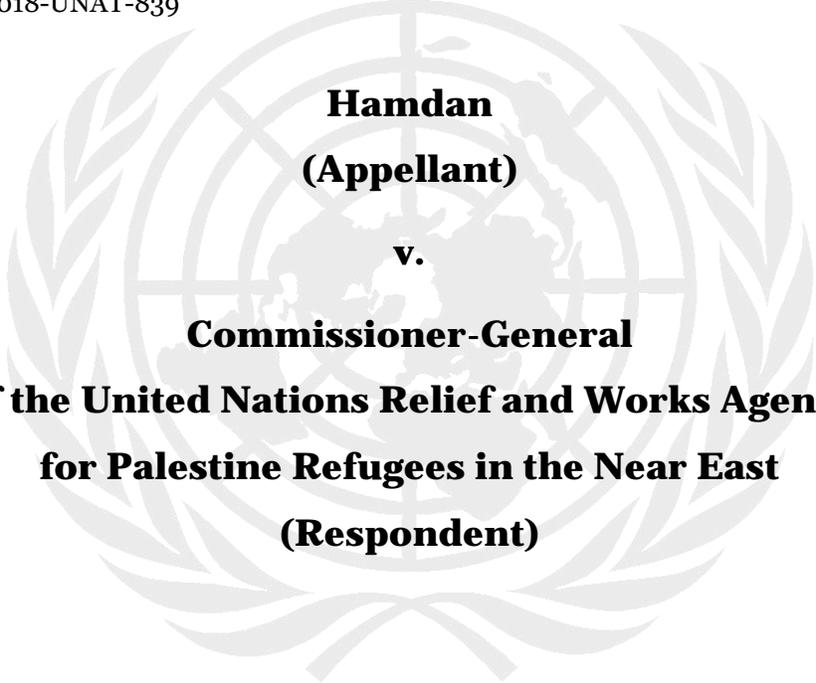




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2018-UNAT-839



**Hamdan  
(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 Sabine Knierim, Presiding Judge John Murphy Judge Deborah Thomas-Felix
Case No.:	2017-1134
Date:	22 March 2018
Registrar:	Weicheng Lin

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Counsel for Mr. Hamdan:	Amer Abu-Khalaf, LOSA
Counsel for Commissioner-General:	Rachel Evers

**JUDGE SABINE KNIERIM, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2017/031, 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 10 October 2017, in the case of *Hamdan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Jihad Hamdan filed the appeal on 28 November 2017, and the Commissioner-General filed an answer on 20 January 2018.

**Facts and Procedure**

2. Effective 1 July 2013, Mr. Hamdan was employed by the Agency on a fixed-term appointment as Chief, Field Education Programme (C/FEP), Grade 20, in the Jordan Field Office. Following his request, Mr. Hamdan's fixed-term appointment was extended beyond the age of 60 for a period of two years.

3. On 17 May 2015, the Head, Education Development Centre (H/EDC) submitted a complaint of harassment to the Director of UNRWA Operations, Jordan (DUO/J) against Mr. Hamdan, in which she elaborated on several problems and incidents. The H/EDC referred to one incident in particular where she had been excluded from the interviews of the Heads of the Education Units. The H/EDC further mentioned an incident that occurred during a meeting on 4 May 2015, with Ms. N.K., Head, Field Human Resources Office (H/FHRO), regarding the interview process for the posts of Coordinators of the Education Units. The H/EDC claimed that, during this meeting, she had expressed different points of view from the C/FEP, who then had used disrespectful language towards her. She complained that she had been exposed to great pressure to change her opinion concerning the interview process for the Coordinator posts.

4. On 6 June 2015, Mr. Hamdan sent an e-mail to the Deputy Director of UNRWA Operations, Jordan (D/DUO/J), in which he alleged that the H/EDC was having someone edit her e-mails before sending them, thus giving a third person access to confidential information. He requested this to be investigated.

5. By two Terms of Reference (ToR), dated 10 June 2015 and 30 July 2015, the DUO/J authorised investigation INV 15-112 regarding the H/EDC's complaint against the C/FEP for abuse of power, partiality, and improper interference in the management of the EDC.

Furthermore, the DUO/J authorised to investigate the alleged wrongdoing by the H/EDC in having someone edit her English e-mails, thus allowing someone inappropriate access to confidential information. The investigation was also to include determining whether the allegation against the H/EDC was retaliatory.

6. On 22 September 2015, the DUO/J received a second complaint against Mr. Hamdan submitted by the H/EDC joined by a group of Education Specialists. On 10 December 2015, an Education Specialist submitted another complaint against Mr. Hamdan.

7. On 17 December 2015, the Department of Internal Oversight Services (DIOS) referred a complaint to the DUO/J that had been submitted by Ms. G.S, Head, Professional Development and Curriculum Unit (H/PDCU) against the H/EDC. On 23 December 2015, the DUO/J added this complaint to the ToR of INV 15-112.

8. On 7 January 2016, another complaint was submitted against Mr. Hamdan. An Education Specialist claimed that Mr. Hamdan had refused to let her sit for an interview for a vacant post at the PDCU. On 20 January 2016, the DUO/J added this complaint to the ToR of INV 15-112.

9. On 9 February 2016, an Education Specialist at EDC submitted a complaint through the H/EDC to the DUO/J alleging job harassment by Mr. Hamdan. This complaint was added by the DUO/J to the ToR of INV 15-112 on 16 February 2016.

10. By e-mail dated 13 April 2016, Mr. Hamdan recommended the composition of an interview panel for Education Specialist positions at the EDC. In his recommendation for the panel, he did not include the H/EDC. By e-mail dated 13 April 2016, Ms. N.K., the H/FHRO, reminded Mr. Hamdan that the H/EDC could not be excluded from the panel as Education Specialist positions fell under her supervision. By e-mail dated 13 April 2016, Mr. Hamdan proposed that the H/EDC be a panel member.

11. On 17 May 2016, the Panel of Investigators (PoI) submitted its final report on INV 15-112 to the DUO/J. By letter delivered to Mr. Hamdan on 8 June 2016, the Head, Field Legal Office Jordan (H/FLO/J) informed him that the Agency's investigation, through documentary and witness evidence, found that he had committed the following acts of misconduct:

- Retaliating against the H/EDC for having expressed her opinion contrary to his with regard to the Unit Coordinator Interviews and in following meetings at the Field Human Resources Office (FHRO);
- Humiliating the H/EDC in a meeting held at the FHRO and displaying an abusive attitude towards her in a subsequent meeting;
- Negatively affecting the career of the H/EDC by “beginning to pay close negative attention to her work” and “placing unreasonable deadlines”;
- Attempting to undermine the H/EDC, as demonstrated in an e-mail dated 13 April 2016, excluding her from serving on the interview panel for the recruitment of Education Specialists at the EDC;
- Failing to discourage the Area Education Officer, Zarqa from putting pressure on the H/EDC; and,
- Ridiculing the Education Specialists by stating that they have a poor level of English.

12. By letter dated 5 July 2016, Mr. Hamdan was informed by the Human Resources Services Officer, Jordan that his separation from the Agency’s service on grounds of age would be effective as of the close of business on 30 July 2016.

13. By e-mail dated 22 July 2016, Mr. Hamdan responded to the 8 June 2016 letter informing him of the charges of misconduct.

14. By e-mail dated 31 July 2016, the DUO/J informed Mr. Hamdan that a fine would be deducted from his final payment due upon his retirement from UNRWA. The DUO/J indicated that the determined amount of the fine would be confirmed within 30 days; however, that it would not be less than “30 days’ salary”.

15. By letter dated 24 August 2016, a fine equivalent to two months’ net base salary was imposed on Mr. Hamdan as a disciplinary measure. The following allegations of misconduct were found established:

- Abuse of power with respect to the H/EDC;
- Retaliation against the H/EDC; and

- Harassment of several other Education Specialists.

16. On 12 September 2016, Mr. Hamdan requested review of the decision to impose on him the disciplinary measure of a fine of two months' net base salary.

17. On 24 November 2016, Mr. Hamdan filed an application with the UNRWA Dispute Tribunal against the decision of the Agency to impose on him the disciplinary measure of a fine equivalent to two months' net base salary. The application was transmitted to the Commissioner-General on 27 November 2016.

18. The UNRWA DT rendered its Judgment on 10 October 2017, dismissing the application in its entirety. As a preliminary matter, the UNRWA DT considered that since all the incidents underlying the imposed fine occurred after 1 May 2005—the date of the promulgation of the rule establishing fines as possible disciplinary measures—none of the alleged incidents was to be precluded on that basis. Furthermore, the UNRWA DT considered that in accordance with the Appeals Tribunal's jurisprudence in *Gallo*,<sup>1</sup> the Agency could impose the disciplinary measure of a fine against Mr. Hamdan even at a time when he was no longer a staff member. The UNRWA DT further found that Mr. Hamdan could only be charged with the first two of the charges contained in the contested decision of 24 August 2016, namely abuse of power and retaliation against the H/EDC, and not also with the third charge, that is harassment against several EDC Education Specialists, because there was no authorization to investigate the harassment charge and the investigators had not interviewed Mr. Hamdan in that regard. On the merits, the UNRWA DT concluded from multiple e-mails and witness statements that Mr. Hamdan “indeed was intimidating and humiliating the H/EDC”,<sup>2</sup> and that his evaluation of her performance “was either an act of retaliation or at the very least abuse of power”.<sup>3</sup> The UNRWA DT thus found it established that Mr. Hamdan had “engaged in actions in violation of the Agency's regulatory framework and committed acts [of] retaliation and abuse of power against the H/EDC, and that these actions constitute[d] misconduct”.<sup>4</sup> Moreover, the UNRWA DT considered that the disciplinary measure of a fine in the amount of two months' net base salary was proportionate to the established misconduct. In particular, the UNRWA DT found that the Commissioner-General would have imposed the same disciplinary measure, had he only

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<sup>1</sup> *Gallo v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-706, paras. 17-18.

<sup>2</sup> Impugned Judgment, para. 60.

<sup>3</sup> *Ibid.*, para. 62.

<sup>4</sup> *Ibid.*, para. 64.

considered as misconduct the same facts as the UNRWA DT, namely only the first charge as contained in the 24 August 2016 decision letter. As his employment contract had already expired but he had not yet received the final payment due upon his retirement, imposing a fine was the only reasonable disciplinary measure. The UNRWA DT considered that the misconduct was particularly serious in light of Mr. Hamdan's senior managerial position and the contested sanction was, therefore, not absurd or perverse.

### **Submissions**

#### **Mr. Hamdan's Appeal**

19. Mr. Hamdan submits that the UNRWA DT erred in fact and in law by finding that the Commissioner-General had been entitled to impose the disciplinary measure of a fine irrespective of the end date of his contract. When the disciplinary sanction was imposed on Mr. Hamdan on 24 August 2016, he was no longer in active service. The Appeals Tribunal's Judgment in *Gallo* is distinguishable from the present case in that it concerned a written reprimand, which, pursuant to United Nations Staff Rule 10.2(b)(i), is not a disciplinary measure. There is no precedent to the effect that a disciplinary measure may be imposed after the end of a staff member's employment contract.

20. Mr. Hamdan argues that the UNRWA DT "erroneously assessed the failure of [the] administration to meet the requirements of [an] adversary procedure in establishing the facts and failed to heed procedural rights to [him]". First, he claims that the only complaint submitted by the H/EDC against him was the one on 17 May 2015 and that all other claims in the Investigation Report had not been included in the 17 May 2015 complaint. Events that took place beyond this date should not have been considered by the UNRWA DT as they had not been authorized by any ToR. Consequently, the UNRWA DT's reference to the subsequent event of the alleged exclusion of the H/EDC from the interview panel for Education Specialists was incorrect. In addition, the witness statement by the H/FHRO had not been brought to Mr. Hamdan's attention or included in any ToR.

21. Moreover, Mr. Hamdan contends that the UNRWA DT incorrectly concluded that his evaluation of the H/EDC's performance amounted to either an "act of retaliation or at the very least abuse of power". In fact, the UNRWA DT "failed to take into account all details of the extension of [the] 6[-]month probation period of [the] H/EDC" and missed essential facts, which

demonstrated that the H/EDC's performance evaluation was neither arbitrary nor retaliatory. Mr. Hamdan also claims that this issue was neither included in any complaint by the H/EDC against Mr. Hamdan nor in the ToR of INV 15-112.

22. Mr. Hamdan asserts that the UNRWA DT, despite its finding that all the incidents underlying the sanction occurred after 1 May 2015, referenced incidents, where the H/EDC had been excluded from the interview of the Heads of Education Unites, which had allegedly occurred before the provision introducing fines as disciplinary measures came into effect. Consequently, no fine could be imposed on this basis. In this context, Mr. Hamdan also claims that “[a]mong the alleged facts of misconduct committed by [him] as stated in the [Investigation Report, namely] ‘negatively affecting the career of the H/EDC[’] by ‘beginning to pay close negative attention to her work’ and ‘placing unreasonable deadlines’ and ‘micromanagement of EDC, incitement to the mobbing of the H/EDC’” were allegations that were cited in a complaint submitted on 22 September 2015 by the H/EDC and several Education Specialists at the EDC. He asserts that “[t]hese alleged acts of misconduct should be dropped because the DUO/J had not authorized the investigation”.

23. In Mr. Hamdan's view, the UNRWA DT also erred in law and fact by excluding some parts of evidence and being particularly selective in excerpts from the witness testimonies in violation of UNRWA Area Staff Regulation 11.4 and the Appeals Tribunal's jurisprudence in *Sanwidi*.<sup>5</sup> In particular, the UNRWA DT gave disproportionate weight to the testimony of the H/FHRO “who [had] led the battle against [Mr. Hamdan] (...) and had never been on good terms with [him]” and the UNRWA DT failed to hear other witnesses who were more closely involved in the alleged incidents. Moreover, the UNRWA DT failed to consider important excerpts of the Investigation Report that were favourable to him. The UNRWA DT also failed to take into consideration that the allegations of humiliation and intimidation and the alleged attempt to remove the H/EDC from her post have not been justified by any concrete evidence. It erred in not disclosing which e-mails exactly were exhibiting intimidating and humiliating language and how they supported the other allegations.

24. Mr. Hamdan further alleges that he obtained copies of the testimonies and interviews only months after the closure of the Investigation Report; at the time the charges against him were based on anonymous witness statements, which constituted an infringement of

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<sup>5</sup> *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 38.

investigation procedures. The UNRWA DT failed to address this breach of his “procedural right (...) to be informed on the course of [the] investigation”.

25. In light of the foregoing, Mr. Hamdan requests that the Appeals Tribunal order (i) reversal of the UNRWA DT Judgment and repayment of the “unjustified fine imposed by the Agency”; (ii) compensation of 50,000 Jordanian Dinar (JOD) “for moral and reputational damage due to the unjustified disciplinary measure”; and, (iii) expungement of the disciplinary measure from his official status file.

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

26. The Commissioner-General submits that the UNRWA DT did not err on a question of fact or law in its conclusion that the Agency could impose on Mr. Hamdan the disciplinary measure of a fine, irrespective of the end date of his contract. The UNRWA DT was cognisant of the material fact that Mr. Hamdan’s contract had ended at the time of the imposition of the sanction. Mr. Hamdan’s interpretation of the *Gallo* Judgment is too narrow and restrictive. In fact, it emerges from a dispassionate reading of the *Gallo* Judgment that the authority to manage the Organization’s records is not limited to discretionary administrative decisions but also extends to disciplinary measures and this authority does not lapse upon a staff member’s separation from service. The UNRWA DT has provided a reasoned holding as to why the *Gallo* jurisprudence should apply *mutatis mutandis* to disciplinary measures.

27. The Commissioner-General further submits that the UNRWA DT did not err on a question of law and/or fact when it dismissed the application on the merits. First, Mr. Hamdan’s claim that multiple issues were investigated without the proper authorization according to the ToR is without merit. Having properly determined the scope of the complaints that were duly authorized for investigation, the UNRWA DT correctly held that Mr. Hamdan could not be charged with allegations of harassment of the H/EDC and nine Education Specialists as indicated in the second charge contained in the contested decision of 24 August 2016. The suggestion that the UNRWA DT did in fact consider these aspects in its decision is unfounded.

28. Furthermore, the Commissioner-General contends that the UNRWA DT was correct in its conclusion that Mr. Hamdan’s evaluation of the H/EDC’s performance was either an act of retaliation or at least of abuse of power. The UNRWA Dispute Tribunal was cognisant of the applicable regulatory framework relating to abuse of power and retaliation and properly reviewed

the underlying facts and evidence before reaching its correct conclusion that any abuse of power complaint may, in certain instances such as in this case, involve a consideration of a performance evaluation.

29. Mr. Hamdan's contention that the UNRWA DT erred in imposing a fine based on incidents that had occurred before the relevant provision introducing fines as disciplinary measures had entered into force, are without merit. In fact, a review of the Judgment reveals that a finding of retaliation based on attempts to exclude the H/EDC from the selection panel for the recruitment of the Unit Coordinators was premised on subsequent events. The Commissioner-General also recalls that the UNRWA DT limited its scope of review to the allegation of abuse of power and retaliation against the H/EDC and consequently did not consider the complaints of 22 September 2015 referenced by Mr. Hamdan in its determination of the case.

30. In addition, Mr. Hamdan's contention with regard to the UNRWA DT's assessment of the evidence is without merit. The UNRWA Dispute Tribunal reviewed copies of several e-mails sent by Mr. Hamdan to the H/EDC as well as several witness statements and correctly concluded that Mr. Hamdan had been intimidating and humiliating towards the H/EDC. The witness statements referred to by Mr. Hamdan in this context were of no avail to the UNRWA DT's findings upholding the Agency's decision to impose a fine on Mr. Hamdan.

31. Moreover, the Commissioner-General argues that in light of the foregoing, Mr. Hamdan's plea for compensation has no legal basis. In particular, in the absence of evidence of harm, there is no ground for an award of moral damages.

32. The Commissioner-General requests the Appeals Tribunal to dismiss the appeal in its entirety.

### **Considerations**

#### *Lawfulness of the disciplinary measure of a fine*

33. The UNRWA DT erred in law in finding that the Commissioner-General was entitled to impose the disciplinary measure of a fine after Mr. Hamdan's employment had ended. A thorough examination of the legal provisions shows that the Commissioner-General's authority is restricted to imposing disciplinary measures on current staff members. Once the appointment of

a staff member ends, the Commissioner-General no longer has the authority to impose disciplinary measures on him or her.

34. The relevant UNRWA Area Staff Regulations (as of 1 June 2010) provide:

REGULATION 10.2

The Commissioner-General may impose disciplinary measures on staff members who engage in misconduct.

REGULATION 10.3

The Commissioner General may summarily dismiss a staff member for serious misconduct.

35. UNRWA Area Staff Rule 110.1 (as amended on 1 May 2015) provides:<sup>6</sup>

DISCIPLINARY MEASURES AND PROCEDURES

...

Disciplinary measures

5. Disciplinary measures under Area Staff Regulation 10.2 may take one or more of the following forms only:

- a. written censure;
- b. loss of one or more steps in grade;
- c. deferment, for a specified period, of eligibility for salary increment;
- d. suspension without pay for a specified period;
- e. fine;
- f. deferment, for a specified period, of eligibility for consideration for promotion;
- g. demotion with deferment, for a specified period, of eligibility for consideration for promotion;
- h. separation from service, with notice or compensation in lieu of notice, notwithstanding Area Staff Regulation 9.3, with termination indemnity;
- i. separation from service, also known as termination for misconduct, with notice or compensation in lieu of notice, notwithstanding Area Staff Regulation 9.3, and without termination indemnity pursuant to Area Staff Rule 109.9;
- j. summary dismissal.

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<sup>6</sup> Emphasis in original.

36. UNRWA Area Personnel Directive No. A/10/Rev. 2 (Disciplinary measures and procedures) reads:<sup>7</sup>

FORMS OF DISCIPLINARY MEASURES

...

17. Fine: A fine shall be imposed on a staff member by deducting the amount from the staff member's net monthly salary including allowances or, in the alternative, the official imposing such sanction may agree with the staff member on alternative means of payment, such as by bank cheque or personal cheque from the staff member. The amount to be deducted and the time period for making such deductions, if the deductions are to occur multiple times over a specified time period, shall be at the discretion of the official imposing such sanction. In case of deductions multiple times over a specified time period, the official imposing such sanction may discuss a payment plan with the staff member.

37. We find that these legal provisions clearly restrict the Commissioner-General's authority to taking disciplinary measures only against current staff members. UNRWA Area Staff Regulation 10.2 authorizes the Commissioner-General to "impose disciplinary measures on *staff members*".<sup>8</sup> The fact that the Commissioner-General's authority is restricted to imposing disciplinary measures on staff members with ongoing appointments becomes especially clear from paragraph 17 of UNRWA Area Personnel Directive No. A/10/Rev. 2, which governs the method for imposing fines and prescribes that it has to be done "by deducting the amount from the staff member's net monthly salary including allowances" which is technically impossible with respect to former staff members. We note that the 24 August 2016 decision is not in accordance with this provision as it stated that the fine imposed on Mr. Hamdan was to be "deducted from (his) separation payments".

38. In other situations where rights or obligations are bestowed on former staff members, UNRWA's legal provisions expressly say so and explicitly distinguish between former and current staff members; e.g. in Article 3 of the UNRWA DT Statute which reads:

An application under article 2, paragraph 1, of the present statute may be filed by:

- (a) Any staff member of UNRWA;
- (b) Any former staff member of UNRWA[.]

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<sup>7</sup> Emphasis in original.

<sup>8</sup> Emphasis added.

39. We note that under the United Nations system, Section 2.3 of the recent Administrative Instruction ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process) explicitly states that “all references to ‘staff member’ shall include former staff members” thus enabling the Tribunals to apply the relevant regulations to former staff members. The Commissioner-General has not presented, and we did not find, a similar legal provision for UNRWA.

40. On 24 August 2016 when the disciplinary measure of a fine was imposed on Mr. Hamdan, he had already left active service and was no longer a staff member of UNRWA. Examining the written record, we have no doubt that Mr. Hamdan’s last day of service was 30 July 2016. The decision to impose the disciplinary measure was not contained in the 31 July 2016 e-mail as it merely informed Mr. Hamdan that the Agency had decided “to take an action against [him]” “(...) which will include a fine that will be deducted from the final payment of any monies that may be due upon [his] retirement from UNRWA”. Even assuming the decision had already been taken on 31 July 2016 rather than 24 August 2016 it would have been too late as Mr. Hamdan was no longer a staff member on 31 July 2016.

41. While we agree with the UNRWA DT that it is very unfortunate that the Commissioner-General has no authority to sanction actions of (serious) misconduct committed by former staff members by imposing disciplinary measures, we consider that it is not within the Tribunals’ authority to stretch and apply the legal provisions against their clear and unambiguous wording in order to establish such a system. It is up to the UNRWA Administration to decide whether former staff members should be included in the Agency’s disciplinary system and what kind of disciplinary measures could be taken against them depending on the degree of their misconduct. The situation at hand is different from the circumstances presented in *Gallo* where the Secretary-General imposed the non-disciplinary measure of a written reprimand against a former staff member. In that case we stated: <sup>9</sup>

... First, there is no requirement in the Staff Regulations or Rules that provides that the Secretary-General’s discretionary authority to issue a written reprimand as a non-disciplinary measure pursuant to Staff Rule 10.2(b)(i) is predicated upon and limited to the existence of an ongoing employment contract. Nor is there any jurisprudence from this Tribunal requiring such an existing employment relationship in order to issue administrative non-disciplinary measures.

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<sup>9</sup> *Gallo v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-706, paras. 17-18.

... Second, we agree with the Secretary-General that this reasoning, were it to prevail, would render nugatory those standards of conduct (e.g., confidentiality obligations pursuant to Staff Regulation 1.2(i), amongst others) that survive active service. More importantly, from a practical perspective, it would also stymie the Secretary-General's ability and discretionary authority to properly manage investigations and discipline staff. The Secretary-General clearly has the authority to administer the Organization's records, including those of former staff members, and to ensure they reflect the staff member's performance and conduct during his or her period of employment. This authority does not lapse upon the staff member's separation from service. In this regard, we are persuaded by the Secretary-General's submission that to conclude otherwise would mean that the conduct by a staff member in his or her last days of service could not be recorded in the Organization's files if the staff member separated prior to such conduct being recorded. As the Secretary-General argued, a staff member could essentially obviate the Administration's broad discretion and authority in administrative matters by simply resigning or otherwise separating from the Organization.

42. The UNRWA DT erred in finding that the reasoning presented in *Gallo* was applicable *mutatis mutandis* to the present case. First, the wording of the above-mentioned provisions is clear and unambiguous in the sense that disciplinary measures may only be imposed during an ongoing appointment. Therefore, unlike the Secretary-General's discretionary authority to issue a written reprimand as a non-disciplinary measure pursuant to United Nations Staff Rule 10.2(b)(i) referred to in *Gallo*, there is a requirement that the Commissioner-General's authority to impose disciplinary measures is indeed predicated upon and limited to the existence of an ongoing employment. In light of the significant impact of disciplinary measures when compared to the less severe consequences of non-disciplinary measures such as reprimands, it is only logical to require a specific legal basis for the imposition of a disciplinary procedure. Second, even though some elements of the *ratio* contained in paragraph 18 of the *Gallo* Judgment seem equally relevant to disciplinary measures, this alone is insufficient to overcome the clear and unambiguous language of the applicable provisions.

43. In the present case, the Commissioner-General imposed on Mr. Hamdan the disciplinary measure of a fine after he had left active service which, as stated above, is not in accordance with UNRWA's disciplinary system. It follows that the disciplinary measure of a fine has to be rescinded. As a direct consequence of this rescission, the Commissioner-General will have to retribute the amount of the fine to Mr. Hamdan and remove the 24 August 2016 decision from Mr. Hamdan's official status file.

44. As the contested administrative decision concerns a disciplinary measure and not appointment, promotion or termination, the Appeals Tribunal is not required to set an amount of compensation that the Commissioner-General may elect to pay as an alternative to the rescission of the contested administrative decision under Article 9(1)(a) of the Statute of the Appeals Tribunal.

*Award of compensation for moral harm*

45. By dismissing his application in its entirety, the UNRWA DT has (implicitly) dismissed Mr. Hamdan's application for compensation for moral harm. There was no need for the UNRWA DT to provide any further reasoning for this decision because it directly followed from the UNRWA DT's finding of lawfulness of the contested administrative decision and its dismissal of Mr. Hamdan's application. As we have 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>10</sup>

46. However, having overturned the UNRWA DT's finding that the 24 August 2016 decision was lawful, we must now decide whether Mr. Hamdan is entitled to compensation.

47. In this regard, Article 9 of the Statute of the Appeals Tribunal provides:

1. The Appeals Tribunal may only order one or both of the following:

...

- (b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Appeals Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

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<sup>10</sup> *Kucherov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-669, para. 33, citing *Wishah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-537, para. 40, and citations therein.

48. The Appeals Tribunal may only award compensation for harm in cases where the staff member has presented evidence other than his own testimony that he or she suffered pecuniary or moral injury due to the contested administrative decision.<sup>11</sup>

49. Mr. Hamdan did not suffer any pecuniary injury and does not request any compensation in this regard.

50. He did not present any evidence showing that he suffered mental distress, anxiety or other moral injury during the investigation and/or the proceedings. Consequently, there can be no award of compensation in this respect.

51. As to the alleged damage to his reputation and professional standing, we note that Mr. Hamdan had already left active service when the disciplinary measure of a fine was imposed on him on 24 August 2016; and that this decision is rescinded so that the harm to his professional reputation is minimal. Further, the documentary evidence reveals that there is some truth to the suggestion that Mr. Hamdan was indeed an authoritative and intimidating manager. Regardless of the question whether or not we would still consider the 24 August 2016 disciplinary measure to be unlawful had it been imposed on Mr. Hamdan on or before 30 June 2016, we do not deem it appropriate to award compensation for reputational and professional harm to him under the circumstances of the case.

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<sup>11</sup> *Kallon v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742, Concurring Opinion by Judge Sabine Knierim, para. 2, representing the majority view on this issue.

**Judgment**

52. The appeal is partly upheld and Judgment No. UNRWA/DT/2017/031 is hereby vacated insofar as it dismisses Mr. Hamdan's application for rescission of the disciplinary measure of a fine. Mr. Hamdan's appeal is dismissed and Judgment No. UNRWA/DT/2017/031 is affirmed to the extent that it dismissed Mr. Hamdan's application for compensation for moral and reputational damage.

53. We order rescission of the 24 August 2016 disciplinary measure of a fine and direct the Commissioner-General to restitute to Mr. Hamdan the amount of the fine with interest payable from 24 August 2016, and to remove the disciplinary measure from Mr. Hamdan's official status file.

Original and Authoritative Version: English

Dated this 22<sup>nd</sup> day of March 2018 in New York, United States.

*(Signed)*

Judge Knierim, Presiding

*(Signed)*

Judge Murphy

*(Signed)*

Judge Thomas-Felix

Entered in the Register on this 23<sup>rd</sup> day of May 2018 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar