November 2023, the Commissioner-General of UNRWA (Commissioner-General) filed his answer.

²⁰ *Ibid.*, para. 2.

²¹ *Ibid.*, paras. 21 to 24.

²² *Ibid.*, paras. 42 to 48.

Submissions

Mr. Qasem's Appeal

26. In relation to the first contested decision, Mr. Qasem asserts that the UNRWA DT erred in law and fact in its conclusion that the application was not receivable *ratione materiae*. Specifically, Mr. Qasem contends that the UNRWA DT erred in dismissing the case by summary judgment on grounds of receivability, as he had indeed submitted an RDR. Mr. Qasem requests that the UNAT order the rescission of the decision of exclusion from the selection process and order that the Administration repeat the selection process in a fair and transparent manner; award compensation for moral, financial, and professional damages; and order that the Agency make an unwavering and unconditional commitment to refrain from any future acts of prejudice against him without due process.

27. In relation to the second contested decision, Mr. Qasem contends that the UNRWA DT erred in its Judgment. He submits that the non-disclosure of the investigation results had a direct impact on the terms and conditions of his employment and his physical safety. Mr. Qasem asks that the Appeals Tribunal order the Agency to disclose the investigation results of his complaints; refer the conflict between him and the HCC for an external independent investigation to stop the HCC's aggression; award compensation for moral, professional, and financial losses; and order that the Agency refrain from any acts of discrimination against him.

28. Mr. Qasem also requests that the Appeals Tribunal hold an oral hearing in his case.

The Commissioner-General's Answer

29. As to the first contested decision, the Commissioner-General concedes that the UNRWA DT erred in considering the application not receivable, as Mr. Qasem had indeed submitted an RDR. Since the case was disposed of on receivability, the Commissioner-General submits that there is no basis to address the issues canvassed by Mr. Qasem that go to the merits.

30. Turning to the second contested decision, the Commissioner-General submits that the UNRWA DT did not err as a matter of fact or law that would require a reversal of the impugned Judgment. The application was not receivable because the contested decision did not have legal consequences affecting the terms and conditions of Mr. Qasem's appointment and, therefore, there is no appealable administrative decision. Notably, Mr. Qasem does not point to any rule in the

UNRWA legal framework that provides for a general right to the outcome of an investigation into a complaint against another staff member.

31. The Commissioner-General clarifies that under the UNRWA legal framework, the only situation where a complainant is provided with the outcome of an investigation (which would have rendered this case receivable), is with respect to cases falling under General Staff Circular No. 06/2020 on Prohibition of Discrimination, Harassment – including Sexual Harassment – and Abuse of Power which is not the case here.

32. Noting that the case was disposed of on receivability, the Commissioner-General contends that there is no basis for addressing the issues such as the alleged interference by the Agency with the local judicial proceedings and the investigative process as canvassed by Mr. Qasem.

33. In light of the foregoing, the Commissioner-General concedes that the UNRWA DT erred in its conclusion in relation to the first contested decision. He requests the Appeals Tribunal to find that the UNRWA DT did not err on a question of fact, as a matter of law or in procedure when it dismissed the application in relation to the second contested decision as not receivable *ratione materiae* and, therefore, to dismiss the appeal in part.

Considerations

Preliminary issue on the oral hearing

34. Mr. Qasem requests this Tribunal to hold an oral hearing.

35. Article 8(3) of the UNAT Statute and Article 18(1) of its Rules of Procedure allow this Tribunal to hold oral hearings, on its own motion or on written application of a party, when such hearings “would assist in the expeditious and fair disposal of the case”.

36. In the present appeal, Mr. Qasem requests an oral hearing to prove the facts of his case. However, the written record of the case seems to be sufficient to render a Judgment on the appeal. Mr. Qasem’s request must, therefore, be denied.

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37. In the impugned Judgment, the UNRWA DT found that Mr. Qasem had failed to submit an RDR, and therefore dismissed the case because of its non-receivability *ratione materiae*.

38. Mr. Qasem takes issue with that Judgment, claiming that he had indeed submitted such a request.

39. As contended by Mr. Qasem and conceded by the Commissioner-General, we find that the UNRWA DT committed an error of fact, resulting in a manifestly unreasonable decision. The case record shows that Mr. Qasem attached a copy of his RDR in Annex 84 to his application before the UNRWA DT. Therefore, there is no doubt that the UNRWA DT manifestly erred when it decided that Mr. Qasem's case was non-receivable with respect to the prior submission of the RDR.

40. The failure of the first instance court on a question of receivability normally results in rescission of the impugned Judgment and remand for a fresh review. This solution better serves the right of the parties to appeal. However, considerations of judicial economy convinced this Tribunal to review the case on the merits without remand.

41. We note first that the present case is ready to be decided on the merits. The parties have already made their submissions in respect of the merits of the issue under consideration, i.e., Mr. Qasem's non-selection. We also note that the matter at stake involves a well-established question of law of direct application to the facts of the case. Therefore, we will directly settle the case on the merits without remand, allowing for a quick settlement of the dispute and, hence, for judicial satisfaction to the parties.

The merits of the non-selection case

42. In the present case, Mr. Qasem submits that the Administration erred when it rejected his application for the post of Acting HHC because of his placement on ALWP.

43. In his response before the UNRWA DT, the Commissioner-General conceded that an irregularity occurred in the recruitment process, as Mr. Qasem should not have been excluded automatically on the basis that he was on administrative leave. However, the

Commissioner-General maintains that, in any case, the contested decision must be upheld because Mr. Qasem did not have a real chance of selection.

44. The question is therefore whether Mr. Qasem had a significant chance of selection.

45. The jurisprudence of this Tribunal in matters of staff appointment or promotion is well established. As we ruled in *Abbassi*:²³ “In reviewing administrative decisions regarding appointments and promotions, the UNDT examines the following: (1) whether the procedure as laid down in the Staff Regulations and Rules was followed; and (2) whether the staff member was given fair and adequate consideration.”

46. Procedural irregularities shall result in the rescission of the contested decision only when the staff member had a significant chance of selection or promotion.²⁴

47. Area Staff Regulation 4.3 reads: “Due regard shall be paid in the appointment, transfer and promotion of staff to the necessity for securing the highest standards of efficiency, competence and integrity.”

48. Further, paragraph 124(b) of Area Staff Personnel Directive No. A/4/Part II, Rev. 8/Section I, dated 1 February 2022, on area staff selection, provides that the Recruitment Administrator must acquire the two most recent performance evaluation reports for the recommended candidate, if the candidate is an internal candidate.

49. Paragraph 126 of the same legal framework also reads:

If the Recruitment Administrator receives a negative reference or a negative performance evaluation for a candidate, she or he must inform the Hiring Manager and the relevant authority referred to in paragraph 9 of the negative reference or evaluation. The relevant authority as defined in paragraph 9 must consider the matter and decide –

a. that the negative reference or performance evaluation is significant, and the candidate should no longer be considered for the post; or

b. that the negative reference or performance evaluation is minor, and the recommended appointment should proceed.

²³ *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110, para. 23.

²⁴ *Bofill v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-174, para. 28.

If the relevant authority is of the view that the appointment should not be made, such a decision should be documented in the Selection Submission and the appointment process must proceed with the next recommended candidate.

50. It follows that for internal candidates, like Mr. Qasem, the Administration must normally check *inter alia* the two most recent performance evaluations to assess whether he/she is the most suitable for the advertised position.

51. The case record in Mr. Qasem's case casts strong doubts on his chances for selection for the post of Acting HHC.

52. First, Mr. Qasem's performance evaluations in the two years preceding the year of recruitment reveal persistent performance issues. Mr. Qasem's performance evaluation of 2019 showed failure to fully meet expectations in some competencies and objectives, such as planning and monitoring, initiative and innovation, and working with people.²⁵ To improve his performance, Mr. Qasem was subject to an informal Opportunity to Improve (OTI) process of four months from 24 November 2019 until 24 February 2020.²⁶ In 2020, Mr. Qasem's performance evaluation was similar to that of 2019. Due to the overall unsatisfactory performance of Mr. Qasem, he was placed for the second time on an informal performance improvement plan on 16 December 2020. The plan contained multiple actions to address his performance issues and set a duration of plan until 16 March 2021.²⁷ Failing to improve his performance in the informal OTI, the Administration further informed Mr. Qasem that he was subject to a formal OTI plan to address the multiple issues related to his performance. The OTI was for a three months' period, from 16 November 2021 until 16 February 2022.²⁸ Although Mr. Qasem refused to sign the formal OTI form for personal concerns,²⁹ we find that, in any event, the formal OTI complements a series of uncontested informal OTIs that indicate the persistence of performance issues.

53. Furthermore, a review of Mr. Qasem's administrative and disciplinary record shows that Mr. Qasem was served with a Letter of Reprimand on 13 July 2017 for failure to follow instructions of his direct supervisor.³⁰ We also note that Mr. Qasem was served, in 2021, with

²⁵ Commissioner-General's reply before the UNRWA DT (Case No. UNRWA/DT/JFO/2023/050), Annex 10.

²⁶ *Ibid.*, Annex 9.

²⁷ *Ibid.*, Annex 11.

²⁸ *Ibid.*, Annex 15.

²⁹ *Ibid.*, Annex 15.

³⁰ *Ibid.*, Annex 8.

a written letter of censure and a fine equivalent to two months' salary for having physically assaulted a subordinate.³¹

54. In addition, we find that Mr. Qasem's placement on ALWP, although not precluding him from applying for the position of Acting HHC, would have further reduced his chances for being selected. It appears from the case record that the position to which Mr. Qasem applied was a temporary appointment pending a permanent appointment. As such, the availability of the candidate to occupy the post could have been another important and reasonable factor to be considered in the case of Mr. Qasem who was until then on ALWP.

55. Considering these factors altogether, along with the fact that 10 other candidates were shortlisted for the interviews,³² the Appeals Tribunal finds that Mr. Qasem's chance of selection was limited.

56. Turning to Mr. Qasem's multiple allegations of bias and prejudice, we recall the consistent jurisprudence of this Tribunal that the onus of proof of such allegations is on the person alleging same.³³ Mr. Qasem did not submit any proof in this regard, and his allegations must therefore be dismissed.

57. For these reasons, the first contested decision is upheld, and Mr. Qasem's appeal on this count is denied.

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58. In the impugned Judgment, the UNRWA DT found, as a matter of law, that the non-disclosure of investigation results to Mr. Qasem did not produce direct legal consequences for him. Relying on Section VI.F.2 of the UNRWA DIOS Guide to Conducting Investigations, 2021, the UNRWA DT found that the terms of appointment do not provide UNRWA staff members with a right to the outcome of an investigation into their complaints against other colleagues. Therefore, absent a reviewable administrative decision, the UNRWA DT decided that Mr. Qasem's case was not receivable.

³¹ *Ibid.*, Annex 14.

³² *Ibid.*, Annex 19.

³³ *Muwambi v. Secretary General of the United Nations*, Judgment No. 2017-UNAT-780, para. 27; *Nwuke v. Secretary General of the United Nations*, Judgment No. 2015-UNAT-506, para. 49; *Hepworth v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-178, para. 29.

59. Mr. Qasem challenges the finding of the UNRWA DT. Relying on *Ezzedine Loubani*,³⁴ Mr. Qasem alleges that the UNRWA DT erred in law when it disregarded the personal and professional consequences of the contested decision on him, resulting in “a grievous miscarriage of justice”.³⁵

60. We first find that Mr. Qasem’s reliance on the case of *Ezzedine Loubani* is clearly misplaced. In that case, the issue at stake was the due process rights of the subject to receive a copy of the investigation report by the end of the investigative process. Such due process rights may have an impact on the substantive findings and ultimately on the disciplinary sanction imposed. The situation of the subject to investigations must therefore be distinguished from that of the complainant.

61. We find second that, despite erring in its reliance on the Investigations Guide instead of the DIOS Investigations Policy 2021, the UNRWA DT did not fundamentally err in its finding that the contested act was not a reviewable administrative decision. To affirm its finding, we provide a relatively nuanced reasoning as follows.

62. The jurisprudence of this Tribunal in matters of identification of administrative decisions is well-established. In *Lee*, we held that “the key characteristic of an administrative decision subject to judicial review is that the decision must ‘produce[] direct legal consequences’ affecting a staff member’s terms and conditions of appointment; the administrative decision must ‘have a direct impact on the terms of appointment or contract of employment of the individual staff member’”.³⁶

63. We have also ruled that an administrative decision does not produce legal consequences unless it is final. Intermediary steps and processes do not constitute final reviewable administrative decisions. In this regard, we held in *Michaud*, a case of investigations, that:³⁷

The purpose of the investigation was to examine the facts and evidence and to make a recommendation to UNDP. As the recommendation it made was not acted upon, no decision of final effect adversely affecting the rights of Mr. Michaud was made pursuant to

³⁴ *Ezzedine Loubani v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2022-UNAT-1242, para. 41.

³⁵ Appeal brief, B, para. 22.

³⁶ *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, para. 49 (internal footnotes omitted).

³⁷ *Michaud v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-761, para. 51.

the investigation. In so far as there might have been procedural shortcomings in the conduct of the investigation, they are of no practical consequence. The right to due process or procedural fairness only arises in relation to administrative decisions which materially and adversely affect the rights or legitimate expectations of staff members. And, as just stated, OAS took no decision that materially, adversely or directly impacted on the rights of Mr. Michaud. It merely made a non-binding recommendation to the UNDP. That recommendation is not an administrative decision subject to review under Article 2(1) of the UNDT Statute and the UNDT was therefore correct to hold the appeal in relation to the investigation not receivable *ratione materiae*.

64. Although Mr. Qasem is a complainant, while Mr. Michaud was a subject to investigation, we find that the same requirement of finality to characterize the administrative decision applies. It is only when the investigative and where applicable the subsequent administrative and/or disciplinary process has been concluded that the aggrieved party, the subject or the complainant, may contest the final administrative decision taken by the Administration. Indeed, the Appeals Tribunal concedes in the present case that Mr. Qasem has certain rights to information, as a complainant who is also the victim, under Section B. “Rights and Obligations for Complainants”, paragraph 29 of DIOS Technical Instruction on Investigation Policy 01/2021. However, these rights cannot be raised with the Tribunals before the issuance of the final decision made by the Administration to dispose of the case, whether by the closure of the investigation, or by finalizing an administrative or disciplinary process. Mr. Qasem’s case was, therefore, premature, and the UNRWA DT did not err when it dismissed his application absent a reviewable administrative decision.

Judgment

66. Mr. Qasem's appeal is granted in part, and Judgment No. UNRWA/DT/2023/033 is reversed in respect of Case No. UNRWA/DT/JFO/2023/050. Mr. Qasem's case is dismissed on the merits. In relation to Case No. UNRWA/DT/JFO/2023/104, Mr. Qasem's appeal is dismissed, and the remainder of the impugned Judgment is hereby affirmed.

Original and Authoritative Version: English

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

(Signed)

Judge Sheha, Presiding

(Signed)

Judge Ziadé

(Signed)

Judge Sandhu

Judgment published and entered into the Register on this 7th day of August 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar