

2020-UNAT-1036, Mansour

UNAT Held or UNDT Pronouncements

UNAT held that UNRWA DT failed to address some issues before it, in respect of which the Appellant is entitled to a reasoned decision. UNAT held that UNRWA DT erred in declining the Appellant's implicit request for a hearing in person, at least without having considered it and given reasons. UNAT held that the termination of the Appellant's appointment could not be assessed as hasty, premature, or arbitrary, with particular reference to the Medical Board process. UNAT held that any opportunity of the Appellant's appointment to that vacancy had therefore passed, irrespective of her qualifications because applications closed more than a month before the Medical Board's determination that she was not fit to return to her teaching role. UNAT noted that UNRWA DT failed to address the Appellant's claim that she had been given insufficient notice of her separation; however, in light of the termination letter advising her that she would be paid for the balance of the 30-day required period and in the absence of evidence that she was not paid, UNAT held that that ground of appeal must fail. UNAT held that UNRWA DT did not err in concluding that the Appellant had not contested the Medical Board's conclusions. UNAT considered that the Appellant had access to the Medical Board and was afforded the opportunity to submit her own medical assessment to it, which was taken into account. There was no suggestion that treatment for the consequences of the Appellant's injury might have restored her to sufficient health or enabled her to return to teaching within a reasonable period. UNAT held that lack of access to the Medical Board as a ground of appeal must fail. UNAT held that there was no regulatory obligation on UNRWA to find an alternative position for a disabled staff member or even to delay any finality of dismissal to enable one to be found for the disabled staff member and therefore this ground of appeal must fail. UNAT held that the Appellant's claims for payments to which she alleged she was entitled, but had not yet been paid, must fail because it was not satisfied that any loss to the Appellant resulted from UNRWA DT's failure. UNAT held that the Appellant's claim for disability allowance could not be introduced as a claim on appeal on the basis that the claim did not appear in her application to UNRWA DT. UNAT held that

UNRWA DT incorrectly excluded the Appellant's claims to disability compensation entitlements on the basis that they had been abandoned or settled because she had failed to file a rejoinder to the Respondent's defense which included that these claims were still under consideration. UNAT held that UNRWA DT erred in law in excluding these claims as there was no regulatory provision or presumption in law of acceptance of the pleaded reply in the absence of a rejoinder. UNAT allowed the appeal in part (relating to issues of compensation for disability) and remanded those issues to UNRWA DT for decision, but otherwise dismissed the Appellant's appeal.

Decision Contested or Judgment/Order Appealed

UNRWA DT judgment: The Applicant contested the decision of the Administration to dismiss her application challenging the lawfulness of the termination of her employment on medical grounds. UNRWA DT dismissed the application on the basis that the Applicant failed to produce any evidence that the decision to terminate her appointment on medical grounds was exercised arbitrarily or capriciously, was motivated by prejudice or other extraneous factors, or was flawed by procedural irregularity or error of law.

Legal Principle(s)

UNRWA DT is a first instance tribunal before which the usual expectation is that there will be an in-person hearing, even if not of evidence, at which a party has an opportunity to make submissions and answer questions from the Tribunal. A failure to address a matter in issue by UNRWA DT may amount to a reviewable failure to exercise discretion. There is no regulatory provision or presumption in law of acceptance of the pleaded reply in the absence of a rejoinder.

Outcome

Appeal granted in part

Outcome Extra Text

No relief ordered; No relief ordered.

Full judgment

[Full judgment](#)

Applicants/Appellants

Mansour

Entity

UNRWA

Case Number(s)

2020-1352

Tribunal

UNAT

Registry

New York

Date of Judgement

26 Jun 2020

President Judge

Judge Colgan

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Evidence

Evidence of harm

Medical evidence

Applicable Law

UNAT Statute

- Article 2.1(b)
- Article 2.1(c)
- Article 2.1(d)

UNRWA Area Staff Regulations

- Regulation 11.4
- Regulation 11.5
- Regulation 9.3(b)

UNRWA Area Staff Rules

- Rule 106.4

UNRWA DT Statute

- Article 9.1
- Article 9.2

Related Judgments and Orders

2020-UNAT-1011

2013-UNAT-292

2010-UNAT-049

2015-UNAT-593

2014-UNAT-445