



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

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Judgment No. 2025-UNAT-1517

**Ayesha Mahmoud Al Rifai**  
**(Appellant)**

**v.**

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

## **JUDGMENT**

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Before:	Judge Kanwaldeep Sandhu, Presiding Judge Katharine Mary Savage Judge Abdelmohsen Sheha
Case No.:	2024-1901
Date of Decision:	21 March 2025
Date of Publication:	14 April 2025
Registrar:	Juliet E. Johnson

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

**JUDGE KANWALDEEP SANDHU, PRESIDING.**

1. Ms. Ayesha Al Rifai, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency), appeals Judgment No. UNRWA/DT/2023/051 (impugned Judgment) which was rendered by the UNRWA Dispute Tribunal (UNRWA DT or Dispute Tribunal).<sup>1</sup>
2. In the impugned Judgment, the UNRWA DT dismissed Ms. Al Rifai's application in which she challenged her separation from service with termination indemnity (first contested decision) and the Agency's actions regarding complaints that Ms. Al Rifai filed against several current and former staff members (second contested decision).
3. For the reasons set forth herein, the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) dismisses the appeal and affirms the impugned Judgment.

**Facts and Procedure**

4. Ms. Al Rifai was employed by UNRWA from 1 October 2006 on a fixed-term appointment as the Deputy Dean at the Ramallah Women Training Centre (RWTC), West Bank Field Office (WBFO). At the relevant time, she was the Dean/Principal at RWTC.<sup>2</sup>
5. On 21 December 2016, the Director of UNRWA Operations, West Bank (DUO/WB) referred several complaints of abuse of authority, harassment and misuse of resources against several RWTC staff, including Ms. Al Rifai, to the Department of Internal Oversight Services (DIOS). One of the complaints made against Ms. Al Rifai was by an Assistant House Mother at RWTC (Complainant O1 or CO1).<sup>3</sup>
6. On 9 January 2017, DIOS initiated an investigation into the complaints.
7. On 22 February 2017, Ms. Al Rifai met with a Senior Instructor, RWTC (Witness O1 or WO1) in her office. During the meeting, WO1 drafted a complaint letter accusing CO1 of sexual

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<sup>1</sup> *Al Rifai v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2023/051 (27 December 2023).

<sup>2</sup> *Ibid.*, para. 5.

<sup>3</sup> *Ibid.*, para. 6.

harassment and gave it to Ms. Al Rifai. In the letter, Wo1 alleged in detail that Co1 had made sexual advances towards him two years earlier.<sup>4</sup>

8. The next day, on 23 February 2017, the DUO/WB met with Ms. Al Rifai regarding the complaints filed against her and told her that she would be placed on administrative leave with pay pending conclusion of the investigation and disciplinary process. A Note to File was written by the Special Assistant to the DUO/WB, which stated in part:<sup>5</sup>

[Ms. Al Rifai] said she had had a feeling that DUO would be coming with this news. In the last couple of days she had heard staff saying that an investigation would be undertaken. She had called [Chairman of the Staff Union], telling him that she did not have a good feeling.

9. At this same meeting, the Chairman of the Staff Union gave Wo1's letter of complaint against Co1 to the DUO/WB. DIOS received the letter on 27 February 2017.

10. In late February, Wo1 met with the Deputy Principal, RWTC (Witness O2 or Wo2). During this meeting, Wo2 informed Wo1 that Co1 had not submitted any complaint against him.<sup>6</sup>

11. When meeting with DIOS investigators about the complaint against Ms. Al Rifai, Wo1 made the following statement:<sup>7</sup>

On Wednesday 22 February 2017, [Ms. Al Rifai] send me an urgent request to go to her office. [...] When I arrived at her office, she told me that she had received a complaint of attempted rape against me from [Co1]. She added that the field office had informed her of allegations of sexual harassment against me.

I told her that this was not true and that my issue with [Co1] had taken place more than two years ago and it was not something like this. [...] [Ms. Al Rifai] replied that I could lose my job and my family. She said that I was in a dangerous situation.

I asked her what was requested from my side. [Ms. Al Rifai] said that I should write now against [Co1]. [...] She said something along these lines: "Since [Co1] has raised a complaint against you, you should reply in parallel to what she wrote in her complaint. My duty is to protect you. I am here to protect you."

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<sup>4</sup> *Ibid.*, para. 9.

<sup>5</sup> Appeal, Annex 4.

<sup>6</sup> Impugned Judgment, para. 11.

<sup>7</sup> *Ibid.*, para. 13 (paragraph numbers omitted).

I told her that I needed to leave in order to recall the incident and think what to write in my response, but she replied that I only had now to raise my complaint and I should do it in hand-writing. [...]

I asked her what I should write because I remember that my issue with [Co1] had been silly. [Ms. Al Rifai] told me that she would help me to write the statement. I told her that my relationship with [Co1] had only been friendly. She refused this and said that the complaint against me was of sexual harassment and sexual abuse so my words should be similar to sexual harassment and sexual abuse, otherwise I could lose my name, my job and my career. I was shocked and terrified at that moment.

...

The information contained in the complaint that I wrote is generally false. There are some elements of truth in regard to my friendly relationship with [Co1], but all of these details a[s] they were presented are not true. [Ms. Al Rifai] refused to use my terms, such as good relationship or friendly relationships, and instructed me to add parts or incidents that had not taken place (such as adding words on feminine/suggesting looks and smiles, touching me with her hands, sending hints or stressing [...] that occasion is still reoccurring). Some parts I added myself to defend myself. The last paragraph, starting from “in light [o]f...” was suggested by [the Applicant].

...

[...] I felt under pressure because [Ms. Al Rifai] told me that our meeting was formal and she mentioned that it concerned allegations of sexual harassment and accusations of rape. She also told me that I could not leave the room and I should submit my complaint with my handwriting and containing accusations similar to the ones against me. Most of the statement were not my own words but words requested by [Ms. Al Rifai], otherwise I could lose my reputation and my job.

[...] After this, however, I spoke to [Wo2] and I learned from him that no complaint against me had been raised. I also learned from him that, contrary to [Ms. Al Rifai]’s denial during her meeting with me, she was fully aware of my misunderstanding with [Co1] of two years before.

After speaking to [Wo2], on Sunday 26 February 2017, I wrote a small letter as a clarification on the issue. I did not raise it as a complaint because I did not know if my complaint against [Co1] had already been sent or not.

12. Subsequently, in April 2017, Wo1 sent DIOS a copy of the complaint that he had written against Co1, highlighting the parts he said were dictated by Ms. Al Rifai, and a confirmation of his interview statement. He stated that:<sup>8</sup>

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<sup>8</sup> *Ibid.*, para. 14.

I would like to inform you that [Ms. Al Rifai] summoned me to her office on Wednesday, 22 of February 2017 and informed me that a female member of staff has written a complaint against me [...], and that the Front Office has informally phoned her to further investigate this issue. When I told her that the mentioned issue is not true, and that a misunderstanding occurred two years ago [...], she threatened me of losing my job, reputation, and my family and professional and social statu[ions] if I do not write a letter against the female staff promptly. I requested to leave the office to think and to have a word with [...]; she told me that she does not want anyone to interfere regarding this issue, (and that it should remain between the two of us). I told her that I have lectures to give, she told me that the letter is more important than giving any lectures, and that the time is limited and that the letter should be written now and immediately. She sat with me in the office and dictated what I should write in the letter.

Afterwards, when I checked this issue with [W02], I knew that there is no letter addressed against me. Therefore, I herewith request withdrawing the letter submitted against the previously mentioned member of staff.

13. On 11 April 2017, Ms. Al Rifai submitted a complaint against several staff members. She alleged that they had spread “defamatory rumours” about her during the DIOS investigation. She submitted additional complaints against staff members and a DIOS investigator on 11 May 2017 and 21 July 2017.

14. Regarding the investigation of the complaint against Ms. Al Rifai, on 7 June 2017, DIOS interviewed Ms. Al Rifai, at which time she denied forcing W01 to write a complaint against Co1 and denied suggesting or dictating any words in the complaint.<sup>9</sup>

15. On 5 September 2017, DIOS finished the investigation and concluded that there was sufficient evidence to find that Ms. Al Rifai had “misled” W01 into submitting a malicious complaint of sexual harassment against Co1.<sup>10</sup>

16. On 9 October 2017, the DUO/WB issued Ms. Al Rifai an Opportunity to Respond letter (OTR letter), informing her of the investigation’s findings, namely:<sup>11</sup>

- [Ms. Al Rifai] misled [W01] into submitting a false complaint of sexual harassment against [Co1];
- [Ms. Al Rifai] misused, on some occasions, RWTC staff and other resources for your personal benefit;

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<sup>9</sup> *Ibid.*, para. 15.

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

<sup>11</sup> OTR letter, p. 5.

- [Ms. Al Rifai] pressured [TA] to sign complaints against [FR] and shouted at [JH].

17. Ms. Al Rifai provided two responses to the OTR letter. After she received a copy of the transcript of her interview with DIOS, she provided further comments.

18. On 13 September 2018, the DUO/WB issued a Disciplinary Measure letter to Ms. Al Rifai. First, the DUO/WB determined that Ms. Al Rifai had “misled [Wo1] into submitting a false complaint of sexual harassment against [Co1]”. The DUO/WB found that Wo1’s account was more credible as it was supported by corroborative statements from Wo2 and another staff member. He noted that there was no motive for Wo1 to submit such a complaint against Co1 two years after the events in question, and that the timing of the complaint, one day before Ms. Al Rifai was put on administrative leave, indicated that the complaint was related to the investigation and false. The DUO/WB noted that Ms. Al Rifai had a motive to mislead Wo1, as she already knew she was being investigated.<sup>12</sup>

19. Second, the DUO/WB also found clear and convincing evidence that Ms. Al Rifai had misused staff and RWTC resources for personal benefit by having RWTC security guards do shopping for her. A preponderance of the evidence showed that she had asked RWTC staff to perform small repairs at her properties for her.<sup>13</sup>

20. Third, the DUO/WB found that Ms. Al Rifai had created a hostile work environment by pressuring a staff member (TA) to file a complaint against someone else and shouting at another staff member (JH). The DUO/WB found TA’s evidence particularly credible because he was a supporter of Ms. Al Rifai, and another witness corroborated JH’s account, and that witness was also a supporter of Ms. Al Rifai.<sup>14</sup>

21. The DUO/WB found that Ms. Al Rifai had committed serious misconduct which warranted a serious disciplinary measure. The DUO/WB considered as aggravating factors Ms. Al Rifai’s role as a Principal, a manager and a leader. She was expected to uphold the highest standards of conduct, yet she “actively contributed to an atmosphere of threats, conspiracy, fears of reprisals and a culture of infighting amongst RWTC staff”.<sup>15</sup> Other aggravating factors included that there

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<sup>12</sup> Disciplinary Measure letter, p. 2.

<sup>13</sup> *Ibid.*, p. 3.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*, p. 7.

were multiple instances of misconduct and that she had made “generalized attacks against the conduct, performance or reputations of the complainants and other witnesses”.<sup>16</sup>

22. Ms. Al Rifai was separated from service that same day, with compensation in lieu of notice and with termination indemnity.

23. The Disciplinary Measure letter also concluded that as to Ms. Al Rifai’s complaints against other staff members, there were four staff who had discussed information related to the investigation or her. DIOS considered that these four staff had engaged in minor breaches of the Agency’s Regulatory Framework. The DUO/WB advised that he would be taking managerial action against the concerned employees.<sup>17</sup> This is the second contested decision.

#### *Procedural History*

24. On 5 February 2019, Ms. Al Rifai filed an application challenging the contested decisions with the UNRWA DT.

25. On 21 February 2021, on the eve of a hearing in her case, Ms. Al Rifai filed a motion requesting the recusal of the UNRWA DT Judge.

26. On 22 February 2021, the UNRWA DT went ahead with the hearing, but Ms. Al Rifai did not appear.

27. On 30 March 2021, the Dispute Tribunal issued Judgment No. UNRWA/DT/2021/015 in which it upheld the Agency’s disciplinary measure, as well as its decision to close its investigation into the complaints raised by Ms. Al Rifai.

28. Ms. Al Rifai appealed the latter UNRWA DT Judgment to the Appeals Tribunal. In Judgment No. 2022-UNAT-1240, the Appeals Tribunal held that the UNRWA DT committed a procedural error by proceeding with the hearing while Ms. Al Rifai’s motion for recusal of the UNRWA DT Judge was pending.<sup>18</sup> The UNAT remanded the case for rehearing *de novo*.

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<sup>16</sup> *Ibid.*, p. 8.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Aysha Al-Rifai v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2022-UNAT-1240, paras. 37-39.

29. On remand, the UNRWA DT held a hearing on 11 and 12 September 2023. The Dispute Tribunal heard from Ms. Al Rifai and four witnesses, Wo1, Wo2, a secretary at RWTC (Wo3) and a cleaner at RWTC (Wo4).

*Impugned Judgment*

30. The Dispute Tribunal dismissed Ms. Al Rifai's application. It first examined whether Ms. Al Rifai's due process rights were respected and held that Ms. Al Rifai had failed to establish a violation of her due process rights.

31. The UNRWA DT rejected her claim of a violation because the DIOS did not interview all her proposed witnesses. The Tribunal held that there was no provision in the Agency's regulatory framework that required DIOS to interview everyone, and she had not shown that evidence from these other witnesses would have changed the outcome of the case.<sup>19</sup>

32. The Dispute Tribunal rejected Ms. Al Rifai's claim that DIOS could not have reviewed some of her evidence (116 pages) when she submitted it three days before DIOS completed the Investigation Report. The Tribunal noted that the annexes she submitted were irrelevant to the outcome of the case.<sup>20</sup>

33. The Dispute Tribunal found that Ms. Al Rifai had presented no evidence that the DIOS investigators were biased against her.<sup>21</sup>

34. The Dispute Tribunal agreed that the Agency failed to respect her due process rights by failing to provide her with the Investigation Report before taking the contested decisions. However, Ms. Al Rifai received a full unredacted copy before the hearing. At the hearing, she had the opportunity to examine the key witnesses and test the veracity of their evidence. Accordingly, she has not demonstrated that this had an impact on the outcome of her case.<sup>22</sup>

35. With regards to Ms. Al Rifai's complaints about unreasonable delay, the Dispute Tribunal held that the two-month delay in the conclusion of the investigation was not unreasonable or excessive.<sup>23</sup> The Tribunal recognized that it took a significant amount of time for the Agency to

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<sup>19</sup> Impugned Judgment, paras. 74-75.

<sup>20</sup> *Ibid.*, para. 76.

<sup>21</sup> *Ibid.*, para. 77.

<sup>22</sup> *Ibid.*, para. 79.

<sup>23</sup> *Ibid.*, para. 83.



issue the disciplinary measure, twelve months, but that this was just two months after Ms. Al Rifai had submitted her final round of comments. In any event, Ms. Al Rifai had failed to demonstrate how this delay impacted her ability to mount a defense or to show any prejudice.<sup>24</sup>

36. The Dispute Tribunal also dismissed Ms. Al Rifai's contention that she suffered moral damage from the delay, particularly as she was on administrative leave with pay during this period.<sup>25</sup>

37. Having considered the totality of the evidence and after assessing the credibility of witnesses, the Dispute Tribunal concluded that there was clear and convincing evidence that Ms. Al Rifai had misled and intimidated WO1 into making false allegations against CO1.<sup>26</sup>

38. The Dispute Tribunal held that it was a clear violation of Area Staff Regulation 1.4 and General Staff Circular 07/2014, paragraphs 3 and 5, for Ms. Al Rifai to mislead and intimidate another staff member into filing a malicious complaint of sexual harassment. Her actions were also a manifest abuse of authority under paragraphs 16, 17, and 22 of General Staff Circular No. 06/2010. The Tribunal held that her actions constituted serious misconduct.<sup>27</sup>

39. The Dispute Tribunal found that the sanction of separation from service was not disproportionate to the misconduct. Ms. Al Rifai was a senior manager and a holder of a position of trust. As a senior manager, she must have known that false accusations of sexual harassment could have caused severe harm to the concerned individuals. The Agency was entitled to conclude that this conduct so seriously damaged the employment relationship to render its continuation intolerable.<sup>28</sup> Given that this count of misconduct was sufficient to support the sanction, the Tribunal did not examine the other misconduct findings in the Disciplinary Measure letter.<sup>29</sup>

40. Regarding the second contested decision, the Agency's closure of the investigation into Ms. Al Rifai's complaints, the Dispute Tribunal held that Ms. Al Rifai had failed to show that the Agency's resolution of this matter was erroneous. She was able to raise all her concerns and to present her arguments, explanations, and evidence to the investigators. The Tribunal noted that

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<sup>24</sup> *Ibid.*, paras. 84-85.

<sup>25</sup> *Ibid.*, para. 88.

<sup>26</sup> *Ibid.*, para. 108.

<sup>27</sup> *Ibid.*, para. 109.

<sup>28</sup> *Ibid.*, para. 113.

<sup>29</sup> *Ibid.*, para. 114.

the Agency took managerial action against the four staff members who committed minor misconduct with respect to breaches of confidentiality around the investigation.<sup>30</sup>

41. The Dispute Tribunal also held that Ms. Al Rifai had no right under the Agency's framework to receive a copy of the DIOS Preliminary Assessment Report (PAR) regarding the investigation into her complaints. She was kept informed of the status of the investigation and was apprised of the outcome which was sufficient. Although the 14-month delay between Ms. Al Rifai's last complaint and the second contested decision was unreasonable, Ms. Al Rifai has failed to demonstrate how the delay prejudiced her and the investigation was completed within 60 days of her final complaint.<sup>31</sup>

42. The Dispute Tribunal concluded that Ms. Al Rifai had not met her burden of showing that the Agency had abused its discretion in closing the investigation into her complaints and there were no due process violations.

43. The Dispute Tribunal denied Ms. Al Rifai compensation for costs for translating her statement from English into Arabic, as there was no basis for this in the regulatory framework.

### **Submissions**

#### **Ms. Al Rifai's Appeal**

44. As a preliminary matter, Ms. Al Rifai requests that the Appeals Tribunal grant her anonymity in this judgment.

45. On the merits of her appeal, Ms. Al Rifai submits that the UNRWA DT erred on a question of fact by relying on the evidence of Wo1 who is not credible. Ms. Al Rifai submits that the UNRWA DT failed to properly weigh the credibility of the evidence. Given the unreliability of Wo1's testimony, it is unclear what the basis was for finding that the misconduct was proven by clear and convincing evidence.

46. Ms. Al Rifai also submits that the UNRWA DT erred in law when it only focused on one of the misconduct findings and failed to review all her due process allegations. She claims that her due process rights were violated by not receiving the Investigation Report before the imposition of

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<sup>30</sup> *Ibid.*, paras. 121-122.

<sup>31</sup> *Ibid.*, paras. 124-125.

the disciplinary sanction. The Agency had two years to reach its conclusion, and she had only a brief interval to prepare her defense.

47. Ms. Al Rifai contends that the UNRWA DT erred in its cursory review of the second contested decision. The spreading of rumors and breaches of confidentiality over the ongoing investigation, which were substantiated, were all part of a pattern of mobbing that informed the actions of RWTC staff, including the motivation behind Wo1's contradictory behaviour.

48. Ms. Al Rifai submits that the UNRWA DT erred in finding that the delay in investigating her complaints was unreasonable but reaching no further conclusions from this.

49. Ms. Al Rifai argues that the Commissioner-General's case amounts to drawing inferences and assumptions that fall short of the required burden of proof to justify separation from service. Ms. Al Rifai submits that her long unblemished record of integrity was ignored, including her role in combating gender-based violence.

50. Ms. Al Rifai submits that given the allegation justifying the separation "appears at most to be an isolated case", relying on the UNAT's Judgment in *Nkoyock*,<sup>32</sup> Ms. Al Rifai's record of service should have been taken into consideration in reducing the sanction.

51. Ms. Al Rifai submits that she suffered moral damage, in terms of her reputation, loss of career, and psychological stress and anxiety. She notes that she submitted a series of medical reports from 2017 to 2019 to prove this and they are part of the case record.

52. Ms. Al Rifai requests that her appeal be granted, the contested decision rescinded, or in the alternative, that she be awarded two years' net base salary in lieu compensation. She also requests two years' net base salary in moral damages.

### **The Commissioner-General's Answer**

53. The Commissioner-General submits that the UNRWA DT correctly dismissed the application, therefore, this appeal should be dismissed.

54. The Commissioner-General argues that Ms. Al Rifai has failed to establish any reversible error of fact, law or procedure warranting intervention by the UNAT. The UNRWA DT followed

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<sup>32</sup> *Moise Alain Nkoyock (Fils) v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1401, paras. 78-79.

the applicable jurisprudence on judicial review of disciplinary cases and correctly concluded that clear and convincing evidence established the misconduct, that the disciplinary measure was proportionate, and that there were no due process violations.

55. The Commissioner-General submits that the UNRWA DT also did not err when it upheld the Agency's decision to close the investigation into the complaints filed by Ms. Al Rifai.

56. The Commissioner-General submits that the UNRWA DT conducted a systematic review of the probative value, relevance, credibility and reliability of the witness testimony provided by Ms. Al Rifai, W01 and W02. These testimonies were given at a hearing, and the Dispute Tribunal gave explicit reasons as to why it accepted or rejected the testimony of each witness. Accordingly, Ms. Al Rifai's reliance on AAC<sup>33</sup> as a basis to overturn the impugned Judgment is inapposite.

57. The Commissioner-General contends that Ms. Al Rifai may not raise new arguments on appeal about how she had a brief period to prepare her defence, when she did not raise this before the UNRWA DT.

58. The Commissioner-General submits that Ms. Al Rifai had a meaningful opportunity to respond and defend herself against the allegations during the investigative process, the disciplinary process and before the UNRWA DT. There are no substantial procedural irregularities that warrant vitiating the contested decision.

59. The Commissioner-General contends that the UNRWA DT was within its rights to decline to review the other bases for the sanction, when the single count was sufficient to justify separation from service. The UNRWA DT's exercise of discretion was not a reversible error, considering the no difference principle.

60. The Commissioner-General rejects Ms. Al Rifai's argument that the UNRWA DT gave only cursory treatment to the second contested decision.

61. The Commissioner-General submits that there is no basis for any award of compensation for delay, since there was no unreasonable delay in Ms. Al Rifai's case, nor has she established harm therefrom.

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<sup>33</sup> AAC v. Secretary-General of the United Nations, Judgment No. 2023-UNAT-1370.

### Considerations

62. Ms. Al Rifai says that the UNRWA DT erred in fact and in law in upholding the first and second contested decisions. She also requests that the Appeals Tribunal grant her anonymity in this judgment.

#### *Anonymity*

63. Ms. Al Rifai requests anonymity, “(g)iven the sensitive nature of the information contained in any prospective judgment”.

64. Article 10(9) of the Appeals Tribunal Statute (Statute) provides that the judgments of this Tribunal “shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal”. Article 20(2) of the Appeals Tribunal Rules of Procedure (Rules) states that “published judgements will normally include the names of the parties”.

65. The Appeals Tribunal’s usual or standard position is that the names of the parties are routinely included in judgments of the internal justice system of the United Nations in the interests of transparency and accountability and that names should be redacted “in only the most sensitive of cases”.<sup>34</sup> We have previously found that personal embarrassment and discomfort are not sufficient grounds for redaction, with redaction only to occur in the most sensitive of cases. The person requesting anonymization must show that there is a need for anonymization which justifies a departure from the ordinary rule. This requires balancing competing factors such as the nature and extent of the misconduct; the position and employment record of the staff member; the impact of the decision on the staff member; the impact of such a decision on the complainants; the impact of the decision on transparency, general deterrence, future and past conduct, both staff member and others; and other such factors.

66. Ms. Al Rifai’s only rationale for anonymization is the “sensitive nature” of the information, but she fails to identify what information is alleged to be sensitive or how it is sensitive. Given the lack of rationale provided, there is insufficient reason or evidence to depart from the ordinary rule and support anonymization of this judgment.

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<sup>34</sup> *AAE v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1332, para. 155.

67. Her request for anonymization is dismissed.

*Merits of the Appeal*

69. As provided for by Article 2(1) of the Statute, the role of the Appeals Tribunal is to determine if the Dispute Tribunal has made errors of fact, law or procedure or exceeded or failed to exercise its jurisdiction or competence. An appellant has the burden of showing the impugned judgment is defective in the manner required by Article 2(1).<sup>35</sup>

70. In disciplinary cases such as this one, it is well-established that the Dispute Tribunal must consider:<sup>36</sup>

- (a) whether the facts on which the sanction is based have been established by the Secretary General by clear and convincing evidence when termination is a possible outcome,
- (b) whether the established facts qualify as misconduct under the Staff Regulations and Rules,
- (c) whether the sanction is proportionate to the offence and the circumstances, and
- (d) whether the staff member's due process rights were observed in the investigation and disciplinary process.

Clear and convincing proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt; it means that the truth of the facts asserted is highly probable.<sup>37</sup>

71. We find that the UNRWA DT did not err in dismissing the application challenging the first and second contested decisions for reasons below.

*First Contested Decision: Whether there is clear and convincing evidence to establish the facts of the misconduct charge and whether these facts amount to misconduct under the relevant Area Staff Regulations and General Staff Circulars?*

72. In the impugned Judgment, the UNRWA DT found clear and convincing evidence that Ms. Al Rifai misled and intimidated Wo1 into making false allegations against Co1. This finding is based on its assessment of the consistency and credibility of testimony at the hearing, Wo2's evidence corroborating the evidence of Wo1, and the lack of motive on the part of Wo1 to fabricate

<sup>35</sup> *Iyad Youssef Zaqout v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1183, para. 30.

<sup>36</sup> *Bamba v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1259, para. 37.

<sup>37</sup> *Molari v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-164, para. 2.

allegations against Ms. Al Rifai. In contrast, the UNWRA DT found that Ms. Al Rifai had a motive to discredit CO1 as CO1 was one of the staff members who had filed a complaint against her.

73. Ms. Al Rifai submits that the UNRWA DT erred in fact when it relied on the evidence of WO1. She alleges that WO1 was an admitted “liar” with “a changing story” and WO1’s evidence cannot constitute clear and convincing evidence. WO1 admitted he made a false complaint against CO1 and wished to withdraw it after learning that he was *not* the subject of a complaint of attempted sexual assault by CO1.

74. Ms. Al Rifai also contends that the UNRWA DT erred in relying on the corroboration of WO1’s account by three other persons, none of whom had any direct knowledge. She points out that WO2 was unable to recall when he met with WO1. This may be significant, depending on if it occurred after Ms. Al Rifai was on administrative leave.

75. Ms. Al Rifai avers that the UNRWA DT had no basis to conclude that she knew at the time of her meeting with the DUO/WB that CO1 had filed a complaint against her. The Note to File does not specify any of the individuals who filed the complaint. Ms. Al Rifai was not shown the complaints until much later.

76. Article 2(1)(e) of the Statute enables an appeal to the Appeals Tribunal where it is alleged that the Dispute Tribunal erred on a question of fact, *resulting in a manifestly unreasonable decision*. The appellant has the burden of proving this error.

77. Where key facts are disputed, as in this case, the Dispute Tribunal in its judgment must make explicit findings pertaining to the credibility and reliability of the evidence and provide a clear indication of which disputed version it prefers and explain why. This will require the Tribunal to set out its impression about the veracity of every witness who testified before it in the hearing.<sup>38</sup>

78. In the present appeal, the UNRWA DT did so. It considered the conflicting accounts of the meeting on 22 February 2017 between Ms. Al Rifai and WO1. Ms. Al Rifai denied knowing that there was an investigation into complaints against her at the time of this meeting. The Tribunal relied on the Note to File of her 23 February 2017 meeting with DUO/WB, which indicated that Ms. Al Rifai had heard about the possibility of the investigation beforehand. The Tribunal

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<sup>38</sup> AAC Judgment, *op. cit.*, para. 15.

considered that she was motivated to attempt to discredit CO1, who was one of the staff members who had filed a complaint against her.<sup>39</sup>

79. By contrast, WO1 was not one of the staff members who had filed a complaint against Ms. Al Rifai and had no apparent motive to fabricate allegations against Ms. Al Rifai.

80. The UNRWA DT considered that WO1 acknowledged that his allegations against CO1 were false but held this did not impact his credibility as he provided a detailed, consistent explanation as to his motives in making the false claim. Moreover, WO2 confirmed that WO1 told him that Ms. Al Rifai had encouraged WO1 to draft the complaint against CO1. The UNRWA DT considered that WO2 had no bias against Ms. Al Rifai, as he was one of the signatories to the petition against placing her on administrative leave with pay.

81. The UNWRA DT acknowledged small discrepancies between WO1 and WO2's evidence at the hearing and their witness statements during the investigation process but held that the discrepancies were minor and largely immaterial within the totality of the evidence.

82. We have previously held that "[i]n order to overturn a finding of fact by the UNDT, the Appeals Tribunal must be satisfied that the finding is not supported by the evidence or that it is unreasonable".<sup>40</sup> That is not the case here.

83. Further we have held that "some degree of deference should be given to the factual findings by the UNDT as the court of first instance, particularly where oral evidence is heard. The UNDT has the advantage of assessing the demeanour of witnesses while they are giving evidence and this is critical for assessing the credibility of the witnesses and the persuasiveness of their evidence".<sup>41</sup>

84. As a result, we find that the UNRWA DT did not err in fact in finding that Ms. Al Rifai misled and intimidated WO1 into making false allegations against CO1. The Tribunal conducted an oral hearing and heard testimony from witnesses, including Ms. Al Rifai and WO1. In the present case, the evidence on the first allegation is dependent almost entirely on the meeting between Ms. Al Rifai and WO1 on 22 February 2017 and what was said between them. The findings of credibility are critical to a review of that allegation. The UNRWA DT heard oral testimony from

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<sup>39</sup> *Ibid.*, para. 101.

<sup>40</sup> *Flamur Kazazi v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1382, para. 84 (internal citation omitted).

<sup>41</sup> *Ibid.*, para. 85 (internal citation omitted).



Ms. Al Rifai and WO1 of that meeting and the circumstances around it. They were also questioned on their testimony.

85. The UNRWA DT considered the Investigation Report and witness statements. It found WO1 was credible and consistent, and his evidence was corroborated by WO2. The Tribunal provided a detailed analysis of the evidence and provided adequate reasons for its findings of facts. Based on the above, the UNRWA DT Judge is best placed to make a credibility assessment of the witnesses and we defer to the UNRWA DT's assessment. We cannot find that that the UNRWA DT's findings of fact based on that assessment resulted in a manifestly unreasonable decision.

86. Accordingly, Ms. Al Rifai has not discharged her burden of showing that the UNRWA DT's findings were not based on relevant evidence and resulted in a manifestly unreasonable decision.

87. In addition, Ms. Al Rifai argues that the UNRWA DT erred in law when it only determined one of her three allegations, namely the serious charge of soliciting WO1 to make a false accusation against CO1.

88. We find no error of law in the UNRWA DT determining the first allegation for misconduct (namely forcing WO1 to make a false accusation) given its serious nature before it reviewed the other two allegations of misuse of resources and creation of a hostile work environment. Having determined that the facts underlying the allegation of misleading and intimidating WO1 into making a false complaint against CO1 were established with clear and convincing evidence and that this qualified as misconduct under the relevant Area Staff Regulations and General Staff Circulars, the UNRWA DT did not need to review and make findings on the allegations of misuse of resources or creation of a hostile work environment. Although it would have been helpful to have done so in order to ensure a review for her employment record, in these circumstances, it was not an error of law. In other cases and circumstances, the failure to adjudicate allegations could have a material impact on the legality and fairness of the outcome, but not in this instance as the Tribunal adjudicated the more serious of the allegations.

89. Therefore, we find that the UNWRA DT did not err in its finding that there was clear and convincing evidence establishing the facts underlying the misconduct contrary to the relevant Area Staff Regulations and General Staff Circulars.

*Whether the disciplinary sanction of separation was disproportionate?*

90. Ms. Al Rifai was separated from service with compensation in lieu of notice and with termination indemnity. She says that the UNRWA DT, in reviewing the proportionality of the disciplinary sanction, failed to consider her record of service, given the alleged infraction.

91. It is well established in our jurisprudence that the Commissioner-General has wide discretion in applying disciplinary sanctions for misconduct but this discretion is not unfettered.

92. In the impugned Judgment, the UNRWA DT reviewed the evidence and found that Ms. Al Rifai's behaviour was deliberate. She was a senior manager and in a position of trust, making her conduct all the more serious. The UNRWA DT stated that the Agency's discretion in imposing the disciplinary sanction was mainly affected by Ms. Al Rifai's misconduct towards WO1 which constitutes serious misconduct that in and of itself supports the imposition of "a very serious disciplinary measure". Therefore, the UNRWA DT opined, it was not relevant whether aggravating factors had to be considered.

93. In reviewing the exercise of the Commissioner-General's discretion in imposing a disciplinary sanction, the essential question is whether the sanction is arbitrary or irrational, namely does the sanction bear a rational connection to the evidence of misconduct and the purpose of corrective or progressive discipline.<sup>42</sup> This requires that the Commissioner-General consider all relevant factors (both aggravating and mitigating) and not consider irrelevant factors.

94. In the impugned Judgment, the UNWRA DT found that "[i]t is not relevant whether or not aggravating factors had to be taken into account".<sup>43</sup> We disagree. The fact that the misconduct is "serious" is not sufficient to automatically impose the most severe disciplinary measure without considering *all* relevant factors. To do so would be arbitrary. The Commissioner-General has discretion and must exercise it judiciously by considering and weighing *all* relevant factors (aggravating and mitigating).

95. In *Rajan*, the Appeals Tribunal held that "(t)he most important factors to be taken into account in assessing proportionality of a sanction include the seriousness of the office, the length

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<sup>42</sup> *Samandarov v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-859, para. 25.

<sup>43</sup> Impugned Judgment, para. 114.

of service, the disciplinary record of the employee, the attitude of the employee and his past conduct, the context of the violation and employer consistency”.<sup>44</sup>

96. In the Disciplinary Measure letter, the Commissioner-General confirmed that the seriousness of the misconduct “in and of itself supports the imposition of a very serious disciplinary measure”. The Commissioner-General then stated that Ms. Al Rifai did not have a “pattern or history of wrongdoing with the Agency”. This indicates that, contrary to Ms. Al Rifai’s submission, the Commissioner-General did consider her record of service. The Commissioner-General considered other factors such as her seniority, position and function, multiple breaches and targets, and her resistance during the investigation. These factors support the Commissioner-General’s imposition of the disciplinary sanction.

97. Therefore, we find that the UNRWA DT did not err in finding that the disciplinary sanction of separation with termination indemnity was proportionate to the established misconduct.

*Was due process respected during the disciplinary proceedings?*

98. Ms. Al Rifai claims that the UNRWA DT correctly found that the Agency violated her due process rights by failing to provide her with the Investigation Report before imposing the contested decision but erred when it held that this had no impact on the case because she received a copy of the Report prior to the hearing. She argues that although the Agency had nearly two years to reach its conclusion, she had only a brief interval to prepare a defense.

99. We agree with the UNRWA DT that the Agency failed to respect Ms. Al Rifai’s due process rights by failing to provide her with the Investigation Report before taking the first contested decision.

100. However, the Appeals Tribunal has consistently held that only substantial procedural irregularities will render a disciplinary measure unlawful.<sup>45</sup>

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<sup>44</sup> *Rajan v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-781, para. 48.

<sup>45</sup> *Sall v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-889, para. 33.

101. Further, we have also consistently opined that: “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”.<sup>46</sup>

102. We find no error in the UNRWA DT’s finding that Ms. Al Rifai has not established that the failure to provide her the Investigation Report at an earlier stage had a material impact on the outcome of her case. The procedural irregularity must be substantial. It is important to note that the due process rights of a staff member are complied with as long as he or she has a meaningful opportunity to mount a defense and to question the veracity of the statements against him or her.

103. This is what occurred in the present case. Although Ms. Al Rifai did not receive the Investigation Report before the contested decisions, the DUO/WB informed her of the findings of the Investigation Report in the OTR letter dated 9 October 2017, which included details of the evidence and witness statements, and provided her with an opportunity to respond, which she did. Further, she was given the opportunity to submit observations to the transcript of her interview, which she also did. She received a copy of the Investigation Report prior to the UNRWA DT hearing and had the opportunity to respond to it during the UNRWA DT proceedings including calling and cross-examining witnesses. As such, Ms. Al Rifai had a meaningful opportunity to know the case against her and to respond and mount a defense.

104. Therefore, we find that the UNRWA DT did not err in finding that Ms. Al Rifai had not demonstrated that the failure to provide the Investigation Report earlier was a substantial procedural irregularity in these circumstances.

105. Further, the UNRWA DT reviewed Ms. Al Rifai’s other claims of due process violations including excessive delay in the investigation and not being permitted to adduce additional evidence. The Tribunal correctly reviewed the delays but held that there was similarly no demonstrable impact on Ms. Al Rifai’s ability to mount a defense. We agree that any irregularity in the delays and additional evidence identified was not substantial such that Ms. Al Rifai’s right to due process was not met.

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<sup>46</sup> *Mohamad Haider Elmenshawy v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2024-UNAT-1510, para. 98.

*Second Contested Decision: Whether the Agency abused its discretion in its handling of Ms. Al Rifai's complaints?*

106. In the impugned Judgment, the UNRWA DT held that Mr. Al Rifai had not met her burden that the Agency erred in the second contested decision, namely that the Agency abused its discretion by closing the investigation into her complaints. Further, it concluded that, although the 14-month delay between her complaint and the Agency's decision to close the investigation was unreasonable, she had failed to show that she was prejudiced by the delay.

107. Ms. Al Rifai argues that the Dispute Tribunal only gave a "cursory review" of her challenge to the second contested decision and it erroneously "drew no conclusions" from the unreasonable delay in concluding the investigation.

108. We find no merit in Ms. Al Rifai's submissions.

109. The UNRWA DT considered her claims that her complaints were not fairly and impartially investigated and noted that she was in constant contact with the investigators. It reviewed the record and found that she was able to raise all her concerns and to present her additional arguments, explanations, and evidence.

110. The Dispute Tribunal correctly recalled that disciplinary matters are within the discretion and authority of the Commissioner-General and that the Agency has discretion as to how to conduct a review and assessment of a complaint and whether to undertake an investigation. The UNRWA DT correctly applied this jurisprudence to the case and held that Ms. Al Rifai had failed to show the Agency had abused its discretion or failed to exercise it judicially. It is not sufficient for her to simply disagree with the course of action taken by the Agency.

111. As for Ms. Al Rifai's argument that the contested decision should be nullified on the ground of due process violations including the excessive delay in the conclusion of the investigation, the UNRWA DT appropriately reviewed the argument and evidence and held that the 14-month delay between her last complaint and the Agency's letter informing her of the closure of the investigation was unreasonable.

112. However, as per the above reasoning, only substantial procedural irregularities and the significance of the due process violation's impact on the outcome of the case will render the matter unlawful. The staff member alleging due process violations has the burden of proving this.

113. We agree that Ms. Al Rifai has failed to demonstrate how the delay prejudiced her in this case. She says that the delay “could have had an impact on all the allegations and shed light on the impact of mobbing that she argued influenced the staff”. This is insufficient to demonstrate prejudice to her.

114. In conclusion, we find no merit in Ms. Al Rifai’s appeal. The appeal is dismissed.

**Judgment**

115. Ms. Al Rifai's appeal is dismissed, and Judgment No. UNRWA DT/2023/051 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 21<sup>st</sup> day of March 2025 in Nairobi, Kenya.

*(Signed)*

Judge Sandhu, Presiding

*(Signed)*

Judge Savage

*(Signed)*

Judge Sheha

Judgment published and entered into the Register on this 14<sup>th</sup> day of April 2025 in New York, United States.

*(Signed)*

Juliet E. Johnson,  
Registrar