



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

Judgment No. 2023-UNAT-1335

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

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge Kanwaldeep Sandhu Judge Gao Xiaoli
Case No.:	2022-1661
Date of Decision:	24 March 2023
Date of Publication:	2 May 2023
Registrar:	Juliet Johnson

Counsel for Appellant:	Amer Abu-Khalaf, LOSA
Counsel for Respondent:	Natalie Boucly

JUDGE SABINE KNIERIM, PRESIDING.

1. Before the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT and UNRWA or Agency, respectively), Mr. Vijay Neekhra contested the decision to impose on him the disciplinary measures of a written censure and deferment of eligibility for consideration for promotion until 22 May 2020.
2. By Judgment No. UNRWA/DT/2021/065, the UNRWA DT dismissed the application. Mr. Neekhra appealed.
3. For the reasons set out below, we dismiss the appeal.

Facts and Procedure

4. Effective 25 May 2011, Mr. Neekhra was employed by the Agency on a fixed-term appointment as Senior Urban Planning Officer, Grade P-4, Headquarters, Amman.
5. On 7 August 2018, the Agency published, internally and externally, a vacancy announcement for the position of Deputy Director of UNRWA Operations (Programmes), Grade P-5, Gaza (D/DUO/G).
6. Mr. Neekhra applied for the post, was shortlisted and was invited to take a written test on 23 September 2018. The cover e-mail and the test included information and instructions, *inter alia* on citations/quotations in the event a candidate uses external sources.
7. On 16 October 2018, Mr. Neekhra was informed by the Director of Human Resources (DHR) that there was an indication following a Grammarly Report that he had plagiarized.
8. By e-mail to the DHR dated 21 October 2018, Mr. Neekhra stated that he had not used the websites as indicated in the Grammarly Report, that he had only used several official reports and information that had already been available to him as an UNRWA staff member, and that he had studied such information as preparation for the written test.
9. On 4 November 2018, the DHR referred the matter to the Department of Internal Oversight Services (DIOS). The DIOS concluded in its Investigation Report dated 31 July 2019 that there was sufficient evidence that Mr. Neekhra had plagiarized in a large part of his answers in the written test for the post of D/DUO/G.

10. By letter to Mr. Neekhra dated 26 August 2019, the DHR informed him about the findings of the Investigation Report and issued him an Opportunity to Respond letter. Mr. Neekhra responded on 10 September 2019.

11. By letter to Mr. Neekhra dated 20 January 2020, the DHR informed him of the decision to impose on him the disciplinary measures of a written censure and deferment of eligibility for consideration for promotion until 22 May 2020.

12. On 16 March 2020, Mr. Neekhra submitted his request for decision review. On 6 April 2020, he was informed that the contested decision had been upheld.

13. On 11 June 2020, Mr. Neekhra filed an application with the UNRWA DT.

14. On 5 December 2021, the UNRWA DT issued Judgment No. UNRWA/DT/2021/065, dismissing the application.

15. The UNRWA DT first addressed Mr. Neekhra's allegation that in view of a lack of a reference in the Commissioner-General's reply, no review by an Intake Committee had been conducted in his case which constituted a violation of his due process rights. The UNRWA DT noted that in his observations, the Commissioner-General clarified that a meeting of an Intake Committee had been held on 6 November 2018, and that absent further allegations and evidence by Mr. Neekhra in this respect, this contention was dismissed.

16. The UNRWA DT also dismissed Mr. Neekhra's contention that, despite the relevant provisions of the DIOS Technical Instruction 02/2016 on UNRWA's Investigation Policy (DTI 02/2016), the conclusion of the investigation had been delayed. The UNRWA DT noted various deadlines during the investigative process, but found that they were of recommendatory nature. In addition, from the date of the allegations until the conclusion of the Investigation Report there was a nine-month interval which the UNRWA DT concluded was not excessive to the extent that it would violate Mr. Neekhra's due process rights.

17. The UNRWA DT next considered whether the facts upon which the disciplinary measure was based had been established. It found that Mr. Neekhra had admitted that he did not make use of citations/quotations when he copied excerpts from official reports that were available to him as an UNRWA staff member. The UNRWA DT therefore concluded that the facts based on

which Mr. Neekhra had been admonished in the contested disciplinary measures were established.

18. The UNRWA DT then turned to consider whether the established facts qualified as misconduct. The UNRWA DT considered that Mr. Neekhra, in his role as Senior Urban Planning Officer, as a candidate for the post of D/DUO/G as well as in view of his experience within the Agency, should have been aware of the notion of plagiarism and the basic principles of citations/quotations in the context of a written test. Such an awareness is part of his integrity, regardless of his intention when he copied excerpts from official reports into his answers, the difficulty in providing the citations/quotations and his unpersuasive allegations of “non-clarity on the test instructions”. Accordingly, the UNRWA DT held that Mr. Neekhra’s action to copy-paste excerpts from internal/external sources without proper citation was a violation of the Agency’s regulatory framework and that Mr. Neekhra did not conduct himself in a manner befitting his status as a staff member of the Agency.

19. The UNRWA DT was also satisfied that the disciplinary measures imposed on Mr. Neekhra were proportionate to the nature and gravity of his misconduct. The UNRWA DT found that the imposed disciplinary measures of a written censure and deferment of eligibility for consideration for promotion until 22 May 2020 were among the lowest measures that the Agency could impose on a staff member. Given Mr. Neekhra’s role as a senior officer and his misconduct involving a lack of integrity, the disciplinary measures imposed on him appeared to be proportional. Therefore, the UNRWA DT concluded that it would not interfere with the Agency’s discretion, as the imposed disciplinary measures were neither absurd nor arbitrary; nor was there any evidence that the measures taken were tainted by extraneous reasons or bias.

20. Mr. Neekhra filed an appeal on 1 February 2022, and the Commissioner-General filed an answer on 1 April 2022.

Submissions

Mr. Neekhra's Appeal

21. Mr. Neekhra submits that the UNRWA DT erred in fact by asserting that “the cover email and test included information and instructions, inter alia on citations/quotations in the event a candidate uses external sources”. There was no mention of external sources in the instruction.

22. He further submits that the UNRWA DT erred in fact by asserting that Mr. Neekhra had been informed by the DHR “that there was an indication following a Grammarly Report ... that he had plagiarized”. Mr. Neekhra submits that he was an internal candidate and thus had gained in-depth knowledge regarding UNRWA. He utilized his experience in his response. He did not use any of the websites mentioned in the Grammarly Report.

23. Mr. Neekhra contends that the UNRWA DT erred in fact on the issue of recognition of the Ethics course. He had not requested the UNRWA DT to recognize his Ethics course; rather, he had requested that the UNRWA DT consider that he had taken the course as part of the disciplinary measures imposed by the Agency. In his view, this error of fact by the UNRWA DT shows that his case had not been properly assessed by the UNRWA DT.

24. Mr. Neekhra avers that the UNRWA DT erred in law in its conclusion that the time limits for concluding an investigation are not binding on the Agency. As any other Organization, UNRWA is bound by its own rules as well as by case law.

25. Furthermore, he says, the UNRWA DT erred in law and in fact on the question of Mr. Neekhra's intent resulting in a manifestly unreasonable decision. Mr. Neekhra made some citations/quotations which clearly reflected his good intention and motive. Any omissions were unintentional and a result of “human error” and should not be considered as misconduct.

26. Mr. Neekhra alleges that the UNRWA DT erred by recognizing his written test which was not conducted in a controlled testing environment, in violation of the UNRWA international staff selection policy and International Personnel Directive i/4/part I.

27. Moreover, Mr. Neekhra submits that the UNRWA DT erred in law considering that at the time Mr. Neekhra wrote the written test, there was no rule/policy that provided that plagiarism was misconduct. Mr. Neekhra had raised in his application that the policy of plagiarism was

adopted only after he had taken the exam, and therefore the alleged misconduct of plagiarism should not be applied to him.

28. Finally, Mr. Neekhra contends that the UNRWA DT erred in law and fact on the question of proportionality leading to a manifestly unreasonable decision. In particular, the UNRWA DT erred in law by ignoring the rationale and measures imposed in similar cases in the same Organization, his past conduct and integrity, his performance ratings as “best performer”, and the “undisputable” fact that he is honest and “has a good attitude towards work”.

29. Mr. Neekhra requests that the Appeals Tribunal vacate the UNRWA DT Judgment, rescind the imposed disciplinary measures, and remove the letter placed in his official file.

The Commissioner-General’s Answer

30. The Commissioner-General contends that the UNRWA DT did not err in fact, resulting in a manifestly unreasonable decision. The alleged errors of fact concern merely the UNRWA DT’s narrative of facts which was drawn from the documentary evidence on record, not findings of the UNRWA DT. To the extent that Mr. Neekhra contests the narrative of facts as drawn from the documentary evidence on record, such grounds are wholly misconceived and should be rejected. At any rate, since Mr. Neekhra admits that there were instructions on the cover sheet of the written test and the cover e-mail on plagiarism, the question of errors of fact is disingenuous and does not arise. In addition, Mr. Neekhra challenges the UNRWA DT’s consideration of the UNRWA Ethics E-learning Course as a remedy and contends that he did not request the course as a remedy. This ground too is misconceived and irrelevant as it does not affect the outcome of the case before the UNRWA DT.

31. The Commissioner-General submits that the UNRWA DT did not err in a question of law in its consideration of the issue of delay in the conclusion of the investigation. The UNRWA DT was cognizant of the applicable provisions of the UNRWA Investigation Policy, considered the relevant dates in the process and taking into account other deadlines correctly concluded that there was no excessive delay in concluding the Investigation Report to the extent that it would violate Mr. Neekhra’s due process rights. The UNRWA DT’s conclusion is reasonable.

32. Turning to the issue of intent, the Commissioner-General submits that Mr. Neekhra has not demonstrated in what respect the UNRWA DT erred in its conclusion. Instead, he asserts that the omission to cite the source of his information was unintentional – assertions he had

repeatedly made before the UNRWA DT. Mr. Neekhra is merely rearguing his case in the face of an acknowledgment that he copied and pasted text from external sources without citation. In the Commissioner-Generals' view, plagiarism evinces a dishonest and deceptive intent attracting strict liability irrespective of one's intent as correctly found by the UNRWA DT in the instant case. Strict liability defines the circumstances in which an offender is held liable for wrongful conduct, regardless of his or her mental state. The UNRWA DT as such did not err in law on the question of intent.

33. As to the alleged error in law in finding that at the time Mr. Neekhra wrote the written test, there was no rule/policy on plagiarism and therefore the alleged misconduct of plagiarism should not be applied, the Commissioner-General submits that the issue as to whether plagiarism amounted to misconduct at the material time had been raised before the UNRWA DT. In this regard, the UNRWA DT considered the relevant provisions of the legal framework and correctly concluded that copy-pasting excerpts from internal/external sources without proper citation was a violation of the Agency's regulatory framework, and that Mr. Neekhra did not conduct himself in a manner befitting his status as a staff member of the Agency.

34. Considering International Staff Rule 10.1, International Staff Personnel Directive No. 1/10 on Disciplinary Measures and Procedures as well as General Staff Circular No. 07/2014 on the Revised Standards of Conduct for International Civil Service (GSC No. 07/2014), it is clear that Mr. Neekhra's actions fell within the purview of misconduct and as such, his protestations that plagiarism was not established as misconduct is patently without basis and should be rejected. As noted above, plagiarism evinces a dishonest and deceptive intent and an element of lack of integrity. Mr. Neekhra's actions fell below the standards of integrity expected of an international civil servant and constituted misconduct warranting the imposition of the disciplinary measures.

35. The Commissioner-General next contends that contrary to Mr. Neekhra's contention, the UNRWA DT did not err on the question of proportionality. Mr. Neekhra's reliance on the *Fares* Judgment¹ to support his contention that the measure imposed on him was not consistent with similar cases, is misplaced as both Mr. Neekhra and Mr. Fares have *prima facie* distinguishable circumstances warranting the imposition of different measures, with Mr. Fares

¹ *Fares v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2021/047.

being a junior Area Staff member, whereas Mr. Neekhra is a senior (P-4) Agency staff member and a holder of a Ph.D. Mr. Neekhra likewise failed to provide any other cases in support of his contention that the disciplinary measure imposed was not “consistent with similar cases”. The UNRWA DT correctly considered that the imposed disciplinary measures of a written censure and deferment of eligibility for consideration for promotion until 22 May 2020 are among the lowest measures that the Agency can impose on a staff member and its consideration of the question of proportionality cannot be faulted.

36. The Commissioner-General concludes that Mr. Neekhra has not identified reversible errors warranting the interference by the Appeals Tribunal. The UNRWA DT did not err on a question of fact, as a matter of law or in procedure in dismissing the application on the merits and as such, the reliefs sought by Mr. Neekhra have no legal basis. Moreover, the sanction relating to deferment of eligibility for consideration for promotion until 22 May 2020 is no longer a live issue given the passage of time.

37. Finally, the Commissioner-General submits that the application before the UNRWA DT was frivolous given Mr. Neekhra’s tacit admission and the instant appeal is patently without merit, frivolous and constitutes an abuse of process for which the Commissioner-General requests an award of costs against Mr. Neekhra pursuant to Article 9(2) of the UNAT Statute. The cost of an appeal to UNAT is USD 16,778 and is fully borne by the Organization. To this end, the Commissioner-General submits that a cost order, in whatever amount UNAT might see fit, be issued against Mr. Neekhra.

38. The Commissioner-General requests UNAT to find that the UNRWA DT did not err on a question of fact, as a matter of law, or in procedure when it dismissed Mr. Neekhra’s application on the merits and therefore, to dismiss the appeal in its entirety. In addition, the Commissioner-General requests an award of costs against Mr. Neekhra.

Considerations

39. In disciplinary cases, the Tribunals will examine the following: (i) whether the facts on which the disciplinary measure is based have been established (where termination is the sanction imposed, the facts must be established by clear and convincing evidence; in all other cases preponderance of the evidence is sufficient); (ii) whether the established facts amount to misconduct; (iii) whether the sanction is proportionate to the offence; and (iv) whether the

staff member's due process rights were respected.² Applying these principles, we cannot find any errors in the Judgment of the UNRWA DT.

Information in the cover e-mail and test

40. Mr. Neekhra submits that the UNRWA DT committed an error of fact at paragraph 4 of its Judgment stating that “the Applicant applied for the post, was shortlisted and was invited to take a written test on 23 September 2018. The cover email and the test included information and instructions, *inter alia* on citations/quotations in the event a candidate uses external sources.” He claims that there was no mention in the instruction about external sources.

41. We cannot find any factual error in the Judgment. As the UNRWA DT stated, both the 23 September 2018 cover e-mail and the test contained information and instructions. The test specifically provided: “You are allowed to use internet or other resources, as long as anything you use is clearly referenced.” “Internet and other resources” are the “external sources” mentioned by the UNRWA DT.

16 October 2018 communication

42. Mr. Neekhra further alleges that the UNRWA DT committed an error of fact in paragraph 5 of its Judgment stating that “[o]n 16 October 2018, the Applicant was informed by the [DHR] that there was an indication following a Grammarly Report ... that he had plagiarized”. Mr. Neekhra alleges that this was incomplete and the DHR's letter said “plagiarized, i.e. copied from sources available on the internet without proper citation”.

43. The UNRWA DT's presentation of the 16 October 2018 information is correct. It is not necessary for the UNRWA DT to cite such information in full, including in “an example”.

Mr. Neekhra's 21 October 2018 answer

44. Mr. Neekhra complains that the UNRWA DT erred in fact in paragraph 6 of the Judgment holding that “By email to the DHR dated 21 October 2018, the Applicant stated that he had not used the websites as indicated in the Report; that he had only used several official reports

² *Suleiman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2020-UNAT-1006, para. 10 (internal footnote omitted).

and information that had already been available to him as an UNRWA staff member; and that he had studied such information as a preparation for the written test.” Mr. Neekhra complains that his answer does not contain the words “only used” and that there is an error in understanding of basic facts and details.

45. We find that the UNRWA DT gave an accurate presentation of Mr. Neekhra’s 21 October 2018 answer where he wrote:³

[W]ithin the allocated time for the test, I tried to quote and provide citation to reports to maximum extent possible such as UN report “Gaza in 2000 – a livable place?” and “Gaza – 10 years later”. Being an internal candidate and being involved in different type of discussions, preparation and review of many reports, I gained in-depth knowledge of issues, challenges, operations & managements, monitoring mechanisms, inter-linkages between different programmes and departments with UNRWA, etc. which were very useful and I utilised these earned experiences in my response. As during the test, I was concentrating on providing my response, **I didn’t used any of the websites that has been mentioned in the Grammarly report** and I feel that this identification by Grammarly Report may be merely a coincidence.

As Mr. Neekhra stated that he utilized his “earned experiences” but none of the websites mentioned in the Grammarly Report, it was correct for the UNRWA DT to conclude that he “only used several official reports and information that had already been available to him as an UNRWA staff member”. This is also in accordance with Mr. Neekhra’s statement during his 31 March 2019 interview with DIOS (see in more detail below).

Ethics course

46. Mr. Neekhra complains that the UNRWA DT erred in fact in paragraph 23 of the Judgment when it mentioned that he requested to recognize the Ethics course. In his application to the UNRWA DT, he had not requested the Ethics course to be recognized but “as a remedy to show proof of the Ethics course he had taken part of disciplinary measures and demanded by the Agency”.

³ Original emphasis.

47. This is exactly how the UNRWA DT understood Mr. Neekhra's request. At paragraph 23, the UNRWA DT stated that he requested "[t]o recognise his successful completion of the UNRWA Ethics E-learning course" which is in full accordance with Mr. Neekhra's application and allegations on appeal.

Intake Committee

48. Mr. Neekhra submits that the UNRWA DT erred in fact in paragraph 26 of the Judgment. In his observations before the UNRWA DT, the Commissioner-General merely said there was no e-mail evidence mentioning the Intake Committee which in Mr. Neekhra's view was a breach of procedure.

49. This submission does not put the Judgment into doubt. In paragraph 26 of the Judgment, the UNRWA DT reviewed Mr. Neekhra's (assumed) allegation that, due to a lack of a reference in the Commissioner-General's reply, no review by an Intake Committee had been conducted in his case. As the Commissioner-General subsequently clarified that a meeting of an Intake Committee had been held on 6 November 2018, the UNRWA DT dismissed this contention. For Mr. Neekhra's due process rights the only relevant issue is whether or not a meeting and review by an Intake Committee took place. Whether there is "e-mail evidence" for it is not legally relevant.

Duration of the investigation process

50. Mr. Neekhra further alleges that the UNRWA DT committed an error of law in paragraphs 27 and 28 of the Judgment as it was not allowed to conclude that UNRWA was not bound by deadlines without any legal basis as this would give the Agency absolute discretionary power to pick and choose from the written policies and over the rights of a staff member. In the case of *Abu Nada*,⁴ the UNRWA DT found an investigation spanned 26 months and this delay was a violation of natural justice.

51. We agree with the UNRWA DT that Mr. Neekhra's due process rights were not violated by an undue delay in the investigation proceedings. The UNRWA DT found that the provisions in DTI 02/2016 were not binding on the Agency but rather of recommendatory nature. In

⁴ *Abu Nada v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2013/038.

addition, as there was a nine months' interval from the referral to DIOS (4 November 2018) until the conclusion of the Investigation Report R (31 July 2019), the UNRWA DT did not consider this an excessive delay.

52. The UNRWA DT is correct in holding that the provisions of DTI 02/2016 do not impose absolute deadlines. This is apparent from paragraph 12 that all investigations should endeavour to be completed "as quickly as possible", and within six months of their initiation "whenever possible". We also agree that a duration of nine instead of six months does not constitute an excessive delay. The present situation is clearly different from *Abu Nada* where the investigation process took more than two years.

Intent and misconduct

53. Mr. Neekhra claims that the UNRWA DT erred in fact and law in paragraphs 32 and 36 of the Judgment by not considering that he had acted without intent. He made citations and quotations in the test which clearly reflected his good intention and motive and the parts he did not cite or quote were unintentional. In the case of *Fares*, the staff member accepted having copied from an internal report and did not contest that he plagiarized while Mr. Neekhra's unintentional act of not quoting was due to human error and should not be considered as plagiarism.

54. The UNRWA DT held that it is clear from the case record that Mr. Neekhra admitted that he did not make use of citations/quotations when he copied excerpts from official reports which were available to him as an UNRWA staff member. It considered that Mr. Neekhra, in his role as Senior Urban Planning Officer, as a candidate for the post of D/DUO/G as well as in view of his experience with the Agency, should have been aware of the notion of plagiarism and the basic principles of citations/quotations in the context of a written test, and that such an awareness is part of his integrity, regardless of his intention when he copied excerpts from official reports into his answers and the difficulty in providing the citations/quotations. The UNRWA DT concluded that Mr. Neekhra's actions to copy-paste excerpts from internal/external sources without proper citation is a violation of the Agency's regulatory framework, namely International Staff Regulations 1.9 and 1.10 and GSC No. 07/2014, paragraphs 4 and 5.

55. We cannot find any error in these considerations. During his 31 March 2019 interview with DIOS, Mr. Neekhra stated that, for the test, he used reports which had been available in his system for some time. On page 6 of the interview transcript, he explains:

As part of my pre-preparation stage I went through these reports which were available in my system from last 5-7 years or so. I think Gaza 2020 report is with me since 2012 and Gaza – 10 years later in 2017. So as a part of the pre-preparation I took certain text and figures and if some question comes up then to support and rationalise what I am saying and to provide background information, I will be using these facts, figures and data. My intention is not to claim any authorship, which is beyond my capacity.

56. And on page 11 of the transcript, he states: “Let me say it again that I have gone through all these reports as part of a pre-preparation for the tests, I perceived that such type of questions might be coming, and I took the relevant parts that I thought might be useful during the exam but as everybody knows that I couldn’t type these six and half pages in 90 minutes, it’s impossible at least for me.”

57. This means that Mr. Neekhra had saved these reports on his computer at an earlier stage and, as a preparation for the test, had chosen certain parts like figures and data which he thought might be useful, and which he then copy-pasted into his text during the exam. Such action was expressly allowed as long as the candidate used proper quotations and citations. Mr. Neekhra, however, himself admits that he did not correctly cite and quote all the sources used by him. He stated, during the interview, while he “tried to quote to the maximum extent possible”⁵, he “missed to quote”⁶. We agree with the UNRWA DT that such behavior is a violation of the Agency’s regulatory framework and constitutes misconduct. The relevant provisions are as follows:

International Staff Rule 10.1 Misconduct

(a) Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the UNRWA International Staff Regulations and UNRWA International Staff Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct.

⁵ Transcript of the 31 March 2019 interview, p. 5.

⁶ *Ibid.*, pp. 11 and 12.

International Staff Regulations

Staff Regulation 1.9: By accepting appointment, staff members pledge themselves to discharge their functions and to regulate their conduct with the interest of the Agency only in view. Loyalty to the aims, principles and purposes of the Agency is a fundamental obligation of all staff members by virtue of their status as international civil servants.

Staff Regulation 1.10: While staff members' personal views and convictions, including their political and religious convictions, remain inviolable, staff members shall ensure that those views and convictions do not adversely affect their official duties or the interests of the Agency. They shall conduct themselves at all times in a manner befitting their status as international civil servants and shall not engage in any activity that is incompatible with the proper discharge of their duties with the Agency. They shall avoid any action and, in particular, any kind of public pronouncement that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status.

General Staff Circular No. 07/2014 on the Revised Standards of Conduct for International Civil Service (GSC No. 07/2014)

4. International civil servants should share the vision of their organizations. It is loyalty to this vision that ensures the integrity and international outlook of international civil servants; a shared vision guarantees that they will place the interest of their organization above their own and use its resources in a responsible manner.

5. The concept of integrity enshrined in the Charter of the United Nations embraces all aspects of an international civil servant's behaviour, including such qualities as honesty, truthfulness, impartiality, and incorruptibility. These qualities are as basic as those of competence and efficiency, also enshrined in the Charter.

58. Plagiarizing in a written test obviously demonstrates a lack of integrity because it can be considered as a form of cheating. A staff member who plagiarizes in a written exam puts himself/herself in an advantage over other candidates. Not only does he or she save a lot of time by presenting external sources without proper citation and quotation, but the relevant parts of the text will also appear to be written by the staff member himself/herself.

59. The UNRWA DT was correct to point out that Mr. Neekhra should have been aware of the notion of plagiarism and the basic principles of citations/quotations in the context of a written text due to his role as Senior Urban Planning Officer, as a candidate for the post of D/DUO/G as well as in view of his experience within the Agency. The Appeals Tribunal already held that strict liability defines the circumstances in which an offender is held liable for wrongful conduct regardless of his or her mental state. As statutory or contractual instruments rarely expressly

mention *mens rea* (a blameworthy state of mind) as an element of prohibited conduct, the existence of such a requirement is ordinarily a matter of interpretation. Courts and tribunals usually presume that misconduct can consist of both intent or negligence, unless there are clear and convincing indications to the contrary.⁷ With regard to a written exam in the context of a selection process for a promotion, any kind of plagiarism, whether intentional or negligent, will be considered a violation of the principle of integrity, as the candidate puts himself/herself into an advantage over other candidates (see above). The provisions cited by Mr. Neekhra (ST/SGB/2016/9 and the UNRWA International Staff Rules) do not refer to plagiarism in a written exam in a selection process for a promotion, but to other kinds of misconduct (misrepresentation of functions, official titles and nature of duties; alteration, destruction, falsification etc. of official documents, records or files) and are therefore not relevant in the present case. Moreover, ST/SGB/2016/9 does not apply to UNRWA staff.

60. Further, as the disciplinary sanction was not termination, the standard of proof in the present case is preponderance of evidence. Applying this standard, we find Mr. Neekhra's behaviour was not only negligent, but an intentional act of plagiarism. Mr. Neekhra knew about the notion of plagiarism. He had been expressly informed about this concept within the test sheet and, in his written exam, correctly cited and quoted some external sources. His 31 March 2019 interview clearly shows that he knew that he had to properly cite and quote external sources because he stated that he "tried to quote these reports to the maximum extent possible"⁸.

61. His allegations during the interview show that Mr. Neekhra believes that an intentional act of plagiarism requires intent to claim authorship or ownership of the text: "As I have said the intention here was not to claim any authorship or legitimate ownership, it was unintentional, unknowingly, unconsciously without claiming any ownership"⁹ and "I have mentioned reports earlier – the Gaza Ten Years Later. As I said earlier the intention was not to hide anything or that I'm trying to hide Gaza 2020 report or I'm hiding Ten Years Later report, I have mentioned these reports several times, my intention is not to claim that this as my work or these findings are mine."¹⁰

⁷ *Rajan v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-781, para. 41.

⁸ Transcript of the 31 March 2019 interview, p. 9.

⁹ *Ibid.*

¹⁰ *Ibid.*, p. 10.

62. However, this is not the case. An intentional act of plagiarism already occurs when a staff member knows that he or she is required to properly cite and quote external sources in a written exam but does not do so. Whether the motivation will be to pretend authorship/ownership of the text or merely to save time or any other reason is not relevant. We find it highly probable that Mr. Neekhra who was informed and knew about the concept of plagiarism deliberately copy-pasted parts of external sources without proper citation and quotation.

Controlled testing environment

63. Mr. Neekhra alleges that the UNRWA DT erred by “recognizing” his written test which was not conducted in a controlled testing environment, in violation of the UNRWA International Staff Selection Policy and International Personnel Directive I/4/part I, 13 December 2016 (“Where possible, the Recruitment Section provides a controlled written testing environment for internal candidates and other personnel on premises, given the advantage they have over external candidates in accessing information and Agency resources.”).

64. It is not clear how this allegation could be relevant for the present appeal. The cited policy seems to have the goal to protect external candidates within a selection process, while the present appeal exclusively deals with the lawfulness of the disciplinary sanction imposed on Mr. Neekhra for plagiarism during his written exam.

Rules/policy on plagiarism at the time of the written test

65. Mr. Neekhra claims that the UNRWA DT erred in paragraph 37 of the Judgment in concluding that he had violated the Agency’s regulatory framework because at the time he took the written test, there were no rules or policies on plagiarism.

66. This argument is without merit. The provisions mentioned by the UNRWA DT (International Staff Regulations 1.9 and 1.10 and General Staff Circular No. 07/2014 paragraphs 4 and 5) were already in force on 23 September 2018 when Mr. Neekhra took his written exam. The cases referred to by Mr. Neekhra are different from the present situation as they did not concern a disciplinary sanction based on plagiarism. In *Saleh*,¹¹ the staff member contested the

¹¹ *Saleh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2018/019.

decision not to short-list him for advertised posts under a new selection policy which had not been published, and in *Mousa*,¹² the staff member challenged the decision to calculate his separation benefits according to rules which were not yet in force at the date of his retirement.

Proportionality

67. Mr. Neekhra claims that the UNRWA DT erred in fact and law in paragraphs 38 to 41 of the Judgment when dealing with the issue of proportionality. In the *Fares* case, the Agency accused the staff member of the same misconduct (plagiarism) but did not impose a disciplinary sanction and only issued a reprimand although Mr. Fares held a very senior position and had served in the Agency for over 30 years. In considering the rationality of a disciplinary sanction, an important factor is the extent to which the measure is in accordance with similar cases in the same organization. Mr. Neekhra claims that the UNRWA DT ignored such similar cases and therefore committed an error of law.

68. There is no merit in this argument. The UNRWA DT acknowledged the broad discretion of the Agency with regard to the decision to impose a disciplinary sanction. This is in full accordance with the jurisprudence of the Appeals Tribunal. In *Appellant*, we held:¹³

... The matter of the degree of the sanction is usually reserved for the Administration, which has discretion to impose the measure that it considers adequate in the circumstances of the case and for the actions and conduct of the staff member involved. This appears as a natural consequence of the scope of administrative hierarchy and the power vested in the competent authority. It is the Administration that carries out the administrative activity and procedure and deals with the staff members. Therefore, the Administration is best suited to select an adequate sanction able to fulfil the general requirements of these kinds of measures; to wit: a sanction within the limits stated by the respective norms, which is sufficient to prevent repetitive wrongdoing, punish the wrongdoer, satisfy victims and restore the administrative balance. That is why the tribunals will only interfere and rescind or modify a sanction imposed by the Administration where the sanction imposed is blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity. This rationale is followed without any change in the jurisprudence of this Tribunal. The Secretary-General also

¹² *Mousa v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2018/048.

¹³ *Appellant v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1216, para. 45 (internal footnote omitted).

has the discretion to weigh aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose.

69. The UNRWA DT then took into account that the imposed disciplinary measures are among the lowest measures that the Agency can impose on a staff member. Given Mr. Neekhra's role as a senior officer and his misconduct involving a lack of integrity, it held that the disciplinary sanction was proportionate. We cannot find any fault in this reasoning.

70. Contrary to Mr. Neekhra's allegations, the UNRWA DT did not have to take into account the Agency's decision in the case of *Fares* because the circumstances in the two cases are different. While Mr. Fares only copied a few lines without proper citations, large parts of Mr. Neekhra's test answers were copy-pasted without citation. While Mr. Neekhra had been expressly informed in the test sheet what would be considered plagiarism, and that plagiarism was not allowed, such information did not appear in Mr. Fares' test instructions. Finally, Mr. Fares openly admitted that he had committed misconduct while Mr. Neekhra alleges that he had done nothing wrong. One of the goals of a disciplinary sanction is to ensure that the staff member does not commit the same or other misconduct in the future. It is obvious that the need to impose a disciplinary sanction is higher when the staff member does not acknowledge his or her misconduct than when the staff member admits his or her wrongdoing. Against that backdrop, it was thus legitimate for the Agency to impose a (mild) disciplinary sanction on Mr. Neekhra.

Costs on appeal against Mr. Neekhra

71. Article 9(2) of the Statute provides: "Where the Appeals Tribunal determines that a party has manifestly abused the appeals process, it may award costs against that party." In his answer, the Commissioner-General seeks costs against Mr. Neekhra.

72. The UNAT's power to award costs is restricted by the Statute to cases in which it determines that a party has manifestly abused the proceedings before it. In the present case, we do not find that these conditions are met. Mr. Neekhra exercised his right to file an appeal against the first instance Judgment. Although he did not succeed, his attempt to have the disciplinary sanction rescinded on appeal was not frivolous.

Judgment

73. The appeal is dismissed, and Judgment No. UNRWA DT/2021/065 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 24th day of March 2023 in New York, United States.

(Signed)

Judge Knierim, Presiding

(Signed)

Judge Sandhu

(Signed)

Judge Gao

Judgment published and entered into the Register on this 2nd day of May 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar