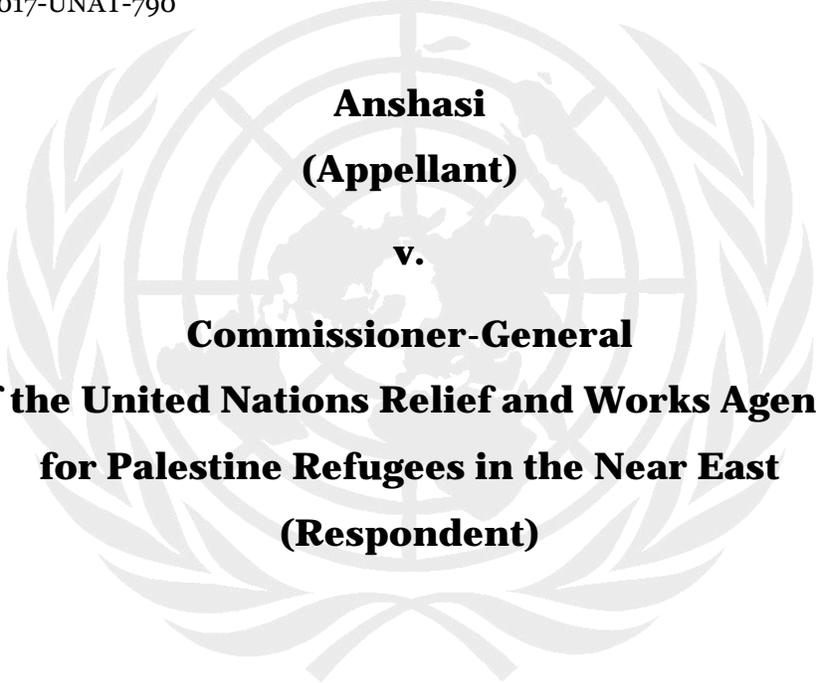




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2017-UNAT-790



**Anshasi  
(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 Dimitrios Raikos, Presiding Judge Richard Lussick Judge John Murphy
Case No.:	2017-1074
Date:	27 October 2017
Registrar:	Weicheng Lin

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Counsel for Mr. Anshasi:	Self-represented
Counsel for Commissioner-General:	Rachel Evers

**JUDGE DIMITRIOS RAIKOS, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2017/004, 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 19 February 2017, in the case of *Anshasi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Khalil Mohammad Abdulfattah Anshasi filed the appeal on 20 April 2017, and the Commissioner-General filed his answer on 20 June 2017.

**Facts and Procedure**

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

... Effective 28 August 2007, the Applicant was employed by UNRWA as a Teacher, at Wadi Rayyan Preparatory Boys School in the Jordan Field Office, Grade 8, Step 1. As a consequence of the Applicant reaching the age of 60, his fixed-term appointment was to expire on 24 June 2014.

... On 29 May 2014, upon the Applicant's request, his contract was extended for two years beyond the age of retirement. At the time, a medical examination was carried out and the Applicant was declared fit. The Applicant signed an "undertaking" regarding pre-existing health conditions.

... From 3 December 2015 onwards, the Applicant was absent from work on sick leave.

... On 7 March 2016, the Applicant requested to be referred to a medical board. On 27 April 2016, a preliminary medical assessment was conducted at the Irbid Camp Health Center. On 5 May 2016, the Chief, Field Health Programme, Jordan recommended not to refer the Applicant to a medical board. The Applicant was informed of this decision on 11 May 2016.

... On 11 May 2016, the Human Resources Services Officer ("HRSO") informed the Applicant that he would be separated from the Agency's service on 24 June 2016, due to the expiration of his contract.

... On 16 May 2016, the Applicant submitted a request for decision review of the decision not to convene a medical board.

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<sup>1</sup> Impugned Judgment, paras. 2-12 and 17-21.

... By letter dated 22 May 2016, the Applicant was informed that, since he had been on continuous sick leave since 3 December 2015, and will have exhausted all his sick leave credits on 29 May 2016, he was to be placed on Special Leave Without Pay (“SLWOP”) after 29 May 2016. The Applicant received this letter on 1 June 2016.

... On 14 June 2016, the Director of UNRWA Operations, Jordan confirmed the decision not to convene a medical board.

... On 26 June 2016, the Applicant was informed that the payment of his separation benefits would be deferred due to his refusal to sign the form waiving the medical examination.

... On 30 July 2016, the Applicant submitted a request for decision review with respect to the decision to put him on SLWOP. On 10 August 2016, the Applicant submitted a request for decision review of the decision to defer the payment of his separation benefits.

... On 21 September 2016, the Applicant filed his application with the UNRWA Dispute Tribunal ...

...

... On 13 December 2016, the Applicant filed a “Motion for Leave to Submit Observations on the Respondent’s Reply and for Leave to File a Motion for Expedited Consideration”. The motion was transmitted to the Respondent on the same day.

... By Order No. 106 (UNRWA/DT/2016) dated 27 December 2016, the Applicant’s motion for leave to submit observations and to file a motion for expedited consideration was granted.

... On 9 January 2017, the Applicant filed his observations, which were transmitted to the Respondent on 10 January 2017.

... On 10 January 2017, the Applicant filed a “Motion to Request Expedited Consideration” (“Motion”). The motion was transmitted to the Respondent on the same day. The Respondent did not file any objections to the motion.

... By Order No. 16 (UNRWA/DT/2017) dated 19 January 2017, the Applicant’s motion for expedited consideration was granted.

3. The UNRWA DT issued its Judgment on 19 February 2017 dismissing the application in its entirety. It rejected Mr. Anshasi’s request to hold an oral hearing and hear witnesses on the grounds that all the disputed issues were legal issues and there was no dispute regarding the facts. On the merits, the UNRWA DT found that (i) there was no “substantiated reason” for the Agency to grant Mr. Anshasi’s request for a referral to a medical board because there was “no dispute between the parties about [Mr. Anshasi] being unfit for service” and he was

not eligible for a disability benefit;<sup>2</sup> (ii) the Commissioner-General reasonably exercised his discretion when he decided to place Mr. Anshasi on SLWOP for a period of less than a month between the exhaustion of his sick leave credits and the expiration of his contract; and, (iii) Mr. Anshasi did not have a “legal interest”<sup>3</sup> in challenging the Agency’s decision to defer the payment of his separation benefit because this decision was solely due to his own refusal to sign the medical waiver or to be referred to an “exit medical examination” as part of the established separation clearance procedure.

### **Submissions**

#### **Mr. Anshasi’s Appeal**

4. Mr. Anshasi submits that the UNRWA DT committed an error of procedure such as to affect the decision of the case by rejecting his request to hold an oral hearing and hear witnesses.

5. He asserts that the UNRWA DT erred in law and fact in finding that he had failed to provide reasons for his request for a referral to a medical board and that the Agency could reasonably decide to refuse his request. The UNRWA DT also erred in law and in fact in its consideration of UNRWA Area Staff Personnel Directive No. A/6/Part VI (Medical Boards - Authorities and Procedures) (PD A/6/Part VI) which—in Mr. Anshasi’s view—contains no statement to the effect that staff members should be directed to a preliminary medical evaluation prior to the convening of a medical board.

6. Mr. Anshasi contends that the UNRWA DT erred in law and in fact when it found that a staff member may be placed on SLWOP in the interest of the Agency without his having requested it. He submits that the UNRWA DT “erred by failing to notice that the interests of the staff member ... were not taken into consideration”. In addition, Mr. Anshasi claims that the “second condition set out in paragraph 1.4.1 [of UNRWA Staff Personnel Directive No. A/5/Part II (Special leave)]” does not apply because in his case, the SLWOP was not provided in order to “give the staff member a reasonable opportunity of returning to duty at a foreseeable date”.

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<sup>2</sup> *Ibid.*, para. 30.

<sup>3</sup> *Ibid.*, para. 40.

7. Mr. Anshasi further challenges the UNRWA DT's finding that any delay with respect to the payment of his separation benefit was only due to his own refusal to sign the medical waiver or to be referred to an "exit medical examination". Signing the waiver would only serve the interests of the Agency and release it from any responsibility towards him and the medical examination was offered to him after three months of dispute on the waiver, during which time his funds were withheld. In addition, the UNRWA DT erred by "failing to find that the proposed exit medical examination was tainted by a real and/or perceived conflict of interest, as the doctor who would have carried it out was the same one who had conducted the preliminary assessment on 27 April 2016".

8. Based on the foregoing, Mr. Anshasi asks the Appeals Tribunal to find that the UNRWA DT "erred by failing to order the rescission of the three contested decisions, and by failing to identify a causal link between the three contested decisions and the medical damages that he suffered, which were substantiated by a medical report". He requests the Appeals Tribunal to vacate the UNRWA DT Judgment and "grant him the means of redress that he seeks".

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

9. The Commissioner-General submits that the UNRWA DT correctly exercised its discretionary power in the management of cases and did not commit an error of procedure such as to affect the decision of the case when it declined to hold an oral hearing and hear witnesses.

10. He further asserts that the UNRWA DT did not err in fact or law in concluding that the Agency's decision to refuse Mr. Anshasi's request for a referral to a medical board based on a preliminary medical examination was reasonable. The UNRWA DT was cognizant of the applicable instruments (namely PD A/6/Part VI, paragraph 1.2 of UNRWA Area Personnel Directive No. A/9 (Separation from Service) (PD/A/9) and UNRWA Area Staff Rule 109.7) and applied the correct standard of judicial review. Even assuming *arguendo* that the UNRWA regulatory framework does not provide for a preliminary medical assessment prior to convening a medical board, it was a reasonable exercise of the Agency's discretion not to refer Mr. Anshasi to a medical board on this basis.

11. Moreover, the Commissioner-General argues that the UNRWA DT did not err in fact or law by upholding the Agency's decision to place Mr. Anshasi on SLWOP in the interests of the Agency in accordance with Area Staff Rule 105.2 and UNRWA Area Staff Personnel Directive No. A/5/Part II (Special leave). Considering that Mr. Anshasi had exhausted his sick leave credit by 29 May 2016 and his contract was ending as of 24 June 2016 due to his age, it was reasonable to place him on SLWOP to enable him to end his contract as anticipated. Given that Mr. Anshasi was not entitled to annual leave during the school year as a teacher, that he had exhausted his sick leave credits and that he was about to retire, and therefore not entitled to advance sick leave, the Agency had no other choice than to place him on special leave. Mr. Anshasi has failed to substantiate why such special leave should have been with pay as he seems to suggest.

12. Finally, the Commissioner-General contends that the UNRWA DT did not err in fact or law by acknowledging Mr. Anshasi's responsibility in the Agency's decision to withhold his separation benefit pending completion of the separation clearance procedure. This well-established procedure has to be followed by all staff members before separation benefits can be paid. Since Mr. Anshasi had refused to sign the medical waiver or to present himself to a medical examination as requested by the Agency, he did not complete this step of the separation procedure and was thus not entitled to separation benefits. As to the alleged conflict of interest of the medical officer who would carry out the examination, Mr. Anshasi could have raised the issue when he submitted his observations on 9 January 2017 and thus over two months after the medical examination was set to have taken place. The issue as contended in his appeal brief constitutes a new element which is not part of the impugned Judgment and thus inadmissible.

13. With respect to the relief sought by Mr. Anshasi, the Commissioner-General submits that there is no basis for the consideration of the remedies sought as the Agency's decisions were properly effected and reasonable.

14. The Commissioner-General, therefore, requests that the Appeals Tribunal dismiss the appeal in its entirety.

## Considerations

### *Preliminary issues*

15. As a preliminary matter, Mr. Anshasi filed a request for an oral hearing which he believes will aid the Appeals Tribunal in its deliberations. Oral hearings are governed by Article 8(3) of the Appeals Tribunal Statute (Statute) and Article 18(1) of the Appeals Tribunal's Rules of Procedure (Rules). The factual and legal issues arising from this appeal have already been clearly defined by the parties and there is no need for further clarification. In addition, we do not find that an oral hearing would "assist in the expeditious and fair disposal of the case", as required by Article 18(1) of the Rules. Thus, the request for an oral hearing is denied.

### *Merits*

16. Having reviewed each of the grounds of appeal raised by Mr. Anshasi we are not persuaded that the UNRWA Dispute Tribunal erred in procedure or otherwise exceeded its jurisdiction in the exercise of its powers, such as to warrant reversal of the Judgment.

#### *i) UNRWA DT's decision not to hold an oral hearing*

17. Mr. Anshasi first contends that the UNRWA DT erred in not holding an oral hearing and by refusing to hear witnesses.

18. At the outset, we note that large discretion is afforded to the United Nations Dispute Tribunal (UNDT)<sup>4</sup> and the UNRWA Dispute Tribunal<sup>5</sup> in relation to case management matters and rightly so since the first instance judge is in the best position to decide what is appropriate for the fair and expeditious disposal of a case and to do justice to the parties. Our jurisprudence has consistently held that the Appeals Tribunal will not lightly interfere with the

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<sup>4</sup> The UNDT Rules of Procedure (UNDT Rules) at Article 16(1) provide that "[t]he judge hearing a case may hold oral hearings". Article 19 of the UNDT Rules further provides that "[t]he Dispute Tribunal may at any time, either on an application of a party or its own initiative, issue any order or give any direction which appears to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties."

<sup>5</sup> Article 14 of the UNRWA DT Rules provides that the UNRWA DT "may, at any time, either on an application of a party or of its own initiative make any order or give any direction which appears to the judge to be appropriate for a fair and expeditious disposal of the case and to do justice to the parties".

broad discretion of the first instance tribunal in the management of its cases.<sup>6</sup> This discretion, though broad, is not unfettered and the exercise of it ought not to be arbitrary and/or improper.<sup>7</sup>

*ii) The issue of the medical board*

19. PD A/6/Part VI sets out the procedure with respect to medical boards. Paragraph 1 of PD A/6/Part VI provides:

1.1 Medical Boards for Area Staff members in the Fields will be convened by Chief, Field Health Programme at the written request of the Field Office Director or his/her authorized delegate. For Area staff members at Headquarters, the request will be directed to Chief, Field Health Programme, Gaza from Director of Administration and Finance in respect of [Headquarters (HQ)](Gaza) Area Staff members and to Chief, Field Health Programme, Jordan, from HQ Liaison Officer, HQ(Amman) in respect of HQ(Amman) Area Staff members.

1.2 Although staff members may request to be referred to a medical board, the final decision as to whether a medical board shall be convened rests with the Administration.

Paragraph 4.3 of PD A/6/Part VI provides:

... The terms of reference must specifically request a medical board to evaluate the fitness of a staff member for continued service with the Agency in his/her current post and his/her fitness for service in any post.

20. Paragraph 30 of PD/A/9 stipulates:

... Staff members terminated on medical grounds will be treated in accordance with either Area Staff Rule 106.4 or Area Staff Rule 109.7, as applicable.

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<sup>6</sup> *Namrouti v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-593, para. 33; *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-560, para. 30, citing *Leboeuf et al. v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-354, para. 8; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-294, para. 20; and *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062, para. 23. See also *Darwish v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-369, para. 26 (noting that the UNRWA DT has discretion in matters of procedure).

<sup>7</sup> *Lee v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-583, para. 17, citing *Hamayel v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-459 and *Asaad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-021.

21. UNRWA Area Staff Rule 106.4 provides as follows:<sup>8</sup>

**COMPENSATION FOR DEATH, INJURY OR ILLNESS ATTRIBUTABLE TO SERVICE**

**PRINCIPLES OF AWARD AND ELIGIBILITY**

1. Compensation shall be awarded, in the event of death, injury or illness of a staff member which the Agency determines to be attributable to the performance of official duties on behalf of the Agency, except that no compensation shall be awarded when such death, injury or illness has been occasioned by:

- (A) The willful misconduct of any such staff member, including drunkenness;
- (B) any such staff member's willful intent to bring about the death, injury or illness of himself/herself or another.

2. Without restricting the generality of paragraph 1 of this rule, the death, injury or illness of a staff member shall be deemed to be attributable to the performance of official duties on behalf of the Agency in the absence of any willful misconduct or willful intent when:

- (A) The death, injury or illness occurred as a direct result of travel by means of transportation furnished by, or at the expense of the Agency, in connection with the performance of official duties; provided that the provisions of this sub-paragraph shall not extend to private motor vehicle transportation sanctioned or authorised by the Agency solely on the request and for the convenience of the staff member;
- (B) the death, injury or illness directly resulted from strikes, riots, or civil disturbances; provided that at the time of such death or injury the staff member was acting in his/her official capacity at his/her usual post of duty, or at another post consequent to an order given by a superior Agency official;
- (C) the death, injury or illness directly resulted from war, declared or undeclared; provided that at the time of such death or injury the staff member was serving at the Agency's request in a country other than that in which he/she was resident at the time of his/her initial appointment by the Agency, and would not have suffered such death or injury had it not been for his/her employment with the Agency.

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<sup>8</sup> Emphases in original.

22. UNRWA Area Staff Rule 109.7 stipulates:<sup>9</sup>

**DISABILITY BENEFIT**

1. A staff member whose appointment has been terminated on the stated ground that he/she is for reasons of health incapacitated for further service with the Agency shall be eligible to receive a disability benefit as defined in paragraph 2 of this rule provided that he/she is less than 60 years of age and does not receive a termination indemnity under rule 109.9.

...

5. Where the incapacity of the staff member which gives rise to the termination of his/her appointment is partially or wholly attributable to the performance of his/her Agency duties and entitles him/her at any time to compensation under rule 106.4, then the following adjustments shall be made between entitlements under rule 106.4 and entitlements under this rule:

(A) Compensation payments made under rule 106.4 representing medical, hospital or directly related costs, or salary payments during sick leave or otherwise authorized absence prior to the date of termination, shall not affect, or be affected by, the payment of a benefit under this rule;

(B) Where the total amount of compensation payable under rule 106.4, other than the payments referred to in sub-paragraph (A) above, exceeds the amount of the disability benefit which would be payable under this rule, then the staff member's entitlement under this rule shall thereby be extinguished and nothing shall be payable thereunder[;]

(C) Where the total amount of compensation payable under rule 106.4, other than the payments referred to in sub-paragraph (A) above, is less than the amount of the disability benefit which would be payable under this rule, then the amount of the disability benefit shall be reduced by the amount of the said compensation payments, and the staff member's entitlement hereunder shall consist only of such part of the disability benefit as remains after this reduction.

23. Mr. Anshasi submits that the UNRWA DT erred in fact and in law when it found that he had failed to provide reasons for his request for a referral to a medical board and the Agency could reasonably decide to refuse his request.

24. With respect to the decision not to convene a medical board, the UNRWA DT found as follows:<sup>10</sup>

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<sup>9</sup> Emphases in original.

<sup>10</sup> Impugned Judgment, para. 33.

... It is clear from these provisions [PD/A/9, paragraph 30 and Area Staff Rule 106.4)] that a staff member's appointment can be terminated when he or she is incapacitated for further service for reasons of health. Furthermore, that staff member can then be eligible for a disability benefit. However, it is also clear that a staff member is not eligible for a disability benefit when he or she is over the age [of] sixty. Even if the Applicant did not indicate why he requested to be referred to a medical board, it is evident that he wanted to receive a disability benefit. However, since the Applicant was over the age of 60, he was not eligible for a disability benefit.

25. The UNRWA DT went on to state:<sup>11</sup>

... The Agency had no reason to refer the Applicant to a medical board as the Applicant's contract was to expire on 24 June 2016. Furthermore, it was not relevant for the Applicant either, as he did not contest that he was unfit for service, nor did he allege that his health problems were related to his service with the Agency. Referral to a medical board is appropriate for a staff member, but only if a staff member could be eligible for a disability benefit. This is not the case in the current situation. Consequently, the Agency could reasonably decide to refuse the Applicant's request.

26. We find no reasons to differ from that conclusion. When judging the validity of the Administration's exercise of discretion in administrative matters, as in the case of a decision to refer, or not to refer, a staff member to a medical board, the first instance tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The first instance tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the first instance tribunal to consider the correctness of the choice made by the Administration amongst the various courses of action open to it. Nor is it the role of the first instance tribunal to substitute its own decision for that of the Administration.<sup>12</sup>

27. The decision not to refer Mr. Anshasi to a medical board is reasonable, given the specific factual circumstances of the case at hand, as correctly found by the UNRWA DT. In fact, Mr. Anshasi was, at the material time, over the age of sixty and thus not eligible for a disability benefit, and there was no indication of his alleged health problems being related to his service with the Agency. On the contrary, as a result of the preliminary medical assessment conducted

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<sup>11</sup> *Ibid.*, para. 34.

<sup>12</sup> *Muwambi v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-780, para. 28, citing *Said v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-500, para. 40 and *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 40.

on 27 April 2016, the Chief, Field Health Programme, Jordan, recommended not to refer Mr. Anshasi to a medical board. We share the view of the first instance Judge that this decision was a valid exercise of the Agency's discretion.

28. Additionally, the findings of fact made by the UNRWA DT can only be disturbed under Article 2(1)(e) of the Statute when there is an error of fact resulting in a manifestly unreasonable decision, which is not the case here.

29. The Appeals Tribunal emphasizes that the appeals procedure is of a corrective nature and, thus, is not an opportunity for a dissatisfied party to reargue his or her case. A party cannot merely repeat on appeal arguments that did not succeed before the lower court. The function of the Appeals Tribunal is to determine if the UNRWA Dispute Tribunal made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as prescribed in Article 2(1) of the Statute. An appellant has the burden of satisfying the Appeals Tribunal that the judgment he or she seeks to challenge is defective. It follows that an appellant must identify the alleged defects in the impugned judgment and state the grounds relied upon in asserting that the judgment is defective.<sup>13</sup>

30. It is obvious that Mr. Anshasi was not satisfied with the UNRWA Dispute Tribunal's decision. He has failed, however, to demonstrate any error in the UNRWA DT's finding that the Agency's decision not to refer him to a medical board resulted from a valid exercise of its discretionary power and was not tainted by improper motives or was otherwise unlawful. He merely voices his disagreement with the UNRWA DT's findings and resubmits his submissions to this Tribunal. He has not met the burden of proof of demonstrating an error in the impugned Judgment such as to warrant its reversal.<sup>14</sup>

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<sup>13</sup> *Al-Mussader v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2017-UNAT-771, para. 31; *El Saleh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-594, para. 30; *Achkar v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-579, para. 15 and citations therein; *Ruyooka v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-487, para. 24.

<sup>14</sup> *Al-Mussader v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2017-UNAT-771, para. 32; *Ruyooka v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-487, para. 24; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-236, para. 37; see also *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110, para. 27; *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035, para. 30.

*iii) The issue of placement on SLWOP*

31. UNRWA Area Staff Rule 105.2 provides in paragraph 1:

... Special leave with full or partial pay or without pay may be granted in the interests of the Agency in cases of extended illness, or for other exceptional reasons, for such period as the Commissioner-General may prescribe.

32. Area Staff Personnel Directive PD A/5/Part II provides in paragraph 1.4:

... Special leave may be approved for the following reasons:

1.4.1 **Illness.** Provided that sick leave, advanced sick leave and annual leave accruals have been exhausted, and provided the Agency considers that a limited extension of absence will give the staff member a reasonable opportunity of returning to duty at a foreseeable date. Such leave may be approved with full, partial, or without pay up to 90 days subject to a written recommendation of the Director of Health In Headquarters (Amman) and Chief, Field Health Programme in Field Offices; any extension beyond 90 days will require the authorization of the Director of Human Resources.

33. With respect to the Agency's decision to place Mr. Anshasi on SLWOP, the UNRWA DT held that the Commissioner-General had the discretionary authority to place a staff member on SLWOP, and came to the conclusion that:<sup>15</sup>

... As the Applicant had been on sick leave since 3 December 2015, his sick leave credits allowed coverage until 29 May 2016, and his contract was to expire on 24 June 2016, the [UNRWA Dispute] Tribunal finds that it was not unreasonable to place him on SLWOP for a period less than a month.

34. We agree with both heads of the UNRWA DT's findings. Contrary to Mr. Anshasi's arguments, under the aforementioned legal and factual circumstances, his consent for SLWOP was not required, as it is up to the discretion of the Agency and the Commissioner-General may, at his own initiative, place a staff member on special leave with full or partial pay or without pay if he or she considers that to be in the interest of the Agency.<sup>16</sup> Moreover, the contested administrative decision was reasonable and therefore lawful, as correctly determined by the UNRWA DT. The UNRWA DT gave careful and fair consideration to Mr. Anshasi's arguments regarding his placement on SLWOP, while he has not successfully discharged the burden of

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<sup>15</sup> Impugned Judgment, para. 38.

<sup>16</sup> *Cf. Adewusi v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-382, para. 16; *Cabrera v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-215, para. 46.

proving improper action on the part of the Administration. Indeed, he has not convinced the UNRWA DT, nor the Appeals Tribunal, that the Administration violated his rights in any way whatsoever in that respect.

*iv) The decision to defer payment of separation benefits*

35. Insofar as the Administration's decision to withhold the payment of the separation benefits owed to Mr. Anshasi upon his separation is concerned, the UNRWA Dispute Tribunal Judge decided that this was lawful in that any delay with respect to the payment of Mr. Anshasi's benefits was solely due to his own choice to refuse to sign the medical waiver or to be referred to an "exit medical examination".

36. Indeed, as found by the UNRWA DT and not disputed by Mr. Anshasi, the Agency has established a separation clearance procedure for the separation of staff members in order to ensure that both parties have fulfilled their obligations towards each other. Part of this clearance procedure is signing a form waiving medical examination. Mr. Anshasi refused to sign this waiver. As a result, he was informed that the payment of his separation benefits would be deferred. In an attempt to resolve this situation, the Agency, by letter dated 21 September 2016, offered to refer the Applicant to an "exit medical examination", indicating that once the medical examination was concluded, his separation benefits would be disbursed.

37. Mr. Anshasi's reluctance to sign a form waiving medical examination was apparently due to his belief that he was waiving any outstanding claims against the Agency contrary to his own interests, i.e. that it would release the Agency from any responsibility towards him.

38. First, the Appeals Tribunal recalls its jurisprudence in *Ahmed*<sup>17</sup> in which it referred to the language of the former United Nations Administrative Tribunal in its Judgment *Stouffs*:

... The [Former Administrative] Tribunal observes, on the one hand, that the staff member's disagreement with the content of the form does not exempt her from the general obligation to sign it in order to be able to receive the benefits deriving from her service with the United Nations. On the other hand, the [Former Administrative] Tribunal emphasizes that the staff member's signature does not deprive her of the possibility of challenging a contested component of its content or pursuing her action. The [Former Administrative] Tribunal points out that the Administration must ensure that a

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<sup>17</sup> *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-386, para. 21, citing Former Administrative Tribunal, Judgment No. 1212, *Stouffs* (2004), para. XI (emphasis omitted).

staff member's signing of the P.35 form is not considered as the signing of a general release from the Organization's obligations towards the staff. ...

39. Additionally, we agree with the first instance Judge that the established separation clearance procedure for the separation of staff members benefits both the staff member and the Administration, as it allows identifying and pursuing the best way of settling their obligations towards each other.

40. However, the Appeals Tribunal recalls its jurisprudence that the discretionary power of the Administration is not unfettered.<sup>18</sup> The Commissioner-General has an obligation to act in good faith and comply with applicable laws. Mutual trust and confidence between the employer and the employee is implied in every contract of employment. And both parties must act reasonably and in good faith.<sup>19</sup>

41. That said, in the absence of a legal provision expressly providing for the staff member to sign a form waiving his/her rights towards the Agency in order for him/her to be paid his/her separation benefits,<sup>20</sup> we could contemplate cases where it would be neither logical nor reasonable to expect the UNRWA Administration to have the staff member sign a form waiving his/her outstanding claims against the Agency, i.e. in the sense of a general release from the latter's obligations towards the staff member.

42. Nevertheless, in the present case, it does not result from the documentary evidence on file that Mr. Anshasi's signing a "form waiving medical examination" is equal to signing a general release from the Agency's obligations towards him.

43. Finally, in all the circumstances of the case, and considering that the Agency promptly after Mr. Anshahi's refusal to sign the "form waiving the medical examination" offered to refer him to an "exit medical examination" on 21 September 2016, after which his separation benefits would be paid, we find there is no question of an unreasonable decision or *mala fides* on the part

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<sup>18</sup> *Hamayel v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-459, para. 17; *Pérez-Soto v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-329; *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-121; *Asaad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-021.

<sup>19</sup> *Hamayel v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-459, para. 17.

<sup>20</sup> *Arg. e contrario* from Judgment *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-539, paras. 38-43.

of the Administration, as correctly found by the UNRWA DT. The delay in the payment of the separation benefits to Mr. Anshasi was entirely attributable to his refusal to accept the aforesaid offer.

44. Lastly, Mr. Anshasi submits that there is a conflict of interest with respect to the medical officer who was tasked with carrying out the offered “exit medical examination”, in that he was the same doctor who had conducted the preliminary assessment on 27 April 2016. However, this issue was not raised before the UNRWA DT—although Mr. Anshasi had been granted the right to submit his observations on 27 December 2016 by the first instance Judge—and thus cannot be introduced for the first time on appeal for consideration by the Appeals Tribunal.<sup>21</sup> We find that Mr. Anshasi’s appeal in this regard is not receivable.

45. Our conclusion that the UNRWA DT did not make any errors of law or fact in denying Mr. Anshasi’s challenge of the impugned administrative decisions precludes him from seeking compensation. Since no illegality was found, there is no justification for the award of any compensation. As this Tribunal stated before, “compensation cannot be awarded when no illegality has been established; it cannot be granted when there is no breach of the staff member’s rights or administrative wrongdoing in need of repair”.<sup>22</sup>

46. Accordingly, the appeal fails.

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<sup>21</sup> *Haimour and Al Mohammad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-688, para. 38; *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-547, para. 25; *Simmons v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-221, para. 61.

<sup>22</sup> *Kucherov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-669, para. 33. See also *Nwuke v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-508, para. 27, citing *Oummih v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-420 and *Antaki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-095.

**Judgment**

47. The appeal is dismissed and Judgment No. UNRWA/DT/2017/004 is hereby affirmed.

Original and Authoritative Version: English

Dated this 27<sup>th</sup> day of October 2017 in New York, United States.

*(Signed)*

Judge Raikos, Presiding

*(Signed)*

Judge Lussick

*(Signed)*

Judge Murphy

Entered in the Register on this 8<sup>th</sup> day of December 2017 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar