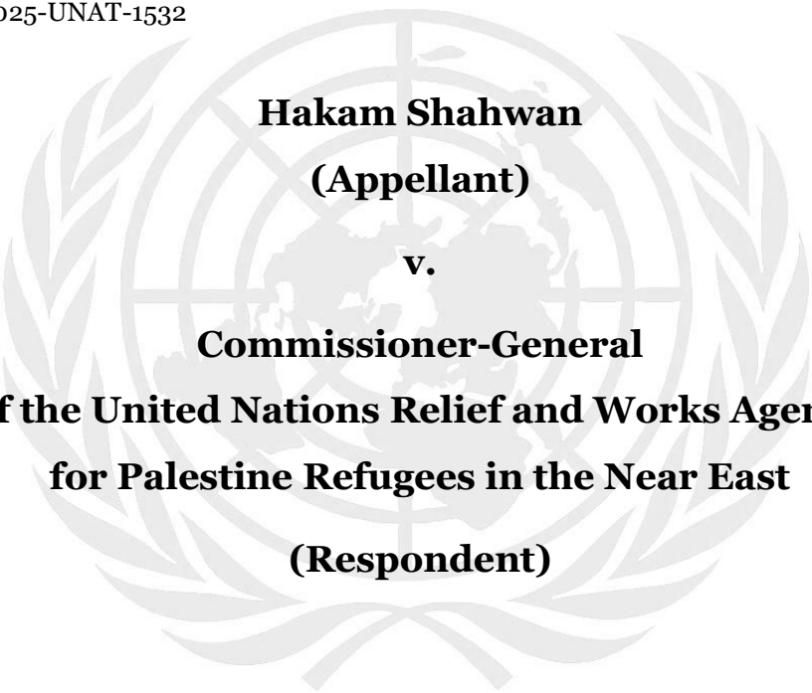




UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2025-UNAT-1532



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

JUDGMENT

Before:	Judge Katharine Mary Savage, Presiding Judge Graeme Colgan Judge Gao Xiaoli
Case No.:	2024-1909
Date of Decision:	21 March 2025
Date of Publication:	8 May 2025
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Anca Apetria
Counsel for Respondent:	Stephen Margetts

JUDGE KATHARINE MARY SAVAGE, PRESIDING.

1. Mr. Hakam Shahwan, the former Chief of Staff of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) at the D-2 level, has filed an appeal of Judgment No. UNRWA/DT/2023/050 (impugned Judgment or the second Judgment) issued by the UNRWA Dispute Tribunal (UNRWA DT) on 27 December 2023.¹
2. In the impugned Judgment, the UNRWA DT dismissed Mr. Shahwan's application for partial execution of Judgment No. UNRWA/DT/2023/018 (the first Judgment) and his request for compensation.
3. For the reasons set out below, the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

4. Mr. Shahwan filed three applications with the UNRWA Dispute Tribunal, contesting the decision to place a note in his Official Status File (OSF) (Case No. UNRWA/DT/HQA/2020/045); the decision not to approve his sick leave request (Case No. UNRWA/DT/HQA/2020/064); and the decision not to complete his performance evaluation reports and the non-provision of a certificate of service (Case No. UNRWA/DT/HQA/2021/032).²
5. The UNRWA DT consolidated the applications and decided them in its first Judgment dated 27 April 2023. In the first Judgment, the UNRWA DT rescinded the Agency's decision to place a Note in Mr. Shahwan's OSF and ordered the Agency to pay Mr. Shahwan 3,000 Jordanian dinars (JOD) for his legal costs but denied his other requests for compensation. The UNRWA DT dismissed Mr. Shahwan's challenge to the Agency's denial of his sick leave request as not receivable. Lastly, the UNRWA DT rescinded the Agency's decision to refuse to complete Mr. Shahwan's performance evaluation reports and to provide a certificate of service. In connection with the latter claim, the UNRWA DT ordered the Agency to pay Mr. Shahwan an additional JOD 3,000 for his legal costs but denied his other requests for compensation.³

¹ *Shahwan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2023/050 on Application for Partial Execution of Judgment.

² *Ibid.*, para. 2.

³ *Ibid.*, para. 3.

6. On 6 June 2023, Mr. Shahwan contacted the Department of Legal Affairs to inquire about the execution of the first Judgment. The following day, on 7 June 2023, the Director of Legal Affairs advised that the Judgment would become executable in accordance with Article 11(3) of the Dispute Tribunal's Statute following the expiry of the time limit for filing the appeal.⁴

7. On 23 and 24 June 2023, respectively, the Commissioner-General filed an appeal against the first Judgment in respect of the awards of legal costs and Mr. Shahwan appealed in respect of moral and material damages.⁵

8. On 13 September 2023, Mr. Shahwan filed an application for partial execution of the first Judgment.⁶

9. On 11 October 2023, the UNRWA DT issued a corrigendum to the first Judgment, adding the following paragraph:⁷

120. The present Judgment is subject to appeal before the UNAT by either Party, in accordance with the provisions of the UNAT's Statute. If not appealed, the present Judgment becomes executable as of 27 June 2023 and the Respondent is obliged to pay the above sums to the Applicant and execute the Judgment on or before 27 August 2023, during which period the US Prime Rate, applicable as of 27 June 2023, shall apply. If the sums are not paid on or before 27 August 2023, an additional five percentage points shall be added to the US Prime Rate until the date of payment.

10. On 4 December 2023, the Commissioner-General filed a reply.⁸

11. On 27 December 2023, the UNRWA DT issued the impugned Judgment, in which it dismissed the application for partial execution. The UNRWA DT noted that neither party had appealed the impugned Judgment in relation to the order to remove the Note from Mr. Shahwan's OSF or the order to provide him with performance evaluations and a certificate of service and, as such, it was unclear why the Agency would not proceed to execute this portion of the Judgment. The UNRWA DT however found that the Agency had no obligation to partially execute the

⁴ *Ibid.*, paras. 4 and 5.

⁵ *Ibid.*, para. 6.

⁶ *Ibid.*, para. 7.

⁷ *Ibid.*, para. 8.

⁸ *Ibid.*, para. 9.

Judgment considering that the filing of an appeal had the effect of suspending the execution of a judgment.⁹

12. On 21 March 2024, Mr. Shahwan filed an appeal against the impugned second Judgment.

13. On 2 May 2024, the Appeals Tribunal issued Judgment No. 2024-UNAT-1429 (the UNAT Judgment), granting the Commissioner-General's appeal and granting, in part, Mr. Shahwan's appeal against the first Judgment. The Appeals Tribunal reversed the awards of legal costs, finding that with no evidence of a manifest abuse of proceedings by the Commissioner-General before the UNRWA DT, nor any finding by the UNRWA DT of such an abuse of proceedings, the orders for payment of the legal costs could not be sustained. The Appeals Tribunal granted Mr. Shahwan's appeal in part, finding that due to the Agency's failure to provide Mr. Shahwan with a certificate of service and performance evaluations, he had been unable to prove his past employment record with the United Nations to prospective employers. The Appeals Tribunal found that the Agency had caused harm to Mr. Shahwan's employment prospects, amounting to a serious violation of his career and his person and awarded compensation for moral damages in the amount of three months' net base salary.

14. On 24 May 2024, the Commissioner-General filed his answer to Mr. Shahwan's appeal against the impugned second Judgment.

15. On 5 June 2024, Mr. Shahwan filed a motion for additional pleadings, requesting an opportunity to respond to matters presented for the first time in the Commissioner-General's answer.

16. On 18 June 2024, the Commissioner-General filed his comments, arguing that Mr. Shahwan had not provided compelling reasons to justify additional pleadings.

17. By Order No. 566 (2024) dated 28 June 2024, the Appeals Tribunal granted Mr. Shahwan's motion. The Appeals Tribunal found that, given that Mr. Shahwan had filed his appeal before the UNAT Judgment was issued, whereas the Commissioner-General had an opportunity to address the UNAT before submitting his answer, it was in the interest of procedural fairness to allow Mr. Shahwan to submit additional pleadings.

⁹ *Ibid.*, paras. 18 and 19.

18. Mr. Shahwan filed additional pleadings pursuant to Order No. 566 (2024) on 17 July 2024, and the Commissioner-General filed his response to the additional pleadings on 5 August 2024.

Submissions

Mr. Shahwan's Appeal

19. Pursuant to Articles 11 and 12 of the UNRWA DT Statute, the impugned Judgment was to be executed following the expiry of the time limit for filing an appeal, which is 60 days from the notification of the judgment. The impugned Judgment was issued and notified to the parties on 27 April 2023, and it follows that the deadline to submit an appeal expired on 26 June 2023. Within that deadline, the Commissioner-General did not submit an appeal against the UNRWA DT's orders to remove the Note from Mr. Shahwan's OSF to issue performance evaluations for 2018, 2019, and 2020, and to issue a certificate of service showing his period of service, his title and his duties. Consequently, by 27 June 2023, those parts of the impugned Judgment became executory for the Agency.

20. Mr. Shahwan contends that, at present, more than eight months later, the Agency "maliciously refuses" to comply with the above orders on grounds that the Appeals Tribunal might review the impugned Judgment in its entirety. This, Mr. Shahwan submits, is "legally nonsensical, to say the least". The Appeals Tribunal does not review a judgment beyond the parts contested by the appellants and does not amend or cancel the entire judgment when neither party has identified any errors therein. In the instant case, neither party appealed to the Appeals Tribunal against the parts of the Judgment that are the object of the request for partial execution. Mr. Shahwan requests partial execution of the impugned Judgment as identified above.

21. Mr. Shahwan further claims that this case involves a "high degree of bad faith and malice on the part of UNRWA" which has the clear intention to prejudice Mr. Shahwan. The Agency's "unlawful and irregular actions" are left without any cost to itself while Mr. Shahwan has been struggling to find a job for four years since the illegal note was placed in his OSF, and he was obliged to withdraw his pension and exhaust it to cover the needs of his family, including his four children. He also experienced stress, despair and severe anxiety. This matter has been pending for more than three years and the Agency knew by 26 June 2023, if not much earlier, that the impugned Judgment would become executory (having succeeded on the points in question, Mr. Shahwan could not have submitted an appeal). There is therefore no justification for such a delay, other than

“malice and gross bad faith on the part of UNRWA” who is well aware that Mr. Shahwan has not secured any employment by now. It is more likely than not that it is the refusal on the part of the Agency to issue the documents ordered by the UNRWA DT that impedes him to find a new job.

22. Mr. Shahwan contends that given the harm caused to him and his family, as well as the stress and anxiety about his future and that of his family, a request for material and moral damages is fully justified. Mr. Shahwan has waited that justice be done for three years. He incurred legal fees and has experienced severe harm due to the Agency’s behaviour. He legitimately expected that the Agency would execute the relevant part of the judgment, but this has not occurred. The way the Agency behaves, following the issuance of the impugned Judgment, is sufficient evidence of the harm caused to him. Depriving him of the most elementary documents he needs to secure further employment is in breach of his substantive entitlements arising out of his contract. His request for moral and material damages is fully justified.

23. Mr. Shahwan submits that contrary to the Agency’s contention, there is also no duplication of the compensation requested as the damages requested in this appeal relate to the harm incurred by him as a result of the non-execution of the impugned Judgment eight months after it had become executory, i.e. material damages for the loss of salary during this time and moral damages for the stress and anxiety he and his family experienced. Finally, Mr. Shahwan requests the Appeals Tribunal to order the Agency to pay him compensation for the legal fees incurred in this procedure, in the amount of at least CHF 4,000 (he will provide the bill after the submission of the answer). He contends that it is the Agency’s “capricious, and bad faith behaviour” that forced him to submit this request for execution of judgment. In his view, only an order for compensation for material and moral damage will make the Agency comply with its obligations, avoid causing additional harm to its former staff members, show respect towards the judgments issued by the UNRWA DT as well as respect to justice and staff rights.

24. Mr. Shahwan asks that the Appeals Tribunal reverse the impugned second UNRWA DT Judgment and order the immediate execution of Sections 119 i.a-b and iii.a-c of the first Judgment (within a maximum of one week); order the Agency to pay him material damages for the delay in the execution of the first Judgment in an amount equivalent to one month’s most recent salary for each month of delay as of 1 July 2023 and until payment is made, i.e. eight months of salary by the time of the appeal; order the Agency to pay him moral damages in an amount equivalent to three months of his most recent salary; and to award costs in the amount of at least USD 3,000 incurred in connection with the present appeal.

The Commissioner-General's Answer

25. The Commissioner-General submits that the requested relief for partial execution has become moot. On 19 February 2024, the Agency removed the Note from Mr. Shahwan's OSF. Following the issuance of the UNAT Judgment, which provided the final determination on compensatory damages and on legal costs and did not alter any other orders in the first Judgment, the Agency executed the parts of first the Judgment related to the provision of documents. Specifically, the certificate of service was provided to Mr. Shahwan on 17 May 2024, and the performance evaluations for 2018 and 2019 were provided to him on 23 May 2024. The Commissioner-General submits that the Agency also has initiated processes to pay Mr. Shahwan compensation for non-pecuniary damage (moral damages), equivalent to three months' net base salary in total, as directed by the Appeals Tribunal.

26. The Commissioner-General submits that the appeal is not well founded on any of the grounds set out in Article 2 of the UNAT Statute and should be dismissed on this basis alone. Should the UNAT nevertheless consider the appeal, the Commissioner-General submits that Mr. Shahwan has failed to establish any reversible error of fact, law, or procedure by the UNRWA DT, warranting intervention by the UNAT.

27. First, Mr. Shahwan's claim that those parts of the impugned Judgment that were not appealed had become executory is misguided. The language of Article 7 of the UNAT Statute is not ambiguous and specifically states that, should a judgment be appealed, its execution is suspended. This language is consistent with Article 11(3) of the UNRWA DT Statute, which provides that judgments of the UNRWA DT are subject to appeal, and in the absence of such appeal, they shall be executable following the expiry of the time limit to appeal provided for in the UNAT Statute. Considering that two appeals had been filed against the first Judgment, it did not become executable. The application for partial execution was therefore correctly dismissed by the UNRWA DT.

28. Secondly, the Commissioner-General submits that Mr. Shahwan's claim for compensation is duplicative and was addressed by the Appeals Tribunal in the UNAT Judgment. On this ground alone the claim for compensation should be dismissed. Considering especially that the issue of compensation ordered in the first Judgment had been appealed by both parties, it would have been outside the UNRWA DT's jurisdiction to review the questions of compensation raised in the application, while the same questions were being considered by the UNAT. Further, in the first

UNAT Judgment, the Appeals Tribunal has provided the final determination on compensation and legal costs. No compensation for material damage was awarded, compensation for moral damage equivalent to three months' net base salary in total was awarded, and the awards of legal costs pronounced in the first Judgement were reversed. Accordingly, Mr. Shahwan's claims for compensation are duplicative as they have already been addressed by the Appeals Tribunal.

29. Should the Appeals Tribunal determine that the UNRWA DT erred in dismissing the application and consider Mr. Shahwan's requests for compensation under Article 9(1)(b) of the UNAT Statute, the Commissioner-General submits that such requests should be dismissed. Mr. Shahwan does not demonstrate in accordance with UNAT jurisprudence that his chances of being selected were significant had his file included annual performance evaluations. Indeed, Mr. Shahwan does not adduce any evidence demonstrating that his non-selection was caused by the absence of performance evaluations. Moreover, Mr. Shahwan's name was mentioned in multiple open online sources in connection with various allegations; irrespective of whether such allegations were substantiated or not, such publications also affected the prospects of his employment. His claim of material damages is therefore purely speculative and should be dismissed. Finally, he does not provide any evidence that would enable the UNRWA DT or the UNAT to determine the quantum of the lost financial opportunity for a possible award of compensation for alleged material harm, assuming causation could be established (which it is not).

30. Turning to Mr. Shahwan's claim for moral damages for stress and anxiety, the Commissioner-General submits that Mr. Shahwan has not provided any evidence in support of his request and, as such, it should also be dismissed. Mr. Shahwan's appeal against the UNRWA DT's refusal in the first Judgment to grant moral damages due to mental stress and anxiety was dismissed by the Appeals Tribunal on the same basis. Furthermore, in relation to moral damages "as a consequence of the [Agency's] failure to provide him with the certificate of service and performance evaluations", having regard to the facts of the matter, the Appeals Tribunal found that an amount for compensation for moral damage in the amount of three months' net base salary was appropriate as of the moment of the issuance of the first Judgment.

31. Finally, the Commissioner-General submits that Mr. Shahwan's request for legal costs should be dismissed for absence of evidence "that the circumstances of a matter are of such a nature as to justify such an unusual award, including that no staff legal assistance was available to the staff member which created the need to seek external legal advice or representation", in line with the findings of the UNAT Judgment. To the extent that Mr. Shahwan seeks an award of damages to

“send a message” to the Agency, the Commissioner-General submits that under Article 9(3) of the UNAT Statute, the Appeals Tribunal shall not award exemplary or punitive damages. The Commissioner-General also rejects the allegations of “a high degree of bad faith and malice on the part of UNRWA”. For instance, the Agency made reasonable efforts to contact Mr. Shahwan’s immediate supervisors to obtain certification of Mr. Shahwan’s performance evaluation, but those were not successful.

32. The Commissioner-General requests that the Appeals Tribunal dismiss the appeal in its entirety and affirm the impugned Judgment.

Mr. Shahwan’s Additional Pleadings

33. Mr. Shahwan contends that the Commissioner-General has not provided any evidence to support his claim that the Agency has withdrawn the Note from his OSF, and he fully reiterates his request for execution on that aspect. Moreover, by asserting that the Note has allegedly been withdrawn on 19 February 2024, before the UNAT Judgment was announced, the Commissioner-General acknowledges that the first Judgment was to be executed on that point. It remains unclear why the Note was withdrawn in February 2024 and not earlier.

34. Mr. Shahwan submits that by asserting having allegedly withdrawn the Note from his OSF on 19 February 2024, the Commissioner-General acknowledges having acted in bad faith towards Mr. Shahwan. The certificate of service and the performance evaluations—which the Agency was ordered to issue in the same way it was ordered to withdraw the Note—were not sent to Mr. Shahwan on 19 February 2024 but were sent in an incomplete form to him a few days before the submission of the answer in this procedure. The performance appraisals, signed by an unknown staff member, were prepared in a rush, for the purpose of the answer only, with the same rating for all objectives and years, a rating that Mr. Shahwan had not received in the past and which does not correspond to the work detailed in the document. Despite the discussions and e-mails on those documents being incorrect or incomplete, the Commissioner-General refused to correct them.

35. Mr. Shahwan asserts that it follows from the above that the Commissioner-General implicitly agrees that the first Judgment was to be executed in relation to the parts that were not appealed before the UNAT Judgment was issued, but “maliciously decided not to do so”. The fact that the Agency arbitrarily decided to execute only one part of that judgment on 19 February 2024,

that is 10 months after the issuance of the first Judgment, and before the UNAT Judgment was issued, refusing at the same time to execute the other parts not appealed to the Appeals Tribunal, is clear proof in that respect. The Commissioner-General deliberately put at risk Mr. Shahwan's career and impeded him from finding a new position even after the first Judgment had been issued. The request for material and moral damages is fully justified.

36. Mr. Shahwan avers that the Commissioner-General's claim on the "initiation" of the processes for the execution of the UNAT Judgment is misleading. The outcome of the UNAT Judgment was known to the Agency since 28 March 2024 through the oral pronouncement, and its execution required, in fact, not more than an hour, and no processes needed to be put in place. It was, however, not until 13 June 2024 that payment was made to Mr. Shahwan. Even on this point, the Commissioner-General acted without care towards Mr. Shahwan who remains unemployed at present.

37. Mr. Shahwan contends that the Commissioner-General's submission that the claim for compensation on appeal is duplicative since the UNAT Judgment allegedly addressed that request, is clearly mistaken. The Appeals Tribunal ordered compensation for the unlawful acts that led to the first Judgment which impeded Mr. Shahwan from finding new employment. There was no compensation requested or granted in that procedure as a result of the refusal on the part of the Agency to partially execute the first Judgment. Mr. Shahwan submitted his appeal in June 2023, and at that time, he could not have known which parts of the first Judgment would be appealed by the Agency, nor that it would not execute the parts of the first Judgment that were not appealed. It was only in the present procedure that Mr. Shahwan requested compensation for the damage that he incurred as a result of the Agency's refusal to partially execute the first Judgment.

38. Subsidiarily, Mr. Shahwan contends that the Appeals Tribunal in the UNAT Judgment clearly determined that there was a link between Mr. Shahwan's failure to secure new employment and the Agency's refusal to execute the parts of the first Judgment that had not been appealed, i.e. the Agency's refusal to withdraw the Note and to issue a certificate of service and performance evaluations. This finding applies equally in the instant case for the period from 1 July 2024 onward, during which the Agency refused to comply with the UNRWA DT's orders in the first Judgment.

39. Mr. Shahwan submits that contrary to what the Commissioner-General asserts in bad faith, performance appraisals and certificates of service are essential documents in a selection process. The Agency knows that an organization does not respond substantively to each application that is

incomplete; a candidate receives a generic e-mail that indicates that s/he was not selected for the post concerned. Providing evidence on the specific reason for the rejection of an application is impossible, and it is absurd for the Agency to request such evidence. The answer rightly notes that reference checks are made by potential employers. However, for a candidate who does not submit the most recent performance appraisals and a certificate of service attesting to the employment history, an application is deemed incomplete and is simply rejected, with no reference check made. This was the case with Mr. Shahwan.

40. Finally, Mr. Shahwan contends that the Commissioner-General's reference to unidentified publications in the media, all of which allegedly impeded him from finding a new job after the first Judgment was issued is speculative and only serves to demonstrate that the Commissioner-General attempts to avoid responsibility. In any case, publications in the media are irrelevant if one considers that the former Commissioner-General, i.e., his former supervisor, whose name appears in many of those online publications, has secured a high-level position in Geneva as the Director-General of the International Committee of the Red Cross (ICRC).

41. Mr. Shahwan submits that for the first time in its answer, the Commissioner-General claims that the Agency made efforts to contact his former immediate supervisors. The Commissioner-General however does not adduce any evidence to demonstrate such efforts. Most importantly, it is unclear when such contact would have been established, considering that the Commissioner-General had asserted before the UNRWA DT that Mr. Shahwan had no right to receive the performance evaluations and that the Appeals Tribunal had the authority to and might rescind the first Judgment on the matter of the issuance of the performance evaluations.

42. Mr. Shahwan asks that the Appeals Tribunal dismiss the Commissioner-General's answer in its entirety. He contends that the UNRWA DT wrongly found that the execution of the entire first Judgment was suspended pending the appeal and not only the part that was appealed, and he reiterates the redress sought. The deliberate delay by the Agency in the execution of the judgment with full knowledge that its appeal was limited to the legal fees only, maliciously maintained a situation that impacted Mr. Shahwan's ability to secure a job after having served the United Nations system for more than two decades with full dedication and loyalty.

The Commissioner-General's Response to Mr. Shahwan's Additional Pleadings

43. The Commissioner-General submits that while Mr. Shahwan's motion had been granted to allow him to provide comments in view of the UNAT Judgment, Mr. Shahwan mainly raises unmeritorious claims, taking issue with the timing and nature of the execution of the first Judgment, questions which are not properly before the Appeals Tribunal; and raises the question of compensation, which is inapposite, as the impugned Judgment did not address compensation. The Commissioner-General nevertheless addresses Mr. Shahwan's submissions.

44. The Commissioner-General submits that there is no merit in Mr. Shahwan's contention that the Agency had failed to inform him of the withdrawal of the Note from his OSF and that the withdrawal of the Note before the issuance of the UNAT Judgment serves as acknowledgement of bad faith. Both claims are without merit, as on 27 February 2024, Mr. Shahwan's counsel was informed of the removal of the Note from his OSF, and on the same day, his counsel confirmed receipt of the information and did not request additional confirmation. Furthermore, Mr. Shahwan appears to ignore the difference between his right to enforce execution of a judgment, which had not yet become executable at the time of his request, and the Agency's discretion to partially execute the impugned Judgment following its issuance.

45. The Commissioner-General argues that Mr. Shahwan's claim that because the UNAT Judgment was orally pronounced on 22 March 2024 and because, in his view, execution required not more than an hour, the Agency had acted without care towards him by making the compensation payment on 13 June 2024, is unsupported by the facts. The UNAT Judgment provided for a 60-day execution period from the date of its issuance. The Agency acted diligently in expeditiously implementing the Judgment.

46. Turning to Mr. Shahwan's request for compensation, the Commissioner-General acknowledges that in certain circumstances harm incurred in different periods of time could give rise to distinct claims for compensation. However, in the present case, the temporal aspect of the alleged harm is irrelevant as the Appeals Tribunal found in the UNAT Judgment that in the absence of any corroborating evidence, the appeal against the refusal to grant moral damages due to mental stress and anxiety had to fail. In present case, Mr. Shahwan has not provided any additional evidence of moral harm incurred by him due to the non-execution of the first Judgment, and requests compensation for "additional stress and anxiety". As the claim was rejected in principle

in the absence of evidence, and that no additional evidence was provided, its temporal component is irrelevant.

47. The Commissioner-General contends that Mr. Shahwan's claim that the Appeals Tribunal's finding regarding moral damages applies equally for the period from 1 July 2023 onward is misguided. First, compensation was awarded for moral damage, not material damage claimed by Mr. Shahwan in the present proceedings. Second, the quantum of the compensation is not directly tied to a temporal period (e.g., not three months' salary of compensation for three months of breach). On 2 May 2024, based on the facts of the case and available evidence, the Appeals Tribunal assessed the moral injury to Mr. Shahwan and awarded compensation for moral damage in the amount of three months' net base salary. On 17 May 2024 and 23 May 2024 respectively, the Agency provided Mr. Shahwan with the certificate of service and performance evaluation.

48. The Commissioner-General submits that any potential compensation for material damage should be based on evidence of harm caused to Mr. Shahwan. His assertion that he suffered economic losses due to non-execution of the first Judgment is a mere hypothesis not only unsupported by evidence, but the evidence provided by him shows, on the contrary, that the absence of performance evaluations and a certificate of service did not contribute in any way to his failure to secure employment.

49. The Commissioner-General notes that Mr. Shahwan submitted as proof of his unsuccessful attempts to secure employment 32 responses from United Nations' and other entities informing him of his non-selection. Thirty-one out of these 32 applications were made with entities that do not use Inspira, and their portals do not prompt applicants to submit performance evaluations with their applications. Therefore, in relation to these 31 applications, the absence of performance evaluations could not have affected the completeness of Mr. Shahwan's applications and therefore his employment prospects.

50. As to the one application Mr. Shahwan submitted through Inspira, the Commissioner-General submits that the non-execution of the first Judgment did not in any way affect his chance of success. Mr. Shahwan's assertion that the absence of performance evaluations leads to automatic rejection of the application is misconceived and unsubstantiated. The Office of Human Resources manual on staff selection does not prescribe rejection of candidates for absence of performance evaluations. Also, contrary to Mr. Shahwan's contention, a

reference check is the last step of the selection process. Since, according to his own statement, he was never pre-selected or invited to an interview, he had therefore never reached the reference check step of the selection process. It is also unclear how the employment status of the former Commissioner-General is relevant to his claims.

51. The Commissioner-General argues that Mr. Shahwan effectively requests the Appeals Tribunal to review its position with relation to damages and to legal costs. Given that all the circumstances remained the same, he did not produce any additional evidence, and the matter essentially arises from the same facts, making such a request goes against the principle of *res judicata*.

52. The Commissioner-General submits that the UNRWA DT was correct in dismissing the application, and reviewing the merits would be against the principles of interest of justice and the efficient and expeditious resolution of the proceedings. As matters of compensation and legal costs raised in the application were identical to those under review by the Appeals Tribunal, in reviewing the application the UNRWA DT would have either needed to wait for the UNAT Judgment, which would defy the purpose of the application for execution; or issue a judgment prior to the Appeals Tribunal's review, which would have risked affecting the outcome of the UNAT Judgment, e.g., any potential damages awarded by the UNRWA DT would not have been taken into account by the Appeals Tribunal in determining the appropriate compensation.

53. The Commissioner-General requests the Appeals Tribunal to dismiss the appeal in its entirety and to affirm the impugned Judgment or, alternatively, to dismiss Mr. Shahwan's claim for compensation.

Considerations

54. This appeal is against the second Judgment of the UNRWA DT in which Mr. Shahwan's application for partial execution of the first Judgment was dismissed. In addition, on appeal for the first time Mr. Shahwan seeks material and moral damages for the harm caused to him and his family, as well as the stress and anxiety about his future and that of his family in waiting justice during the failure to execute the first Judgment, and legal fees in the amount of at least CHF 4,000 incurred due to the Agency's conduct.

55. In the first Judgment, the UNRWA DT rescinded the Agency's decision to place a Note in Mr. Shahwan's OSF and ordered that it pay him JOD 3,000 for his legal costs but denied his other

requests for compensation. The UNRWA DT dismissed Mr. Shahwan's challenge to the Agency's denial of his sick leave request as not receivable. Lastly, the UNRWA DT rescinded the decision to refuse to complete Mr. Shahwan's performance evaluation reports and to provide a certificate of service. In connection with the latter claim, the UNRWA DT ordered the Agency to pay Mr. Shahwan an additional JOD 3,000 for his legal costs but denied his other requests for compensation.¹⁰ The Commissioner-General filed an appeal against the first Judgment in respect of the awards of legal costs. Mr. Shahwan appealed against the determination of the question of moral and material damages. Thereafter, in the UNAT Judgment, which was issued on 2 May 2024, the Commissioner-General's appeal succeeded and Mr. Shahwan's appeal succeeded in part, with the awards of legal costs reversed and Mr. Shahwan awarded compensation for moral damage in the amount of three months' net base salary for the harm caused to him as a result of the Agency's failure to provide him with a certificate of service and performance evaluations. This was found to have amounted to a serious violation of his career and his person in that he was unable to prove his past employment record with the United Nations to any prospective employer.

56. Prior to the UNAT Judgment, on 13 September 2023, Mr. Shahwan filed an application for partial execution of the first Judgment of the UNRWA DT, which concerned the order that the Agency complete his performance evaluation reports and provide him with a certificate of service. In the second Judgment, issued on 27 December 2023, the application for partial execution was refused.

57. On 19 February 2024, the Agency removed the Note from Mr. Shahwan's OSF, a fact of which Mr. Shahwan's counsel was informed on 27 February 2024, prior to the issuance of the UNAT Judgment on 2 May 2024. Subsequent to the UNAT Judgment, Mr. Shahwan was, on 17 May 2024, provided with his certificate of service and, on 23 May 2024, with his performance evaluations for 2018 and 2019.

58. Insofar as this appeal concerns the failure of the UNRWA DT in its second Judgment to order the partial execution of the first Judgment in respect of the removal of the Note from Mr. Shahwan's OSF and the provision to him of his certificate of service and his performance evaluations for 2018 and 2019, we find that the appeal has become moot.

59. As a general principle, a matter is moot when this Tribunal's judgment will have no practical effect on the parties. This usually occurs where there is no longer an existing or live

¹⁰ *Ibid.*, para. 3.

controversy between the parties, in which case we will usually not make a ruling on such matters where our judgment will amount to an advisory opinion on the legal questions which are abstract, academic or hypothetical and have no direct effect, unless there are found to be compelling reasons to the contrary.

60. Since there has been compliance with those orders of the first Judgment of the UNRWA DT against which the second Judgment refused to make a partial execution order, there is no practical effect to be served in this appeal in determining whether or not the UNRWA DT erred in its refusal to order the partial execution of its first Judgment in relation to such orders. It follows that, given that the orders have been complied with, there is no live controversy which exists between the parties in relation to the relief granted and any decision on the merits of the matter will have no direct effect but will merely be of academic interest.

61. Even if this were not so, we note that we are not persuaded that in refusing to order the partial execution of the first Judgment, the UNWRA DT exercised its discretion in this regard injudiciously, or that it exceeded its jurisdiction or competence, failed to exercise jurisdiction vested in it, erred on a question of law, committed an error in procedure, such as to affect the decision of the case, or erred on a question of fact, resulting in a manifestly unreasonable decision. The applicably statutory provisions do not make it clear that, as a matter of right, the fact that a judgment is the subject of a partial appeal would warrant an order of partial execution against those orders which are not the subject of appeal pending determination of the appeal. We accept that the partial execution of a judgment may, depending on the applicable facts and circumstances, be appropriate where it is found that the delay in the execution of that portion of the judgment which is not under appeal would cause significant harm to one party, while the entry into force of the remaining parts of the judgment are suspended pending the outcome of the appeal. We note that the Appeals Tribunal in the impugned Judgment raised the question why the Agency did not proceed to execute the portion of the first Judgment not appealed but nevertheless found that the Agency had no obligation to partially execute that first Judgment, considering that the filing of an appeal had the effect of suspending the execution of the entire Judgment. Given the manner in which the relevant statutory provisions are framed, we are unable to find that in the exercise of its discretion in this regard, the UNWRA DT failed to act judiciously.

62. Turning to Mr. Shahwan's claim for compensation on the basis of what he contends to be material and moral harm suffered by him due to the delays in the execution of the first Judgment, we recognize that Article 9(b) of the UNAT Statute permits this Tribunal to award compensation

for harm, supported by evidence. However, for such damages to be awarded, as was made clear in *Kallon*, there must exist a sufficient evidentiary basis establishing that such harm has in fact occurred, with harm not to be too readily assumed on an insubstantial factual basis.¹¹ There is no dispute that this Tribunal has already ordered that Mr. Shahwan be compensated for the same harm suffered by him related to the Agency's inclusion of a Note in his OSF, its failure to provide him with a certificate of service and complete his performance appraisals. No further evidentiary basis has been advanced by Mr. Shahwan to support a claim for further compensation for harm when the orders made in the first Judgment by the UNWRA DT have been complied with.

63. Similarly, in relation to the issue of legal costs, since Mr. Shahwan has not been successful on appeal and there is no evidence of a manifest abuse of the appeals process, there exists no basis on which to award costs against the Commissioner-General in this matter.

64. It follows for these reasons that Mr. Shahwan's appeal cannot succeed and falls to be dismissed.

¹¹ *Kallon v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742, para 67.

Judgment

65. Mr. Shahwan's appeal is dismissed, and Judgment No. UNRWA/DT/2023/050 is hereby affirmed.

Original and Authoritative Version: English

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

(Signed)

Judge Savage, Presiding

(Signed)

Judge Colgan

(Signed)

Judge Gao

Judgment published and entered into the Register on this 8th day of May 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar