



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

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Judgment No. 2015-UNAT-514

**Abu Nada  
(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 Mary Faherty, Presiding  
Judge Rosalyn Chapman  
Judge Luis María Simón

**Case No:** 2014-588

**Date:** 26 February 2015

**Registrar:** Weicheng Lin

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**Counsel for Mr. Abu Nada:** Self-represented

**Counsel for Commissioner-General:** Lance Bartholomeusz

**JUDGE MARY FAHERTY, PRESIDING.**

1. The United Nations Appeals Tribunal has before it an appeal filed by Mr. Kamal Yusuf Abu Nada against Judgment No. UNRWA/DT/2013/038, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or UNRWA Dispute Tribunal, and UNRWA or Agency, respectively) on 30 December 2013 in the case of *Abu Nada v. Commissioner-General of UNRWA*. Mr. Abu Nada appealed on 10 February 2014 and the Commissioner-General of UNRWA answered on 5 May 2014.

**Facts and Procedure**

2. The following facts are uncontested:<sup>1</sup>

... On 28 April 2004, [Mr. Abu Nada] entered the service of the Agency as a Placement Assistant, Grade 4, Step 5, at the Rehabilitation Centre for the Visually Impaired (“RCVI”), Department of Relief and Social Services, Gaza, on a two-year fixed term appointment.

... On 20 July 2004, the Officer-in-Charge, Administration Department, Gaza sent a memorandum to all UNRWA staff including [Mr. Abu Nada] requesting, pursuant to Area Staff Rule 101.4, that they complete a form entitled “Annual Verification of Outside Activities & Interests” (the “Verification Form”).

... On 31 July 2004 and subsequently on 25 February 2006 and on 17 March 2008, [Mr. Abu Nada] completed the Verification Form, checking “No” to the two following questions therein:

Have you been permitted to engage in outside activities & interests by an approving authority?

Do you have any changes to report with regard to the outside activities?  
If so, please provide full details of such changes under separate memorandum (do not give details on this form).

... [Mr. Abu Nada] also signed below the area on the Verification Form reading as follows:

I hereby certify that the information provided on this form is correct. I further certify that any change in my circumstances with regard to outside activities and interest[s] will be promptly notified to the Agency.

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<sup>1</sup> Impugned Judgment, paras. 2-14 (internal footnotes omitted).

... By letter dated 23 October 2008, the Director, UNRWA Operations, Gaza (“DUO/G”) advised [Mr. Abu Nada] that effective 23 October 2008 he was suspended without pay, pursuant to Area Staff Rule 110.2, pending the outcome of an investigation on the following allegations:

It has come to the Agency’s attention that you may be guilty of misconduct or serious misconduct. Specifically, it would appear that (a) you have been in receipt of money from the Palestinian National Authority’s Ministry of Prisoners’ Affairs as part of their job creation programme whilst also a staff member of UNRWA; (b) you have been engaged in continuous or recurring outside occupation or employment without the prior approval of the Agency in your management of the business of Al Quds Publishing and Management and in your position on the executive body of the Society of Friends of UNRWA RCVI; and (c) you have consistently refused to follow the express written instructions of your supervisors to sign an undertaking not to be involved in the executive committee of any community-based organization that is associated with UNRWA. (Such an undertaking is required to be given by all staff in the Relief and Social Services Departments throughout the Agency’s fields of operation.)

\* \* \*

An investigation of these charges is on going [sic], and pending the outcome of the investigation, you are herewith suspended from duty without pay effective 23 October 2008 in accordance with the provisions of Area Staff Rule 110.2. I should highlight that the presumption of innocence lies with you, until otherwise proven, and this suspension does not prejudice your contractual rights. Should the charges of misconduct or serious misconduct prove to be well founded, you may be subject to summary dismissal under Area Staff Regulation 10.3 or to termination or other disciplinary measure in accordance with Area Staff Rule 110.1, effective from the date of the suspension.

... On 12 November 2008, the Deputy Director, UNRWA Operations, Gaza (“D/DUO/G”) wrote [Mr. Abu Nada] a three-page letter detailing the charges against him. [...] [Mr. Abu Nada] was given seven days to respond to the allegations.

... By letter dated 19 November 2008, [Mr. Abu Nada] provided a response to the D/DUO/G claiming that the monthly amount received since 1 March 2004 from the [Palestinian Ministry] was not unemployment benefits. Rather, [Mr. Abu Nada] alleged that the monthly payment was a reward for those - like [him] - who had been imprisoned by the Israelis for more than five years and was not conditional on him remaining unemployed.

... By letter dated 17 February 2009, the D/DUO/G wrote to [Mr. Abu Nada] stating:

I refer to your letter of 19 November 2008 providing your response to the findings of the investigation into, among other matters, the allegation that you had received unemployment benefits from the Ministry of Detainees Affairs while employed by the Agency.

Please find attached a letter from the Ministry of Detainees Affairs dated 22 December 2008. This letter indicates that you were receiving this money, not as part of a loan programme, but as unemployment benefits or salary. The staff of the Ministry who were responsible for your case file have indicated that had they known that you were employed by UNRWA, your benefits would have ceased.

... [Mr. Abu Nada] was given seven days to provide his comments in writing. In his observations [Mr. Abu Nada] alleges that he provided a response to the aforementioned letter on 21 February 2009. [...]

... By letter dated 22 December 2009, [Mr. Abu Nada] submitted a letter to the DUO/G requesting clarification of the outcome of the investigation [, including with respect to the delay in making a final decision]. [...] The file is devoid of any further communication between the parties for nearly one year.

... On 1 December 2010, the Field Legal Officer, Gaza (“FLO/G”) obtained an article from the *de facto* authorities in the Gaza Strip in which [Mr. Abu Nada] was referred to as Colonel Kamal Abu Nada, chairman of a campaign titled “Civilian Dignity and Police Authority”, and was making statements to the media about the campaign. Photos of [Mr. Abu Nada], referred to as Colonel Kamal Abu Nada in police uniform, were found under two links in the news of the Ministry of the Interior of the *de facto* authorities of the Gaza Strip.

... By letter dated 14 December 2010, the DUO/G notified [Mr. Abu Nada] of the decision to summarily dismiss him effective 14 December 2010 for serious misconduct, stating the following:

It has come to my attention that while you are suspended pending investigation, you are employed as a Colonel in the *de facto* authority’s police force. I attach various websites which describe you as a Colonel in the police force, giving interviews about the current “dignity and prestige of the police” campaign, as well as photographs of you in police uniform.

While you are suspended pending investigation, you remain an UNRWA staff member and subject to its regulations and rules. As you are no doubt aware, all UNRWA staff are obliged by the Area Staff Regulations not to engage in any activity that is incompatible with the proper discharge of their duties with the Agency ...

Given the clear and incontrovertible evidence of serious misconduct, you are hereby notified of the decision to summarily dismiss you under the terms of Area Staff Regulation 10.3 and Area Staff Rule [sic] effective today.

Attached to this letter were a news article and several photographs from an online news source [...] and a police website [...] in which [Mr. Abu Nada] is wearing the uniform of a Gaza police officer, standing among other Gaza policemen.

... By letter to the DUO/G dated 28 December 2010, [Mr. Abu Nada] requested decision review.[...]

... By letter dated 30 December 2010, the Deputy Director, UNRWA Operations, Gaza ("D/DUO/G") responded to [Mr. Abu Nada]'s letter of 28 December 2010, explaining recourses for decision review and appeal.

... On 1 March 2011, [Mr. Abu Nada] filed his application with the UNRWA DT.  
[...]

.... On 18 November 2013, the [UNRWA DT] issued Order No. 113 (UNRWA/DT/2013) [asking the Respondent whether the Agency's regulatory framework had been translated into Arabic and whether Mr. Abu Nada had received the Area Staff Regulations and Rules upon appointment and in what language.] Pursuant to the Order, on 2 December 2013, the Respondent provided his answers.

3. The UNRWA DT determined that it did not have jurisdiction to review the October 2008 decision to suspend Mr. Abu Nada without pay as Mr. Abu Nada had failed to request administrative review of such decision within the statutory deadline.

4. The UNRWA DT also discussed its Order No. 113. It was noted that Mr. Abu Nada had received the Area Staff Regulations in English upon his appointment, but that there was no evidence that he had received a copy of the Area Staff Rules at such time. In this regard, the UNRWA DT noted that the procedures on how to contest an administrative decision were contained in the former Area Staff Rules. It further noted that the Area Staff Regulations were translated into Arabic after the decision to suspend Mr. Abu Nada without pay. The UNRWA DT found that the Agency's failure to translate the Regulations and Rules into Arabic before 2009 and its continued failure to translate the remaining regulatory framework to be a violation of due process. However, given that the decision to suspend Mr. Abu Nada without pay was not receivable, the UNRWA DT could not award damages for violation of due process.

5. The UNRWA DT also noted that Mr. Abu Nada's challenges to the deductions made against his personal Provident Fund contributions related to a separate administrative decision which was outside the scope of its Judgment.

6. Regarding the summary dismissal for serious misconduct in December 2010, the UNRWA DT held that the decision was lawful given that: (i) the facts of Mr. Abu Nada's outside employment and unauthorized public statements had been established; (ii) such actions constituted serious misconduct; and (iii) the sanction of summary dismissal constituted a proper exercise of the Commissioner-General's discretionary authority. The UNRWA DT noted that Mr. Abu Nada had not provided any convincing evidence to demonstrate that such decision was tainted by procedural irregularities, prejudice or other extraneous factors or errors of law.

7. The UNRWA DT, however, found that there had been excessive delay in carrying out the investigation with respect to the alleged misconduct resulting in his suspension without pay. It noted that it took 25 months for UNRWA to communicate a final decision to Mr. Abu Nada after its initial "findings of the investigation". The UNRWA DT considered this to be "inhumane and a flagrant abuse of power" given that Mr. Abu Nada lived in the Gaza Strip, an economically depressed region. The UNRWA DT determined that such delay breached the principles of natural justice and caused Mr. Abu Nada to suffer stress and anxiety. Accordingly, the UNRWA DT awarded Mr. Abu Nada 25 months' net base salary for moral damages.

### **Submissions**

#### **Mr. Abu Nada's Appeal**

8. Mr. Abu Nada asserts that the UNRWA DT made several errors of fact, which resulted in an incorrect assessment of the material and moral damages he suffered.

9. Mr. Abu Nada asserts that the UNRWA DT focused only on the decision to summarily dismiss him and did not sufficiently consider why he was forced to seek outside employment. Specifically, he contends that the suspension without pay for 26 months while waiting for UNRWA to complete the investigation left him with no choice but to seek work in order to support his family and educate his children. He was forced to sell his home and live in low-rent accommodations, including a sixth floor walkup, which caused hardship and

suffering for his family. He contends that the compensation awarded by the UNRWA DT barely covered half of his rental expenses since selling his home, and does not cover the “considerable pain caused by the stares of my colleagues and society”.

10. Mr. Abu Nada complains that he was not given an opportunity to be heard before the dismissal or provided with any “legal warning” regarding taking a second job, which otherwise might have allowed him to remain with UNRWA. Mr. Abu Nada claims UNRWA failed to explain to him his rights during his suspension, including the right to ask for administrative review. He indicates that unlike “formal” staff members, he received no notification, decisions, administrative circulars, etc. during the period of his suspension. He further notes that the Arabic translation of “instructions and decisions” were disseminated on 12 October 2009 during his suspension and thus he did not receive them.<sup>2</sup>

11. Mr. Abu Nada queries why the UNRWA DT failed to address the issue of deductions made to his financial entitlements.

12. Mr. Abu Nada notes that the annexes provided to UNRWA DT by the Agency included correspondence which was, he claims, libelous and damaging. He considers that this may have led to the denial of visas for his sons to study abroad. He seeks monetary compensation in an amount not less than “one million dollars” for the harm and pain that he has suffered as a result of UNRWA’s actions.

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

13. Mr. Abu Nada has not demonstrated in what respects the UNRWA DT erred on questions of facts resulting in a manifestly unreasonable decision. Rather, Mr. Abu Nada has largely reiterated the facts set out in his application to the UNRWA DT and attempts to reargue his case.

14. The Commissioner-General notes that the UNRWA DT, in granting an award in excess of the statutory limit of two years’ net base salary, *i.e.*, 25 months, already took into account the exceptional circumstances of the delay. Further, the basis of such award was the

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<sup>2</sup> Mr. Abu Nada is referring to a communication dated 12 October 2009 from the then Director of Human Resources, UNRWA, in which she informed staff members that the Area Staff Regulations and Rules had been translated into Arabic and where such documents could be accessed.

number of months that Mr. Abu Nada was suspended without pay, given that no other evidence had been provided to substantiate his economic loss.

15. The Commissioner-General further notes that the UNRWA DT already considered the decision of the suspension without payment and found it not receivable due to Mr. Abu Nada's failure to request administrative review in a timely manner. Therefore, the UNRWA DT correctly focused on the issue of the summary dismissal.

16. Finally, the Commissioner-General considers that Mr. Abu Nada's claim of damage resulting from the alleged libelous correspondence is speculative. Moreover, Mr. Abu Nada did not raise this issue before the UNRWA DT.

### **Considerations**

17. Mr. Abu Nada premises his submissions to the Appeals Tribunal by stating that the UNRWA DT "made several errors of fact, resulting in a clearly illogical decision". He states that "the Judgment has wronged [him] and failed to do [him] justice. It has not correctly assessed the material and moral damages caused by the Agency's initial decision to suspend [him], which lies at the heart of the issue."

18. Mr. Abu Nada appears to take issue with the UNRWA DT's determination that it did not have jurisdiction to review the decision to suspend him without pay on 23 October 2008. However, we find no error of law or fact on the part of the UNRWA DT in its conclusion on this issue. Mr. Abu Nada did not seek administrative review of the suspension decision within the timeframe provided by the then applicable Area Staff Rules and the UNRWA DT found no evidence that the Agency waived that requirement. Pursuant to Article 8(3) of its Statute, the UNRWA DT "shall not suspend, waive or extend the deadlines for decision review". Accordingly, it correctly determined that it did not have jurisdiction to review the decision of 23 October 2008.

19. Essentially, what Mr. Abu Nada challenges before this Tribunal is the level of compensation he was awarded by the UNRWA DT for the wrong it found was done to him, namely the excessive delay in carrying out the investigation into his alleged receipt of unemployment benefits from a third party while in the employ of the Agency.



20. Mr. Abu Nada argues that the UNRWA DT focused on the formal aspect of the decision to dismiss him without taking sufficient consideration of his explanations regarding the reasons he looked for outside work. He refers to the following matters: his suspension without pay for 26 months; the failure of the Agency to conclude the investigation; the failure to establish an investigation committee; the lack of response to his letter of 22 December 2009; and the failure to give him a warning prior to his dismissal or establish a committee prior to his dismissal in order to hear his explanation for finding new employment during his suspension.

21. Insofar as Mr. Abu Nada, by way of the latter two submissions, seeks to challenge the finding of the UNRWA DT upholding the decision to summarily dismiss him as a ground to seek increased compensation, he has not pointed to any error of law or fact on the part of the UNRWA DT, in upholding the dismissal, such as to warrant the engagement of this Tribunal with the question of the lawfulness of his dismissal. We note that the UNRWA DT analysed the dismissal decision in accordance with the then applicable legal framework and concluded that: (i) the facts upon which the sanction was based were established; (ii) they legally supported the characterization of serious misconduct; and (iii) the sanction imposed constituted a proper exercise of the Commissioner-General's discretion, pursuant to the then applicable Area Staff Regulations. Specifically, the UNRWA DT found that Mr. Abu Nada was afforded an opportunity to appeal his dismissal by letter of 30 December 2010.

22. Mr. Abu Nada submits that the compensation awarded "is not remotely commensurate to the nature and scale of the hardship caused to [his] family" and claims that the UNRWA DT failed to have regard to the impact that the prolonged period of suspension without pay had on him, as set out in his application.

23. In the course of its analysis of the circumstances of the prolonged period of suspension without pay, in respect of which the UNRWA DT concluded merited an award of damages, the Tribunal had this to say:

[T]o sum it up, it took the Agency a total of 25 months from the date of communicating the alleged "findings of the investigation" to the Applicant to make a final decision. Indeed, the Applicant was given time to put his comments on the record, however, the Tribunal fails to understand the reasons for the excessive delay on the part of the Agency. The Tribunal recognises that the Agency employs over 30,000 staff members, so investigations may not be conducted with the utmost speed.

However, to keep a staff member suspended without pay, in an economically depressed region like the Gaza Strip for 25 months after the “findings of the investigation” had been communicated to the Applicant, is inhumane and a flagrant abuse of power. The Tribunal finds that such conduct constitutes grounds to award the Applicant moral damages for the anxiety and stress such an excessive delay caused.

[...]

For the reasons discussed above, the Tribunal finds that the Agency’s delay in the handling of the Applicant’s investigation breached the principles of natural justice as well as directly caused the Applicant to suffer stress and anxiety.[...]

[...] While technically still a staff member of UNRWA, the Applicant was not allowed to seek outside employment lest he violate the Agency’s regulatory framework and therefore was at the mercy of the Agency until a final decision was made. As noted in the Applicant’s 22 December 2009 letter to the DUO/G, the Applicant pleaded “[w]hy the delay in taking a decisive decision in my case, whether in returning to my work or terminate me from work?”. Such excessive delay unquestionably caused the Applicant moral injury which can only be redressed by an award of moral damages.<sup>3</sup>

24. We are satisfied that the above-quoted extracts from the Judgment aptly demonstrate that the UNRWA DT was alert to the injury which the prolonged delay caused Mr. Abu Nada.

25. It is also asserted that the UNRWA DT did not address his complaint regarding the deduction of USD 3,119 by the Agency from Mr. Abu Nada’s personal Provident Fund contributions upon his dismissal, apparently by way of recoupment because the Agency had inadvertently paid these monies into his bank account. There is no merit in this complaint. Mr. Abu Nada has not demonstrated any error of law or fact on the part of the UNRWA DT when it determined that the alleged deductions constituted a separate administrative decision, which could not be reviewed in the context of the application before the UNRWA DT.

26. Mr. Abu Nada submits that correspondence from the Agency to the UNRWA DT in May 2013 contains “distortions”, without further elaboration. The Appeals Tribunal pays no regard to this assertion, in the absence of a specific ground of complaint having been advanced by Mr. Abu Nada as to how the alleged “distortions” impacted on the conduct of the UNRWA DT hearing or the Judgment it duly rendered.

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<sup>3</sup> Impugned Judgment, paras. 80, 82 and 83.

27. Mr. Abu Nada complains that the Judgment fails to refer to a “grave and obvious distortion” insofar as the Agency asserted that he received the Agency’s instructions, regulations and rules in March 2004,<sup>4</sup> although the Arabic translations of such documents were disseminated only on 12 October 2009, after Mr. Abu Nada’s suspension. We find this complaint also to be without merit. The UNRWA DT properly noted the due process deficit which the absence of translated documents gave rise to, but concluded that as the 2008 decision to suspend Mr. Abu Nada was not receivable, the UNRWA DT could not award damages for violation of due process. Mr. Abu Nada has failed to show how the UNRWA DT erred in its determination of this issue.

28. Mr. Abu Nada asserts that the UNRWA DT failed to assess the gravity of what essentially he describes as a wrongful characterization by the UNRWA Field Legal Officer of his employment by the de facto authorities of Gaza. It is apparent from its Judgment that the UNRWA DT had recourse to the communications about which Mr. Abu Nada complains; the weight or relevance which the UNRWA DT attached to the description of Mr. Abu Nada’s employment in the said communications was a matter for that Tribunal. Mr. Abu Nada’s arguments on appeal do not convince us that the UNRWA DT committed any error in failing to have regard to the issue in circumstances where the UNRWA DT’s remit on compensation related to the prolonged period of suspension without pay endured by Mr. Abu Nada until he was ultimately summarily dismissed in December 2010. Furthermore, the Appeals Tribunal agrees with the Commissioner-General’s submission that Mr. Abu Nada’s arguments concerning the communications are speculative.

29. The question for determination by this Tribunal is whether the UNRWA DT erred in fact in its assessment of damages such as to give rise to a manifestly unreasonable decision. At paragraph 84 of its Judgment, the UNRWA DT stated:

[I]t is up to this Tribunal as the trier of fact to assess the magnitude of the breach based on the evidence before it. According to the evidence, it is clear that the Agency failed to keep the Applicant informed of the progress of its “ongoing” investigation and failed to respond to his inquiries into the duration of his suspension. Essentially, the Agency suspended the Applicant and seemed to have forgotten about him. When the evidence gathered did not support a finding of misconduct the Agency did nothing. It almost appears as if the investigators were hoping for evidence to fall into their laps -

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<sup>4</sup> The actual date is 27 April 2004 according to the Commissioner-General’s Response to Order No. 113 (UNRWA/DT/2013).

and by serendipity, it did. The Tribunal finds that the Agency's excessive delay in carrying out the investigation and making its final decision was a violation of natural justice and the direct cause of the Applicant's stress and anxiety. The Applicant is awarded 25 months' net base salary for moral damages due to the excessive delay of investigation. The Tribunal believes this case merits exceptional circumstances allowing it to award damages beyond the statutory limit of two years' net base salary for the reasons given above.

30. The jurisprudence of the Appeals Tribunal acknowledges that the first instance tribunal is the body best placed to assess the level of damages to be awarded in any particular case. We have stated in *Abubakr*:

[T]he UNDT "is vested with the statutory power to determine, in the circumstances of each case, the remedy it deems appropriate to rectify the wrong suffered by the staff member whose rights have been breached." It correctly noted the burden rests with [the staff member] to substantiate his claim for compensation or damages.<sup>5</sup>

In *Goodwin*, we said:

[W]e will "respect the opinion of the trial judge as to how to determine damages in each particular case". The trial judge is best placed to assess the nature and evidential value of the information being provided by an applicant to the UNDT to justify an award of damages, including pecuniary damages. In the absence of a compelling argument that the UNDT erred on a question of law, or on a question of fact resulting in a manifestly unreasonable decision, we will not lightly interfere with the findings of the Dispute Tribunal.<sup>6</sup>

31. In the present case, the UNRWA DT went beyond the two years' net base salary to compensate Mr. Abu Nada for the violation of rights he suffered as a result of the excessive delay he endured as a staff member suspended without pay. That was the context in which the UNRWA DT properly determined that a compensatory award was merited. In our view, the award fell well within the parameters of reasonableness, and we observe that the bounds of reasonableness could conceive of an award less than the 25 months' net base salary awarded to Mr. Abu Nada. However, we defer to the UNRWA DT's assessment. In all the circumstances of the case, the award was fair and reasonable and Mr. Abu Nada has not convinced us otherwise.

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<sup>5</sup> *Abubakr v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-272, para. 49 quoting *Abubakr v. Secretary-General of the United Nations*, Judgment No. UNDT/2011/219, para. 61.

<sup>6</sup> *Goodwin v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-346, para. 23.

32. The appeal is dismissed.

**Judgment**

33. The appeal is dismissed and the Judgment of the UNRWA DT is affirmed.

Original and Authoritative Version: English

Dated this 26 day of February 2015 in New York, United States.

*(Signed)*

Judge Faherty, Presiding

*(Signed)*

Judge Chapman

*(Signed)*

Judge Simón

Entered in the Register on this 17<sup>th</sup> day of April 2015 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar