



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

Judgment No. 2024-UNAT-1510

**Mohamed Haider Elmenshawy
(Appellant)**
v.
**Commissioner General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East
(Respondent)**

JUDGMENT

Before:	Judge Nassib G. Ziadé, Presiding Judge Kanwaldeep Sandhu Judge Leslie F. Forbang
Case No.:	2023-1866
Date of Decision:	25 October 2024
Date of Publication:	30 December 2024
Registrar:	Juliet E. Johnson

Counsel for Appellant:	George G. Irving
Counsel for Respondent:	Stephen Margetts

JUDGE NASSIB G. ZIADÉ, PRESIDING.

1. Mr. Mohamed Haider Elmenshawy, a former employee of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) has filed an appeal of Judgment No. UNRWA/DT/2023/034¹ rendered by the UNRWA Dispute Tribunal (UNRWA DT or Dispute Tribunal).
2. In the impugned Judgment, the UNRWA DT had dismissed Mr. Elmenshawy's application, in which he contested his separation from service with compensation in lieu of notice and with termination indemnity (contested decision).
3. For the reasons set out herein, the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

4. Effective 1 March 2019, Mr. Elmenshawy was serving as Chief of Security Operations and Analysis, Grade P-5, at UNRWA Headquarters in Amman, Jordan (HQA).
5. On 29 August 2019, the Agency advertised the post of Director, Department of Security and Risk Management (D/DSRM), Grade D-1. Mr. Elmenshawy applied but was not selected. He challenged his non-selection for this position, but the UNRWA DT denied his application as not receivable, and on appeal, the UNAT affirmed.²
6. The individual who was selected for the D/DSRM position assumed his post on 20 April 2020. Mr. Elmenshawy had been serving as Acting D/DSRM prior to his arrival.
7. On 15 September 2020, the Department of Internal Oversight Services (DIOS) received a complaint submitted by the newly appointed D/DSRM including several allegations against Mr. Elmenshawy. Among them, the D/DSRM stated that Mr. Elmenshawy was reluctant to accept his appointment, was withholding institutional knowledge, and had told colleagues that he, the D/DSRM, was an Israeli spy.

¹ *Elmenshawy v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2023/034 (07 September 2023) (impugned Judgment).

² *Mohamed Haider Elmenshawy v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1176.

8. DIOS decided to limit its investigation to the following three allegations concerning harassment and abuse of power; however, it reviewed information concerning possible breaches of confidential information as part of the overall context:³

- a) Mr. Elmenshawy told colleagues that the D/DSRM was an Israeli spy;
- b) Mr. Elmenshawy harassed a former staff member leading to his resignation from the Agency; and
- c) Mr. Elmenshawy directed staff to show loyalty to him and not to follow the D/DSRM's direction.

9. On 17 October 2020, the Commissioner-General placed Mr. Elmenshawy on Administrative Leave with Pay (ALWP).

10. From October to December 2020, DIOS interviewed the D/DSRM and seven other witnesses. These witnesses were: W01 (a P-4 staff member who reported to Mr. Elmenshawy and resigned allegedly due to harassment by him), W02 (a G17 senior security officer who reported directly to Mr. Elmenshawy), W03 (a G14 security officer at HQA who reported to W02), W04 (a P-3 Field Security Officer at the Gaza Field Office), W05 (a P-3 Field Security Officer at the West Bank Field Office), W06 (a former staff member in DSRM who briefly worked for Mr. Elmenshawy, but never overlapped with the D/DSRM), and W07 (a G8 staff member in the Lebanon Field Office). DIOS also interviewed Mr. Elmenshawy.

11. On 23 December 2020, DIOS issued its Investigation Report. The main conclusions related to the witness statements were the following:

- a) W02 was very specific that Mr. Elmenshawy said that the D/DSRM is an Israeli spy; W01 said that Mr. Elmenshawy also mentioned this to him, but without any details. Mr. Elmenshawy emphatically denied this, but said he had a conversation with W02 about the *Mukhabarat* intelligence services which could have been misinterpreted. Overall, DIOS concluded it was likely that Mr. Elmenshawy uttered comments about the D/DSRM being an Israeli spy.⁴

³ Department of Internal Oversight Services, Investigation Division, Investigation of Allegations of Harassment by a Senior HQA Staff Member (Investigation Report), para. 4.

⁴ Investigation Report, paras. 141-142.

- b) WO1 and WO2 gave detailed credible evidence in support of alleged harassment of WO1. WO1 claimed that his experience working with Mr. Elmenshaw was the reason for his resignation; WO2 confirmed the same. WO4 stated that Mr. Elmenshaw's tone could be due to cultural mannerisms and was overall supportive of Mr. Elmenshaw's character. WO3 and WO6 gave only partial corroboration of a workplace with poor staff relations. DIOS found it likely that Mr. Elmenshaw was aggressive and harassed WO1 and WO2.⁵
- c) Although Mr. Elmenshaw denied expecting staff to show loyalty to him over the D/DSRM, consistent evidence was provided by WO1 and WO2 that Mr. Elmenshaw did indeed demand such loyalty. WO1 gave plausible evidence that Mr. Elmenshaw asked him to choose sides, and when WO1 refused, Mr. Elmenshaw isolated him. WO2 supported WO1's account. Both stated that Mr. Elmenshaw used highly offensive language about the director. DIOS observed that the motivation for this animosity seemed to be related to Mr. Elmenshaw not obtaining the position of D/DSRM, which was repeatedly raised by Mr. Elmenshaw and likely the source of his frustration and adoption of a "with me or against me" management style.⁶
12. DIOS also noted Mr. Elmenshaw's defense that the D/DSRM's allegations were in response to his complaints about the recruitment process for the post of D/DSRM but had not submitted any evidence in support.
13. DIOS further reported that WO5 stated that the D/DSRM had told him in a phone call in March 2020 that Mr. Elmenshaw was not liked by UNRWA senior management and would not last long. Although WO5 said he relayed this to WO4, WO4 did not corroborate this conversation. DIOS noted that this called into question whether the D/DSRM had formed an adverse assessment before taking up his role as D/DSRM in April 2020 but concluded that it did not undermine the testimony of the other witnesses.⁷
14. By letter dated 31 January 2021, the Deputy Commissioner-General issued an Opportunity to Respond (OTR) letter that detailed the findings of the DIOS investigation.⁸

⁵ *Ibid.*, paras. 143-144.

⁶ *Ibid.*, paras. 145-146.

⁷ *Ibid.*, para. 140.

⁸ Misconduct Investigation: Opportunity to Respond Letter, Re: INV-20-0155 (OTR letter).

15. The OTR letter stated that there was sufficient evidence that Mr. Elmenshawy:⁹
- a) Told DSRM colleagues that the D/DSRM was an Israeli spy;
 - b) Harassed a former staff member, WO1, leading to his resignation; and
 - c) Created a hostile work environment in the HQ Security Department expressing animosity against the D/DSRM and expecting DSRM colleagues to side with him over the D/DSRM. This was likely due to his frustrations over the recruitment exercise for the post of D/DSRM.
16. On 15 February 2021, Mr. Elmenshawy provided his response to the OTR letter.¹⁰ He stated that it was difficult to respond in detail because he had not been provided a copy of the Investigation Report. He conveyed his view that the initial complaint and the investigation were part of a pattern of retaliation for his having filed an appeal challenging the selection process for the D/DSRM position. Mr. Elmenshawy argued that this was supported by the statement of WO5 that the D/DSRM had said that Mr. Elmenshawy was not liked by UNRWA senior management and would not last long.¹¹ Mr. Elmenshawy questioned why this was ignored by DIOS.
17. Mr. Elmenshawy suggested that the D/DSRM and the Director of Human Resources (HR) who previously worked together at another United Nations entity were working against him, and that this conflict of interest had not been sufficiently explored.¹²
18. Mr. Elmenshawy also alleged, based on a witness statement he attached, that it was the D/DSRM who had created a hostile work environment in the Department.¹³
19. With regard to the allegation that he had harassed WO1, Mr. Elmenshawy pointed out that he had recruited WO1 and for the brief period that they worked together, had given him a satisfactory performance appraisal. He also argued that WO1 left the Agency for a promotion to head of security in another United Nations entity, and he likely used the harassment allegation as a reason to excuse his early departure from the Agency. Mr. Elmenshawy also questioned as

⁹ OTR letter, p. 3.

¹⁰ 15 February 2021 letter from Mr. Elmenshawy to Deputy Commissioner-General, Response to the investigation findings set out in letter Re: INV-20-0155 (Response to OTR letter).

¹¹ *Ibid.*, paras. 4-5.

¹² *Ibid.*, paras. 6 & 8.

¹³ *Ibid.*, para. 7.

suspicious the fact that WO1 only stated on the date of his departure that he was resigning because of harassment and had not raised this issue earlier.¹⁴

20. Mr. Elmenshawy stated that telling colleagues that the D/DSRM was an Israeli spy was “manufactured gossip” and never “crossed [his] lips”. He stated he had a general conversation with WO2 about surveillance technologies in the global security market.¹⁵

21. Mr. Elmenshawy claimed that he never challenged the D/DSRM’s authority, that he had been cooperative when the D/DSRM first came to the Agency. Mr. Elmenshawy again pointed to the statement of WO5 that the D/DSRM had ill intentions about Mr. Elmenshawy even before he joined. Mr. Elmenshawy argued that he was obliged to report the wrongdoing in the recruitment process for the D/DSRM post.¹⁶

22. On 18 February 2021, the Deputy Commissioner-General conveyed her decision by letter (Disciplinary Sanction letter).¹⁷ She noted that she had reviewed the Investigation Report, Mr. Elmenshawy’s responses to DIOS and to the OTR letter, as well as the 62 attachments he had submitted to DIOS and 19 attachments submitted with his OTR response.

23. After careful consideration, the Deputy Commissioner-General concluded that there was clear and convincing evidence that Mr. Elmenshawy engaged in harassment and abuse of power, amounting to serious misconduct in violation of International Staff Regulations 1.6, 1.9 and 1.13, International Staff Rules 1.2(f) and (g), and General Staff Circulars Nos. 06/2010, 07/2014, and 05/2007.¹⁸

24. More specifically, the Deputy Commissioner-General found the following:¹⁹

Your conduct in relation to claiming to subordinates that the Director, DSRM, is an Israeli spy, shouting, swearing and showing aggressive behavior towards [W]01, leading to his resignation, and towards other subordinates in the DSRM Team, demanding that they show loyalty to you over the Director, DSRM, or face adverse consequences, amounts to both harassment and abuse of power.

¹⁴ *Ibid.*, p. 4.

¹⁵ *Ibid.*, p. 5.

¹⁶ *Ibid.*, p. 6.

¹⁷ 18 February 2021 letter from Deputy Commissioner-General to Mr. Haider [Elmenshawy], Re: INV-20-0155.

¹⁸ *Ibid.*, p. 2.

¹⁹ *Ibid.*

(...)

This type of conduct undermines the trust and confidence reposed on you by UNRWA, trust and confidence which are fundamental to your employment as the Chief of Security Operations and Analysis.

25. The Deputy Commissioner-General concluded that separation from service with compensation in lieu of notice and with termination indemnity was the appropriate sanction. In reaching this decision, she took into account, as a mitigating factor, Mr. Elmenshawy's unblemished record with UNRWA.²⁰ However, she also weighed the aggravating circumstances, including the multiple breaches of different forms of misconduct, the placement of his personal interest above the interests of the Agency when he was in a senior position of trust providing security services, that he denied all forms of wrongdoing, and that the misconduct was of such severity that it would reasonably affect the trust and confidence of managers.

26. On 2 March 2021, Mr. Elmenshawy submitted a Request for Decision Review (RDR). The Commissioner-General advised that he would not review the decision and that Mr. Elmenshawy could proceed directly to the UNRWA DT.²¹

27. The UNRWA DT held a hearing on Mr. Elmenshawy's application on 3-4 October 2022. The witnesses who appeared before the Tribunal were: Mr. Elmenshawy, the D/DSRM, Wo2, Wo3, Wo4, and Wo5. Wo1 refused to appear before the Tribunal, and Wo6 and Wo7 were not asked to testify.²²

Impugned Judgment

28. The UNRWA DT first examined whether the Agency complied with Mr. Elmenshawy's due process rights. Mr. Elmenshawy claimed his due process rights were violated because the disciplinary sanction was imposed before providing him with the complete Investigation Report. The UNRWA DT observed that under Personnel Directive I/10, it is not expressly stated that the staff member is entitled to a copy of the investigation report.²³ The Agency must provide sufficient information so that the staff member may understand and meaningfully respond to the allegations against him.

²⁰ *Ibid.*, p. 3.

²¹ Impugned Judgment, para. 19.

²² *Ibid.*, para. 20.

²³ *Ibid.*, paras. 45-46.

29. The UNRWA DT found that the Agency sufficiently described the allegations and findings in the OTR letter but violated Mr. Elmenshawy's due process rights by failing to provide him with the Investigation Report and the identities of the witnesses against him. However, early in the Dispute Tribunal proceedings, he was provided with a copy of the Investigation Report and exhibits with identities redacted. Prior to the hearing, he received the full unredacted witness statements. At the hearing he was able to cross-examine most of the witnesses. Accordingly, the UNRWA DT concluded that Mr. Elmenshawy had been effectively able to mount a defense and had not demonstrated that the initial due process violation had an impact on the outcome of his case.²⁴

30. The UNRWA DT rejected Mr. Elmenshawy's claim that the DIOS investigators had not considered exculpatory evidence, e.g., W05's statement that the D/DSRM repeated adverse comments made about Mr. Elmenshawy by UNRWA senior management. The Dispute Tribunal found that this statement was considered by the Agency before imposing the disciplinary measure, and that in any event, the allegations were not corroborated. The Dispute Tribunal also considered W05's evidence in the impugned Judgment.²⁵

31. The UNRWA DT found it concerning that W05 testified that a DIOS investigator told Mr. Elmenshawy that he "ha[d] no legs to stand on" but noted that no one called the investigator to testify. Moreover, given the Tribunal's *de novo* review of the evidence, this did not influence the Tribunal's conclusions.²⁶

32. With regard to the hearing, the UNRWA DT was not convinced by W01's excuse that he could not appear due to distress arising from his prior interactions with Mr. Elmenshawy. Accordingly, the Dispute Tribunal held it would treat W01's evidence in the Investigation Report with caution, and generally only rely on it as corroboration of other evidence that was subject to cross-examination.²⁷

33. The UNRWA DT found the evidence of W02, W03, W04 and W05 in the case file and at the hearing to be generally credible, despite their having different impressions of the performance and personality of Mr. Elmenshawy. The UNRWA DT also found the testimony of the D/DSRM to be generally credible. As regards Mr. Elmenshawy, the Dispute Tribunal was "not satisfied that

²⁴ *Ibid.*, paras. 49-50.

²⁵ *Ibid.*, paras. 51-52.

²⁶ *Ibid.*, para. 54.

²⁷ *Ibid.*, para. 56.

[he] was entirely truthful”.²⁸ In particular, the Dispute Tribunal did not find credible that Mr. Elmenshaw did not accuse the D/DSRM of being an Israeli spy, that he had an excellent working relationship with WO1, and that he never used bad words.²⁹

34. The UNRWA DT found that WO2’s sworn testimony that Mr. Elmenshaw told him that the D/DSRM was an Israeli spy was corroborated by the hearsay evidence of WO1 and the D/DSRM’s sworn testimony. The Dispute Tribunal concluded this was established by clear and convincing evidence.³⁰ However, the Dispute Tribunal decided that it was not established that this put the D/DSRM at risk for his safety.³¹

35. The UNRWA DT reviewed the allegations that Mr. Elmenshaw harassed WO1 and forced his resignation. The statements of WO2 and WO1 were that Mr. Elmenshaw pressured them to side with Mr. Elmenshaw against the D/DSRM, and that after WO1 refused, Mr. Elmenshaw stopped speaking to him, including completing WO1’s performance review without speaking to him. WO2 stated that Mr. Elmenshaw referred to WO1 as “this betrayer”.³² WO2 stated that WO1 shared that he resigned in part because of Mr. Elmenshaw; the D/DSRM stated that he received an e-mail from WO1 confirming the same information. WO1’s statement to DIOS contained multiple instances of Mr. Elmenshaw harassing and intimidating him, by demanding loyalty and pressuring him to work against the D/DSRM.³³ The statements of these three individuals were mutually corroborating.

36. The Dispute Tribunal also heard from WO4 and WO5 who praised Mr. Elmenshaw’s managerial skills; however, the Dispute Tribunal noted that as field personnel they acknowledged that they did not have exposure to the office dynamics in Headquarters. Viewed collectively, the UNRWA DT found that it had been established by clear and convincing evidence that Mr. Elmenshaw had harassed WO1 by shouting, behaving aggressively and improperly using his authority to pressure WO1 to side with him against the D/DSRM, and that this caused WO1 to resign.³⁴

²⁸ *Ibid.*, para. 59.

²⁹ *Ibid.*

³⁰ *Ibid.*, paras. 61-66.

³¹ *Ibid.*, para. 69.

³² *Ibid.*, para. 72.

³³ *Ibid.*, para. 74.

³⁴ *Ibid.*, paras. 76-77.

37. With regard to the allegations of Mr. Elmenshawy creating a hostile work environment, the UNRWA DT found that the period in question was between December 2019 and October 2020; however, the staff were rarely in the office due to the pandemic as of March 2020. Moreover, Mr. Elmenshawy went on home leave in June 2020, and shortly after he returned on 1 October 2020, he was placed on ALWP.³⁵

38. The UNRWA DT grouped a wide range of Mr. Elmenshawy's behaviors in the Disciplinary Sanction letter into: (a) his expressing dissatisfaction over not being selected as D/DSRM and pressuring staff to side with him against the D/DSRM; (b) instructing his subordinates, Wo1 and Wo2, not to communicate with the D/DSRM without his permission; (c) failing to provide the D/DSRM with the external hard drive containing key DSRM files and information when the D/DSRM arrived; (d) turning staff members against each other; and (e) using offensive and inappropriate language.³⁶

39. The UNRWA DT reviewed the evidence of Wo2, the D/DSRM and Wo1, all of whom reported that Mr. Elmenshawy insisted that Wo1 and Wo2 work on his side against the D/DSRM so that the D/DSRM would fail and threatened them that they would pay a price if they did not show loyalty to him.³⁷

40. The UNRWA DT recorded that Wo2 and the D/DSRM confirmed that Wo1 and Wo2 had been told by Mr. Elmenshawy that they should not speak to the D/DRSM without his permission, including not even saying "good morning" in the office upon arrival.³⁸

41. The UNRWA DT noted that Mr. Elmenshawy took the hard drive with key DSRM documents on it when he left Jordan on leave, which was then extended due to the pandemic. The D/DRSM testified that he knew the hard drive existed based on prior experience in UNRWA, but when he asked Mr. Elmenshawy about it, the latter did not provide it. Only in July 2020 did Mr. Elmenshawy admit to its existence and apologized for taking it. The D/DSRM finally received it in October 2020, five months after his arrival at post. Wo1 corroborated in his DIOS interview this sequence of events.³⁹

³⁵ *Ibid.*, paras. 79-80.

³⁶ *Ibid.*, para. 81.

³⁷ *Ibid.*, paras. 83-85.

³⁸ *Ibid.*, paras. 86-88.

³⁹ *Ibid.*, paras. 89-91.

42. The UNRWA DT observed that Wo2 stated that Mr. Elmenshawy suggested he terminate his friendship with Wo1 because he was a “betrayed” and that Wo3 was also “his enemy”.⁴⁰ Wo3 described an incident when Mr. Elmenshawy encouraged a security guard to file a police complaint against her.⁴¹

43. The UNRWA DT noted that both Wo2 and Wo3 stated that Mr. Elmenshawy used bad words to swear at people behind their backs. Wo1 in his DIOS interview confirmed the same.⁴²

44. The UNRWA DT found that Wo2, Wo3 and the D/DSRM gave sworn, consistent testimony about Mr. Elmenshawy’s behavior and the hostile work environment that resulted therefrom. Their evidence was significantly corroborated by the additional evidence of Wo1 contained in the Investigation Report. Accordingly, the UNRWA DT found that it was established by clear and convincing evidence that Mr. Elmenshawy created a hostile work environment.⁴³

45. The UNRWA DT held that Mr. Elmenshawy’s actions were in clear violation of the Agency’s regulatory framework, in particular the provisions forbidding harassment and abuse of power. The Dispute Tribunal noted that these are “priority concern” types of misconduct, which may constitute serious misconduct if against “multiple victims” or if the perpetrator is in a position of trust. The Dispute Tribunal found that as Mr. Elmenshawy was a senior international civil servant who occupied a position of trust, his misconduct towards multiple victims constituted serious misconduct.⁴⁴

46. The UNRWA DT acknowledged that the decision to impose a disciplinary measure is within the discretionary authority of the Commissioner-General, and that it would not interfere except in limited circumstances. The Dispute Tribunal reviewed factors prescribed by the UNAT for considering whether a sanction is disproportionate.

47. The UNRWA DT stated that it could not find that the sanction was disproportionate, holding:⁴⁵

[Mr. Elmenshawy] abused his power by harassing and otherwise mistreating his subordinates, he spread lies about his supervisor and tried to obstruct his work, and he significantly contributed to a hostile work environment in the office. This behavior was deliberate, repeated and harmful. The Agency was thus entitled to conclude that this

⁴⁰ *Ibid.*, para. 92.

⁴¹ *Ibid.*, paras. 92-93.

⁴² *Ibid.*, paras. 95-97.

⁴³ *Ibid.*, paras. 103-104.

⁴⁴ *Ibid.*, paras. 105-106.

⁴⁵ *Ibid.*, para. 111.

conduct seriously damaged the employment relation so as to render its continuation intolerable, warranting separation from service.

48. The UNRWA DT acknowledged that Mr. Elmenshawy believed that the disciplinary measure was a product of bias, and it recognized that the D/DSRM did not appreciate Mr. Elmenshawy's behavior and might even have advocated for his removal. However, the Dispute Tribunal considered that this was a product of the problems created by Mr. Elmenshawy and noted that there was no evidence that the Deputy Commissioner-General, who issued the Disciplinary Sanction letter, was biased.⁴⁶

49. The UNRWA DT dismissed Mr. Elmenshawy's application.

50. Mr. Elmenshawy filed an appeal of the impugned Judgment on 24 October 2023; to which the Commissioner-General filed an answer on 5 January 2024.

Submissions

Mr. Elmenshawy's Appeal

51. Mr. Elmenshawy submits that the UNRWA DT failed to follow the Appeals Tribunal Judgment in AAC, namely, by not providing a systematic analysis of the evidence or making explicit findings on the credibility and reliability of the evidence and clearly stating which of the disputed versions it preferred and why.⁴⁷

52. Mr. Elmenshawy submits that the UNRWA DT did not explain why it found his denial of the charge that he had said the D/DSRM was an Israeli spy to be unconvincing.

53. Mr. Elmenshawy submits that with regard to the charge that he harassed his former subordinate WO1, the UNRWA DT should have drawn a negative inference from the fact that WO1 refused to appear at the hearing, rather than rely on WO1's interview statement in the Investigation Report.

54. Mr. Elmenshawy avers that it was a clear violation of his due process rights for the UNRWA DT to rely on WO1's interview statement to support the three allegations against him.

⁴⁶ *Ibid.*, para. 112.

⁴⁷ The Appellant cites *AAC v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1370, paras. 45 and 47.

Mr. Elmenshawy points out that the UNRWA DT did this even though it found that WO1's reasons for not appearing at the hearing were not convincing.

55. Mr. Elmenshawy argues that the UNRWA DT relied on "double hearsay" in drawing its conclusions that he had harassed WO1 leading to his resignation. The UNRWA DT also ignored the evidence of WO5 that WO1 resigned due to the toxic work environment at UNRWA caused by senior management, not Mr. Elmenshawy.

56. Mr. Elmenshawy claims that the UNRWA DT improperly expanded the charge of creating a hostile work environment beyond what was discussed in the Disciplinary Sanction letter. The UNRWA DT included other issues, such as Mr. Elmenshawy's complaints about his non-selection for the post of D/DSRM and withholding the hard drive from the D/DSRM.

57. Mr. Elmenshawy submits that the most significant error of the UNRWA DT is that despite the fact that it found the testimony of WO4 and WO5 to be "extremely concerning", it held that it had no impact on the outcome of the impugned Judgment. The UNRWA DT refused to consider the possibility of bias or pre-existing animus against Mr. Elmenshawy.

58. Mr. Elmenshawy points out that WO5 testified that the D/DSRM had a pre-determined negative opinion about him that was apparently shared by officials at Headquarters. WO4 also shared concerns about Mr. Elmenshawy's career after what he heard from WO5.

59. Mr. Elmenshawy submits that the animus towards him likely arose from his mistaken identification with the prior discredited regime at UNRWA as well as his challenge to his non-selection for the D/DSRM post.

60. Mr. Elmenshawy argues that the UNRWA DT incorrectly assumed that the testimony of WO4 and WO5 was less important because their interaction was more limited. This is incorrect. Mr. Elmenshawy worked on a daily basis with WO5 and had frequent interactions with WO4.

61. Mr. Elmenshawy argues that the UNRWA DT ignored several serious matters given in evidence by WO4 and WO5: (i) the toxic working environment, (ii) the intent by the D/DSRM to remove him prior to the D/DSRM's arrival at UNRWA, (iii) Mr. Elmenshawy's positive management style, (iv) the close working relationship between Mr. Elmenshawy and WO4 and WO5, and (v) WO1's unreliability as a witness.

62. Mr. Elmenshawy also avers that the UNRWA DT ignored WO5's testimony that Mr. Elmenshawy had been targeted because he supported his subordinates' grievances against several senior UNRWA staff.

63. Mr. Elmenshawy states that WO4 reported that conditions for the staff became better after Mr. Elmenshawy came to UNRWA. The UNRWA DT also ignored WO4's testimony that the D/DSRM lacked integrity, had a propensity for lying, and had an autocratic style, including going after anyone who opposed him.

64. Mr. Elmenshawy submits that WO5 confirmed that the investigators' interview of him was improper and that they asked leading questions and omitted facts.

65. Mr. Elmenshawy claims that the UNRWA DT accepted the testimony of the D/DSRM at face value, although the D/DSRM admitted that he had never raised concerns about Mr. Elmenshawy's behavior.

66. Mr. Elmenshawy submits that the UNRWA DT erred in ignoring that WO1's testimony was imprecise and WO3 actually requested protection from the UNRWA DT given that the office environment was still toxic, long after Mr. Elmenshawy's departure.

67. Mr. Elmenshawy points out that the UNRWA DT erred in failing to consider Mr. Elmenshawy's repeated requests for protection against retaliation for having challenged the selection process of the D/DSRM before the UNRWA DT and the UNAT.

68. Mr. Elmenshawy submits that the UNRWA DT ignored his unblemished service in seven different United Nations entities over 21 years in high-risk environment areas. The UNRWA DT did not acknowledge as a mitigating factor his surviving the 19 August 2003 attack on the Canal Hotel in Baghdad, evacuating United Nations staff from Iraq in 2003 and Afghanistan in 2021, and a direct assassination attempt in Pakistan due to his involvement in the UNICEF polio campaign in 2021.

69. Mr. Elmenshawy argues that the UNRWA DT unfairly shifted the burden of proof to him when it accepted the information in the Investigation Report as unchallenged because neither party requested the investigator to testify.

70. Mr. Elmenshawy submits that the UNRWA DT was wrong to dismiss as inconsequential the failure of the Agency to provide him the Investigation Report until the Dispute Tribunal proceedings. The lack of the Report hindered his ability to respond effectively to the charges and prepare his defense.

71. Mr. Elmenshawy argues that the UNRWA DT erred in refusing to allow him to call the Director of HR as a witness, when this individual was central to Mr. Elmenshawy's allegations of bias.

72. Mr. Elmenshawy submits that the UNRWA DT failed to consider that two witnesses who did testify were in direct reporting lines to the D/DSRM after Mr. Elmenshawy was removed from his post. All of the Commissioner-General's witnesses were in positions subordinate to the D/DSRM and their testimonies reflected close coordination. The UNRWA DT found this proof of consistency, rather than considering other scenarios.

73. Mr. Elmenshawy points out that the UNRWA DT acknowledged, at paragraph 55 of the impugned Judgment, that there was bias in the conduct of the UNRWA investigation.

74. Mr. Elmenshawy submits that the UNRWA DT committed a further error of law with regard to the disciplinary sanction by failing to consider whether other alternatives were available other than cutting short his career six days before the expiry of his contract. The UNRWA DT failed to consider whether termination was really the necessary sanction for this misconduct.

75. Mr. Elmenshawy submits that he has been severely injured, not only by losing his career with the United Nations, but also due to the impact on his reputation by being labeled a harasser and placed on an internet blacklist.

76. Mr. Elmenshawy requests that the Appeals Tribunal reverse the impugned Judgment, and that the contested decision be rescinded, or in the alternative, he be paid three years' net base salary given the exceptional circumstances, as well as compensation for loss of pension entitlements, damage to personal and professional reputation, and loss of career opportunities.

The Commissioner-General's Answer

77. The Commissioner-General submits that the UNRWA DT correctly concluded that the three allegations for which Mr. Elmenshawy had been disciplined were established by clear and

convincing evidence. The UNRWA DT reached this conclusion after consideration of an extensive documentary record and a two-day oral hearing during which six witnesses testified, including Mr. Elmenshawy and the complainant, the D/DSRM.

78. The Commissioner-General submits that the UNRWA DT appropriately recognized that harassment and abuse of power are a priority concern of the Agency, and that having considered the totality of the evidence, the sanction of separation from service was not disproportionate to the established misconduct.

79. The Commissioner-General avers that the UNRWA DT was correct to find that Mr. Elmenshawy received the Investigation Report early in the judicial proceedings, and thus the earlier denial of the Report did not impact his ability to mount a defence to his case. Accordingly, the Commissioner-General requests that the UNAT dismiss the appeal and affirm the impugned Judgment.

80. The Commissioner-General contends that Mr. Elmenshawy's complaint that the UNRWA DT failed to assess the evidence, ignored evidence, or otherwise did not provide a reasoned judgment, are without merit.

81. The Commissioner-General submits that contrary to Mr. Elmenshawy's claim, there is no similarity between the UNRWA DT's analysis in this case and the Dispute Tribunal's analysis in the AAC case. Unlike in AAC, the UNRWA DT did not simply accept the misconduct as proven based on the investigation report, but carefully considered the testimony of the witnesses before it and explained its assessment of the disputed facts.

82. The Commissioner-General rejects Mr. Elmenshawy's contention that the UNRWA DT failed to explain why it did not credit his denial that he ever stated that the D/DSRM was an Israeli spy. The UNRWA DT clearly stated that it found Mr. Elmenshawy's denial unconvincing because it credited the D/DSRM and Wo2's sworn testimony during the hearing to this effect, which was corroborated by the witness statement of Wo1 in the Investigation Report. Moreover, the UNRWA DT did not find Mr. Elmenshawy to be "entirely truthful".

83. The Commissioner-General denies Mr. Elmenshawy's claim that the UNRWA DT erred in failing to draw a negative inference from the fact that Wo1 did not appear in person to testify at the hearing. The Commissioner-General points out that the UNRWA DT expressly noted that Mr. Elmenshawy had been denied the opportunity to cross-examine Wo1 and that the Tribunal

would treat WO1's interview statement in the Investigation Report "with appropriate caution". The Tribunal's limited use of the statement as corroboration was not an error. The UNRWA DT was judicious in its reliance on WO1's statement.

84. The Commissioner-General submits that the UNRWA DT was not obliged to address every submission of Mr. Elmenshaw, such as other reasons why WO1 may have resigned, or that Mr. Elmenshaw was supposedly targeted. The UNRWA DT was required to deliver a reasoned judgment based on the totality of the evidence, which it did.

85. The Commissioner-General submits that Mr. Elmenshaw's claim that the UNRWA DT "improperly expanded" the third allegation of hostile work environment is without merit. The OTR letter and the Disciplinary Sanction letter described a wide range of behaviours which the UNRWA DT merely grouped into types for the purpose of examining the evidence.

86. The Commissioner-General contends that the UNRWA DT committed no error in finding that WO4 and WO5's testimony about possible bias had no impact on the outcome. The Dispute Tribunal made such a finding because it conducted a *de novo* review of the evidence and relied on its own assessment of the credibility and reliability of the various witnesses.

87. The Commissioner-General submits that Mr. Elmenshaw merely disagrees with the impugned Judgment but has failed to show that the contested decision was arbitrary or capricious, motivated by prejudice, or flawed by procedural irregularity or error of law.

88. The Commissioner-General submits that the UNRWA DT properly followed UNAT jurisprudence that the Dispute Tribunals will only interfere with disciplinary measures if they are blatantly illegal or absurd in their severity. There was no reversible error by the UNRWA DT in concluding that the sanction was not disproportionate.

89. The Commissioner-General points out that contrary to Mr. Elmenshaw's submissions, his long service in the Organization was considered a mitigating factor in the contested decision.

90. The Commissioner-General argues that the Agency did not impose the most severe sanction, which would have been summary dismissal or separation without termination indemnity. Moreover, Mr. Elmenshaw failed to address the UNRWA DT's observation that the Agency had the right to conclude that his conduct had so damaged the employment relationship so as to render its continuation intolerable and warranted separation from service.

91. The Commissioner-General submits that Mr. Elmenshawy failed to explain why the failure to provide the Investigation Report at an earlier stage would warrant vitiating the contested decision. Mr. Elmenshawy did not address the Dispute Tribunal's finding that ultimately he was not adversely impacted and was able to mount his defence. Mr. Elmenshawy had a meaningful opportunity to respond and defend himself against the allegations during his interview with DIOS, the disciplinary process, and before the UNRWA DT. The Commissioner-General submits that there were no due process violations here.

92. The Commissioner-General concludes that as the UNRWA DT correctly found the contested decision to be lawful, there is no basis for the rescission of the contested decision or the awarding of the requested compensation.

93. The Commissioner-General requests that the Appeals Tribunal dismiss the appeal and affirm the impugned Judgment.

Considerations

94. The appeal in this disciplinary case raises three primary issues: (a) was Mr. Elmenshawy provided with due process during the disciplinary proceedings? (b) did the UNRWA DT base its decision on an appropriate evaluation of the evidence presented? and (c) was the disciplinary measure issued proportionate?

95. With respect to due process, while Mr. Elmenshawy does not emphasize the issue in his submissions, we find it important to first address the question of whether the delay in providing Mr. Elmenshawy with the full Investigation Report violated his due process rights.

96. The applicable personnel directive provides that when an investigation indicates that a staff member has engaged in misconduct that may lead to a disciplinary decision, the staff member shall be notified in writing of the findings and given a reasonable opportunity to respond.⁴⁸

97. As we have stated in *Ezzedine Loubani*:⁴⁹ "It is a fundamental precept of natural justice and fair process that before a staff member is able to be sanctioned for misconduct which has

⁴⁸ International Personnel Directive No. I/10, paras. 16-17.

⁴⁹ *Ezzedine Loubani v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2022-UNAT-1242, para. 41.

been investigated and decided upon (including potentially as seriously as by the staff member's loss of employment), that staff member is entitled to know what was found and why". Accordingly, we have held that "[i]t does not matter that such a right [to an investigation report] may not be specified in relevant procedures (...) it is such a fundamental element of workplace natural justice that it should go without saying" that the investigation report is provided to the staff member.⁵⁰

98. However, we have also consistently opined that:⁵¹ "As in all cases of due process failures, it is necessary to weigh the significance of the failure against what would have been the outcome had the failure(s) not occurred".

99. Although Mr. Elmenshawy was not provided with the full Investigative Report prior to his receipt of the Disciplinary Sanction letter, he was provided prior to his termination a detailed Opportunity to Respond letter which explained the investigative findings. In addition, he received full unredacted witness statements prior to the hearing before the Dispute Tribunal and had an opportunity to cross-examine all witnesses who testified. While we are troubled by the failure of the Commissioner-General to provide the full unredacted Investigation Report to Mr. Elmenshawy at the appropriate point in time, the subsequent steps described above sufficiently mitigated the negative consequences of that failure such that there was no material impact on the outcome of the proceedings. On these facts, we do not find that Mr. Elmenshawy's due process rights were violated.⁵²

100. Mr. Elmenshawy challenges the UNRWA DT's analysis of the evidence in a variety of respects. As the Appeals Tribunal, we do not review the evidence *de novo*, but instead give deference to the UNRWA DT's factual findings, provided that they have been made based on appropriate procedures and the correct analytical framework.⁵³ Ultimately, the issue we must decide is whether the UNRWA DT correctly held that clear and convincing evidence supported the decision to terminate Mr. Elmenshawy's employment with the Agency.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*, para. 43.

⁵² *Samer Mohammad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2022-UNAT-1195, paras. 41-43; *Maguy Bamba v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1259, para. 56 ("only substantial procedural irregularities can render a disciplinary sanction unlawful").

⁵³ *Samer Mohammad* Judgment, *op. cit.*, para. 42; *AAC* Judgment, *op. cit.*, paras. 45-54.

101. As an initial matter, the UNRWA DT correctly held that the termination decision could be upheld only if it was supported by clear and convincing evidence of the underlying alleged misconduct.⁵⁴

102. And, in evaluating that evidence, the UNRWA DT also followed the well-established framework for the resolution of factual disputes in disciplinary cases described in AAC.⁵⁵ The Appeals Tribunal's judgment in AAC affirmed that to provide due process and a basis for appellate review, the Dispute Tribunal must provide express written findings regarding witness credibility and an explanation as to why it weighed disputed evidence in the way it did, as well as explain whether and why the clear and convincing standard of proof has been met in a particular case.⁵⁶

103. Here, as set forth above, the UNRWA DT heard live testimony from numerous witnesses, all of whom were subject to cross-examination. It also admitted certain hearsay statements, which it carefully assessed using established methods regarding corroboration, and did not exclusively rely on hearsay statements for any decisive findings. With respect to the hearsay statement of WO1 in particular, the UNRWA DT did err in not considering that an adverse inference concerning credibility could have been made based on his refusal to testify, but the Dispute Tribunal sufficiently addressed WO1's absence by giving his interview statement less weight and/or required corroboration from other sources, as described in the impugned Judgment. Upon consideration of the record of the hearing and the arguments of the parties' representatives, we find no basis to overturn the considered evaluation of the UNRWA DT in any respect which could affect the outcome.

104. In light of the above, and the other factual determinations made by the UNRWA DT, we also conclude that the clear and convincing standard of proof was satisfied here. This standard requires unequivocal evidence of misconduct, which is highly persuasive, particularly in the context of a termination decision.⁵⁷ Such evidence was proffered in the instant case: WO2 was found to have credibly testified to Mr. Elmenshaw's statement that the D/DSRM was an Israeli spy, testimony corroborated by other evidence; WO2 and WO3, again corroborated by other evidence, were found to have credibly testified to the hostile work

⁵⁴ *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. 66.

⁵⁵ AAC Judgment, *op. cit.*

⁵⁶ *Ibid.*, para. 47.

⁵⁷ *Jafar Hilmi Wakid* Judgment, *op. cit.*, para. 66.

environment, the harassment of W01, and the efforts to undermine the D/DSRM. W02 testified in considerable detail to harassment by, and improper pressure from, Mr. Elmenshawy before, during and after the lockdown in response to the COVID-19 pandemic. In addition, the UNRWA DT specifically determined that Mr. Elmenshawy's denial of the key allegations was not entirely truthful and therefore not credible.⁵⁸

105. We emphasize that the UNWRA DT is charged in the first instance with assessing the credibility of the witnesses. An appellate tribunal is not generally in a position to assess credibility based on solely a written record. We can, nonetheless, review the Dispute Tribunal's assessment to ensure it is supported by the record, and have done so here. We find, contrary to Mr. Elmenshawy's arguments, no basis in the record to overturn the UNWRA DT's determinations of credibility.

106. For example, Mr. Elmenshawy points to evidence suggesting that the D/DSRM had an improper and pre-established motive to oust Mr. Elmenshawy from his position, relying on the testimony of W05 that the D/DSRM used highly insulting language to describe Mr. Elmenshawy, which the latter claims undermined the credibility of the D/DSRM's professed concerns over Mr. Elmenshawy's performance. Indeed, the D/DSRM admitted to his own speculative suspicions as he came into his new position and before he filed the complaint against Mr. Elmenshawy. The D/DSRM candidly testified to being "paranoid" and that he had concerns that an Inner City Press report that his recruitment was supposedly fraudulent might have come from Mr. Elmenshawy.⁵⁹ The D/DSRM's suspicions could also have contributed to the difficult work environment. But W05's testimony was undermined by the fact that W04, the witness with whom W05 allegedly passed on the D/DSRM's remark, could not corroborate that the D/DSRM used this offensive language. W05's credibility was also somewhat undercut given that his testimony before the UNRWA DT expanded considerably beyond his original statement to DIOS and revealed a catalog of personal grievances of his own against the D/DSRM and the Agency. Likewise, W04's memory about this phone call he had with W05 was more fulsome at the hearing, than when W04 spoke to the DIOS investigators two years earlier.

107. Moreover, the record also contains evidence, independent from the D/DSRM, outlining in detail the misconduct of Mr. Elmenshawy which the UNRWA DT found credible. Even if it

⁵⁸ Impugned Judgment, para. 59.

⁵⁹ Testimony of the D/DSRM, UNRWA DT Hearing, 4 October 2022.

were found that the D/DSRM had a negative predisposition towards Mr. Elmenshawy, or himself may have impacted the work environment by his own behavior toward Mr. Elmenshawy, the independent testimony regarding Mr. Elmenshawy's misconduct remains compelling. For example, WO3 testified that Mr. Elmenshawy was "aggressive and loud" and that he played staff against one another. Likewise, WO2 testified that Mr. Elmenshawy was "shouting", "swearing at people", using vulgar language about a young female intern, and exploiting local staff for his private needs.

108. In this matter, we give deference to the Dispute Tribunal Judge who heard oral testimony of the witnesses and her determination of the credibility of their oral evidence. As we have held in prior cases, the assessment of the credibility and reliability of witnesses will depend on a variety of factors including: i) the witness' candour and demeanour; ii) the witness' latent and blatant biases; iii) internal and external inconsistencies in the evidence; iv) the probability or improbability of particular aspects of the witness' version; v) the caliber and cogency of the witness' testimony when compared to that of other witnesses testifying in relation to the same incident; vi) the opportunities the witness had to experience or observe the events in question; and vii) the quality, integrity and independence of the witness' recall of the events.⁶⁰

109. We must consider whether the Dispute Tribunal Judge turned her mind to the relevant factors affecting the truthfulness of the evidence, including the believability or credibility of the witnesses, and the accuracy or reliability of their testimony. In the present case, we find that the Dispute Tribunal appropriately considered these factors and having done so, we defer to the Dispute Tribunal Judge's findings.

110. Having determined that Mr. Elmenshawy was afforded due process, and that the UNWRA DT applied the correct legal standards, followed the correct procedures, and made factual determinations supported by the evidence and its credibility determinations, we turn to the issue of whether termination was the appropriate and necessary sanction for the misconduct. In other words, we must decide whether the penalty was a proportionate sanction.⁶¹

⁶⁰ AAC Judgment, *op. cit.*, para. 47; AAE v. *Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1332, para. 106.

⁶¹ *Ali Hussein Haidar v. Secretary-General of the United Nations*, Judgment, No. 2021-UNAT-1076, para. 54; *Rajan v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-781, para. 47.

111. Mr. Elmenshawy was found to have spread a rumor that his manager was an Israeli spy; to have acted aggressively towards his colleagues, driving one to resign and attempting to coerce others to behave adversely towards the D/DSRM; and created a hostile work environment. These abuses of power by a senior international civil servant were serious, sustained, and surely known by Mr. Elmenshawy to be totally inappropriate.⁶² Considering the egregiousness of the violations, we cannot find the sanction of termination to be arbitrary, irrational, or otherwise disproportionate or illegal. We note that the Deputy Commissioner-General did not impose the most severe possible sanction, but instead accounted for Mr. Elmenshawy's prior unblemished record with UNRWA by providing a termination indemnity.⁶³ Taken as a whole, we find no reason to conclude that the contested termination decision was disproportionate either to the offence or to decisions in like cases.

⁶² See UNRWA Staff Rule 1.2(g); UNRWA International Personnel Directive 1/10, para. 9.

⁶³ Disciplinary Sanction letter, p.3.

Judgment

112. Mr. Elmenshawy's appeal is dismissed, and Judgment No. UNRWA/DT/2023/034 is hereby affirmed.

Original and Authoritative Version: English

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

(Signed)

Judge Ziadé, Presiding

(Signed)

Judge Sandhu

(Signed)

Judge Forbang

Judgment published and entered into the Register on this 30th day of December 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar