

# 2022-UNAT-1195, Samer Mohammad

## UNAT Held or UNDT Pronouncements

The UNAT decided that mistakes in the way the summary dismissal decision was communicated to the appellant did not affect the fact that the real decision had ultimately been taken by the competent person in the Commissioner-General and not by any delegated authority.

It was undisputed that Mr. Mohammad was not afforded the opportunity to comment on the additional evidence produced against him after the re-opening of the investigation (two interviews of student B's mother and student B). However, neither in his appeal nor in his initial application to the UNRWA DT did he point out any shortcomings in either interview. In addition, the UNAT observed that he had not specifically contest any fact or information given by either interviewee. The UNAT held that he had been correctly informed of the allegations against him, and afforded the opportunity to make representations before the dismissal decision was taken. In addition, before the UNRWA DT, he had ample opportunity to respond to the evidence against him, and produce evidence in his favor. Therefore, the UNAT held that there was no error in the UNRWA DT finding that his due process rights had been observed.

With regard to the sufficiency of the evidence, the UNAT held that some degree of deference must be given to the factual findings of the UNRWA DT, and that there was nothing in the appeal which could undermine the Dispute Tribunal's judgment. The UNAT noted that the totality of the evidence made it implausible to conceive that the student had obtained pornographic material from some means other than from Mr. Mohammad. In addition, the UNAT noted that Mr. Mohammad did not contest having a sexually themed conversation with the student.

The UNAT held that the imposed sanction of dismissal for sexually abusive or exploitative behavior was well within the discretion of the UNRWA Administration.

## Decision Contested or Judgment/Order Appealed

In UNRWA/DT/2021/003, the UNRWA DT dismissed Mr. Mohammad's application, rejecting his allegations of procedural irregularities. The Dispute Tribunal held that any shortfall in the initial investigation was offset by further interviews and that Mr. Mohammad's due process rights were observed. The UNRWA DT also determined that Mr. Mohammad's explanations regarding the allegations against him were not credible. It concluded that there was clear and convincing evidence that the alleged misconduct by Mr. Mohammad had in fact occurred.

## Legal Principle(s)

The due process rights of a staff member are complied with as long as s/he has a meaningful opportunity to mount a defense and to question the veracity of the statements against him or her.

In disciplinary cases, only when the preliminary investigation stage is completed and a disciplinary process has begun is the staff member entitled to receive written notification of the formal allegation, but also to be given the opportunity to assess the evidence produced against him or her.

Procedural fairness is a highly variable concept and is context specific.

Only substantial procedural irregularities render a disciplinary measure unlawful.

## Outcome

Appeal dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Samer Mohammad

## Entity

UNRWA

## Case Number(s)

2021-1543

## 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

Disciplinary matters / misconduct

Sexual exploitation and abuse

Discretionary authority

## Applicable Law

UNRWA Area Staff Circulars

UNRWA Area Staff Regulations

## UNRWA Area Staff Rules

- Rule 110.1

## UNRWA DT RoP

- Article 13

## Related Judgments and Orders

2018-UNAT-889

2020-UNAT-1061

2018-UNAT-822

2017-UNAT-761

2020-UNAT-1024

2014-UNAT-431