



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

Judgment No. 2024-UNAT-1500

**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 Kanwaldeep Sandhu, Presiding Judge Katharine Mary Savage Judge Leslie F. Forbang
Case No.:	2023-1862
Date of Decision:	25 October 2024
Date of Publication:	11 December 2024
Registrar:	Juliet E. Johnson

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

JUDGE KANWALDEEP SANDHU, PRESIDING.

1. Mr. Qasem Abdelilah Mohammed Qasem, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency), contested before the UNRWA Dispute Tribunal (UNRWA DT) the decision to impose on him the disciplinary measures of a written censure and a fine equivalent to two months' salary (contested decision).
2. By Judgment No. UNRWA/DT/2023/037 dated 25 September 2023 (impugned Judgment), the UNRWA Dispute Tribunal dismissed Mr. Qasem's application based on a review of the written record.
3. Mr. Qasem filed an appeal before the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) on the basis that the UNRWA Dispute Tribunal failed to hold an oral hearing and that the investigation process was procedurally unfair.
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

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.¹
6. At the time material to this appeal, Mr. Qasem was employed by the Agency as Head, Health Centre B, Grade HL7, Step 5 at the Suf Camp Health Centre, Jordan Field Office (JFO).²
7. On 28 February 2021, the Chief Area Office, Irbid (CAO/Irbid) sent an e-mail to the Officer-in-Charge, Director of UNRWA Affairs, Jordan (OiC/DUA/J) reporting that a physical altercation had occurred between Mr. Qasem and one of his subordinates, a Health Centre Clerk (HCC), Suf Camp Health Centre, JFO.³

¹ Disciplinary Measures Letter dated 24 October 2021 (Disciplinary Measures Letter), page 7. See also *Qasem Abdelilah Mohammed Qasem v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2024-UNAT-1467, para. 5.

² Impugned Judgment, para. 5.

³ *Ibid.*, para. 7.

8. By letter dated 28 February 2021, the OiC/DUA/J placed Mr. Qasem on Administrative Leave with Pay (ALWP) pending the outcome of an investigation.⁴

9. That same day, the OiC/DUA/J ordered two Field Investigators (Investigators) to investigate the actions of both Mr. Qasem and the HCC and issued terms of reference for the investigation. The Investigators interviewed ten people: Mr. Qasem, the HCC and eight witnesses (Wo1 to Wo8).⁵

10. On 30 March 2021, the investigation report was issued. The investigation report concluded that there was enough evidence to substantiate the allegation that Mr. Qasem had physically assaulted the HCC on 28 February 2021, but that there was not enough evidence to support that the HCC had resorted to violence when he was assaulted by Mr. Qasem.⁶ The investigation report did not make a conclusion as to whether Mr. Qasem acted in self-defense.

11. On 9 May 2021, Mr. Qasem submitted a complaint to the Director of UNRWA Affairs, the Deputy Director of UNRWA Affairs, Jordan - Operations (DDUA/J/O), the Deputy Director of UNRWA Affairs Jordan - Programmes (DDUA/J/P), and the Head Field Finance Officer regarding the length of time the investigation was taking. He further requested his reinstatement from ALWP and that supervision of the HCC be transferred to another supervisor.⁷

12. On 11 May 2021, the DDUA/J/O responded, stating that he would follow up with the Investigators to ensure expeditious resolution.⁸

13. By letter dated 13 July 2021, the DUA/J issued Mr. Qasem an Opportunity to Respond (OTR) letter. The OTR letter informed Mr. Qasem of the allegations against him, including that he had pushed and kicked the HCC, as well as the Investigators' findings. The OTR letter stated:⁹

⁴ *Ibid.*, para. 8.

⁵ *Ibid.*, paras. 9 and 10.

⁶ *Ibid.*, para. 21.

⁷ *Ibid.*, para. 22.

⁸ *Ibid.*

⁹ *Ibid.*, para. 23.

You admitted to pushing [the HCC] with your body to avoid his reaction but denied kicking him.

[...]

On 30 March 2021, the investigation was completed and, based on the statements summarised above, the investigators concluded that you committed physical assault by pushing [the HCC].

In light of the foregoing, it is reasonable to believe that you engaged in misconduct, namely physical assault.

14. On 26 July 2021, Mr. Qasem replied to the OTR letter. He denied assaulting the HCC and stated that the Investigators had failed to consider discrepancies in the HCC's statements and had falsified statements in his interview. Mr. Qasem alleged that the HCC had initiated physical contact by pushing him, and that he pushed the HCC away in self-defense each time the HCC charged towards him.¹⁰

15. By Disciplinary Measures Letter dated 24 October 2021, the DDUA/J/O imposed on Mr. Qasem the disciplinary measures of a written censure and a fine equivalent to two months' salary for engaging "in misconduct by committing actions that adversely reflect on [his] status as an employee of the Agency, and not befitting the status of a United Nations staff member" based on Mr. Qasem's physical altercation with the HCC.¹¹

16. By e-mail dated 25 October 2021, Mr. Qasem requested the release of all investigation documents pertaining to his case from the Field Legal Office (FLO). He received no response.¹²

17. By letter dated 15 November 2021, Mr. Qasem submitted a Request for Decision Review (RDR). He listed his rights that were violated as "right to a free trial and falsifying statements in OTR letter".¹³

18. By letter dated 7 December 2021, the DUA/J issued a response to Mr. Qasem's RDR and affirmed the contested decision.¹⁴

¹⁰ *Ibid.*, para. 24.

¹¹ *Ibid.*, para. 25.

¹² *Ibid.*, para. 26.

¹³ *Ibid.*, para. 27.

¹⁴ *Ibid.*, para. 28.

The Impugned Judgment

19. In the impugned Judgment dismissing the application, the UNRWA DT first considered whether it had been established by a preponderance of the evidence that Mr. Qasem had physically assaulted the HCC or whether Mr. Qasem's actions were instead in self-defense based on Mr. Qasem's contention that he had not initiated physical contact with the HCC.¹⁵

20. The UNRWA DT considered the record before it, including the statements of six witnesses, three of whom (Wo2, Wo3 and Wo6) were eyewitnesses in the room with Mr. Qasem and the HCC when the altercation between them began. The UNRWA DT found that Wo2, Wo3 and Wo6 all stated that Mr. Qasem had initiated the altercation; Wo2, Wo5 (who had witnessed part of the altercation), and Wo6 all stated that Mr. Qasem had pushed the HCC until he fell to the ground and then kicked him; Wo3 stated that Mr. Qasem initially had pushed the HCC but then both were holding each other; Wo3 confirmed that the HCC had fallen to the ground but stated that Mr. Qasem had not kicked the HCC; and four witnesses (Wo2, Wo6, Wo7 and Wo8) all stated that Mr. Qasem had been "restrained" by Wo8. The UNRWA DT also found that no witness testified that the HCC had started the altercation or had to be restrained and that there was no evidence to corroborate Mr. Qasem's claim of self-defense. Ultimately, the UNRWA DT found established that Mr. Qasem "[had] initiated physical contact with the HCC and [had been] the primary aggressor".¹⁶

21. The UNRWA DT was also satisfied that Mr. Qasem's established conduct constituted misconduct. The UNRWA DT found that Mr. Qasem's conduct violated the Agency's regulatory framework which prohibits all forms of violence by staff members and requires that staff members always conduct themselves in a manner befitting their status as employees of the Agency.¹⁷

22. The UNRWA DT also found that the disciplinary measures were proportionate considering that the disciplinary measures of a written sanction and a fine equivalent to two months' salary were far from the most severe that the Agency could impose, and that Mr. Qasem held an important position of authority and physically assaulted his subordinate. The UNRWA DT also

¹⁵ *Ibid.*, para. 47.

¹⁶ *Ibid.*, paras. 48 to 54.

¹⁷ *Ibid.*, paras. 55 to 57.

considered the aggravating and mitigating factors that had been considered by the Agency and concluded that there was no basis upon which to interfere with the Agency's discretion.¹⁸

23. Finally, the UNRWA DT considered and addressed in turn Mr. Qasem's claims alleging due process violations, including failure to disclose relevant information, failure to provide him with an opportunity to confront witnesses, failure to consider relevant evidence, and institutional bias against him. Although the UNRWA DT agreed with Mr. Qasem that the Agency should have disclosed the identity of witnesses during the disciplinary process, and in this regard had failed to "sufficiently respect" Mr. Qasem's due process rights, the UNRWA DT ultimately found that Mr. Qasem had failed to establish how this or any other alleged violation had had any impact on the outcome of the case.¹⁹

24. Mr. Qasem filed an appeal against the impugned Judgment on 5 October 2023, and the Commissioner-General filed his answer on 11 December 2023.

Submissions

Mr. Qasem's Appeal

25. As a preliminary matter, Mr. Qasem requests an oral hearing before the UNAT to interview witnesses and address any questions or queries by the UNAT directly.

26. Mr. Qasem alleges that by denying his request for an oral hearing, the UNRWA DT "closed another door in addressing [his] legitimate concerns".

27. Mr. Qasem recalls that he had been denied access to the investigation report prior and after the imposing of the disciplinary measures. He had repeatedly demanded the disclosure of witness identities and statements; yet, the investigation report was only disclosed to him during Dispute Tribunal proceedings on 16 May 2022.

28. He also says that the UNRWA DT erred in finding that he "initiated the physical contact with HCC and was the primary aggressor",²⁰ when he had not been charged with being the

¹⁸ *Ibid.*, paras. 58 to 61.

¹⁹ *Ibid.*, paras. 62 to 73.

²⁰ *Ibid.*, para. 54.

primary aggressor but rather with physically assaulting “by kicking and pushing [the HCC] to the ground”.²¹

29. During the investigation and all consequent communications with the Agency and the UNRWA DT, Mr. Qasem denied that he initiated the physical contact or kicked the HCC. He, however, had no opportunity to counter the claims of initiating the physical altercation nor allegations of him being “restrained” in the OTR and Disciplinary Measures Letters as these allegations had been unknown to him at that time.

30. Mr. Qasem contends that following the disclosure of the investigation report, he submitted a detailed reply stating why the investigation report was unfair, unjust, and biased. The UNRWA Dispute Tribunal however only addressed one aspect of his claims in a footnote and ignored all other arguments. For example, Wo6 who according to the investigation report testified that Mr. Qasem had kicked the HCC, denied in a local court that she had witnessed Mr. Qasem kicking the HCC at all. Mr. Qasem also objected to the Investigators’ recommendation to amend the HCC’s performance evaluation without any authorization, analysis, or findings that could explain this recommendation. Mr. Qasem finds it disturbing that this recommendation is connected to retaliation for reporting misconduct against the HCC, Wo2 and Wo6. These two errors alone, he contends, undermine the credibility of the whole investigation report.

31. Mr. Qasem submits that, on appeal, he has provided video evidence of a different interaction between him and the HCC.²² On 5 December 2021, the HCC entered Mr. Qasem’s place of work without authorization and “with no formal business” and during a pending conflict between them. Mr. Qasem resorted to recording the interaction on his mobile phone to avoid further fabrications by the HCC and “his accomplices”. The video recording is clear in its content. The HCC acted in a provocative and threatening manner. The staff were heard and seen intervening and standing to separate the HCC from Mr. Qasem. The HCC was resisting calls for him to leave the premises. He concluded his unauthorized entry by pointing his index finger at Mr. Qasem and threatening him personally and publicly. This video recording should cast serious doubts on the authenticity of the allegations against Mr. Qasem and is unequivocal evidence of continuing intimidation.

²¹ Disciplinary Measures Letter dated 24 October 2021, page 1.

²² Annex 5 to Mr. Qasem’s appeal.

32. Mr. Qasem claims that the UNRWA DT “ignored” the Appeals Tribunal Judgment in *Loubani*.²³ The UNRWA DT should have been “guided” by it to “take appropriate similar remedies [...] to address the Agency’s failure” for not having disclosed the identity of the witnesses during the disciplinary process.

33. Mr. Qasem submits that he is “alarmed by [the] indifference shown by the UNRWA [DT] in establishing facts and accountabilities” when it “dismissed the importance of the kicking allegations”.

34. Mr. Qasem asserts that the UNRWA DT did not address all of his claims submitted in his submissions following the disclosure of the investigation report.

35. Mr. Qasem submits that the UNRWA DT made contradictory statements regarding his claim of “institutional bias”.

36. Mr. Qasem alleges that there is a “long history of mismanagement of threats” by the HCC proving “chronic mismanagement”.

37. Mr. Qasem “seeks justice” and requests the Appeals Tribunal to rescind the contested decision. He seeks compensation for financial, personal, professional and social losses suffered as a result of previous and ongoing mismanagement and discrimination.

The Commissioner-General’s Answer

38. As a preliminary matter, the Commissioner-General opposes Mr. Qasem’s request for an oral hearing on grounds that it would not assist in the expeditious and fair disposal of the case as the facts and record clearly define the issues for decision on appeal.

39. The Commissioner-General avers that the appeal should be dismissed because Mr. Qasem has failed to identify any grounds of appeal by citation to any provisions of Article 2(1) of the UNAT Statute. Mr. Qasem largely repeats submissions made to the Agency during the disciplinary process and before the UNRWA DT, which alone does not establish a reversible error warranting intervention by the UNAT.

²³ *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.

40. Should the UNAT not dismiss the appeal for failure to satisfy Article 2(1) of the UNAT Statute, then, the Commissioner-General submits that the appeal has no merit. The appeal fails to establish any reversible error of fact, law, or procedure by the UNRWA DT warranting intervention by the UNAT.

41. The Commissioner-General contends that the UNDT did not commit a reversible error by not holding an oral hearing. Unlike the Rules of Procedure of the United Nations Dispute Tribunal, which provide that a hearing will “normally” be held following an appeal against an administrative decision imposing a disciplinary measure, there is no similar provision in either the UNRWA DT’s Statute or its Rules of Procedure. The absence of this statutory compulsion for the UNRWA DT to hold a hearing underscores that it falls within the UNRWA DT’s wide discretion in case management to determine whether it has sufficient information to render a decision. In the present case, the UNRWA DT duly considered Mr. Qasem’s request and properly exercised its discretion when denying it. The factual and legal issues were clearly defined, and the record was clear and sufficient.

42. In this regard, the Commissioner-General recalls that, after the disclosure of the (unredacted) investigation report, the UNRWA DT admitted into the record additional pleadings and evidence submitted by Mr. Qasem. In reaching its decision, the UNRWA DT also considered that Mr. Qasem had not challenged the credibility of three witnesses whose evidence alone was sufficient to find that he had physically assaulted the HCC and was the primary aggressor and that his other claims, even if substantiated, would not have changed that conclusion. Apart from his bald claim, Mr. Qasem has failed to explain, let alone establish, how the UNRWA DT’s denial of his request for an oral hearing was an error of procedure that affected the outcome of the case. Accordingly, the UNRWA DT’s decision was a proper exercise of its wide discretion in case management, and Mr. Qasem has not shown otherwise.

43. The Commissioner-General contends that contrary to Mr. Qasem’s claims, the UNRWA DT did not “ignore” *Loubani*. Specifically, the UNRWA DT cited *Loubani* when it found that the Agency’s failure to provide Mr. Qasem with a copy of the investigation report during the disciplinary process was a due process violation. Mr. Qasem’s suggestion that because the UNAT in *Loubani* modified the sanction imposed in that case means that it was an error for the UNRWA DT not to do so in the present case is misguided. Other factors that were involved in *Loubani* that contributed to the UNAT’s decision to intervene to modify the sanction are absent from the present case (e.g., unlike the instant case, in *Loubani* the disclosed copy of the investigation report was

redacted and the UNRWA DT found that Mr. Loubani had not been given the opportunity to address aggravating factors).

44. Further, after noting the due process violation (citing *Loubani*), the UNRWA DT correctly considered its impact and concluded that there was no evidence to show that the outcome of the case would have been different had the Agency timely disclosed the identities of Wo3 to Wo8. The UNRWA DT further found that Mr. Qasem had had a meaningful opportunity to respond and defend himself given the questions asked of him during his interview and the information provided to him in the OTR letter.

45. The Commissioner-General recalls that the UNRWA DT granted Mr. Qasem's requests to supplement the record, which he did "generously". As noted above, the UNRWA DT noted that after disclosure of the investigation report, Mr. Qasem did not challenge the credibility of three witnesses whose testimony alone was sufficient to establish that he had physically assaulted the HCC. Notably, Mr. Qasem does not address the UNRWA DT's findings in this regard, let alone explain how they were in error. He simply claims that the UNRWA DT should have taken "appropriate remedies". This is insufficient to establish a reversible error.

46. The Commissioner-General submits that Mr. Qasem's remaining submissions and requested reliefs can be disregarded. Many are bald assertions and others misconstrue the impugned Judgment. Importantly, Mr. Qasem fails to explain how any of these undermine the lawfulness of the contested decision. Mr. Qasem also fails to recognize that the UNRWA DT is under no obligation to address every claim.

47. Finally, the Commissioner-General submits that there is no basis upon which to grant any of the requested reliefs given that the contested decision was properly affected. The UNAT has made clear that rescission and compensation cannot be ordered where there is no illegality and that compensation for moral harm must be supported by evidence. The Commissioner-General requests the UNAT to dismiss the appeal and affirm the impugned Judgment.

Considerations

48. The issues in the appeal are whether the UNRWA Dispute Tribunal erred in the impugned Judgment and whether it erred in denying Mr. Qasem's request for an oral hearing in the UNRWA Dispute Tribunal proceedings.

Preliminary Matter: Request for an Oral Hearing before the Appeals Tribunal

49. As a preliminary matter, Mr. Qasem’s request for an oral hearing before the Appeals Tribunal was denied for the following reasons.

50. Article 18(1) of the Appeals Tribunal’s Rules of Procedure (Rules) provides that the Appeals Tribunal may hold oral hearings on the written application of a party or on their own initiative if such hearings would assist in the expeditious and fair disposal of the case.

51. Mr. Qasem’s request for an oral hearing before the Appeals Tribunal to interview witnesses and address any queries is not persuasive and does not justify an oral hearing. Given the role of the Appeals Tribunal, the purpose of a hearing before the UNAT is not to adduce or hear evidence at first instance but to determine whether the first instance tribunal erred on questions of law, fact, jurisdiction or procedure. Except in exceptional circumstances, the Appeals Tribunal makes this determination generally from the record. Therefore, we do not find that an oral hearing would “assist in the expeditious and fair disposal of the case”, as required by Article 18(1) of the Rules.

Did the UNRWA Dispute Tribunal err in the Impugned Judgment?

52. The Appeals Tribunal has consistently emphasized that, on appeal, a staff member cannot merely repeat the arguments that did not succeed before the first instance body. The function of the Appeals Tribunal is to determine if the first instance body made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as prescribed in Article 2(1) of the Appeals Tribunal Statute. An appellant has the burden of identifying the alleged defects in the impugned judgment and state the grounds relied upon in asserting that the judgment is defective.²⁴

53. We do not disagree with the Commissioner-General that Mr. Qasem has failed to adequately identify his grounds of appeal or errors of law, fact, jurisdiction or procedure. However, we also consider that he is self-represented, and we have previously held that there must be some leeway given to self-represented parties in this regard.²⁵ Therefore, we will review the merits of the appeal.

²⁴ *Cherneva v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-870, para. 30; *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, para. 19.

²⁵ *Eduardo Alvear v. Secretary General of the International Civil Aviation Organization*, Judgment No. 2024-UNAT-1464, para. 33.

Merits of the Appeal

54. In reviewing disciplinary cases, it is well settled that the task of the UNDT is to determine whether: i) the facts on which the sanction is based are established according to the evidentiary standard (which is on a preponderance of evidence if separation is not a likely outcome); ii) the established facts qualify as misconduct in terms of the applicable legal framework; iii) the sanction is proportionate to the misconduct; and iv) there has been due process or procedural fairness by the original decision-maker,²⁶ which in this instance is the Agency.

i) Establishment of the Facts on which the Sanction is based

55. Mr. Qasem was charged with committing “physical assault by pushing” the HCC.²⁷ In the contested decision, the decision-maker stated that the Investigators found that Mr. Qasem had engaged in misconduct, namely “physical assault, by kicking and pushing [the HCC] to ground” and that this constituted workplace violence.²⁸

56. In the impugned Judgment, the UNRWA DT upheld the contested decision and found, on a preponderance of evidence, that Mr. Qasem had physically assaulted the HCC. In doing so, it relied on the “totality of the evidence” which consisted of the evidence obtained during the investigation and the written material provided by the parties in the UNRWA DT proceedings.²⁹

57. We note that Mr. Qasem does not dispute that he was involved in a physical altercation with the HCC on the date in question. In the interview with the Investigators, Mr. Qasem admits that he pushed the HCC with his hand and that he and the HCC were both pushing each other inside the room. He also confirms that the HCC was on the ground. This is also corroborated by the testimony of witnesses interviewed in the investigation, three of whom were present during the altercation. Further, in the appeal submissions, Mr. Qasem does not deny that he physically pushed the HCC or that the HCC ended up on the ground.

²⁶ *AAC v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1370, para. 38.

²⁷ OTR Letter, page 4.

²⁸ Disciplinary Measures Letter, pages 1, 2 and 7.

²⁹ Impugned Judgment, para. 54.

58. But Mr. Qasem disputes the UNRWA DT's findings that he initiated the altercation, "kicked" the HCC and was "restrained" by others. In the UNRWA DT application, Mr. Qasem stated that the HCC "initiated the physical contact with his body and I defended myself by pushing back".³⁰

59. The UNRWA DT found that Mr. Qasem "initiated physical contact with the HCC and was the primary aggressor" and stated he had to be "restrained".³¹ It made no specific finding on whether Mr. Qasem "kicked" the HCC. Mr. Qasem argues that the UNRWA DT erred in making these findings.

60. We accept the UNRWA DT's factual findings are based on the testimonies of witnesses as reported in the investigation report which is hearsay. Normally if there are facts established by witnesses that are in dispute, which in the present case is whether Mr. Qasem acted in self-defense, "kicked" the HCC, or was "restrained", an oral hearing would be required to properly determine the factual issues particularly if there is contradictory or inconsistent evidence and testimonies. The UNRWA DT did not make a finding on whether Mr. Qasem "kicked" the HCC so any inconsistencies or contradictions between witnesses on this point are not significant.

61. In the disciplinary process, an investigation report prepared will contain largely hearsay evidence as it contains evidence not tendered by a witness at the proceedings before the UNDT but evidence reported on by an investigator. The UNDT, as the first instance tribunal, may consider it inadmissible, or it may be given less weight than direct evidence given by a witness before the UNDT as the first instance tribunal. What weight will be given to the investigation report and whether an oral hearing will be ordered will depend on the circumstances of the case and on an assessment of the totality of evidence. This includes whether there exist material factual disputes on key issues; whether corroborating evidence such as video and other evidence exists; whether significant due process violations have occurred during the investigation; and the severity of the sanction imposed. Thus, while hearsay evidence has its intrinsic limitations and drawbacks, it nevertheless is admissible in appropriate circumstances with the requirement that it be treated with caution.³²

³⁰ UNDT application, page 10.

³¹ Impugned Judgment, paras. 53 and 54.

³² See *AAY v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1493, para. 54.

62. In the present case, what is critical is that there is no dispute that Mr. Qasem, a supervisor, pushed the HCC during an altercation in front of other employees and in the workplace. It is also undisputed that the HCC ended up on the ground. In our view, this alone is sufficient to establish the finding of misconduct. Mr. Qasem had a senior role in the workplace and as such had an obligation to lead by example in creating and fostering a psychologically safe work environment for all staff. In resorting to violence, he did not do so.

63. Unlike the UNRWA Dispute Tribunal, the investigation report did not come to a conclusion on who initiated the assault or who was the primary aggressor and whether Mr. Qasem had to be “restrained”. The UNRWA Dispute Tribunal relied on the fact that no witness corroborated the allegation of self-defense or the fact that Mr. Qasem had to be “restrained”.³³ In the report, Wo7 and Wo8 refer to Mr. Qasem being “held” by staff, but the UNRWA DT inferred from this evidence that Mr. Qasem was being “restrained” which further implies that he was physically being prevented from attacking the HCC. Without clear evidence or hearing witness testimony on this, the UNRWA Dispute Tribunal’s conclusion on this point is a speculative inference.

64. However, any error by the UNRWA DT in making this finding of fact, namely that Mr. Qasem needed to be restrained, did not result in a manifestly unreasonable decision as the established facts were sufficient to make a finding of misconduct.

65. As for Mr. Qasem’s argument that he acted in self-defense, he says that he pushed the HCC only after “he physically pushed me with his body” and he felt that the HCC “could hurt” him. He does not provide any details of what he means by the HCC “pushing” him “with his body”. This could mean many things such as the HCC standing too close or nudging him. If this is the meaning, it is difficult to view this as requiring a self-defense response.

66. Self-defense does not allow people to use force because they think it justified or in response to provocation, but rather when it is necessary to combat imminent harm. In order to act out of self-defense, the individual must be faced with a real or perceived threat to their safety. Mr. Qasem has not provided any evidence that he was faced with a physical threat or imminent harm. For example, there is no indication that the HCC hit or attempted to hit Mr. Qasem or that the HCC jumped at Mr. Qasem which would cause Mr. Qasem to defend himself by pushing the HCC. None of the three witnesses present during the entire altercation reported any such provocation by the

³³ Impugned Judgment, para. 53.

HCC. As for Mr. Qasem saying he “felt” the HCC “could hurt him”, again, there must be some reasonable basis for Mr. Qasem to believe this and that it was a necessary and reasonable use of force to push the HCC

67. Further, in the context of the workplace and Mr. Qasem’s supervisory relationship with the HCC, even if we accept that there was a degree of provocation by the HCC, it was simply improper for Mr. Qasem to assault the HCC and does not exculpate Mr. Qasem’s use of force in these circumstances. Mr. Qasem was a supervisor in the workplace and as such had an obligation to defuse arguments and tense situations, particularly in front of other employees. There is no indication that he was unable to do so and had to resort to a physical response due to the behaviour of the HCC.

68. Therefore, we find that the UNRWA Dispute Tribunal did not err on the question of whether Mr. Qasem committed physical assault and whether he acted in self-defense. Consequently, the UNRWA DT correctly held that it had been established on a preponderance of the evidence that Mr. Qasem physically assaulted the HCC.

ii) Whether the Established Facts amount to Misconduct and Whether the Sanction is Proportional

69. UNRWA Area Staff Regulation 1.4 provides in relevant part that:

Staff members shall conduct themselves at all times in a manner befitting their status as employees of the Agency. They shall not engage in any activity that is incompatible with the proper discharge of their duties with the Agency. They shall avoid any action and in particular any kind of public pronouncement which may adversely reflect on their status, or on the integrity, independence and impartiality which are required by that status.

70. UNRWA Area Staff Rule 110.1(1) stipulates that:

Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the UNRWA Area Staff Regulations and UNRWA Area Staff Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct.

71. Situations of physical violence are dealt with in General Staff Circular No. 01/2013 on the Prohibition of Violence. Paragraph 2 provides that: “All forms of violence, including against children, by UNRWA staff and other personnel in the course of their duties and/or in UNRWA

installations are strictly prohibited at all times and under *all conditions and circumstances*, and as such are considered misconduct.”³⁴

72. Also, under Jordan Staff Circular No. J/22/2015 on Workplace Violence, “[v]iolent behaviour in the workplace is unacceptable from anyone.... Workplace violence is any incident in which a staff member is abused, threatened, or assaulted by colleagues. A work-related assault can, and usually will, amount to serious misconduct[.]”

73. Based on the established fact that Mr. Qasem physically assaulted the HCC in the workplace, he engaged in workplace violence and failed to observe the standards of conduct expected of an international civil servant. As such, he violated the UNRWA Staff Regulations and Rules and the administrative issuances against workplace violence. This amounted to misconduct.

74. In the contested decision, the Agency imposed a written censure and a fine equivalent to two months’ salary. In the impugned Judgment, the UNRWA Dispute Tribunal held these disciplinary measures were proportionate to the nature and gravity of the misconduct.³⁵

75. We find that the UNRWA Dispute Tribunal did not err in making this finding. Mr. Qasem was in a position of authority as a supervisor and as such should not have engaged, but tried to avoid, a physical altercation with a subordinate. Pursuant to the *Handbook on Ethics and the standards of Conduct Applicable to UNRWA Personnel, Serving Ethically*, 2013, paragraphs 3.1 and 3.6, Mr. Qasem was obligated to “be patient, respectful and courteous to all persons ... including ... colleagues” and “[a]s a manager/supervisor ... be open to the views of all team members and ... encourage them to contribute from their knowledge and experience to team efforts”.

76. The imposed disciplinary sanctions of a written censure and fine are among the least severe that the Agency could have imposed on Mr. Qasem for engaging in workplace violence. The Agency appropriately considered the aggravating and mitigating factors and exercised its discretion appropriately and proportionally in imposing the sanctions.

³⁴ Emphasis added.

³⁵ Impugned Judgment, paras. 60 and 61.

iii) Procedural Fairness of the Investigation Process

77. In the application before the UNRWA Dispute Tribunal, Mr. Qasem argued that the Agency: i) failed to disclose relevant information (the identities of adverse witnesses, the fact that three witnesses alleged that he had kicked the HCC, the fact that the HCC claimed to have suffered serious injuries, and the HCC's medical report); ii) failed to provide him the opportunity to confront the adverse witnesses; iii) failed to consider relevant evidence; and iv) displayed institutional bias against him.³⁶

78. The UNRWA Dispute Tribunal found that the Agency should have disclosed the identity of the witnesses during the disciplinary process and as such the Agency failed to respect Mr. Qasem's due process rights.

79. We agree and find there were due process violations in the disciplinary process, the most significant of which was the Agency's failure to provide a copy of the investigation report to Mr. Qasem before he was asked to provide his response to the OTR Letter.

80. As we have previously held in *Loubani*, a staff member is entitled to a copy of the investigation report during the disciplinary process, "at least at the conclusion of the former's investigation and before it determined what was to be the outcome of the investigation's findings".³⁷ In fact, we have held that this is a "fundamental element of workplace natural justice".³⁸ This is because, in order for a staff member to have a "meaningful opportunity to respond", s/he must know the allegations against them, be presented with relevant, credible and significant evidence collected during the investigation, and be given an opportunity to respond before the contested decision is made. Otherwise, the staff member does not have an adequate opportunity to defend themselves against the allegations.³⁹

81. In the present case, not only was Mr. Qasem not provided with the investigation report, but he was also not provided with sufficient details of the case against him during the investigation interview. In that interview, the Investigators asked Mr. Qasem general questions such as what happened on 28 February 2021, why he went to the HCC's office, whether he "kicked him" on the "ass" or "below his knee", his justification for pushing, whether Mr. Qasem

³⁶ *Ibid.* paras. 32 and 62.

³⁷ *Loubani* Judgment, *op. cit.*, para. 41.

³⁸ *Ibid.*

³⁹ *Jafar Hilmi Wakid v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2022-UNAT-1194, para. 71.

threatened the HCC, and who else was present. However, the Investigators did not put to Mr. Qasem the identities of witnesses they had interviewed and what their evidence was. This was required for a proper investigation.

82. Therefore, we are troubled that he was not given an opportunity to respond to that evidence or to explain during the interview.

83. Despite this lack of due process and procedural fairness, the UNRWA Dispute Tribunal was correct that “it is necessary to weigh the significance of the failure against what would have been the outcome had the failure(s) not occurred”⁴⁰ which is what the UNRWA DT did in the impugned Judgment.

84. We agree with the UNRWA DT that there is an insufficient basis to find that the due process violation in the investigation and disciplinary process had an impact on the outcome on the case, but we arrive at this conclusion for different reasons.

85. Despite our concern that Mr. Qasem did not know the specific details of the case against him including having a copy of the investigation report that included the identities and testimonies of the witnesses that were interviewed, we note that the admitted and undisputed facts are sufficient to make a finding of misconduct. By Mr. Qasem’s evidence alone, there is a sufficient basis to support the allegation of physical assault as he does not dispute that he pushed the HCC in the workplace and an insufficient basis to make a claim of self-defense.

86. Therefore, we find that the significance of the due process failures did not outweigh the outcome or establishment of the facts had the failures not occurred.

Denial of an Oral Hearing by the UNRWA Dispute Tribunal

87. Mr. Qasem also submits that there were due process violations during the UNRWA Dispute Tribunal proceedings by its denial to hold an oral hearing to afford him the opportunity to challenge the evidence against him as contained in the investigation report.

⁴⁰ *Loubani* Judgment, *op. cit.*, para. 43.

88. During the UNRWA Dispute Tribunal prehearing process, Mr. Qasem requested an oral hearing in order to “call witnesses to testify in support of his claims of bias, witness tampering, and falsification of evidence”.⁴¹

89. In paragraph 44 of the impugned Judgment, the UNRWA Dispute Tribunal denied the request for an oral hearing on the basis that a review of the record was sufficient to render a judgment specifically as Mr. Qasem “ha[d] not challenged the credibility of three witnesses [presumably Wo2, Wo3, and Wo6 who were present during the incident] whose evidence alone is sufficient to find by a preponderance of the evidence that he physically assaulted the HCC and was the primary aggressor”.

90. Article 2(1)(d) of the UNAT Statute provides that the Appeals Tribunal has competence to hear and pass judgment on an appeal against a Dispute Tribunal’s judgment concerning an error in procedure “such as to affect the decision of the case”. Therefore, the question is whether the UNRWA DT’s refusal to hold an oral hearing was an error of procedure that affected the decision of the case.

91. Article 11(1) of the UNRWA Dispute Tribunal Rules of Procedure gives the UNRWA DT the discretion to hold a hearing as it provides that “[t]he Judge hearing a case *may* hold oral hearings”.⁴²

92. The Appeals Tribunal previously held in *Mbaigolmem* that as cases of alleged misconduct typically require determination of disputed factual issues, this is best done in “an oral hearing involving an adversarial fact-finding process which tests the credibility, reliability and probabilities of the relevant testimony”. Further, as a factual finding of misconduct is of serious import, “the determination of misconduct should preferably be done in an oral hearing”.⁴³

93. However, we have also held that “an oral hearing and cross-examination will not be required in all disciplinary cases”.⁴⁴ Further in *Shumba*, the Appeals Tribunal held that whether an oral hearing will be required “will depend on the circumstances of the case before the UNDT. For example, there may be documentary, audio or video evidence or circumstances surrounding

⁴¹ Impugned Judgment, para. 42.

⁴² Emphasis added.

⁴³ *Mbaigolmem v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-819, para. 26.

⁴⁴ *Applicant v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1187, para. 58.

the parties or witnesses that may support not holding an oral hearing.”⁴⁵ This is also the case if there are admissions of facts or undisputed facts that are present that will support not holding an oral hearing.⁴⁶

94. In the present case, we note some discrepancies and inconsistencies in the witnesses’ versions of the incident as reported by the Investigators. For example, the Investigators reported that Wo2 stated that after Mr. Qasem pushed the HCC, he “kicked” him with his legs and “continued kicking with his leg”.⁴⁷ However, Wo3, who was also present, stated that Mr. Qasem did not kick the HCC with his leg.⁴⁸ Wo5 and Wo6 stated that they saw Mr. Qasem kicking but the other witnesses did not.⁴⁹

95. However, these inconsistencies are ultimately not material as the undisputed facts and admissions are sufficient to establish that Mr. Qasem physically assaulted the HCC without the need to have “an adversarial fact-finding process which tests the credibility, reliability and probabilities of the relevant testimony”.

96. In declining the request for an oral hearing in case management, the UNRWA Dispute Tribunal appropriately considered the undisputed facts and admissions and evidence that independently corroborated the facts such as the investigation record, copies of e-mails, and other evidence.

97. We find that the UNRWA Dispute Tribunal Judge exercised her discretion judiciously in not holding a hearing in the circumstances of this case and that the lack of a hearing did not “affect the decision of the case”.

98. For the reasons set out above, we dismiss the appeal.

⁴⁵ *Humphreys Timothy Shumba v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1384, para. 74 (internal footnote omitted).

⁴⁶ Cf. *Ray Steven Millan v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1448, paras. 49 and 52; *Michael David Antoine v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1449, para. 47.

⁴⁷ Investigation Report, page 9.

⁴⁸ *Ibid.*, page 10.

⁴⁹ *Ibid.*, page 11.

Judgment

99. Mr. Qasem's appeal is dismissed, and Judgment No. UNRWA/DT/2023/037 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 25th day of October 2024 in New York, United States.

(Signed)

Judge Sandhu, Presiding

(Signed)

Judge Savage

(Signed)

Judge Forbang

Judgment published and entered into the Register on this 11th day of December 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar