

2020-UNAT-1023, Sirhan

UNAT Held or UNDT Pronouncements

UNAT considered appeals from both Mr. Sirhan and the Commissioner-General. UNAT held that UNRWA DT exceeded its competence and erred in fact and law by rescinding the decision to terminate Mr. Sirhan on medical grounds. UNAT held that the decision to convene a Medical Board more than one month after Mr. Sirhan's service-incurred injury in order to examine his fitness for continued service with UNRWA was reasonable. UNAT held that UNRWA DT erred in law in interpreting the Area Staff Rules as requiring UNRWA to provide injured staff members adequate time for recovery before deciding to appoint a medical board to consider that staff member's future employment. UNAT held that UNRWA DT erred by deciding that the decision to convene a medical board less than two months after the staff member's service-incurred injury was unlawful and that therefore the termination was unlawful. UNAT held that UNRWA DT erred in taking into account additional evidence in the form of medical certificates produced by Mr. Sirhan after the Medical Board had reported to UNRWA in order to overturn the conclusions of the Medical Board, noting that Mr. Sirhan had had the opportunity to present such evidence to the Medical Board before it reached its conclusions. UNAT held that UNRWA DT's judgment was erroneous. UNAT dismissed Mr. Sirhan's appeal, allowed UNRWA's appeal, and set aside the UNRWA DT judgment. Judge Colgan dissented.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to terminate his service on medical grounds. UNRWA DT found that the decision to convene a medical board less than two months after the service-incurred injury in order to examine the staff member's fitness for continued service was manifestly unreasonable and failed to give him adequate time for recovery. UNRWA DT ordered rescission of the decision to terminate the staff member's service on medical grounds or payment of compensation in lieu.

Legal Principle(s)

UNRWA has a broad discretion to require a staff member to undergo a medical examination at any time it may consider necessary. Additional evidence not presented at the first instance, despite a party having had the opportunity to present it at that time, is generally not admissible on appeal.

Outcome

Appeal dismissed on merits; Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Sirhan

Entity

UNRWA

Case Number(s)

2019-1290

2019-1291

Tribunal

UNAT

Registry

New York

Date of Judgement

26 Jun 2020

President Judge

Judge Colgan

Language of Judgment

Arabic

English

Issuance Type

Judgment

Categories/Subcategories

Evidence

Evidence of harm

Medical evidence

Termination (of appointment)

Health reasons

Applicable Law

UNRWA Area Staff Rules

- Rule 104.4
- Rule 106.2(9)
- Rule 106.4
- Rule 106.4(8)
- Rule 109.7(7)

UNRWA Personnel Directives

- PD A/6/Amend.72
- PD A/9/Rev.10

Related Judgments and Orders

2020-UNAT-1011