

2022-UNAT-1194, Jafar Hilmi Wakid

UNAT Held or UNDT Pronouncements

UNAT held that UNRWA DT did not commit an error in procedure, such as to affect the decision of the case pursuant to Article 2(1) of the UNAT Statute. UNAT rejected the argument that the fact that the Appellant did not receive the recordings of the hearing or transcript affected the decision of the case. UNAT held that the Appellant merely repeated arguments raised before UNRWA DT. UNAT accepted UNRWA DT's finding that the Appellant had ample opportunity to respond to allegations and provide comments on the investigation report and exhibits. UNAT held that UNRWA DT made fundamental errors of fact resulting in a manifestly unreasonable decision, namely in assessing the credibility of the evidence of the Complainant and the Appellant and in dismissing the Complainant's retraction without supporting evidence. UNAT held that the evidential standards were not met to support the finding that there was clear and convincing evidence that established to a high degree of probability that the alleged misconduct had occurred. UNAT found no merit in the Appellant's argument that his due process rights were violated. UNAT held that UNRWA DT erred in law in its interpretation of UNRWA GSC No. 07/2010. UNAT remanded the matter back to UNRWA DT for a rehearing before a different judge for additional findings of fact.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to impose on him the disciplinary measure of separation from service without termination indemnity due to serious misconduct in the form of sexual exploitation and abuse. UNRWA DT dismissed his application.

Legal Principle(s)

The appeals procedure is not an opportunity for a party to reargue his or her case. UNDT should ordinarily hear the evidence of the complainant and other material

witnesses. Misconduct must be established by clear and convincing evidence. The due process rights of a staff member are complied with as long as the staff member has a meaningful opportunity to mount a defence and to question the veracity of the statements against him or her.

Outcome

Case remanded

Full judgment

[Full judgment](#)

Applicants/Appellants

Jafar Hilmi Wakid

Entity

UNRWA

Case Number(s)

2021-1534

Tribunal

UNAT

Registry

New York

Date of Judgement

18 Mar 2022

President Judge

Judge Sandhu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Facts (establishment of) / evidence

Sexual exploitation and abuse

Disciplinary sanction

Disciplinary matters / misconduct

Termination (of appointment)

Applicable Law

UNAT Statute

- Article 2.3
- Article 2.1
- Article 2.4(b)
- Article 8.3

UNRWA Area Staff Rules

- Rule 110.1

UNRWA Personnel Directives

- PD A/10
- PD A/60

Other UN issuances (guidelines, policies etc.)

- UNRWA Investigation Policy (DIOS Technical Instruction 02/2016)

UNRWA Area Staff Circulars

- General Staff Circular 07/10

Related Judgments and Orders

2014-UNAT-440

2010-UNAT-035

2020-UNAT-1024

2018-UNAT-819

2011-UNAT-164

2020-UNAT-1033

2020-UNAT-1061

2018-UNAT-822