

2014-UNAT-442, El-Khalek

UNAT Held or UNDT Pronouncements

UNRWA DT considered an appeal by the Commissioner-General. UNAT held that UNRWA DT did not err in fact or in law such as to vitiate its judgment, except with regards to the award of compensation. UNAT held that UNRWA DT did not overstep its role to judicially review the administrative decision imposing a disciplinary measure on the staff member and terminating his appointment. UNAT held that the Administration had failed to demonstrate that the staff member had committed the serious misconduct he had been charged with, because not only did the proceedings fail to provide him with an adequate opportunity to defend himself breaching his right to due process, but also there was not enough evidence supporting the accusation. UNAT held that the administrative investigation was flawed because it did not rely on trustworthy evidence since the second investigation report appeared to be based mostly on hearsay or inconsistent testimonies not subject to cross-examination. UNAT held that UNRWA DT had correctly concluded that there was a breach of due process rights. UNAT held that the illegality of the termination stemmed from two different sources and the rescission of the administrative decision ordered by UNRWA DT had to be affirmed. UNAT held that the compensation in lieu of reinstatement, established at four years' net base salary, had to be partially vacated because UNRWA DT had not demonstrated sufficient reason to exceed the average statutory limit of two years. UNAT held that the compensation for moral damages seemed adequate, given the well-founded reasoning of UNRWA DT about the important negative consequences created by a serious sanction as the one illegally suffered by this staff member. UNAT upheld the appeal in part, affirmed the UNRWA DT judgment in part and reduced the compensation in lieu of reinstatement to two years' net base salary.

Decision Contested or Judgment/Order Appealed

UNRWA DT judgment: The Applicant contested the decision to terminate his appointment for misconduct. UNRWA DT found UNRWA's reply, more than two years

after the applicable deadline without leave to file a late reply or participate in the proceedings, receivable since it was in the interests of justice for UNRWA to be permitted to participate in the case. UNRWA DT rescinded the impugned decision, ordering the Applicant to be retroactively reinstated and then offered the early voluntary retirement he had requested, with related rights and entitlements, or, in the alternative, compensation in the amount of four years' net base salary. UNRWA DT also awarded moral damages of USD 20,000.

Legal Principle(s)

An appeal before UNAT does not constitute an opportunity to retry a case: the function of UNAT involves the task of determining if the Dispute Tribunal has made any errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction. Judicial review of a disciplinary case requires the Dispute Tribunal to consider the evidence adduced and the procedures utilised during the course of the investigation.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

El-Khalek

Entity

UNRWA

Case Number(s)

2013-508

Tribunal

UNAT

Registry

New York

Date of Judgement

27 Jun 2014

President Judge

Judge Simón

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

In-lieu compensation

Non-pecuniary (moral) damages

Disciplinary matters / misconduct

Dismissal/separation

Evidence

Termination (of appointment)

Disciplinary sanction

Applicable Law

UNAT Statute

- Article 2.1

UNRWA DT Statute

- Article 10.5

Related Judgments and Orders

2010-UNAT-018

2010-UNAT-087

2011-UNAT-164

2013-UNAT-302

2011-UNAT-123

2010-UNAT-084

2010-UNAT-024