UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2023-UNAT-1387

Mazin Ismail Sadieh

(Appellant)

v.

Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East

(Respondent)

JUDGMENT

Before:	Judge Leslie F. Forbang, Presiding Judge Kanwaldeep Sandhu Judge Nassib G. Ziadé
Case No.:	2022-1745
Date of Decision:	27 October 2023
Date of Publication:	22 November 2023
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Natalie Boucly

JUDGE LESLIE F. FORBANG, PRESIDING.

1. Mr. Mazin Ismail Sadieh contested a decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) to cancel his invitation to an interview for the post of Camp and Community Services Officer (CCSO), Jordan Field Office (JFO) (contested Decision).

2. By Judgment No. UNRWA/DT/2022/042, the UNRWA Dispute Tribunal (UNRWA DT) rescinded the contested Decision, ordered compensation in lieu of rescission in the amount of JOD 100, and declined to award compensation for moral damage (impugned Judgment).[1]

3. Mr. Sadieh lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).

4. For the reasons set out below, the Appeals Tribunal dismisses the appeal.

Facts and Procedure[2]

5. Mr. Sadieh was employed by the Agency as Camp Services Officer, Grade 10, Step 21, at JFO.[3]

6. On 18 June 2019, the Agency advertised a Vacancy Announcement (VA) for several posts of Community Services Officer, Grade 15.[4] Mr. Sadieh applied to the post on 24 June 2019. The title of the advertised posts was subsequently amended to CCSO (first recruitment process).

7. On 18 November 2019, a written test for the posts of CCSO was conducted.[5] In February 2020, Mr. Sadieh was informed that he had not passed the written test; he was not invited to an interview. By e-mail dated 10 February 2020, he objected to the decision not to invite him to an interview. By e-mail dated 16 February 2020, the Associate Human Resources Officer, JFO, informed him that he was not invited to an interview because his written test score was less than the passing score.

[1] *Sadieh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment dated 6 September 2022.
[2] Summarized from the impugned Judgment as relevant to the appeal.
[3] Impugned Judgment, para. 3.
[4] *Ibid.*, para. 4.
[5] *Ibid.*, para. 5.

8. On 17 February 2020, Mr. Sadieh submitted a Request for Decision Review (RDR) against the decision not to invite him to an interview for the posts of CCSO.[6] Other candidates also complained about their outcomes of the written test. As a result, the Agency decided to invite all shortlisted candidates to an interview.

9. By e-mail dated 25 February 2021, Mr. Sadieh was invited to an interview to be held on 10 March 2021.[7]

10. By e-mail dated 9 March 2021, he was informed of the contested Decision.[8] The first recruitment process proceeded and other candidates were interviewed.

11. On 9 March 2021, Mr. Sadieh submitted an RDR against the contested Decision.[9] The Agency did not respond to that RDR.

12. On 11 May 2021, he filed his application with the UNRWA DT.

13. From 30 May to 12 June 2021, the Agency internally advertised a new VA for another post of CCSO at JFO (second recruitment process).[10]

14. Following the first recruitment process, successful candidates were appointed to the posts of CCSO as of 1 July 2021.[11]

15. Following the second recruitment process, on 2 August 2021, the Interview Panel recommended Mr. Sadieh for the post advertised in the new VA.[12] Effective 1 September 2021, he was selected and promoted to the post of CCSO at Irbid Camp, JFO, Grade 15, Step 1.

The impugned Judgment

16. By Judgment No. UNRWA/DT/2022/042, the UNRWA DT decided to rescind the contested Decision, order compensation in lieu of rescission equivalent to the sum of JOD 100 and not award any compensation for moral damage.

[6] *Ibid.*, para. 8.
[7] *Ibid.*, para. 9.
[8] *Ibid.*, para. 10.
[9] *Ibid.*, para. 11.
[10] *Ibid.*, para. 12.
[11] *Ibid.*, para. 44.
[12] *Ibid.*, para. 12.

17. The UNRWA DT noted that the application was receivable and not moot.[13]

18. The UNRWA DT found that, as the Commissioner-General admitted the shortcomings in the recruitment process, it did not need to address the merits of Mr. Sadieh's non-selection and held that the contested Decision was not lawfully taken and had to be rescinded.[14]

19. The UNRWA DT was of the view that, had the irregularities not been committed, the best-case scenario for Mr. Sadieh would have been to be appointed to one of the posts of CCSO as of 1 July 2021.[15] As such, the maximum amount of compensation in lieu of rescission he is entitled to is the salary difference between his former post and the post of CCSO at Irbid Camp for two months, which is equivalent to JOD 154. Given the high chance of him being selected for one of the posts of CCSO,[16] JOD 100 is an appropriate amount of compensation.

20. The UNRWA DT found that the medical report, submitted by Mr. Sadieh in support of his claim of moral damages, was silent regarding the cause of his medical condition and that there was only his own testimony that his moral damage was directly caused by the contested Decision.[17] He has failed to provide sufficient evidence of harm. Regarding other requested remedies, they are irrelevant to the case and, as such, without merit.

Procedure before the Appeals Tribunal

21. On 2 November 2022, Mr. Sadieh filed an appeal of the impugned Judgment with the Appeals Tribunal, to which the Commissioner-General filed an answer on 9 January 2023.

[13] *Ibid.*, para. 44.
[14] *Ibid.*, para. 47.
[15] *Ibid.*, para. 51.
[16] The UNRWA DT further noted that Mr. Sadieh's chance of being selected for one of the posts of CCSO was more than 50 percent as there were 14 candidates for eight posts.
[17] Impugned Judgment, para. 53.

Submissions

Appellant's Appeal

22. Mr. Sadieh requests that the Appeals Tribunal reconsider the case and grant fair remedies.

23. He contends that the UNRWA DT overlooked his argument, put forth in paragraphs 10–17 of the application, that the Agency refused to let him see the written test he submitted and model answers, intending to exclude him from the competitive process.

24. Mr. Sadieh submits that, as pointed out in paragraph 19 of the application, the Agency treated him poorly and indirectly threatened him, and human resources officials of the Agency harassed him. The UNRWA DT did not consider the motives of such activity, which included discriminating against him, or its effects. From February 2020 until February 2021, the Agency's insistence that he had not passed the written test and not qualified for an interview caused him extremely high psychological pressure, anxiety about losing his employment and damage to his personal relationships; therefore, the cancellation of his interview was a repetition of a wrong.

25. He argues that the UNRWA DT surprisingly ignored his argument, put forth in paragraph 6 of his response,[18] that he had turned to a psychiatric clinic on the advice of a mental health and staff care counsellor of the Agency, not on his own initiative, and that this is significant evidence, together with the medical report,[19] that the psychological harm was caused by the Agency. It was not possible to obtain a detailed medical statement on the cause of the psychological harm as the doctor did not agree to writing it.

26. Mr. Sadieh asserts that the UNRWA DT relied on incorrect information in calculating the compensation. There were not eight but ten vacant posts for 13 other candidates as ten is the number of camps in the Jordan region. Two vacancies subsequently remained.

27. He contends that the UNDT incorrectly limited the compensation in lieu of rescission to the period before 1 September 2021, the date when his selection to the post of CCSO at Irbid Camp became effective, ignoring that the Agency provided no assistance to him in the competitive process and that he might not have been selected. Compensation must be calculated beyond that

[18] Appellant refers to his response of 9 September 2021, submitted in reply to Order No. 100 (UNRWA/DT/2021).
[19] Appellant refers to Annex 23 to his response of 9 September 2021.

moment, based on the jeopardy he faced. The UNDT likewise ignored the number of applicants competing for the two vacant posts. The UNDT also failed to include in the calculation the enormous psychological pressure he faced during the relevant period and its effects. The violations, bullying, discrimination and partiality with which he was treated have not been compensated.

The Commissioner-General's Answer

28. The Commissioner-General requests that the Appeals Tribunal dismiss the appeal.

29. The Commissioner-General argues that the appeal is not well-founded on any of the grounds set out in Article 2(1) of the Statute of the Appeals Tribunal. Mr. Sadieh has failed to identify the grounds of appeal and, as such, it is defective.

30. The Commissioner-General contends, however, that the impugned Judgment is free of error. The UNRWA DT's determination of the amount of compensation in lieu was fair, adequate and reasonable, there is no basis for an adjustment. Regarding the claim of moral damages, the UNRWA DT did not err either. The medical report relied on by Mr. Sadieh does not demonstrate a nexus between the illegality of the contested Decision and the alleged harm. He has not identified reversible errors by the UNRWA DT, warranting the interference of the Appeals Tribunal.

Considerations

Oral hearing

31. As regards Mr. Sadieh's request for an oral hearing, we reiterate that our dispositions of requests for oral hearings are governed by the UNAT Statute and UNAT Rules of Procedure. Article 8(3) of the UNAT Statute states that the judges assigned to a case will determine whether to hold oral proceedings. Article 18(1) of the UNAT Rules of Procedure specifies:

> The judges hearing a case may hold oral hearings on the written application of a party or on their own initiative if such hearings would assist in the expeditious and fair disposal of the case.

32. It is well-established UNAT jurisprudence that according to the above provisions we have the discretion to determine whether to hold an oral hearing or not with the aim to deal

with the case efficiently and fairly. Notably, in *Guenfoudi*, we denied a request for an oral hearing, explaining that:[20]

> (…) Mr. Guenfoudi has offered no additional evidence and argument beyond his pleadings before the UNDT. Accordingly, we do not see that an oral hearing would "assist in the expeditious and fair disposal of the case".

33. Similarly, in *Matadi* we denied the request for an oral hearing because we did "not find that an oral hearing would be of assistance".[21]

34. We find that holding an oral hearing in this matter would not assist in the expeditious and fair disposal of this case and deny the request.

Receivability of the appeal

35. The appeal brief before us, translated from Arabic, is captioned: "Re: My case against the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)". In said document, Mr. Sadieh catalogues a series of grievances which, for reason of judicial economy, need not be addressed individually. He does not cite any provision of Article 2(1) of the UNAT Statute and does not indicate whether any errors by the UNRWA DT in his case related to its jurisdiction, the procedure, a question of law or a question of fact.

36. It is our considered opinion that this Tribunal has essentially a corrective role. Its jurisdiction is clearly outlined in Article 2(1) of the UNAT Statute as follows:

> The Appeals Tribunal shall be competent to hear and pass judgment on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:
>
> (a) Exceeded its jurisdiction or competence;
> (b) Failed to exercise jurisdiction vested in it;
> (c) Erred on a question of law;
> (d) Committed an error in procedure such as to affect the decision of the case; or
> (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

37. The above constitute the five grounds of appeal upon which an appeal to the Appeals Tribunal must rely to pass the test of receivability. Moreover, Article 8(2)(a) of the

[20] *Mustapha Guenfoudi v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1364, para. 63.
[21] *Matadi et al. v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-592, para. 15.

UNAT Rules of Procedure requires that a brief accompanying the appeal form must explain "the legal basis of any of the five grounds of appeal" set out in Article 2(1) of the Statute.

38. An appeal brief, therefore, must articulate the aspects in which the lower Tribunal acted in excess of its competence, failed to exercise its jurisdiction, or committed an error of fact or law or error in procedure. In *Madi*,[22] we cautioned that an "Appellant is thus obliged to bring his appeal within the parameters of that framework by identifying the specific grounds of appeal". In the same vein, we explained further:[23]

> The appeals procedure is of a corrective nature and is therefore not an opportunity for a party to simply reargue his or her case. A party cannot merely repeat on appeal arguments that did not succeed before the UNRWA DT. More is required. The appellant must demonstrate that the UNRWA DT has committed an error of fact or law warranting intervention by this Tribunal.

39. As we have noted in *Rahman*,[24] the appellant must "identify, by citation to any provision in Article 2(1) of the Statute, the grounds for his appeal" of a Judgment on the merits, otherwise the "appeal is defective".

40. On the basis of the foregoing, we hold that this appeal is defective and consequently not receivable.

41. Nevertheless, in this particular instance we find it appropriate to reiterate our jurisprudence on some of the issues raised in the defective appeal.

Compensation in lieu of rescission

42. Concerning the award of JOD 100, we note that it is trite principle that upon an order of rescission or specific performance, the UNRWA DT is obliged to set an amount as compensation in lieu of rescission which the Commissioner-General may elect to pay, pursuant to Article 10(5)(a) of the UNRWA DT Statute. It states:

> As part of its judgement, the Dispute Tribunal may only order one or both of the following:

[22] *Madi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-853, para. 21.
[23] *Ibid.*
[24] *Abdel Rahman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-610, para 20.

> (a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concern appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;

43. UNAT jurisprudence on the interpretation and implementation of Article 10(5) of the UNRWA DT Statute and the identical Article 10(5) of the UNDT Statute is abundant. In *Ramsaroop & Miksch et al.*, we held:[25]

> Article 10(5) of the Statute of the UNDT confers a choice upon the UNDT in relation to the remedy it can grant. The provision provides no directive principle informing that choice. It is a matter within the sole discretion of the UNDT in the strict sense (…).

44. Turning to the quantum of compensation, we found in *Ramsaroop & Miksch et al.* that "an appellate tribunal will show reluctance to interfere with an award of compensation by the Tribunal that tried the case".[26]

45. The discretion in setting the amount of compensation in lieu of rescission, conferred on the UNRWA DT and the UNDT by their Statutes, is exercised on a case-by-case basis depending on the specific context of each case. However, we have held that the discretion must be exercised in a principled manner.[27] As we noted in *Ashour*:[28]

> (…) It is settled jurisprudence that the very purpose of in-lieu compensation is to place the staff member in the same position he or she would have been in, had the Organization complied with its contractual obligations.
>
> …
>
> (…) In so doing, the Tribunal may consider economic loss or loss of chance deriving from the illegal decision which has been rescinded, as an alternative to the rescission (…).

46. In the instant matter, the UNRWA DT determined that the contested Decision was unlawful and rescinded it. It proceeded to calculate the salary difference between Mr. Sadieh's

[25] *Rhyan Ramsaroop v. Secretary-General of the United Nations & Miksch et al. v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1165, para. 41.
[26] *Ibid.*, para. 42.
[27] *Ashour v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-899, para. 21.
[28] *Ibid.*, paras. 18 and 19 (internal citation omitted).

former post and the post of CCSO at Irbid Camp as from 1 July 2021 until 31 August 2021, i.e. for two months, and found that the difference was JOD 154.

47. In exercising its discretion, which we are reluctant to interfere with, the UNRWA DT "considered the amount of JOD 100 to be an appropriate amount of compensation". Mindful of the foregoing legal principles, and conscious of our duty to show deference to the decision of the UNRWA DT, taken within its jurisdiction, we agree with the award.

Compensation for harm

48. We recapitulate that our jurisprudence requires that for compensation for harm, "the harm be directly caused by the administrative decision in question".[29] As we have held in *Alam*:[30]

> (…) [T]he claimant bears the burden of proof to establish the existence of negative consequences resulting from the illegality, so that the harm must be directly caused by the contested decision. If these other two elements of the notion of responsibility are not justified, the illegality can be declared but compensation cannot be awarded (…).

49. Accordingly, we agree with the UNRWA DT's analysis that a claim for compensation for moral damage pursuant to Article 10(5)(b) of the UNRWA DT Statute must be supported by evidence which must establish a causal link between the contested Decision and the moral damage alleged. The onus to do so is on the claimant. Given the UNRWA DT's finding that his medical report was silent regarding the cause of his medical condition and that there was only his own testimony on the cause of his moral damage, we further agree with the UNRWA DT's conclusion that Mr. Sadieh failed to discharge the onus.

[29] *Ashour* Judgment, *op. cit.*, para. 31.
[30] *Afm Badrul Alam v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1214, para. 33.

Judgment

50. Mr. Sadieh's appeal is dismissed.

Original and Authoritative Version: English

Decision dated this 27th day of October 2023 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Forbang, Presiding	Judge Sandhu	Judge Ziadé

Judgment published and entered into the Register on this 22nd day November 2023 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar