



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

---

Judgment No. 2024-UNAT-1474/Corr.1

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

**JUDGMENT**

---

Before:	Judge Graeme Colgan, Presiding Judge Katharine Mary Savage Judge Kanwaldeep Sandhu
Case No.:	2023-1850
Date of Decision:	28 June 2024
Date of Publication:	14 August 2024
Registrar:	Juliet E. Johnson

---

Counsel for Mr. Lutfiev:	Neha Dubey
Counsel for Commissioner-General:	Natalie Boucly

**JUDGE GRAEME COLGAN, PRESIDING.**

1. The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (Commissioner-General and UNRWA or Agency, respectively) appeals the lengthy and complex Judgment No. UNRWA/DT/2023/028 of the UNRWA Dispute Tribunal (UNRWA DT or UNRWA Dispute Tribunal) granting two of three applications by Erdinch Lutfiev, a former UNRWA staff member.<sup>1</sup> The first of these two applications challenged UNRWA’s decision not to investigate Mr. Lutfiev’s complaints of prohibited conduct by others towards him, what we will call “the non-investigation decision”. The second of the two applications granted by the UNRWA DT was against UNRWA’s decision to separate him from service, with compensation in lieu of notice and termination indemnity, for the serious misconduct of making unsubstantiated comments in the workplace. We will refer to this as “the termination decision”.<sup>2</sup>

2. Also challenged by the Commissioner-General are the Dispute Tribunal’s remedies awarded to Mr. Lutfiev of rescission of the non-investigation decision and payment of USD 4,000 for the delay in handling Mr. Lutfiev’s complaint; the rescission of the termination decision and *in-lieu* compensation of two years’ net base salary; and the costs’ awards of USD 2,500 and USD 4,000.

3. How Mr. Lutfiev went from being a complainant about misconduct by work colleagues and an acknowledged victim of retaliation for making those complaints, to being a dismissed staff member, was and remains a complex and, from reading the impugned Judgment, an enigmatic story.

4. For the reasons set out below we grant the Commissioner-General’s appeal, reverse the UNRWA DT’s Judgment in part, and remand the issue of the lawfulness of Mr. Lutfiev’s separation from service to the UNRWA Dispute Tribunal for re-hearing and re-decision.

---

<sup>1</sup> *Lutfiev v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2023/028 dated 27 June 2023 (impugned Judgment).

<sup>2</sup> The UNRWA DT dismissed Mr. Lutfiev’s application contesting a declaration that he had been the subject of retaliation, what we will call its “retaliation decision”. There is no appeal against this part of the UNRWA DT’s Judgment. All three cases were consolidated by the Dispute Tribunal and decided compendiously in one Judgment.

### Facts and Procedure

5. From December 2008 until February 2011, Mr. Lutfiev worked for UNRWA as an international driver on a consultancy contract. As from 7 February 2011, he was employed by the Agency on a three-year fixed-term appointment, as an international driver, Level GS-3, in the Central Support Services Division (CSSD) with Duty Station Jerusalem, West Bank Field Office (WBFO). His fixed-term appointment was extended several times, with his last appointment being extended until 30 November 2020.<sup>3</sup>

6. On 5 October 2018, Mr. Lutfiev submitted a complaint of workplace discrimination to the Director of Human Resources (DHR), with copies to his supervisor, the Chief CSSD (C/CSSD), and to the Chief Ethics Office (C/EO). An attempt to find an informal resolution of his complaint initiated by the C/EO was unsuccessful.<sup>4</sup>

7. On 16 November 2018, Mr. Lutfiev submitted to the acting Director, Department of Internal Oversight Services (D/DIOS) a prohibited conduct complaint under General Staff Circular GSC 6/2010 (Prohibition of Discrimination, Harassment-Including Sexual Harassment-and Abuse of Power) (GSC 6/2010). He asserted that the former Chief of Staff (CoS) had engaged in discriminatory treatment against him.<sup>5</sup>

8. By letter dated 22 November 2018 signed by the DHR, Mr. Lutfiev was placed on administrative leave with pay (ALWP), effective that same day. Mr. Lutfiev allegedly had made serious and unacceptable comments and allegations about the private lives and professional conduct of several staff members, including comments related to the alleged sexual orientation of certain staff members, about alleged sexual relations between certain staff members and about alleged financial impropriety and misconduct of certain staff members. Furthermore, the letter refers to feedback by some staff members showing a general lack of trust and confidence when travelling as passengers with Mr. Lutfiev (as their driver) which was said to have resulted in a complete breakdown in trust and confidence on the part of the Agency in Mr. Lutfiev's ability to perform his duties. He was informed that the Agency did not consider it in its best interests to maintain him on duty pending the outcome of this process.<sup>6</sup>

---

<sup>3</sup> Impugned Judgment, para. 6.

<sup>4</sup> *Ibid.*, paras. 12-13.

<sup>5</sup> *Ibid.*, para. 15.

<sup>6</sup> Application to UNRWA DT, Annex 1.

9. On 26 November 2018, Mr. Lutfiev submitted his comments on the concerns included in the letter of 22 November 2018. That same day, Mr. Lutfiev also filed with the acting D/DIOS a complaint of retaliation against the former CoS and a request to the C/EO for protection against retaliation.<sup>7</sup>

10. On 2 December 2018, the Intake Committee of DIOS decided to refer Mr. Lutfiev's case to the EO for a preliminary assessment. This case included both the retaliation complaint against the former CoS, as well as Mr. Lutfiev's complaint of workplace discrimination against several of his colleagues.<sup>8</sup>

11. On 17 December 2018, the C/EO informed Mr. Lutfiev that the EO had concluded its preliminary assessment of the request for protection against retaliation with a determination that his allegations constituted a *prima facie* case of retaliation.<sup>9</sup>

12. On 2 January 2019, the complaints against Mr. Lutfiev were referred to DIOS on the explicit instruction of the former Commissioner-General. The letter was handed to Mr. Lutfiev the same day in a meeting with the C/CSSD and the former CoS.<sup>10</sup>

13. On 12 February 2019, the EO issued its report concluding that Mr. Lutfiev's retaliation complaint against the former CoS revealed a *prima facie* case of retaliation under the provisions of General Staff Circular GSC 5/2007 (Allegations and complaints procedures and protection against retaliation for reporting misconduct and cooperating with audits or investigations). Furthermore, the EO advised suspending any ongoing activities related to the termination of Mr. Lutfiev's assignment and to extend his contract until the Agency had taken appropriate decisions on the investigative findings. Accordingly, his contract was extended several times, ultimately until 30 November 2020. His ALWP was also likewise extended.<sup>11</sup>

14. On 21 November 2019, DIOS issued Investigation Report IR 35/2019 into Mr. Lutfiev's allegations of retaliation and abuse of power, determining that the actions of the former CoS constituted retaliation. DIOS concluded that the former CoS had abused his power by attempting to interfere in Mr. Lutfiev's performance management and had actively sought his dismissal. DIOS also found that the former CoS had sought to encourage complaints by others against

---

<sup>7</sup> Impugned Judgment, paras. 18-20.

<sup>8</sup> *Ibid.*, para. 21.

<sup>9</sup> *Ibid.*, para. 22.

<sup>10</sup> *Ibid.*, para. 16.

<sup>11</sup> *Ibid.*, para. 65.

Mr. Lutfiev and that the former CoS had withheld vital relevant information from the former Commissioner-General. Furthermore, DIOS found that there was insufficient evidence to support the claim that Mr. Lutfiev had not suffered detrimental action after submitting a complaint and that the Agency would have performed the same actions regardless of his complaint of 5 October 2018.<sup>12</sup>

15. On 5 January 2020, the DIOS Chief Investigations Division (DIOS/CID) informed Mr. Lutfiev that the outcome of the investigation was a finding of retaliation “in full”. The retaliation was especially attributed to the former CoS and occurred mainly in the period between October 2018 and July 2019.<sup>13</sup>

16. By letter dated 20 April 2020, the DHR informed Mr. Lutfiev of the allegations of misconduct made against him and offered him an Opportunity to Respond which he did by letter dated 19 May 2020.<sup>14</sup>

17. By letter dated 29 May 2020, received by Mr. Lutfiev on 16 June 2020, the Commissioner-General formally acknowledged that Mr. Lutfiev had been subjected to retaliation. The Commissioner-General noted that he would ensure appropriate disposal of the disciplinary process; that Mr. Lutfiev would be informed on the course of action taken in this case following a full and independent legal review; that the Commissioner-General would ensure that no detrimental action would take place; and that he continued to be committed to protecting staff from retaliation.<sup>15</sup>

18. By e-mail dated 5 July 2020, the DIOS/CID informed Mr. Lutfiev that it had been decided not to investigate his complaint of discrimination in the workplace. He was further advised that there would be no further investigation of the allegations against the former CoS because the latter was no longer active within the Agency and the allegations against him no longer merited investigation. It appears that the Agency and the former CoS agreed to the latter’s “separation” from the Agency on or about 31 December 2019 after a six-month period of special leave without pay.<sup>16</sup>

---

<sup>12</sup> *Ibid.*, paras. 66-69.

<sup>13</sup> *Ibid.*, para. 10.

<sup>14</sup> *Ibid.*, paras. 93-94.

<sup>15</sup> *Ibid.*, paras. 10 and 71.

<sup>16</sup> *Ibid.*, para. 25 and fn. 6.

19. Reference was also made in the same e-mail of 5 July 2020 to Mr. Lutfiev's complaint of workplace discrimination against several colleagues.<sup>17</sup> DIOS/CID informed Mr. Lutfiev that, after assessment, it had been decided that further investigation would not be warranted. In the same e-mail, Mr. Lutfiev was informed that his prohibited conduct complaint and the other complaint had not been handled by DIOS initially (in 2018) and therefore had been reconsidered by DIOS the week before the contested decision was taken. No explanation was provided for the non-handling of the prohibited conduct complaint and the other complaint since 2018.<sup>18</sup>

20. On 16 July 2020, Mr. Lutfiev submitted a request for decision review of the non-investigation decision to which the Agency did not respond. That same day, Mr. Lutfiev also submitted a request for decision review of the retaliation decision.<sup>19</sup>

21. By letter dated 23 November 2020, the Commissioner-General informed Mr. Lutfiev of the outcome of the disciplinary process. The Commissioner-General concluded that Mr. Lutfiev's conduct amounted to serious misconduct and imposed on him the disciplinary measure of immediate separation from service with compensation in lieu of notice and with termination indemnity.<sup>20</sup>

22. On 25 January 2021, Mr. Lutfiev submitted a request for decision review of the termination decision to which the Agency again did not respond.<sup>21</sup>

23. On 11 September 2020, Mr. Lutfiev filed an application with the UNRWA DT challenging the Agency's decision not to investigate his complaint of prohibited conduct (Case No. UNRWA/DT/WBFO/2020/056). That same day, Mr. Lutfiev also filed an application with respect to the outcome of his complaint of retaliation (Case No. UNRWA/DT/WBFO/2020/057). On 23 May 2021, Mr. Lutfiev filed an application with the UNRWA DT contesting the disciplinary measure of separation from service, with compensation in lieu of notice and with termination indemnity (Case No. UNRWA/DT/WBFO/2021/038).<sup>22</sup>

---

<sup>17</sup> This portion of the decision is not contested.

<sup>18</sup> *Ibid.*, paras. 26 and 27.

<sup>19</sup> *Ibid.*, paras. 28 and 73.

<sup>20</sup> *Ibid.*, para. 95.

<sup>21</sup> *Ibid.*, para. 97.

<sup>22</sup> *Ibid.*, Annex A, paras. 1 and 2 and Annex B, para. 1.

24. On 27 June 2023, the UNRWA DT issued the impugned Judgment, disposing of all three applications, from which this appeal arises.

*The impugned Judgment*

25. In a necessarily very long and complex Judgment reflecting the several separate issues raised by Mr. Lutfiev's complaints, the UNRWA Dispute Tribunal rescinded the decision not to conduct an investigation into Mr. Lutfiev's prohibited conduct complaint against the former CoS.<sup>23</sup> The UNRWA DT was satisfied that the DIOS had found that there was a credible case of retaliation and thus GSC 5/2007 applied.<sup>24</sup> The UNRWA DT also found that Mr. Lutfiev had reported a protected activity and had made his report in good faith.<sup>25</sup> The UNRWA DT found that the Commissioner-General had made no reference to GSC 5/2007 or the applicable burden of proof, and thus failed to provide any evidence, let alone clear and convincing, to prove that it would have taken the same decision absent the submitted complaints of discriminatory treatment.<sup>26</sup>

26. The UNRWA DT awarded Mr. Lutfiev compensation of USD 4,000 for the inordinate delay in handling his prohibited conduct complaint. The complaint had been submitted on 16 November 2018, but it was only on 5 July 2020 (almost two years later) that a decision was made not to investigate. GSC 6/2010 provides in paragraph 28 for a three-month period to prepare a report. The Agency never provided reasons for the delay. In the end, the complaint was never investigated due to the departure of the former CoS in July 2020 which the UNRWA Dispute Tribunal concluded had obviously been extremely detrimental to Mr. Lutfiev.<sup>27</sup> The UNRWA DT also awarded USD 2,500 for legal costs for representation.<sup>28</sup>

27. The UNRWA DT dismissed Mr. Lutfiev's application regarding the alleged lack of action and/or remedies taken or provided by the Agency to redress the effects of retaliation. The UNRWA DT found that under the provisions regarding protection against retaliation, the Administration retained a discretion whether to take appropriate measures. The UNRWA DT found that in this case, the Administration had not exercised its discretionary authority arbitrarily or capriciously,

---

<sup>23</sup> *Ibid.*, para. 52.

<sup>24</sup> *Ibid.*, para. 46.

<sup>25</sup> *Ibid.*, para. 49.

<sup>26</sup> *Ibid.*, para. 51.

<sup>27</sup> *Ibid.*, para. 57.

<sup>28</sup> *Ibid.*, para. 58.

had not been motivated by prejudice or other extraneous factors, and the contested decision was not flawed by procedural irregularity or error of law.<sup>29</sup>

28. Turning to the termination decision, the UNRWA DT recalled that in cases where an applicant can call on protection against retaliation, GSC 5/2007 provides that the Administration must prove by clear and convincing evidence that it would have taken the same action absent the protected activity as referred to in paragraph 5 of GSC 5/2007. This requirement, the UNRWA DT held, was additional to the standard of judicial review in disciplinary cases.<sup>30</sup> The UNRWA DT was satisfied that the DIOS had found that there was a credible case of retaliation and thus GSC 5/2007 applied.<sup>31</sup> The UNRWA DT also found that Mr. Lutfiev had reported in good faith a protected activity.<sup>32</sup> The UNRWA DT found that the Commissioner-General had made no reference to GSC 5/2007 or the applicable burden of proof, and thus failed to provide any evidence, let alone clear and convincing evidence, to prove that it would have taken the same decision absent the submitted complaints of discriminatory treatment.<sup>33</sup>

29. The UNRWA DT rescinded the termination decision. Having considered the facts and circumstances, it found it “highly likely that, absent the retaliation activities of the former CoS, the Applicant’s contract would have continued to be extended for three years after 31 January 2019”. Thus, the UNRWA DT found it appropriate to set the in-lieu compensation to be the equivalent of two years’ net base salary. The UNRWA DT also awarded legal costs in the amount of USD 4,000.<sup>34</sup>

30. On 28 August 2023, the Commissioner-General filed an appeal, and on 9 October 2023, Mr. Lutfiev filed his answer.

## **Submissions**

### **The Commissioner-General’s Appeal**

31. The Commissioner-General contends that the UNRWA DT erred in law when it rescinded the termination and non-investigation decisions.

32. The UNRWA DT erred in confounding two separate processes, namely, on the one hand, the investigation/disciplinary process under International Personnel Directive No. 10

---

<sup>29</sup> *Ibid.*, paras. 82-85.

<sup>30</sup> *Ibid.*, para. 116.

<sup>31</sup> *Ibid.*, para. 121.

<sup>32</sup> *Ibid.*, para. 124.

<sup>33</sup> *Ibid.*, para. 126.

<sup>34</sup> *Ibid.*, paras. 127, 132, 133 and 136.



(Disciplinary measures and procedures) (PD/10) and procedures under GSC 6/2010 on the prohibition of discrimination, harassment and abuse of power, and, on the other hand, the process for seeking protection against retaliation under GSC 5/2007.

33. The UNRWA DT erred in concluding that when reviewing a disciplinary sanction against a staff member who has raised credible allegations of retaliation (or when reviewing the Agency's inaction in relation to a staff member's prohibited conduct complaint when the staff member has raised credible allegations of retaliation), the UNRWA DT must import the provisions of GSC 5/2007 into its analysis of the legitimacy of the Agency's actions. The provisions of GSC 5/2007 regulate the circumstances in which the DIOS may investigate and make recommendations to the Commissioner-General for measures to protect an individual from retaliation, but they have no role in, or relevance to, an investigation by the Agency against a staff member for potential wrongdoing or in the assessment whether the Agency needs to investigate such staff member's prohibited conduct complaint.

34. Notably, the standard of review in disciplinary cases is well established – the first instance Tribunal must conduct a four-prong analysis. The UNRWA DT did not embark on such analysis but simply considered the applicability of GSC 5/2007 and, having erroneously imported these provisions into the process, concluded that the Commissioner-General failed to provide evidence to prove that it would have taken the same decision absent the submitted complaints of discriminatory treatment. The UNRWA DT erred in law in concluding that there was no need to assess whether the contested decisions were in compliance with the regular standard of judicial review of administrative decisions.

35. Turning to the award of costs, the Commissioner-General submits that the UNRWA DT erred in fact and law and exceeded its competence in awarding costs for legal representation in the absence of a specific finding of manifest abuse of proceedings under Article 10(6) of the UNRWA DT Statute.

36. The Commissioner-General requests the Appeals Tribunal to grant the appeal and reverse the UNRWA DT's decisions in relation to the termination decision and the non-investigation decision in their entirety and to reverse the awards of costs.

**Mr. Lutfiev's Answer**

37. Mr. Lutfiev contends that the Commissioner-General's argument that the UNRWA DT erred in law by rescinding the non-investigation decision and termination decision on the basis that GSC 5/2007 did not apply to the subject of a disciplinary process pursuant to International Personnel Directive No. 10 or GSC 6/2010 is fundamentally flawed. The Commissioner-General's interpretation of GSC 5/2007 is contrary to the specific words of PD/10 and GSC 6/2010; and second, his suggestion that protection against retaliation is not available to the subject of a disciplinary investigation and/or a person who makes a prohibited conduct complaint is inconsistent with the rationale of retaliation and practicably unrealistic.

38. On a plain reading of the three policies, it is self-evident that GSC 5/2007 does apply to any staff member who is involved in any misconduct investigations, including any person who is interviewed, the alleged offender and the aggrieved party. Both PD/10 and GSC 6/2010 make specific reference to GSC 5/2007. In this case, it is not in dispute that Mr. Lutfiev was the subject of allegations in a misconduct complaint, that he was interviewed in relation to those allegations, and that he himself lodged the prohibited conduct complaint and the retaliation complaint. As someone who was subject to the processes in PD/10 and GSC 6/2010, he was equally able to rely on the protection offered by GSC 5/2007. In such circumstances, these three policies must be read together and should be construed in Mr. Lutfiev's favour. The UNRWA DT considered all of the evidence available in determining that UNRWA had not established to a clear and convincing standard that it would have taken the same action absent the protected activity. The UNRWA DT simply applied GSC 5/2007 to the facts of this case, and it was within the UNRWA DT's discretion to determine that UNRWA had not met the requisite standard of proof.

39. Mr. Lutfiev contends that the appeal incorrectly suggests that because Mr. Lutfiev's retaliation complaint arose in the course of the disciplinary investigation against him, he should have raised retaliation as a defence in that investigation, that the issue of retaliation would have been dealt with by DIOS, and that the burden of proof in paragraph 38 of GSC 5/2007 did not apply. By the time that DIOS notified Mr. Lutfiev of the misconduct complaints made against him, Mr. Lutfiev had already made a retaliation complaint and been advised of a favourable *prima facie* finding. It is therefore unclear how he could have lodged a further retaliation complaint in relation to the same facts in the course of a related investigation. He was not charged until 19 April 2020

and could not therefore raise retaliation as a “defence” before that date. In any case, retaliation is not a “defence” to misconduct allegations but is in itself misconduct.

40. Mr. Lutfiev further contends that it is not disputed that the facts which gave rise to his applications were a result of the former CoS’s abuse of power in actively seeking his dismissal, encouraging complaints against Mr. Lutfiev, and withholding vital information from the former Commissioner-General. The appeal attempts to create an artificial separation between these processes to suggest that the retaliatory action against Mr. Lutfiev was somehow independent of the misconduct complaints made about him, when in reality, the retaliation (termination of Mr. Lutfiev’s contract) was a direct response to Mr. Lutfiev’s protected activity (reporting misconduct). Allegations and investigations of misconduct are precisely what gives rise to a risk of retaliation. In attempting to confine Mr. Lutfiev’s contractual right to protection against retaliation, the Commissioner-General’s proposed interpretation of GSC 5/2007 is clearly inconsistent with the obvious purpose and intent of this policy. The Commissioner-General’s first ground of appeal must therefore be dismissed.

41. Turning to the award of legal costs, Mr. Lutfiev agrees that there is no question as to abuse of proceedings in this case, and that Article 10(6) of the UNRWA DT Statute is not the relevant basis for the UNRWA DT’s award of legal costs. The relevant basis for the UNRWA DT’s award of legal costs, although not specified in the Judgment, must be paragraph 37(d) of GSC 5/2007, which provides that where D/DIOS has found that there is a credible case of retaliation, UNRWA shall provide appropriate remedies which may include but not be limited to representation fees or other costs associated with the individual’s claim of retaliation. The purpose of this remedy is to restore the individual to the same or comparable position they would have been in if the retaliation had not occurred. Mr. Lutfiev’s need to seek legal counsel and incurring fees is directly attributable to UNRWA’s unlawful actions towards him, and the UNRWA DT’s order for costs should therefore be treated as compensation for that loss.

42. Mr. Lutfiev asks that the Appeals Tribunal dismiss the appeal. He requests that the impugned Judgment be executed forthwith. He further asks that the UNAT order an award of costs of the appeal in the amount of USD 4,000 and order that the compensation awarded by the UNRWA DT be paid to Mr. Lutfiev within 28 days of the UNAT’s decision.

### Considerations

43. We begin by noting that the Commissioner-General takes no issue with the UNRWA Dispute Tribunal's summaries of the relevant facts contained in paragraphs 5 to 28, 60 to 73 and 86 to 107 of the impugned Judgment. The appeal alleges only errors of law.

44. Despite, or perhaps because of, the complexity of the approach adopted by the UNRWA DT to these three concurrent issues involving Mr. Lutfiev, the Appeals Tribunal decision on the Commissioner-General's appeals against the UNRWA DT's investigation decision and the UNRWA DT's termination decision is relatively straightforward and explicable. Both decisions address the common feature of the wrongful application to them by the UNRWA DT of the associated but separate process relating to retaliation.

45. Addressing Mr. Lutfiev's challenge before the UNRWA DT relating to the non-investigation decision, we note that his complaint of discriminatory conduct against him by work colleagues was never formalised and, thereby, was not the subject of any administrative decision.

46. As regards his complaint of misconduct against the former CoS, the administrative decision not to undertake or otherwise proceed with this investigation was made because the subject of Mr. Lutfiev's complaint (the former CoS) was no longer a member of the UNRWA staff.<sup>35</sup> While this situation may have frustrated the complainant who wished for his own vindication and an adverse finding against the former CoS, the objective of the misconduct procedure is principally to ensure that, if misconduct is established, it is appropriately sanctioned and, not unconnected with this, to attempt to ensure both specifically and generally amongst all staff that it is not repeated. When a perpetrator of misconduct is no longer with the Organization, sanctions cannot be imposed and there cannot be a specific deterrent to that individual's continuation or repetition of the particular misconduct whilst employed by the Agency or Organization. Investigation of allegations of misconduct and its sanctioning in specific cases is not a compensatory or other remedial process for a staff member claiming to be the subject of misconduct. In these circumstances and while no doubt a disappointing or even frustrating decision for Mr. Lutfiev, the Administration's decision to not further investigate his allegations against the former CoS was one which it was entitled to make for the

---

<sup>35</sup> *Ibid.*, para. 25.

reasons it did. The Commissioner-General's appeal will be granted, and the impugned Judgment reversed with respect to this decision.

47. Turning to the second decision of the UNRWA DT challenged by the Commissioner-General to rescind Mr. Lutfiev's separation from service, for the reasons submitted by the Commissioner-General, he has likewise persuaded us that this was reached by the UNRWA Dispute Tribunal in error of law. That was in two respects. First, the UNRWA DT incorrectly relied on the processes and tests applicable under GSC 5/2007 which addresses protection against retaliation. While this General Staff Circular was engaged in the matter of Mr. Lutfiev's complaints of retaliation and claims to protection therefrom, it was inapplicable to the distinct issues arising from the complaints of misconduct made against Mr. Lutfiev and the sanctions imposed as a result. We infer the complaints related to his conduct towards other staff, but for reasons we will now elaborate on, there is insufficient information in the UNRWA DT's Judgment to be any more specific about the grounds for his separation, let alone to review their justification in law.

48. As just described, the UNRWA Dispute Tribunal applied the wrong methodology to its consideration of the reasons for his separation from UNRWA employment, and as the Commissioner-General has submitted, it did not undertake what is known as the four-pronged examination of the lawfulness of that administrative decision. It did not make findings, to the clear and convincing evidential standard required in this case about what Mr. Lutfiev had done or omitted to do; whether those acts or omissions were misconduct; whether his due process rights were respected leading to the decision to separate him from service; and whether the sanction applied (separation) was available to it in all the circumstances (proportionality).<sup>36</sup>

49. While the Appeals Tribunal is always mindful of the consequences to all concerned of remanding a proceeding such as this to the first instance tribunal to re-determine the case, in the circumstances before us and as described above, there is no alternative but to do so. The impugned Judgment contains insufficient material and findings of fact upon which we could consider justly a determination of the lawfulness of Mr. Lutfiev's separation. It contains only the most generalised descriptions of the allegations against him, but which were denied or otherwise not accepted by Mr. Lutfiev. Determining the four-pronged analysis referred to above starts with the evidential establishment of the relevant facts and these must be a matter for the UNRWA DT with its powers to receive evidence at a hearing if that is appropriate in the particular case. Without this first

---

<sup>36</sup> *Mihai-Tudor Stefan v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1375, para. 63.

“prong” having been engaged in by the UNRWA DT, it is simply not possible for the subsequent three decisions to be arrived at, certainly not by an appellate tribunal as we are.

50. Because we are granting the Commissioner-General’s appeal and, in part, remanding one of Mr. Lutfiev’s proceedings to the Dispute Tribunal for re-hearing and re-decision, it is unnecessary and would be inappropriate to determine or comment on the propriety of remedies awarded to him by the UNRWA DT. Our decision granting the appeal in relation to Mr. Lutfiev’s separation means necessarily that the UNRWA DT’s awards of in-lieu compensation and costs are also set aside. We will only comment that before the UNRWA Dispute Tribunal re-determines the lawfulness of Mr. Lutfiev’s separation, he may renew his claims for compensation and damages in relation to this cause of action which claims will turn first on rescission of the decision to separate him from service and, second, on proof of losses attributable to that decision.

51. We grant that part of the appeal addressing Mr. Lutfiev’s claim of unlawful separation from service and remand this issue to the UNRWA Dispute Tribunal for re-hearing and re-determination.

**Judgment**

52. The Commissioner-General's appeal is granted and Judgment No. UNRWA/DT/2023/028 is reversed, in part, as follows: the UNRWA DT's rescission of the decision not to investigate the former CoS and the related award of costs are reversed. The UNRWA DT's rescission of the decision to separate Mr. Lutfiev from service is reversed, and the issue is remanded to the UNRWA DT for re-hearing and re-decision. The related awards of in-lieu compensation and costs are reversed.

Original and Authoritative Version: English

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

*(Signed)*

Judge Colgan Presiding

*(Signed)*

Judge Savage

*(Signed)*

Judge Sandhu

Judgment published and entered into the Register on this 14<sup>th</sup> day of August 2024 in New York, United States of America.

*(Signed)*

Juliet E. Johnson, Registrar