

2013-UNAT-292, Abu Jarbou

UNAT Held or UNDT Pronouncements

UNAT held that it was a procedural error to allow the Commissioner-General to participate in the proceedings and to file a late reply without a written order, but that the Appellant was not prejudiced by that error and the error did not violate his due process rights. UNAT held that the Appellant's failure to object to the Respondent's late reply before UNRWA DT did not prevent him from raising on appeal the question of procedural error. On the Appellant's claim that UNRWA DT erred when it did not permit him to file a rejoinder to the Respondent's reply, UNAT held that since the Appellant did not properly raise this question before UNRWA DT, he could not raise it on appeal. UNAT held that the Appellant's termination was a proportionate and reasonable sanction for his mismanagement of staff. In particular, UNAT referenced the Appellant's collusion or gross negligence in supervising a staff member and assigning him less hours than required while the staff member was working part-time at a university; improperly using the cleaners to perform other duties in excess of their grade and salary; improperly criticising a staff member for making a complaint against him; intimidating staff members who complained about him; and fabricating memoranda alleging acts of misconduct against other staff members. UNAT held that the Appellant's termination was also a proportionate and reasonable sanction for the Appellant's mishandling of financial matters and constituted a separate ground to terminate his services. In particular, UNAT referenced the Appellant's failure to keep records of the fees paid for renting a hall or the sale of baskets; he authorised a vendor to pay monies owed to a third-party account and that the mishandling led to the reasonable inference that not all fees and monies were being paid to the Centre, but that the Appellant used those monies for his own personal purposes. UNAT held that there was no merit to the Appellant's claim that UNRWA DT erred in not awarding him compensation for the delay since there had been no harm or prejudice to him caused by the delay given that he had worked and was paid throughout; further, UNAT noted that the Appellant had provided no evidence to support an award of moral damages. UNAT held that there was no merit to the claim that UNRWA DT did not address each charge against the

Appellant, as it had applied the correct standard and it was not necessary for any court to address each and every claim, especially when a claim had no merit. UNAT dismissed the appeal.

Decision Contested or Judgment/Order Appealed

The Applicants contested the decision to terminate his appointment in the interest of UNRWA. UNRWA DT dismissed the application.

Legal Principle(s)

Transparency is essential for any system of administration of justice that embraces the principles of the rule of law and due process, and it requires the issuance of a written order when leave of the Tribunal is granted. A party who fails to raise an issue before the trial court cannot later raise that issue on appeal. Not all procedural errors are prejudicial or violate a party's due process rights.

Outcome

Appeal dismissed on merits

Outcome Extra Text

No relief ordered; No relief ordered.

Full judgment

[Full judgment](#)

Applicants/Appellants

Abu Jarbou

Entity

UNRWA

Case Number(s)

2012-321

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Mar 2013

President Judge

Judge Chapman

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Dismissal/separation

Termination (of appointment)

Disciplinary sanction

Applicable Law

GA Resolutions

- A/RES/61/261

Laws of other entities (rules, regulations etc.)

UNRWA Area Staff Regulations

- Regulation 1.1
- Regulation 1.4
- Regulation 9.1

UNRWA DT RoP

- Article 4.4
- Article 6.1

UNRWA DT Statute

- Article 10

Related Judgments and Orders

2011-UNAT-153

2011-UNAT-109

2010-UNAT-094

2012-UNAT-254

2013-UNAT-310

2010-UNAT-042

2012-UNAT-224

2010-UNAT-084

2010-UNAT-025

2010-UNAT-018

2010-UNAT-022

2013-UNAT-280

2010-UNAT-024

2010-UNAT-056

2011-UNAT-121

2011-UNAT-122

2012-UNAT-267