

2022-UNAT-1196, Mohamad Alothman

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by Mr. Al Othman against UNRWA Judgment No. UNRWA/DT/2020/073. It also considered a cross-appeal by the Commissioner-General of UNRWA, to the extent that the Judgment awarded Mr. Al Othman compensation.

UNAT held that there was clear and convincing evidence established that Mr. Al Othman committed the alleged offences. The UNRWA DT conclusions were accurate, based on evidence on record and common knowledge and UNAT found no reason to differ from them. UNAT shared the UNRWA DT's view that the only reasonable conclusion available to the trial Judge, resulting from the evidence against Mr. Al Othman, uncovered by the investigation and the documentary evidence and notably the hearing before the first instance Judge, was that Mr. Al Othman had sexually abused and exploited Ms. A., an Agency's beneficiary. By engaging in this misconduct, Mr. Al Othman violated his obligations under the relevant provisions, and did not conduct himself in a manner befitting his status as an employee of UNRWA and notably his capacity as a teacher.

UNAT found that it was a reasonable exercise of the Commissioner-General's discretion to determine that a teacher intentionally abusing and exploiting sexually a beneficiary of UNRWA in a vulnerable situation rendered Mr. Al Othman unfit for further service with the Agency, and UNAT was satisfied that the summary dismissal was neither unfair nor disproportionate to the seriousness of the offence. As the UNRWA DT correctly held, Mr. Al Othman violated the relationship of trust that had existed between him and UNRWA. His conduct was particularly grave in light of the position he occupied as a teacher and the fact that, as a woman, the Complainant falls within the category of people who have a "most vulnerable" status in accordance with GSC No. 07/2010, and by exploiting this status, Mr. Al Othman placed the Complainant in a potentially harmful position where she could suffer from retaliation in her community because of such an incident, and for having made a complaint about it. As such, the Appeals Tribunal found that imposing the sanction of summary dismissal was a reasonable exercise of the Administration's broad discretion in disciplinary matters; a discretion with which it would not lightly interfere.

Both the appeal and the cross-appeal were dismissed.

Decision Contested or Judgment/Order Appealed

UNRWA DT Judgment: Mr. Al Othman is challenging an administrative decision by UNRWA to impose on him the disciplinary measure of summary dismissal. UNRWA DT by Judgment No. UNRWA/DT/2020/073, partially granted his application. It dismissed his application against the separation decision, finding that UNRWA had made the case of misconduct against him by clear and convincing evidence. However, it held Mr. Al Othman's summary dismissal was effective as of 26 September 2017 and awarded him compensation for material damages equivalent to his full salary, including all associated allowances and entitlements, for the period between 17 March 2017 and 26 September 2017.

Legal Principle(s)

UNAT has held that in a system of administration of justice governed by law, the presumption of innocence has to be respected.

The matter of the degree of the sanction is usually reserved for the Administration, which has discretion to impose the measure that it considers adequate in the circumstances of the case and for the actions and conduct of the staff member involved. This appears as a natural consequence of the scope of administrative hierarchy and the power vested in the competent authority. It is the Administration that carries out the administrative activity and procedure and deals with the staff members.

UNAT will not lightly interfere with the broad discretion conferred on the first instance tribunal in the management of its cases, to enable cases to be judged fairly and expeditiously and for dispensation of justice. It will intervene only in clear cases of denial of due process of law affecting a party's right to produce evidence.

The Dispute Tribunal may award compensation for actual pecuniary or economic loss, including loss of earnings, as well as non-pecuniary damage, procedural violations, stress, and moral injury. Compensation for harm shall be supported by three elements: the harm itself; an illegality; and a nexus between both. It is not enough to demonstrate an illegality to obtain compensation; the claimant bears the burden of proof to establish the existence of negative consequences, able to be considered damages, resulting from the illegality on a cause-effect lien. If one of these three elements is not established, compensation cannot be awarded. Our case law requires that the harm be shown to 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.

An administrative decision may not be retrospective, unless legislative authority allows for such an effect.

The Dispute Tribunal is not competent to award compensation of the specific kind, namely, for actual pecuniary or economic loss, including loss of earnings, as well as non-pecuniary damage, procedural violations, stress, and moral injury, without a previous claim for such damage and compensation; If no request for such compensation is made, the Dispute Tribunal lacks jurisdiction to award this kind of compensation *sua sponte*.

An entitlement to moral damages may arise where there is evidence produced to the Tribunal by way of a medical, psychological report or otherwise of harm, stress or anxiety caused to the employee, which can be directly linked, or reasonably attributed, to a breach of his or her substantive or procedural rights and where the Tribunal is satisfied that the stress, harm or anxiety is such as to merit a compensatory award.

Outcome

Appeal dismissed on the merits; Cross-appeal dismissed on the merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Mohamad Alothman

Entity

UNRWA

Case Number(s)

2021-1550

Tribunal

UNAT

Registry

New York

Date of Judgement

19 Apr 2022

President Judge

Judge Raikos

Judge Sandhu

Judge Halfeld
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Separation from service
Termination of appointment (see also, Termination of appointment)
Disciplinary matters / misconduct
Sexual exploitation and abuse
Discretionary authority
Proportionality of sanction
Applicable Law
UNRWA Area Staff Regulations

- Regulation 1.1
- Regulation 1.4

UNRWA Area Staff Rules

- Rule 110.1

Related Judgments and Orders

2021-UNAT-1118
2021-UNAT-1117
2020-UNAT-1024
2019-UNAT-972
2019-UNAT-960
2019-UNAT-956
2018-UNAT-889
2014-UNAT-467
2018-UNAT-859