



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2025-UNAT-1514

Nadim Abdul Karim El-Haj
(Respondent/Applicant)

v.

Commissioner-General of the
United Nations Relief and Works Agency for
Palestine Refugees in the Near East
(Appellant/Respondent)

JUDGMENT

Before:	Judge Gao Xiaoli, Presiding Judge Katharine Mary Savage Judge Kanwaldeep Sandhu
Case No.:	2024-1906
Date of Decision:	21 March 2025
Date of Publication:	10 April 2025
Registrar:	Juliet E. Johnson

Counsel for Mr. El-Haj:	Amer Abu-Khalaf, LOSA
Counsel for Commissioner-General:	Stephen Margetts

JUDGE GAO XIAOLI, PRESIDING.

1. The Commissioner-General 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/2023/053 (impugned Judgment) by the UNRWA Dispute Tribunal (UNRWA DT or Dispute Tribunal).¹

2. In the impugned Judgment, the UNRWA DT had granted the application of Mr. Nadim El-Haj (Mr. El-Haj), in which he had challenged the disciplinary measure of a fine equivalent to two months' salary (contested decision or contested fine). The fine was imposed by the Agency following a finding that Mr. El-Haj had violated the Agency's neutrality rules. The UNRWA DT allowed the finding of misconduct to stand but rescinded the imposition of the fine.

3. For the reasons set forth herein, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

4. At the relevant time, Mr. El-Haj was employed by the Agency as a Clerk "B", Grade 6 in the Beqa'a Area, Education Department, Lebanon Field Office (LFO).

5. On 14 September 2020, Mr. El-Haj shared on his personal Facebook account a post that included a video that contained anti-Semitic conspiracy theories, namely that 25 Jews are ruling Bahrain with the King's blessing. The hashtag to this post said "Bahrain's_normalization_is_treachery".²

6. On 2 August 2021, a non-governmental organization called UN Watch published a report stating that certain UNRWA staff members had incited "anti-Semitism" and "terrorism" through social media. The report included screenshots of Mr. El-Haj's Facebook profile with the aforementioned post, but without the link to the video.³

7. The LFO subsequently initiated an investigation.⁴

¹ *El-Haj v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2023/053 (31 December 2023).

² 1 March 2022 letter from Director of UNRWA Affairs to Mr. El-Haj (Disciplinary Measures letter).

³ Impugned Judgment, para. 6.

⁴ *Ibid.*, para. 8.

8. On 19 August 2021, in his interview with the LFO investigators, Mr. El-Haj confirmed that he had indeed published the Facebook post in question. He stated that he had not fully comprehended what constituted a breach of neutrality, despite having taken the Agency's neutrality training in April 2018. Mr. El-Haj stated that after the UN Watch report came to his attention, he did some research and realized that his post was a breach of UNRWA standards. Mr. El-Haj deleted the video and expressed regret for having published it.⁵

9. The investigation team concluded that Mr. El-Haj's lack of understanding of the neutrality principle after being trained did not absolve him of accountability, and that he had breached the Agency's principle of neutrality as identified in General Staff Circular No. 06/2011 and the UNRWA Social Media Policy Regarding Personal Use (Social Media Policy).⁶

10. On 3 September 2021, the Director of UNRWA Affairs, Lebanon (DUA/L) issued Mr. El-Haj an Opportunity to Respond letter based on the Investigation Report. The DUA/L concluded that the Facebook post "breached UNRWA's ethical and neutrality standards" and "would constitute misconduct" under General Staff Circular No. 5/2007 (paragraph 5).⁷

11. On 8 September 2021, Mr. El-Haj responded by e-mail with the following:⁸

[P]lease note that as I mentioned in the investigation I [was] unaware totally about the neutrality, so I had share[d] a Facebook video without any ill intention or prejudice support of its content, and without any comment or tagging for the video.

After this I read more about neutrality in UN agencies and became much aware about it, I deleted the shared video from my Facebook.

I regret if I did not know that this is perceived as an inappropriate video and I confirm that I will not do such a thing again.

12. On 1 March 2022, the DUA/L issued the Disciplinary Measures letter. The letter stated simply:⁹

The post in question breached UNRWA's ethical and neutrality standards. Your conduct, as described above, constitutes serious misconduct. ...

⁵ 3 September 2021 letter from Director of UNRWA Affairs to Mr. El-Haj (Opportunity to Respond letter).

⁶ Report of Investigation into allegations of Breaches of Neutrality (Investigation Report), p. 6.

⁷ Opportunity to Respond letter, p. 1.

⁸ 8 September 2021 e-mail from Mr. El-Haj to Senior Field Investigator.

⁹ Disciplinary Measures letter, p. 1.

13. The sanction imposed was the letter of censure, as well as a fine equivalent to two months of his salary and a deferral of his eligibility for promotion for a period of one year.¹⁰

14. The DUA/L considered as aggravating circumstances – Mr. El-Haj’s position in the Education Department, the reputational damage to the Agency, and the fact that Mr. El-Haj had completed neutrality training before sharing the post on his Facebook page.¹¹ As mitigating circumstances, the DUA/L considered Mr. El-Haj’s unblemished employment history with the Agency and his recognition that his actions breached the neutrality principle and that he committed not to repeat such a breach.¹²

15. On 26 March 2022, the DUA/L, in responding to an e-mail from Mr. El-Haj, stated that since he had committed serious misconduct, “two months’ salary deduction is the minimum I could have imposed”.¹³

16. On 31 March 2022, Mr. El-Haj filed a Request for Decision Review (RDR) with the Deputy Commissioner-General (DCG) of the Agency. The DCG acknowledged receipt and advised he could proceed to file an application with the UNRWA DT.¹⁴

Impugned Judgment

17. Mr. El-Haj filed an application with the UNRWA DT alleging, among other things, that his actions did not amount to serious misconduct, as the video he shared did not encourage any harmful act. He also claimed that the deduction of two months’ salary was disproportionate given that he had made a mistake.¹⁵

18. Applying the framework established by the Appeals Tribunal for review of disciplinary measures, the UNRWA DT first found that the facts on which the sanction was based were established by a preponderance of the evidence, because they were admitted by Mr. El-Haj.¹⁶

19. The UNRWA DT found that the Facebook post violated Area Staff Regulation 110.1(1), Area Personnel Directive A/1, Part V, para. 1, Area Personnel Directive

¹⁰ *Ibid.* In his application to the UNRWA DT, Mr. El-Haj allowed that the written censure and the deferral for promotion consideration could stand. UNRWA DT Application, Part VI.

¹¹ Disciplinary Measures letter, p. 1.

¹² *Ibid.*, p. 2.

¹³ Impugned Judgment, para. 14.

¹⁴ *Ibid.*, paras. 15-16.

¹⁵ *Ibid.*, para. 17.

¹⁶ *Ibid.*, para. 30.

no. A/10, Rev.3 (PD A/10/Rev.3), para. 8, General Staff Circular No. 06/2011, para. 4, and the Agency's Social Media Policy. The Tribunal agreed with the Agency that Mr. El-Haj's claims of mistake and lack of knowledge did not absolve him of responsibility, particularly given that he had taken the neutrality training.¹⁷ The Tribunal confirmed that Mr. El-Haj's actions constituted misconduct.

20. However, the UNRWA DT pointed out that Mr. El-Haj was sanctioned for "serious misconduct", and that the Agency's regulatory framework distinguishes between "misconduct" and "serious misconduct", with the latter requiring more severe disciplinary measures.¹⁸

21. The UNRWA DT observed that the Disciplinary Measures letter did not explain why Mr. El-Haj's misconduct was characterized as "serious misconduct". Moreover, in the UNRWA DT proceedings, the Commissioner-General did not explain this categorization, despite Mr. El-Haj's direct challenge to this designation. In fact, the Commissioner-General's reply brief only asserted that Mr. El-Haj's actions constituted "misconduct".¹⁹

22. The UNRWA DT opined that "[c]onsidering the wide range of actions that may amount to a breach of neutrality under UNRWA rules" it was "particularly critical that the Agency be clear and transparent in its reasoning" since categorizing "a breach as 'serious misconduct' appears to automatically trigger more severe sanctions".²⁰ The Tribunal concluded that the Agency had not established that Mr. El-Haj's actions constituted "serious misconduct".²¹

23. Given the UNRWA DT's determination that the actions were only "misconduct", the Tribunal examined whether the fine of two months' salary was proportional. Whereas such a fine is appropriate under the regulatory framework for "serious misconduct", a fine of only one week's salary is listed as a disciplinary measure for "not serious misconduct".

24. The UNRWA DT further found that the Agency's use of Mr. El-Haj's position as a Grade 6 Clerk in the Education Department as an aggravating factor was improper. The Tribunal observed that the Commissioner-General's reply brief relied on Mr. El-Haj's position as a "Teacher" and

¹⁷ *Ibid.*, para. 31.

¹⁸ *Ibid.*, para. 32.

¹⁹ *Ibid.*, paras. 33-34.

²⁰ *Ibid.*, para. 35.

²¹ *Ibid.*, para. 37.

“role model” to explain why the sanctions were proportionate. The Tribunal stated that Mr. El-Haj was not a teacher.²²

25. Given that Mr. El-Haj was not a teacher, and there was no explanation as to why his actions constituted “serious misconduct”, the UNRWA DT held that the sanction of a fine of two months’ salary could not stand. The Tribunal allowed the finding of misconduct and remaining sanctions to stand but rescinded the contested fine.²³ The Tribunal thereby granted Mr. El-Haj’s application.

Procedure before the Appeals Tribunal

26. On 29 February 2024, the Commissioner-General filed an appeal of the impugned Judgment with the Appeals Tribunal. No answer was filed by Mr. El-Haj.

27. On 21 November 2024, the Appeals Tribunal Registry (Registry) sent an e-mail to the Agency to confirm the e-mail address of Mr. El-Haj, noting that he had failed to submit an answer. The Registry copied this communication to the e-mail address on file for Mr. El-Haj.

28. On 25 November 2024, Mr. El-Haj responded to the Registry and the Agency as follows:²⁴

Dear UNAT

I have received the e-mail from you on 4th March 2024 [transmitting the appeal] but had not realized that the Agency had filed an Appeal at UNAT as the Agency had already implemented fully the Decision of UNRWA DT and returned the two months salary as per the attached (January 2024 Pay Slip) and fixed the service computation date. ...

I am wondering how management of UNRWA in Lebanon implementing the UNRWA DT judgment and reimbursed me the two months that were deducted from my salary and at the same time DLA appealing the UNRWA DT Judgment.

This is a very clear contradiction.

29. On 24 January 2025, an Associate HR Officer of the Agency wrote to Mr. El-Haj acknowledging that he had been refunded USD 2,461.04 in January 2024. However, the Officer stated that:²⁵

²² *Ibid.*, paras. 41-43.

²³ *Ibid.*, para. 45.

²⁴ 25 November 2024 e-mail from Mr. El-Haj to Registry.

²⁵ 24 January 2025 e-mail from Associate HR Officer, LFO to Mr. El-Haj.

Unfortunately, this reimbursement was made mistakenly before the appeal process was concluded. In light of this, we regret to inform you that the amount reimbursed in January 2024 will need to be withheld again starting February 2025 salary. This step is necessary to ensure consistency with the ongoing appeal and to avoid any adverse implications for the Agency's case before the Appeals Tribunal.

30. On 11 February 2025, the Commissioner-General filed a motion for additional pleadings with the Appeals Tribunal. The Commissioner-General sought to advise the UNAT of the steps that it had taken since receiving Mr. El-Haj's e-mail of 25 November 2024 (described above). The Commissioner-General also had no objection to Mr. El-Haj providing a response to the original appeal at this late date.

31. Over objection by Mr. El-Haj, the Appeals Tribunal granted the motion for additional pleadings in Order No. 593 (2025).²⁶ The Appeals Tribunal also accepted Mr. El-Haj's comment on the original appeal. These submissions are summarized below.

Submissions

The Commissioner-General's Appeal

32. The Commissioner-General submits that the UNRWA DT erred in law and failed to properly exercise jurisdiction when it rescinded the two-month salary fine based on the inadequacy of reasons in the Disciplinary Measures letter.

33. The Commissioner-General argues that the UNRWA DT erred in law by giving undue weight to the Commissioner-General's reply to the exclusion of the factual record.

34. The Commissioner-General concedes that the Disciplinary Measures letter and his reply brief could have been more complete, but this was not sufficient grounds for the UNRWA DT to rescind the contested fine where the misconduct was established, the seriousness of the breach of neutrality was "manifest" and the contested fine was an available sanction option to the decision-maker.

²⁶ *Nadim El-Haj v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Order No. 593 (2025), para. 20.

35. The Commissioner-General argues that the UNRWA DT should have made an order to the Commissioner-General to furnish the reasons in writing, or at an oral hearing, rather than simply rescinding the contested fine.²⁷

36. The Commissioner-General further submits that as an alternative, the UNRWA DT could have rescinded the contested fine, but left it open to the Agency to issue a new disciplinary decision.

37. The Commissioner-General claims that the UNRWA DT erred by failing to follow the UNAT's guidance in *Kennedy*, namely that "what are adequate reasons will be dependent on the circumstances of the case and the reasons must be read together with the record and outcome to determine whether the result is a lawful exercise of discretion".²⁸

38. The Commissioner-General submits that the UNRWA DT failed to consider the record, including: (i) the undisputed antisemitic nature of the Facebook post in clear breach of the Agency's ethical and neutrality framework, (ii) how the Facebook post was altogether antithetical to the United Nations Charter; (iii) the manifest and self-evident gravity of a neutrality breach involving antisemitism given the Agency's mandate and area of operations; (iv) the "priority concern" of neutrality breaches; and (v) that it was open to the decision-maker to consider whether the staff member's conduct was "serious misconduct" under PD A/10/Rev.3.

39. The Commissioner-General contends that even assuming that the failure to provide an explanation of why the breach was "serious misconduct" was a procedural irregularity, it was not substantial and did not warrant rescinding the contested fine. The Commissioner-General submits that Mr. El-Haj was able to mount his defense. The UNRWA DT further erred in failing to consider that the outcome would have been the same regardless of how comprehensive the Disciplinary Measures letter was.

40. The Commissioner-General submits that the UNRWA DT erred in giving undue weight to the Agency's reply brief, rather than the factual record. The Commissioner-General states that his failure to expressly allege a fact (that the misconduct was "serious") does not constitute an admission that this fact was not established. Moreover, the Commissioner-General argues that it

²⁷ The Commissioner-General relies on *Respondent v. Secretary-General of the United Nations*, 2021-UNAT-1097, para. 46.

²⁸ *Timothy Kennedy v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1184, para. 65.

was at least “implicit” that the Agency was defending the finding that the staff member had engaged in “serious” misconduct.

41. The Commissioner-General points out that the reply brief had a detailed description of the inappropriate, antisemitic political statements in the Facebook post.

42. The Commissioner-General submits that the mistake in his reply brief of referring to Mr. El-Haj as a “Teacher” and “role model” when Mr. El-Haj was a “Clerk” was not a material error.

43. The Commissioner-General further claims that Mr. El-Haj was more than a “Clerk”, and that the record reflects that he acted in the capacity of an “Area Education Officer”²⁹ and thus it was reasonable for the decision-maker to conclude that this was an aggravating factor.

44. The Commissioner-General submits that the UNRWA DT erred in law and competence by interfering with the disciplinary measure imposed. The UNAT has repeatedly emphasized that it will only interfere with disciplinary measures that are “blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity”.³⁰ Accordingly, to rescind the contested fine, the Tribunal would have had to conclude that it was *not* open to the decision-maker in exercising his discretion to characterize the conduct as “serious misconduct”.

45. The Commissioner-General submits that Annex 2 to PD A/10/Rev.3 entitled “Guidance on the Disciplinary Process and Considerations for the Imposition of a Proportionate Disciplinary Response”, is just guidance. It does not include an exhaustive list of the neutrality breaches that may be considered “serious misconduct”.

46. The Commissioner-General argues that pursuant to paragraph 28 of PD A/10/Rev.3, the decision-maker is not even required to consider whether misconduct is “serious” only that this “should be considered”.

47. The Commissioner-General claims that it was error for the UNRWA DT to require the decision-maker to “establish” or provide a detailed explanation as to why Mr. El-Haj’s misconduct

²⁹ 23 August 2021 e-mail from Mr. El-Haj to Senior Field Investigator.

³⁰ The Appellant relies on *Cheikh Thiare v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1167, para. 33.

was considered “serious misconduct” because it was sufficient that it was “open” to the decision-maker to make that determination on the established facts.

48. The Commissioner-General submits that the contested fine of two months’ salary was also commensurate with a finding of *non*-serious misconduct. The Commissioner-General notes that a fine of at least one week’s salary is listed as within the range of measures considered appropriate for “not serious misconduct” and a fine of “at least two months” is recommended for “serious misconduct”. The Commissioner-General accordingly argues that “a fine anywhere along the spectrum up to and including two months” can be considered appropriate for “not serious misconduct”.

49. The Commissioner-General contends that the UNRWA DT should have (i) allowed the contested fine to stand; (ii) at most, reduced it; or (iii) ordered it be vacated subject to the Agency’s reissuance with additional reasons.

50. The Commissioner-General avers that the staff member’s challenge to the proportionality of the contested fine was insufficiently worded for the UNRWA DT to examine the issue.

51. The Commissioner-General points out that the decision-maker could have imposed an even harsher measure. As there were no substantial procedural irregularities, and no illegality, the Commissioner-General argues that the UNRWA DT exceeded its competence by intervening with the measure and rescinding the contested fine.

52. The Commissioner-General requests that the UNAT grant the appeal and reverse the rescission of the contested fine, along with the findings on which the rescission was based.

Additional Pleadings

53. The Commissioner-General informed the UNAT that following Mr. El-Haj’s e-mail of 25 November 2024, it was discovered that the Agency had mistakenly reimbursed the amount of the fine equivalent to two months’ salary in Mr. El-Haj’s salary payment for January 2024.

54. The Commissioner-General submits that it has taken steps to correct the mistaken reimbursement by reversing it in eight installments beginning in February 2025. Mr. El-Haj was informed about this corrective measure on 24 January 2025.

Mr. El-Haj's Answer

55. No timely answer was filed by Mr. El-Haj.

Mr. El-Haj's comment on the appeal pursuant to Order No. 593

56. Mr. El-Haj submits that the appeal is moot because the Agency had fully implemented the impugned Judgment before filing the present appeal. Mr. El-Haj relies on *Kallon*, in which the Appeals Tribunal held that a “judicial decision will be moot if any remedy would have no concrete effect”.³¹

57. Mr. El-Haj submits that the impugned Judgment being fully implemented renders any remedy that was sought in the appeal mooted. There is no controversy pending between the parties because all matters of the impugned Judgment were settled before the appeal was filed when the Commissioner-General reimbursed the two-month salary fine in January 2024.

58. Mr. El-Haj submits that where a party chooses to accept the outcome of a judgment by fully complying with the orders contained therein, he or she is estopped from challenging the judgment on appeal.

59. Mr. El-Haj requests that the UNAT find that this appeal is not receivable because it is moot.

60. Mr. El-Haj contends that the LFO is an agent of UNRWA and its conduct, namely the action of reimbursing Mr. El-Haj, must be imputed to the Commissioner-General. The Commissioner-General cannot now protest that this was a mistake and has provided no evidence that it was a mistake.

61. Mr. El-Haj requests that if the UNAT finds that the appeal is not moot, he submits that the UNRWA DT rightly rescinded the Agency's decision to impose a fine equivalent to two months' salary for a breach of neutrality.

62. Mr. El-Haj submits that the UNRWA DT rightly set aside the disciplinary measure because the Agency failed to give adequate reasons for categorizing the violation as serious misconduct in light of the legal framework of the Agency.

³¹ *Kallon v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742, para. 44.

63. Mr. El-Haj submits that the UNRWA DT rightly found that the Agency did not assess whether the actions amounted to misconduct or serious misconduct in accordance with the framework. The Agency simply regarded his actions as serious misconduct without providing adequate reasons.

64. Mr. El-Haj further submits that the Agency failed to explain why the fact that he was a Grade 6 Clerk in the Education Department was an aggravating factor.

65. Mr. El-Haj requests that for the foregoing reasons the UNAT find that the UNRWA DT had good grounds to rescind the contested fine and to affirm the impugned Judgment.

Considerations

Is the appeal moot because UNRWA reimbursed Mr. El-Haj the contested fine before it appealed the UNRWA DT Judgment?

66. Even though Mr. El-Haj was reimbursed the two-months' salary fine in January 2024, the Commissioner-General argued that this was a mistake and further noted that the contested decision was not withdrawn from Mr. El-Haj's official status file. The Commissioner-General has taken steps to correct the mistaken reimbursement by reversing it and deducting the fine again from Mr. El-Haj's salary in eight installments beginning in February 2025. Mr. El-Haj was informed about the corrective measure on 24 January 2025.³² Therefore, the appeal is not moot as Mr. El-Haj wishes.

Merits of the appeal

67. In disciplinary cases, the Tribunals will examine the following: (i) whether the facts on which the disciplinary measure was based have been established (where termination is the sanction imposed, the facts must be established by clear and convincing evidence; in all other cases preponderance of the evidence is sufficient); (ii) whether the established facts amount to misconduct; (iii) whether the sanction is proportionate to the offence; and (iv) whether the staff member's due process rights were respected.³³

³² 24 January 2025 e-mail to Mr. El-Haj from Associate HR Officer, LFO.

³³ *Suleiman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2020-UNAT-1006, para. 10.

68. In this case, Mr. El-Haj admitted the facts on which the disciplinary measure is based and agreed that his action was properly characterized as misconduct. He only claimed that his action did not amount to “serious misconduct” as defined in the Agency’s regulatory framework and the disciplinary measure of deduction of two months’ salary was, therefore, disproportionate. He did not raise the issue of any violation of his due process rights. The UNWRA DT granted Mr. El-Haj’s application and rescinded the decision with respect to the imposition on Mr. El-Haj of the disciplinary measure of a fine equivalent to two months’ salary. The Commissioner-General argues that the UNRWA DT erred in law and exceeded its competence in rescinding the contested fine.

69. The issues for our consideration are therefore: i) was it established that the conduct constituted “serious misconduct”? and ii) was the sanction proportionate?

Was it established that the conduct constituted “serious misconduct”?

70. Paragraph 28 of PD A/10/Rev.3 provides that “[i]n determining the proportionality of a disciplinary measure, the authorized decision-maker should consider whether the conduct qualifies as serious misconduct ...”

71. The Disciplinary Measures letter only mentioned that “[t]he post in question breached UNRWA’s ethical and neutrality standards” and that Mr. El-Haj’s conduct constituted serious misconduct. The only reference to the legal framework was paragraph 5 of General Staff Circular No. 5/2007 which was concerned with the definition of misconduct. The UNRWA DT correctly observed that the Disciplinary Measures letter did not explain why his misconduct was characterized as “serious misconduct”.

72. We reiterate our jurisprudence that an administrative decision must contain reasons. In *Trevino*, we explained this principle as follows:³⁴

[A]n administrative decision which adversely impacts on a staff member’s status must be reasoned in order for the Tribunals to have the ability to perform their judicial duty to review administrative decisions and to ensure protection of individuals, which otherwise would be compromised. In this respect, the harmful administrative decision must be fully and

³⁴ *Sergio Baltazar Arvizú Trevino v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1231, para. 53.

adequately motivated. The reasoning must be sufficiently clear, precise, and intelligible. A generic reasoning befitting every case is not enough and renders the decision unlawful.

73. In *Respondent*, we said further:³⁵

... The requirement for coherent reasons compels the decision-maker to properly consider the relevant statutory provisions, the grounds for taking the decision, the purpose of the decision, all the relevant considerations and the policy to be implemented. Coherent reasons also encourage open administration and contribute to a sense of fairness. Reasons also critically provide the basis for judicial review of the decision. By requiring coherent reasons supported by the evidence one ensures that there is a rational connection between the premises and the conclusion. The decision-maker must be able to show that he or she has considered all the serious objections to the decision and has answers that plausibly meet those objections, which justify discarding them. The reasons have to show that the decision-maker did not take account of irrelevant considerations or add undue weight to a specific consideration.

74. Even though it was open to the decision-maker under PD A/10/Rev.3 to consider the staff member's misconduct to be "serious misconduct", as the Commissioner-General argued, in order to make this determination, the decision-maker should provide its reasons for doing so.

75. The Commissioner-General in his appeal argues that it was "manifest" that the neutrality breach was so serious;³⁶ therefore, he did not need to provide any explanation. However, in our view, it was far from manifest on its face that this breach was serious misconduct.

76. In the flowchart presented in Annex 2 of PD A/10/Rev.3, which is titled "Guidance on the Disciplinary Process and Considerations for the Imposition of a Proportionate Disciplinary Response", there is the following question:

If the misconduct falls under one of the Agency priority concern areas, the following criteria below will assist you in assessing whether it may constitute serious misconduct:

Breaches of Neutrality and Outside and/or Political Activities: serious if:

- Unauthorized outside political/military/government activity against the interest of the Agency
- Activity involves/calls for/glorifies militant activism or violence
- Activity involves/calls for the destruction of a state

³⁵ *Respondent v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1097, para. 45.

³⁶ Appeal brief, paras. 2, 11, and 15.

77. Significantly, the Facebook post in question did not meet any of the factors above that would have made this neutrality breach “serious”. Even though the Commissioner-General argues that this is not an exhaustive list of the kinds of neutrality breaches that are considered “serious”, he does not set out any factors beyond the list.

78. The Commissioner-General also complains that the UNRWA DT should have given the Agency a chance to provide reasons. In this regard, we agree with the UNWRA DT that the lack of a rationale for why this was “serious misconduct” was adequately raised in Mr. El-Haj’s application. In his application, Mr. El-Haj identified that “[t]he director clearly jumps to an initial decision by considering the case serious misconduct through a forward or share is a simple mistake of not knowing what can or cannot be shared. The video footage does not encourage aggression or any other harmful act” and Mr. El-Haj’s first ground of challenge was that “the case is not misconduct or serious misconduct”.³⁷ This was sufficient notice to the Commissioner-General that whether Mr. El-Haj’s sharing of the post on Facebook was “serious” misconduct was at issue. The Commissioner-General did not respond to this issue in his reply brief to the UNRWA DT. Even in the appeal brief before this Tribunal, we do not see that the Commissioner-General explains why he thought the misconduct was serious.

79. Relatedly, the Commissioner-General argues that the UNRWA DT should have considered it “implicit” that the Agency was defending that the conduct was “serious”, even though he admits to an “oversight” in stating that the breach was “misconduct” in his own reply brief.

80. Since the contested decision did not contain reasons on characterizing the Facebook post action as “serious misconduct” and the Commissioner-General failed to explain his reasoning at any stage of the proceedings, we uphold the conclusion of the UNWRA DT that “misconduct has been established, but not ‘serious misconduct’”.³⁸

Was the sanction proportionate?

81. Annex 2 of PD A/10/Rev.3 identifies “fine: at least 2 months’ salary” as within the range of disciplinary measures considered appropriate for cases of “serious misconduct” and “mitigating and aggravating circumstances may in some cases result in proportionate measures outside the

³⁷ UNRWA DT application, p. 4.

³⁸ Impugned Judgment, para. 37.

recommended range”. As “serious misconduct” was not found in this case, the fine of two months’ salary imposed on Mr. El-Haj cannot stand.

82. In the flowchart presented in the above-mentioned Annex 2 of PD A/10/Rev.3, the range of appropriate disciplinary measures for “not serious misconduct” include “written censure”, “Fine: at least 1 week salary”, “demotion with deferment for consideration for promotion for 1-2 years” etc., subject to any mitigating and aggravating circumstances.

83. The Disciplinary Measures letter listed both the aggravating and mitigating circumstances. Pursuant to the framework in PD A/10/Rev.3, the decision-maker could impose on the staff member a fine of two months’ salary under the premise of “not serious misconduct” if there were aggravating circumstances. However, in this case, the decision-maker did not find that the aggravating circumstances outweighed the mitigating circumstances, which means there are no grounds for the imposition of a more serious disciplinary measure. We thus cannot support the argument of the Commissioner-General that the contested fine of two months’ salary was also commensurate with a finding of *non-serious* misconduct.

84. Therefore, we agree with the UNWRA DT’s decision to rescind the contested fine of two months’ salary.

Judgment

85. The Commissioner-General's appeal is dismissed, and Judgment No. UNRWA DT/2023/053 is hereby affirmed.

Original and Authoritative Version: English

Dated this 21st day of March 2025 in Nairobi, Kenya.

(Signed)

Judge Gao, Presiding

(Signed)

Judge Savage

(Signed)

Judge Sandhu

Judgment published and entered into the Register on this 10th day of April 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar