

2018-UNAT-856, Abu Malluh et al.

UNAT Held or UNDT Pronouncements

UNAT considered the Secretary-General's appeal, specifically as to whether UNRWA DT's decision to award special allowances for extra duties performed and compensation for moral damages was an error in law or fact, resulting in a manifestly unreasonable decision. With respect to the allowance for extra duties, UNAT noted that it is settled in its jurisprudence that the Agency has discretionary powers to pay the special allowances, which must be exercised reasonably in accordance with their substantive legal requirements. UNAT held that there was no room for UNRWA DT to substitute its decision for that of the Agency unless the Agency's decision was unreasonable or disproportionate. UNAT found that, in the present case, there was no allegation of an unreasonable or disproportionate exercise of the Agency's discretion. UNAT accordingly held that UNRWA DT erred in law and exceeded its jurisdiction by awarding special allowances. With respect to the compensation for moral damages, UNAT found that the circumstances of the present cases did not qualify UNRWA DT to invoke its statutory jurisdiction to award such damages. UNAT noted that it previously affirmed awards of moral damages for a "fundamental breach," which involved findings or allegations of actions including: "numerous substantive and procedural irregularities," "reckless abuse of power," "deliberate manipulation of the Organisation's processes," or significant violations of pertinent provisions regarding highly consequential decisions, such as terminations and transfers to other posts. UNAT held that the inconsequential "anomalies" found in the present case did not reach such a level of severity. UNAT accordingly held that UNRWA DT also erred when it awarded compensation for moral damages. UNAT granted the appeal and vacated UNRWA DT's judgment.

Decision Contested or Judgment/Order Appealed

The Applicants contested the Agency's decision to qualify their respective posts as Messenger Porter instead of Messenger A. UNRWA DT found that the Applicants had the contractual status of Messenger Porters and did not find any merit in their

assertion that they believed to be Messenger As. UNRWA DT found that the Applicants had been asked to perform tasks there were not in their contract descriptions but noted that the Applicants were partly to blame because the situation was quickly rectified once they complained to HAGSS. UNAT further found that this quick reaction clearly demonstrated that the assigned duties were not appropriate for Messenger Porters. UNRWA DT held that if the Applicants' requests to requalify their posts were intended for them to have fewer duties, their demand had already been granted when the extra duties were removed, noting that both posts had the same grade level and the same salary. UNRWA DT awarded the applications in part and awarded special allowances for extra duties performed and compensation for moral damages to the Applicants.

Legal Principle(s)

UNRWA DT may only substitute its decision, regarding special allowances, for that of the Agency if the Agency's decision was unreasonable, unfair, illegal, irrational, procedurally incorrect, or disproportionate. UNRWA DT may only award moral damages if a fundamental breach has occurred.

Outcome

Appeal granted

Outcome Extra Text

No relief ordered; No relief ordered.

Full judgment

[Full judgment](#)

Applicants/Appellants

Abu Malluh et al.

Entity

UNRWA

Case Number(s)

2018-1146

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Jun 2018

Language of Judgment

Arabic

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Special Post Allowance

Compensation

Non-pecuniary (moral) damages

Jurisdiction / receivability (UNDT or first instance)

Manifest excess of jurisdiction

Applicable Law

Laws of other entities (rules, regulations etc.)

UNRWA Area Staff Rules

- Rule 103.5

UNRWA DT Statute

- Article 10