

# **2017-UNAT-790, Anshasi**

## **UNAT Held or UNDT Pronouncements**

UNAT held that it was not persuaded that UNRWA DT erred in procedure or otherwise exceeded its jurisdiction such as to warrant reversal of the judgment. UNAT held that there was no reason to differ from UNRWA DT's findings that UNRWA had no reason to refer the Appellant to a medical board and that the issue was not relevant as the Appellant did not contest that he was unfit for service, nor did he allege that his health problems were related to his service with UNRWA. UNAT further noted that, as the Appellant was over sixty years of age, he was not eligible for a disability benefit. UNAT held that the decision not to refer the Appellant to a medical board was reasonable and a valid exercise of UNRWA's discretion, as there was no error of fact resulting in a manifestly unreasonable decision and the Appellant did not meet his burden of proof of demonstrating an error such as to warrant the judgment's reversal. On the issue of placing the Appellant on SLWOP, UNAT agreed with UNRWA DT's finding that it was reasonable and therefore lawful. On the decision to defer payment of separation benefits, UNAT agreed with the UNRWA DT's finding that the decision was not unreasonable and there was no mala fides on the part of the Administration. UNAT held that the delay in the payment of the separation benefits was entirely attributable to the Appellant. UNAT held that the Appellant's claim of conflict of interest was raised for the first time on appeal and as such, not receivable. The appeal was dismissed and the UNRWA DT judgment affirmed.

## **Decision Contested or Judgment/Order Appealed**

The Applicant contested the decisions: (i) not to grant his request to be referred to a medical board; (ii) the decision to place him on Special Leave Without Pay (SLWOP) for the period between the exhaustion of his sick leave credits and the expiration of his contract; and (iii) the decision to defer the payment of his separation benefit on the basis that the Applicant had refused to sign the medical waiver or to be referred for an exit medical examination. UNRWA DT dismissed the application in its entirety.

## Legal Principle(s)

It is the role of the first instance tribunal to determine if a discretionary decision, such as the decision to refer a staff member to a medical board, is legal, rational, procedurally correct, and proportionate. An appeals procedure is of a corrective nature and not an opportunity for a dissatisfied party to reargue his or her case. An appellant has the burden of satisfying UNAT that the judgment he or she seeks to challenge is defective by identifying the alleged defects and stating the grounds relied upon in asserting that the judgment is defective. UNRWA DT has broad discretion in the management of its cases, which includes the decision not to hold a hearing.

## Outcome

Appeal dismissed on merits

## Outcome Extra Text

No relief ordered.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Anshasi

## Entity

UNRWA

## Case Number(s)

2017-1074

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

27 Oct 2017

## President Judge

Judge Raikos

## Language of Judgment

Arabic

English

## Issuance Type

Judgment

## Categories/Subcategories

Benefits and entitlements

Special leave (with or without pay)

Procedure (first instance and UNAT)

Oral hearings

## Applicable Law

UNAT RoP

- Article 18.1

UNAT Statute

- Article 2.1(e)
- Article 8.3

## UNRWA Area Staff Rules

- Rule 105.2
- Rule 106.4
- Rule 109.7

## UNRWA Personnel Directives

- PD A/5/Part II
- PD A/6/Part VI
- PD A/9