

2020-UNAT-1061, Abu Osba

UNAT Held or UNDT Pronouncements

As a preliminary matter, UNAT held that an oral hearing was not necessary and would not assist in the expeditious and fair disposal of the case as the Appellant had not provided grounds for an oral hearing beyond seeking to confront the witnesses and comment on existing evidence. Whilst UNAT held that the Appellant failed to identify any errors of law or fact by UNRWA DT as required under Art 2(1) UNAT Statute, UNAT did go on to consider his appeal as he was not represented. UNAT held that UNRWA DT had correctly applied the standard of review for disciplinary cases and that UNRWA DT's exercise of discretion in not holding an oral hearing was reasonable and not an error of procedure such as to affect the decision of the case. UNAT held that the "no difference" principle applied in the face of the clear and convincing documentary evidence supporting the Appellant's misconduct based on the record, namely the testimony of the thirteen witnesses and five complainants that the Appellant had engaged in the prohibited corporal punishment. UNAT also held that the various allegations which the Appellant made against the other teachers and UNRWA DT were not supported by evidence and therefore had no merit. UNAT found no fault in UNRWA DT's finding that the Appellant's conduct towards students amounted to prohibited corporal punishment and serious misconduct. UNAT held that the disciplinary measure was fair and proportionate to the seriousness of the offence and in accordance with the relevant rules and directives. On the question of whether the Appellant's due process rights were respected, UNAT held that the common law requirements of due process were met. UNAT held that the Appellant's request to face his accusers must give way to the need to protect minor witnesses from the emotional distress the confrontation would entail. UNAT held that UNRWA did not err in finding that the decision to terminate the Appellant's fixed-term appointment was lawful. UNAT dismissed the appeal and affirmed the UNRWA DT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to separate him from service for misconduct in the form of the corporal punishment of children at a school where he was teaching. UNRWA DT dismissed the application without an oral hearing.

Legal Principle(s)

UNRWA DT may determine an appeal without the need for an oral hearing, even in cases where disciplinary measures are the subject of challenge. Any error in procedure in not holding an oral hearing may not affect the final decision if the so-called “no difference” principle applies. The so-called “no difference” principle is where a lack or a deficiency in the due process will be no bar to a fair or reasonable administrative decision or disciplinary action should it appear at a later stage that fuller or better due process would have made no difference; it applies where the ultimate outcome is an irrefutable forgone conclusion. Only substantial procedural irregularities can render a disciplinary sanction unlawful.

Outcome

Appeal dismissed on merits

Outcome Extra Text

No relief ordered; No relief ordered

Full judgment

[Full judgment](#)

Applicants/Appellants

Abu Osba

Entity

UNRWA

Case Number(s)

2020-1361

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Oct 2020

President Judge

Judge Sandhu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Assault (verbal and physical)

Due process

Separation from service

Termination of appointment (see also, Termination of appointment)

Standard of review (judicial)

Disciplinary cases

Termination (of appointment)

Disciplinary sanction

Discretionary authority

Applicable Law

Laws of other entities (rules, regulations etc.)

UNAT RoP

- Article 18.1

UNAT Statute

- Article 2.1

UNRWA Area Staff Regulations

- Regulation 10.2
- Regulation 10.3
- Regulation 9.1

UNRWA Area Staff Rules

- Rule 110.1
- Rule 110.3

UNRWA Personnel Directives

- PD A/10/Rev.1

Related Judgments and Orders

2016-UNAT-610

2018-UNAT-853

2010-UNAT-035

2010-UNAT-051

2016-UNAT-700

2019-UNAT-918

2018-UNAT-819

2017-UNAT-761

2012-UNAT-201

2010-UNAT-081

2014-UNAT-407

2010-UNAT-084

2020-UNAT-978

2017-UNAT-782

2014-UNAT-480

2013-UNAT-302