

2020-UNAT-1011, Abu Fardeh

UNAT Held or UNDT Pronouncements

UNRWA DT did not exceed its competence when assessing whether the decision to convene a medical board was lawful. The decision to convene a Medical Board five months after the service-incurred-injury in order to examine his fitness for continued service was reasonable. UNRWA DT erred in deciding that the decision to convene a medical board less than five months after the Appellant's service-incurred injury was unlawful. UNRWA DT erred in law and exceeded its competence by challenging the authority of the Medical Board's conclusion without clear and convincing medical evidence, by placing significant value on the medical certificates submitted by the Appellant after his examination by the Medical Board and by deciding that the chances of recovery and resumption of duty could be considered to be 75 percent. UNAT considered unlawful the conclusion of the UNRWA DT that the termination on medical grounds was unreasonable. UNAT granted UNRWA's appeal. UNAT granted the Appellant's appeal (in part), including reimbursement for translation costs.

Decision Contested or Judgment/Order Appealed

The Applicant contested his termination on medical grounds. UNRWA DT found that UNRWA's decision to convene a medical board less than five months after the Applicant's service-incurred injury in order to evaluate his fitness for continued service was manifestly unreasonable, on the basis that UNRWA had failed to give the staff member adequate recovery time and there was no evidence that he would never recover. UNRWDT ordered rescission of the decision or payment of compensation in lieu.

Legal Principle(s)

The fundamental right of a staff member to full participation in the justice proceedings requires that he has an opportunity to receive a translation, not only of the reply of the respondent but also of the comments that the respondent could issue, especially if those comments contained rebuttal of the staff member's allegations.

Outcome

Appeal granted; Appeal granted in part

Outcome Extra Text

Only financial compensation.

Full judgment

[Full judgment](#)

Applicants/Appellants

Abu Fardeh

Entity

UNRWA

Case Number(s)

2019-1283

2019-1285

Tribunal

UNAT

Registry

New York

Date of Judgement

26 Jun 2020

President Judge

Judge Neven

Language of Judgment

Arabic

English

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Compensation for injury, illness or death attributable to service (Appendix D to Staff Rules)

Applicable Law

UNAT Statute

- Article 2.5

UNRWA Area Staff Rules

- Rule 104.4
- Rule 106.2(9)
- Rule 106.4

UNRWA Personnel Directives

- PD A/6/Amend.72