UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2024-UNAT-1506

Amjad Al-Thaher

(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.:	2024-1893
Date of Decision:	25 October 2024
Date of Publication:	20 December 2024
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Amer Abu Khalaf, LOSA
Counsel for Respondent:	Stephen Margetts

JUDGE ABDELMOHSEN SHEHA, PRESIDING.

1. Mr. Amjad Al-Thaher (Mr. Al-Thaher), a former staff member with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) contested the decision not to select him for the position of Chief Area Office (CAO), Grade 20, All Areas (contested decision).

2. On 30 November 2023, by Judgment No. UNRWA/DT/2023/046 (impugned Judgment),[1] the Dispute Tribunal of UNRWA (UNRWA DT or UNRWA Dispute Tribunal) granted Mr. Al-Thaher's application, rescinded the contested decision, fixed the alternative compensation in lieu of rescission at JOD 1,494 and rejected all his other claims.

3. Mr. Al-Thaher lodged an appeal with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).

4. For the reasons set out below, the Appeals Tribunal grants the appeal and modifies the impugned Judgment.

Facts and Procedure

5. Mr. Al-Thaher joined the Agency in 1995. At the relevant time of events, he was employed as the Head, Field Information and Communications Technology Office, Grade 18, Step 21, Jordan Field Office (JFO).

6. On 16 June 2019, the Agency advertised two posts of CAO, Grade 20, All Areas, fixed-term appointment (FTA) (the position or the position of CAO) under Vacancy Announcement (VA) JF/16/2019.[2] The minimum qualifications for the position included, *inter alia*, an "[a]dvanced university degree in business, public administration, political science, sociology or other related discipline" and "a[t] least ten years of relevant experience of which five years should have been in a large governmental or international organization at a senior level".[3] VA JF/16/2019 further stated that "[w]hen the minimum requirements are not fully met, the Field Director may exceptionally substitute part of the unmet requirements with a combination of

[1] *Al-Thaher v. Commissioner-General of the United Nations and Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2023/046.
[2] VA JF/16/2019 dated 16 June 2019.
[3] *Ibid.*

relevant academic qualifications, additional professional training and progressive relevant work experience".[4]

7. On 25 September 2019, the Agency re-advertised the two posts for an additional month.[5]

8. The Agency received a total of 335 applications for the position, including that of Mr. Al-Thaher. Twenty-eight candidates, including Mr. Al-Thaher, were shortlisted and invited for a written test. According to the Commissioner-General, "[24] of the shortlisted candidates were 'Tranche 1', meaning that they met all VA requirements, and four of the shortlisted candidates were 'Tranche 2', meaning they met some but not all of the minimum VA requirements".[6] Out of that number, six candidates, including Mr. Al-Thaher, scored above the passing grade of 60 per cent, were shortlisted and invited for an interview. Regarding the educational qualifications, candidates 1 (Mr. Al-Thaher) and 3 had master's degrees, while candidates 2, 4, 5, and 6 had bachelor's degrees. Moreover, according to the Commissioner-General, candidates 5 and 6 were Tranche 2 candidates.[7]

9. On 16 September 2020, the Agency requested the Director of UNRWA Affairs, Jordan, to determine if candidates 5 and 6 met the requirements on equivalency basis for the position. In its request, the Agency indicated that both candidates "met the VA requirements on an equivalency basis because their first-level university degrees were supplemented by additional years of experience".[8]

10. On 20 September 2020, Mr. Al-Thaher was interviewed by an interview panel. The interview panel rated Mr. Al-Thaher's responses as fully satisfactory for one of the five assessed competencies and partially satisfactory for four competencies; therefore, he was not recommended for the position.[9] Two candidates, namely candidates 5 and 6, were recommended for selection for the two posts.

[4] *Ibid*.
[5] VA JF/16/2019 dated 25 September 2019.
[6] Impugned Judgment, para. 8.
[7] *Ibid*., paras. 9-10.
[8] *Ibid*., para. 12. See also Grading and equivalency determination form prepared on 16 September 2020.
[9] Recruitment report dated 28 September 2020.

11. On 28 September 2020, the Director of UNRWA Affairs, Jordan, approved the Agency's request for equivalency determination of candidates 5 and 6, as well as the recommendation of the interview panel that they be appointed to the vacant posts of CAO.[10]

12. On 25 November 2020, Mr. Al-Thaher was notified by letter that he had not been selected for the position.[11]

13. On 9 December 2020, Mr. Al-Thaher requested a review of the contested decision.[12] On 13 January 2021, the Director of Health of UNRWA responded to Mr. Al-Thaher's request, concluding that the selection exercise had been conducted in accordance with the legal framework of the Agency and upholding the contested decision.[13]

14. On 1 February 2021, Mr. Al-Thaher filed an application with the UNRWA Dispute Tribunal challenging the contested decision.

Impugned Judgment

15. On 30 November 2023, the UNRWA Dispute Tribunal issued the impugned Judgment. On the merits of the case, the UNRWA DT found that the Agency improperly shortlisted candidates that did not meet educational requirements, including the two recommended candidates 5 and 6. The UNRWA DT held that "once the Agency elected to require advanced university degree, candidates with only a bachelor's degree could only be shortlisted on an equivalency basis".[14] Relying on UNRWA Area Personnel Directive No. A/4/Part II/Rev.7/Section I (PD A/4), the UNRWA DT highlighted that "candidates can be considered on an equivalency basis in only two cases: (1) if an insufficient number of candidates (approximately five or less) meet the minimum VA requirements for shortlisting, or (2) if an insufficient number of candidates remain after any later stage of the recruitment".[15] Therefore, in the present case, it held that the Agency had no discretion to shortlist four additional candidates who did not meet all the VA requirements, since 24 candidates meeting all the criteria had already been shortlisted.

[10] *Ibid.* See also Grading and equivalency determination form approved on 28 September 2020.
[11] Letter dated 25 November 2020 from the Human Resources Department of UNRWA, JFO to Mr. Al-Thaher.
[12] Request for decision review dated 9 December 2020.
[13] Decision review dated 13 January 2020. We note that the year indicated is 2020. This appears to be a mistake, as the correct date is 13 January 2021.
[14] Impugned Judgment, para. 33.
[15] *Ibid.*, para. 34.

16. The UNRWA DT then addressed Mr. Al-Thaher's contention that his interview started 17 minutes late, resulting in a loss of 30% of his scheduled time. The UNRWA DT concluded that Mr. Al-Thaher did not provide clear and convincing evidence that he received less time than scheduled for the interview, nor that this impacted his ability to perform successfully.[16] The UNRWA DT also rejected all of Mr. Al-Thaher's other allegations of procedural errors.[17]

17. The UNRWA DT then examined Mr. Al-Thaher's allegations of bias. It dismissed his argument that the Director of UNRWA Affairs, Jordan was biased against him, finding that the evidence he submitted did not establish a conflict of interest but indicated a workplace disagreement.[18] Moreover, although the UNRWA DT found some evidence that the recruitment process was biased in favor of candidate 5, it held that Mr. Al-Thaher failed to provide clear and convincing evidence that candidate 5 "was shortlisted despite being ineligible because he was, in fact, a favoured candidate for the post".[19]

18. Therefore, the UNRWA DT concluded that had candidates 2, 4, 5 and 6 not been improperly shortlisted, Mr. Al-Thaher would have had a significant chance of being selected for the position, as only he and candidate 3 would have passed the written test and proceeded to interviews.[20]

19. On this basis, the UNRWA DT rescinded the contested decision. With regard to the alternative compensation in lieu of rescission, the UNRWA DT set it at JOD 1,494. In determining the appropriate amount of compensation, the UNRWA DT provided the following reasoning:[21]

> ... [H]ad the recruitment proceeded properly, only [Mr. Al-Thaher] and [candidate] 3 would have passed the test. At this point, due to the low number of remaining candidates in the recruitment, the Agency could have brought additional candidates into the recruitment under the equivalency process outlined in PD A/4, paragraph 45. Given the totality of factors and evidence considered above, the Tribunal sets [Mr. Al-Thaher]'s likelihood of selection at one-fourth.
>
> ... At the time of the contested decision, [Mr. Al-Thaher]'s monthly salary at Grade 18, Step 21, was [JOD] 3,154 (...). The recruitment was for a [FTA] for three years with a one-year probationary period and a minimum monthly salary of JOD 3,652, including [Mr. Al-Thaher]'s entitlement to Special Occupational Allowance of 89.32 [per cent] of basic

[16] *Ibid.*, paras. 37-41.
[17] *Ibid.*, paras. 42-45.
[18] *Ibid.*, paras. 46-49.
[19] *Ibid.*, para. 50.
[20] *Ibid.*, paras. 51-52.
[21] *Ibid.*, paras. 56-57.

> salary. The monthly salary difference was thus JOD 498. In view of all these considerations, and in light of its broad discretionary authority the Tribunal considers JOD 1,494 to be an appropriate amount of compensation, representing approximately one-fourth of the salary difference for one year.

20. Last, the UNRWA DT rejected Mr. Al-Thaher's request for moral damages, finding that there was insufficient evidence to establish that he suffered compensable harm.[22] It also rejected his requests for an official apology from the Agency and for possible action to enforce accountability.[23]

Procedure before the Appeals Tribunal

21. On 16 January 2024, Mr. Al-Thaher filed an appeal against the impugned Judgment, to which the Commissioner-General responded on 15 March 2024.

Submissions

Mr. Al-Thaher's Appeal

22. Mr. Al-Thaher requests the Appeals Tribunal to reverse the impugned Judgment to the extent of the award in the sum of JOD 1,494 as compensation in lieu of rescission of the contested decision and instead award the amount of JOD 17,928. He also requests the Appeals Tribunal to order the Agency to pay him JOD 14,000 for "financial loss relating to retirement indemnities".[24]

23. Mr. Al-Thaher submits that the UNRWA DT erred in law and in fact in its calculation of the compensation in lieu of rescission, resulting in an amount that is "unjust and inadequate considering all the circumstances of the case".

24. In this regard, Mr. Al-Thaher first contends that the UNRWA DT erred in law by limiting the length of his tenure for the position to one year, despite it being an FTA. He argues that this conclusion is not supported by any evidence, asserting that, pursuant to Appeals Tribunal jurisprudence, the UNRWA DT was obligated to demonstrate the basis for its compensation

[22] *Ibid*., para. 58.
[23] *Ibid*., paras. 59-61.
[24] Appeal form.

determination.[25] Furthermore, relying on *Faten Hatim Al Dawoud*,[26] Mr. Al-Thaher argues that the UNRWA DT's decision to limit the compensation to one year "presupposes cessation at the instigation of the Agency at the end of the post's one-year probationary period", although there was no evidence to support such a conclusion. Therefore, Mr. Al-Thaher submits that the appropriate amount of compensation should be calculated over a period of three years (i.e., 36 months), representing the duration of the FTA for the position.

25. Second, Mr. Al-Thaher contends that the UNRWA DT erred in law and in fact by finding that had candidates 2, 4, 5 and 6 not been improperly shortlisted, his chance of selection for the position would have been at one-fourth. In this regard, he submits that the UNRWA DT improperly relied solely on paragraph 45 of PD A/4 instead of considering it in conjunction with paragraphs 12 to 17 of Module 2 of the UNRWA Area Staff Selection Guidelines (Guidelines) contained in PD A/4, which state that the Agency cannot bring in additional candidates on an equivalency basis, as this process only applies before the shortlisting of candidates and not afterwards. Consequently, Mr. Al-Thaher asserts that since "the initial recruitment was already completed when 28 candidates, 24 of which (including [Mr. Al-Thaher] and [candidate] 3) fully met the post requirements, were already shortlisted, and subjected to a written test", the equivalency process could not have applied.

26. Moreover, Mr. Al-Thaher argues that the UNRWA DT's determination that his chance of selection was at one-fourth is not supported by any evidence. Indeed, he notes that since "the UNRWA DT could not ascertain how many other candidates (...) the [Agency] would have added to [him] and [candidate] 3, then fixing [his] chances of success for the selection of the post would be, with the greatest respect, a mere conjuncture". Therefore, Mr. Al-Thaher contends that since he and candidate 3 were the only two qualified candidates who successfully completed the written test, and because two posts of CAO were available, his chance of selection would have been 100 per cent.

27. Last, Mr. Al-Thaher submits that the UNRWA DT erred in law by failing to consider his request for compensation for retirement benefits that he would have earned had he been selected for the position.

[25] *Emile Abdel Rahman Dabbour v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1096, paras. 23-24.
[26] *Faten Hatim Al Dawoud v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2023-UNAT-1402, paras. 23 and 51-52.

The Commissioner-General's Answer

28. The Commissioner-General requests the Appeals Tribunal to dismiss the appeal and affirm the impugned Judgment.

29. The Commissioner-General submits that Mr. Al-Thaher failed to establish any reversible error in the impugned Judgment warranting the intervention of the Appeals Tribunal. In this regard, the Commissioner-General observes that it "is not sufficient for an appellant to state that he or she disagrees with the outcome of the case or repeat the arguments submitted before the [UNRWA] Dispute Tribunal".[27]

30. The Commissioner-General specifically contends that the UNRWA DT did not commit reversible error when determining the amount of compensation in lieu of rescission. On the contrary, the Commissioner-General asserts that the UNRWA DT's findings were well-reasoned and that it "properly and sufficiently addressed how it arrived at its award of compensation in lieu of rescission for one of the two available posts".

31. The Commissioner-General argues that the UNRWA DT appropriately limited the compensation in lieu to the one-year probationary period. The Commissioner-General submits that Mr. Al-Thaher's reliance on *Faten Hatim Al Dawoud* is misplaced, noting that the facts and circumstances of that case differ significantly from those in the present case.[28] Specifically, the Commissioner-General highlights that, in the present case, among the six candidates interviewed, three performed better than Mr. Al-Thaher in terms of competencies. In contrast, in *Faten Hatim Al Dawoud*, there was no evidence suggesting that the Agency would have deemed Ms. Al Dawoud unsuitable for the position she applied for during the probationary period. In any event, the Commissioner-General notes that Mr. Al-Thaher's claim that the amount of compensation should have been calculated over a period of three years (i.e., 36 months) is, at most, inaccurate. Indeed, the Commissioner-General further observes that Mr. Al-Thaher would have served in the position for a maximum of 34 months, as he retired effective 12 November 2023, the date on which he reached retirement age.

32. The Commissioner-General highlights that, as correctly held by the UNRWA DT in the impugned Judgment, in non-selection cases, several factors, including, *inter alia*, "the salary

[27] *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29.
[28] *Faten Hatim Al Dawoud* Judgment, *op. cit.*

difference, the contract duration, the number of other candidates reaching the final stage of the selection process (…), the probationary period, (…) and the possibility of the abolition of the post in question" are taken into consideration by tribunals to determine the appropriate amount of compensation in lieu of rescission.[29] In the present case, the Commissioner-General contends that the UNRWA DT's finding that, had the recruitment process been executed properly, Mr. Al-Thaher's chance of selection would have been at one-fourth is consistent with the evidence presented before it, which indicates that six candidates successfully completed the written test and were shortlisted for the two available posts, with some qualifying based on equivalency. Given these circumstances, it is reasonable to assume that the Agency would have considered bringing in at least two, and potentially up to four, additional candidates to ensure a competitive recruitment process.

33. In this regard, the Commissioner-General also submits that Mr. Al-Thaher's submission that the equivalency process applies only before the shortlisting of the candidates is misguided and misinterprets the legal framework applicable to the present case. Indeed, the Commissioner-General observes that paragraphs 45 and 46 of PD A/4 clearly provide for the possibility that the Agency may decide to bring in additional candidates on an equivalency basis during a second review after the shortlisting process. Additionally, the Commissioner-General notes that Mr. Al-Thaher's interpretation of paragraphs 12 to 17 of Module 2 of the Guidelines is misguided and further highlights that these Guidelines cannot undermine or otherwise conflict with PD A/4. Therefore, the Commissioner-General submits that Mr. Al-Thaher's contention that he had a 100 per cent chance of selection is inconsistent with PD A/4.

34. Last, the Commissioner-General contends that Mr. Al-Thaher's submission that the UNRWA DT erroneously rejected his request for compensation for retirement benefits is unfounded and speculative. The Commissioner-General further observes that the UNRWA DT was not required to address every and each claim advanced by him, especially if those claims lacked merit.

Considerations

35. Mr. Al-Thaher raises two main challenges in the impugned Judgment. Firstly, he submits that the UNRWA DT erred in its award of compensation in lieu of rescission. Secondly,

[29] Impugned Judgment, para. 55.

he contends that the UNRWA DT failed to consider his claim for retirement benefits, which should reflect the rescission of the contested decision.

36. For the sake of clarity, we shall address each of these claims separately below.

Did the UNRWA DT err in fact or in law in its award of compensation in lieu?

37. Mr. Al-Thaher contends that the UNRWA DT erred in two respects: i) by setting his chance of selection for the position at one-fourth; and ii) by limiting the salary difference due to him at one year of service in the position of CAO.

i) Mr. Al-Thaher's chance of selection

38. In the impugned Judgment, the UNRWA DT reviewed PD A/4. On this basis, it found that, if Mr. Al-Thaher and candidate 3 were the only candidates eligible for the interview process, the Agency would likely have conducted a second review of applicants to include more candidates in the selection process on an equivalency basis, preserving the competitiveness of the exercise. Accordingly, the UNRWA DT estimated that Mr. Al-Thaher's chance of being selected for the position of CAO would have been, in such an exercise, at one-fourth.[30]

39. Mr. Al-Thaher takes issue with that determination, contending that the UNRWA DT committed an error of law. More specifically, Mr. Al-Thaher submits that the UNRWA Dispute Tribunal placed "heavy reliance" on paragraph 45 of PD A/4, that was read "in isolation" of Module 2 of the Guidelines. Mr. Al-Thaher contends that a combined reading of paragraph 45 of PD A/4, together with its Guidelines, reveals that the Agency cannot bring additional candidates on an equivalency basis after the shortlisting phase. Since he and candidate 3 were the only ones to succeed in the written test and were admitted to the interview, it was not possible for the Agency to include other candidates at that late stage of the selection process. Therefore, given that there were two vacant posts of CAO, his chance for selection, like that of candidate 3, was 100 per cent. Mr. Al-Thaher also submits that the UNRWA DT's determination of his chance for selection at one-fourth was "a mere conjecture", as the UNRWA Dispute Tribunal did not give a clear basis thereto.

40. We recall our consistent jurisprudence that administrative manuals and guidelines lack legal authority, as they are not intended to create substantive rights or obligations for the

[30] *Ibid.*, para. 56.

addressees. They give practical advice to UNRWA management personnel while they undertake their professional duties.[31] They are subject and subordinate to relevant rules and regulations and to contractual rights and obligations. While such guidelines may be, in some circumstances, a helpful interpretative tool, and/or useful in understanding administrative practice, these issuances are not binding and cannot modify or supplement the rights and obligations specifically provided for under formal regulations, rules, directives, and policies.

41. As expressed under its main title, the Guidelines of PD A/4 represent "Recommended Recruitment Practices"; or, as expressed under subtitle "Overview", a compendium of "best practices". Consequently, those Guidelines are not binding, and their breach will not necessarily render the contested decision unlawful. A decision can and must be upheld if it has lawful grounds in accordance with the applicable binding rules of PD A/4.

42. Under subtitle "Second review and equivalency" of PD A/4, paragraphs 45 and 46 provide, in relevant parts:[32]

> If an insufficient number of candidates who fully meet the post requirements remain during *or* at the end of the assessment process, the Hiring Director can request the Recruitment Administrator to conduct a second review of applications received to identify further potential candidates.
>
> Where, as a result of a second review, applicants are identified who are potentially suitable but do not fully meet the post requirements set out in the vacancy notice, the Hiring Director has the option to request an equivalency determination from the Recruitment Administrator. (…)

43. In addition, under subtitle "Equivalency determinations" of the same Personnel Directive, paragraph 70 reads:

> In cases where there are insufficient candidates who fully meet the post requirements, candidates with an equivalent combination of relevant academic qualifications, professional training and progressive work experience may also be considered. Equivalency determinations will be made by the Recruitment Administrator, and approved by the respective Field Director for posts in the Field, and the Chief of the Personnel Services Division for posts in HQ.

[31] *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-744, para. 38; *Asariotis v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-496, paras. 21-22.
[32] Emphasis added.

44. It follows, especially from paragraph 45 of PD A/4, that the Agency may conduct a second review and equivalency, not only "during" the assessment process, but also "at the end" of such assessment. Although PD A/4 does not define what is meant by "assessment", the term is mentioned in several instances in this Personnel Directive in conjunction with the terms "test" and "interview".[33] This suggests that the assessment covers the evaluation of candidates from the longlisting phase onwards. It follows that, contrary to Mr. Al-Thaher's claim, the Agency may consider a second review and equivalency at any stage of the selection exercise. Therefore, we find that the UNRWA DT did not err when it considered that the Agency could have brought additional candidates on an equivalency basis after the shortlisting process. Mr. Al-Thaher's contention in this regard cannot, therefore, succeed.

45. This leads us to Mr. Al-Thaher's second contention that the UNRWA DT failed to provide an accurate basis for setting his chance of selection at one-fourth.

46. We recall that calculating the amount of compensation in lieu is "not an exact science".[34] Consequently, this determination is context-specific, and the UNAT gives discretion to the first instance tribunal, with which it will not lightly interfere. However, this does not mean that the first instance tribunal's discretion is unfettered. The UNRWA DT must show that it had adopted a principled approach, leading to a reasoned award.[35]

47. In the present case, the UNRWA DT considered the possibility that the Agency would have brought additional candidates on an equivalency basis under PD A/4 and determined that Mr. Al-Thaher's chance of selection was at one-fourth.

48. We agree with Mr. Al-Thaher that the UNRWA DT did not provide a clear basis for its determination. The UNRWA DT only referred to paragraph 45 of PD A/4, without providing an explicit estimation of how many candidates would have been included.

49. However, we uphold the UNRWA DT's determination of one-fourth a chance of selection on alternative grounds. In light of the Agency's practice, the sufficient number of candidates for a competitive exercise is "normally" between three to five candidates per

[33] See paragraphs 39 and 49 of PD A/4.
[34] *Chhikara v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-723, para. 56.
[35] *Afm Badrul Alam v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1214, para. 23.

vacancy.[36] Therefore, it could be reasonable to expect that the Agency would have brought more candidates to reach the average of that number, i.e., four candidates per vacant post.[37] Considering Mr. Al-Thaher's performance in the interview, and absent sufficient proof of bias or partiality, we then find that a one-fourth chance of selection was not unreasonable in the circumstances. Mr. Al-Thaher's contentions in this regard must, therefore, be denied.

ii) The expected duration of Mr. Al-Thaher's service in the position of CAO

50. In the impugned Judgment, the UNRWA DT observed that the duration of the contract for the position of CAO was three years, with a probationary period of one year. Relying on Appeals Tribunal jurisprudence,[38] the UNRWA DT fixed the amount of compensation in lieu to cover a period of one year, which we reasonably infer to be the equivalent of the probationary period.

51. Mr. Al-Thaher takes issue with that determination. Relying on *Emile Abdel Rahman Dabbour*,[39] he submits that the UNRWA DT failed to address how it reached its determination. He contends that there was no evidence on the record to suggest that he would have been terminated for unsatisfactory performance following the probationary period. Relying on *Faten Hatim Al Dawoud*,[40] which he alleges holds strong similarities with his case, Mr. Al-Thaher submits that the UNRWA DT should have considered the full duration of three years of the contract for the position in determining the amount of compensation in lieu.

52. We partially agree with Mr. Al-Thaher.

53. Indeed, we have held in many instances that determining the amount of compensation in lieu entails a calculation of probabilities, as the staff member may not serve out the full duration of their contract for several reasons, including the abolition of the post, illness, or

[36] This appears to be the Agency's practice as reflected in paragraph 12 of Module 2 of the Guidelines. Although these Guidelines do not have normative authority, as stated earlier, they nevertheless provide information on the Agency's practice in matters of recruitment.
[37] The Agency could also have cancelled the vacancy announcement and re-advertised the post if a sufficient number of qualified candidates, even on equivalency basis, had not been found.
[38] *Boubacar Dieng* v. *Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1118, para. 75; *Rantisi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-528, para. 71.
[39] *Emile Abdel Rahman Dabbour* Judgment, *op. cit.*, paras. 23-24.
[40] *Faten Hatim Al Dawoud* Judgment, *op. cit.*, para. 51.

resignation.[41] These reasons may also include the termination of service for unsatisfactory performance following the probationary period. It follows that the probationary period is one of the possibilities that should normally be considered when setting the amount of compensation in lieu. This does not mean that the first instance tribunal must limit the estimated duration of service in all cases to a period equivalent to the probationary period. This could only be the case when evidence on the record suggests that the candidate's service would possibly be terminated for unsatisfactory service following the end of the probationary period.[42]

54. As rightly submitted by Mr. Al-Thaher, there was no reason on the record for the UNRWA DT to assume that he would have been separated from service following unsatisfactory performance after the probationary period. In so deciding, we find that the UNRWA DT erred in fact, resulting in a manifestly unreasonable decision.

55. This does not mean that we will grant Mr. Al-Thaher's request to be compensated for the full duration of the contract, i.e., three years. In this regard, Mr. Al-Thaher's reliance on *Faten Hatim Al Dawoud* is misplaced. Ms. Al Dawoud's case differs from typical circumstances. In that case, the UNAT varied the period considered by the UNRWA DT to 36 months instead of 12 months (i.e., the probationary period), reflecting the fact that the position of Deputy Chief, Field Infrastructure and Camp Improvement Programme (FICIP), for which Ms. Al Dawoud applied, was an FTA with a total duration of three years. This is because Ms. Al Dawoud was unlawfully excluded from the selection exercise for the position of Deputy Chief, FICIP, while she was already rostered for the higher position of Chief, FICIP. In that case, we emphasized that "[t]here [was] not only no evidence supporting that conclusion, but the evidence before the UNRWA DT tended to confirm the probability of her full-term tenure of that admittedly fixed-term role".[43] Therefore, the UNAT found it unreasonable for the UNRWA DT to limit her compensation in lieu to cover only the one-year probationary period and granted her compensation in lieu that reflected the specificity of her case.

[41] *Shanthi Hejamadi v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1083, paras. 43-45; *Chhikara* Judgment, *op. cit*, para. 55.
[42] *Faten Hatim Al Dawoud* Judgment, *op. cit*., para. 51.
[43] *Ibid.*

56. Considering the probabilities of Mr. Al-Thaher serving in the position, we find it reasonable to set the amount of compensation in lieu to cover the duration of two (out of three) years of the contract of CAO.

57. As determined by the UNRWA DT, the annual salary of Mr. Al-Thaher at Grade 18, Step 21 was JOD 37,848, while the minimum annual salary for the position of CAO was JOD 43,824, resulting in an annual salary difference of JOD 5,976. Calculated for the period of two years, this amounts to JOD 11,952. One-fourth of that amount, or JOD 2,988, is the sum to which we find Mr. Al-Thaher is entitled.

Did the UNRWA DT err by not considering Mr. Al-Thaher's claim for retirement benefits?

58. In his application before the UNRWA DT, Mr. Al-Thaher requested compensation for the difference in indemnities at the retirement age, corresponding to 30 months, which he estimated to be the equivalent to JOD 30,000. The UNRWA DT referred to Mr. Al-Thaher's claim as one of material damages,[44] but did not address that claim in its considerations.

59. The Commissioner-General opposes Mr. Al-Thaher's contention. He argues that the UNRWA DT was correct in dismissing his request, as the Tribunal is not required to address every claim made by the parties, especially when such claim has no merit. He also contends that Mr. Al-Thaher's claim was speculative, as it assumed a continuation of service beyond the one-year probationary period.

60. We grant Mr. Al-Thaher's appeal on this point.

61. Article 2(1) of the Appeals Tribunal Statute provides, in relevant part:

> The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:
> …
> (b) Failed to exercise jurisdiction vested in it;

[44] Impugned Judgment, para. 19.

62. Indeed, we have held that the first instance tribunal is not required to address each and every claim made by an applicant, especially when such claim lacks merit.[45] However, we find that Mr. Al-Thaher's claim had serious merit, and the UNRWA DT should have addressed his claim after deciding to award compensation in lieu. By failing to do so, we find that the UNRWA DT ruled *infra petita*, falling short of his request, thus failing to exercise the jurisdiction vested in it.

63. Since Mr. Al-Thaher's claim is a direct consequence of the UNRWA DT's determination of the unlawfulness of his non-selection, and in the interests of judicial economy, we shall address his request without remand.

64. We recall that compensation in lieu represents the economic or pecuniary value of rescission. Compensation in lieu is calculated by appropriately assessing the financial entitlements that would normally result from retrospective reinstatement. The purpose of such compensation is to put the staff member in the same position as if the contested decision had not been taken.[46] As such, Mr. Al-Thaher's request for retirement benefits fits squarely within the parameters of compensation in lieu.

65. UNRWA Area Staff Rule 109.2 on retirement on grounds of age provides, in relevant part:

> 5. A staff member who has completed not less than ten years of qualifying service shall, upon retirement on grounds of age under this rule, become eligible to receive a standard retirement benefit computed as 11 percent of ending annual base salary for each year of qualifying service through 2014, and as 12 percent of ending annual base salary for each year of qualifying service from 2015 on. Benefits under this rule shall be calculated by prorating to the last full month of qualifying service. In cases where a staff member has periods of qualifying service of less than one full month both before and after 2015, and the total number of days of such service are greater than or equal to 30 days, then the staff member will be credited with one additional month of qualifying service at 12 percent of the ending monthly base salary.
> ...

[45] *Abu Jarbou v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-292, para. 47; *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153, para. 50.
[46] *Jafar Hilmi Wakid v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2024-UNAT-1417, paras. 81-82.

> 7. For the purposes of this rule ending annual base salary shall mean the monthly base salary as defined in staff rule 112.3(D), as at the date of retirement, multiplied by 12.

66. As affirmed previously, Mr. Al-Thaher had a significant chance of selection for the position of CAO, for which compensation in lieu of one-fourth of the net salary difference, covering a two-year period, was ordered. Since the position of CAO was higher than his position of Head, Field Information and Communications Technology Office, we find that he is eligible to receive one-fourth of the retirement benefits for that period of two years as part of the compensation in lieu.

67. Pursuant to UNRWA Area Staff Rule 109.2(5) and (7), retirement benefits are calculated at 12 per cent of the ending annual base salary for each year of service from 2015 onward. In the present case, this represents the difference between Mr. Al-Thaher's annual salary at Grade 18, Step 21, and the minimum annual salary for the position of CAO. Since the annual salary at Grade 18, Step 21, was JOD 37,848, and the minimum annual salary for the position of CAO was JOD 43,824, the annual difference is JOD 5,976. Calculated for the period of two years, this amounts to JOD 11,952. Twelve per cent of that amount is JOD 1,434.24. As Mr. Al-Thaher is entitled to only one-fourth of that amount, then he is entitled, as part of his compensation in lieu, to the amount of JOD 358.56.

68. For these reasons, Mr. Al-Thaher's appeal is granted.

Judgment

69. Mr. Al-Thaher's appeal is granted, and Judgment No. UNRWA/DT/2023/046 is hereby modified. The amount of compensation in lieu is modified to the extent that the amount awarded to Mr. Al-Thaher is increased to JOD 2,988, representing one-fourth of the net base salary difference over a two-year period.

70. Mr. Al-Thaher's claim for retirement benefits, as part of the compensation in lieu, is granted in the amount of JOD 358.56.

71. The amount of compensation in lieu ordered here-above in the amount of JOD 2,988 shall be payable with interest at the U.S. Prime Rate accruing from the date on which Mr. Al-Thaher was notified of his non-selection to the date of payment. The amount of retirement benefits ordered as part of the compensation in lieu, in the amount of JOD 358.56, shall be payable with interest at the U.S. Prime Rate, accruing from Mr. Al-Thaher's date of retirement to the date of payment.

72. If the amount of compensation in lieu ordered is not paid within the 60-day period counting from the date of issuance of this Judgment, interest at the U.S. Prime Rate plus an additional five per cent shall accrue until the date of payment.

Original and Authoritative Version: English

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

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

Judgment published and entered into the Register on this 20th day of December 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar