

# 2021-UNAT-1185, null UNRWA

## UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Commissioner-General and a cross-appeal by Ms. Kaddoura. UNAT affirmed the UNRWA DT Judgment in part. It only vacated the referral of the former Commissioner-General for accountability, finding that it was not adequate to rely on hearsay to refer a former staff member, be it the former Commissioner-General or any other, to accountability. UNAT further held that there was no possibility of imposing a disciplinary measure on a former staff member, and as such any such referral would be ineffectual.

## Decision Contested or Judgment/Order Appealed

Before the UNRWA DT, Ms. Kaddoura contested the decision of the Commissioner-General of UNRWA to impose on her the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity on grounds that she had committed abuse of power and misrepresentation amounting to serious misconduct and in consideration of aggravating factors. The UNRWA DT established that Ms. Kaddoura had reviewed the Complainant's PHPs and reported the irregularities to the former DCG, without informing her direct supervisor, the former DHR. The UNRWA DT also found established that Ms. Kaddourahad played a primary role in informing the Complainant that "any misrepresentation or material omission made on a Personal History Form renders one liable to termination". The UNRWA DT however concluded that there was a legitimate ongoing auditing process, that Ms. Kaddoura had not extended the scope of said auditing process in the Complainant's case by verifying his work experience and that she had not misled the former DCG, the former DUO/J and the former H/RS in that regard. The UNRWA DT also found no merit in the accusation that by making a "veiled threat" of dismissal to the Complainant and giving him an unreasonably short deadline for responding to the letter, Ms. Kaddoura had turned the Complainant's matter into something more akin to a formal misconduct investigation, thus violating the Complainant's due process rights. The UNRWA DT found that not only was Ms. Kaddoura not involved at

any stage with respect to the deadline set for the Complainant to respond, but the Complainant himself had agreed to provide his response within a short period of time. The UNRWA DT further concluded that the Agency had failed to establish by clear and convincing evidence Ms. Kaddoura's alleged ill-intent to cause harm to the Complainant. Having concluded that none of the established facts amounted to misconduct, the UNRWA DT rescinded the decision to impose on Ms. Kaddoura the disciplinary measure of separation from service with termination indemnity and awarded in-lieu compensation in the amount of two years' net base salary. The UNRWA DT ordered the Agency to disburse to Ms. Kaddoura the entirety of her termination indemnity and to place the Judgment in her Official Status File. Finally, the UNRWA DT ordered that Ms. Kaddoura's "oral evidence" be struck from the record; and ordered that the former Commissioner-General be referred to the Commissioner-General for possible action to enforce accountability

## Legal Principle(s)

The trial judge is best placed to assess and determine the value of any specific evidence. Only in exceptional circumstances can any additional evidence be received by the Appeals Tribunal. It is not adequate to rely on hearsay evidence to make an accountability referral. There is no possibility of imposing a disciplinary measure on a former staff member. It is not enough to demonstrate an illegality to obtain compensation: to be entitled to damages, the claimant bears the burden of proof to establish the existence of negative consequences, and in a cause and effect relationship, resulting from the illegality on a cause-effect lien. The harm must be directly caused by the administrative decision in question. If these other two elements of the notion of responsibility are not justified, the illegality can be declared but compensation cannot be awarded.

## Outcome

Appeal granted in part; Cross-appeal dismissed on merits

## Outcome Extra Text

The appeal is upheld in part and the cross-appeal is dismissed. Judgment No. UNRWA/DT/2020/066 is modified only to vacate the order to refer the former

Commissioner-General for accountability.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

null UNRWA

## Entity

UNRWA

## Case Number(s)

2021-1507

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

29 Oct 2021

## President Judge

Judge Colgan

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct  
Abuse of authority  
Disciplinary measure or sanction  
Dismissal/separation  
Facts (establishment of) / evidence  
Evidence  
Admissibility  
Referral for accountability

## Applicable Law

UNAT Statute

- Article 10.5(b)
- Article 9.5
- Article 9.2

UNRWA DT RoP

- Article 13.1

UNRWA International Staff Rules

- Rule 1.2(c)
- Rule 1.2(f)

## Related Judgments and Orders

2021-UNAT-1136

2018-UNAT-839

2020-UNAT-1014

2019-UNAT-909

2017-UNAT-730

2017-UNAT-724

2016-UNAT-640

2012-UNAT-277

2018-UNAT-860