

2022-UNAT-1242, Ezzedine Loubani

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by Mr. Loubani. UNAT held that while a preliminary assessment [regarding potential evidence by witnesses nominated by Mr. Loubani to be interviewed] should have been made by the investigators, this was done by UNRWA DT, and the evidence found to be so inadequate as to be safely ignored.

Mr. Loubani had an opportunity to present this evidence before UNRWA DT, so that its proper assessment meant that his due process right was allowed, albeit belatedly. It would have made no difference to the outcome had the investigators done so. The investigators would have reached the same conclusion about the relevance and reliability of those witnesses' accounts.

On the question of UNRWA's failure or refusal to supply a copy of its Investigation Report to Mr. Loubani (at least until it did so during the UNRWA DT's process), the UNAT concluded that UNRWA and the UNRWA DT both erred in concluding that Mr. Loubani was not entitled to this, at least at the conclusion of the former's investigation and before it determined what was to be the outcome of the investigation's findings. While UNRWA's and the UNRWA DT's identified errors were serious, that does not mean that they necessarily negate the significance of findings properly made about Mr. Loubani's conduct.

UNAT held there was really only one ground of appeal on which Mr. Loubani both succeeded, and which should change the outcome of the case. UNAT was persuaded that the UNRWA DT should have ameliorated the sanctions imposed by UNRWA by taking account of considerations of which UNRWA had given him no opportunity to be heard before determining those sanctions. That would be most justly rectified by modifying the UNRWA DT's Judgment to rescind UNRWA's decision to penalise Mr. Loubani by withholding one week's salary from him. That still would leave as appropriate sanction for his proven misconduct: a written censure, the one-year deferment of consideration for promotion and the requirement to retake a relevant ethics course. The appeal was granted in part and the UNRWA DT Judgment was modified by rescinding the order that one week's salary be withheld from Mr. Loubani.

Decision Contested or Judgment/Order Appealed

Mr. Loubani challenged the decision of UNRWA to impose on him certain disciplinary measures, including a written censure, a deferment of consideration for promotion for one year, a fine equivalent to one week's salary and the obligation to retake an ethics course. These measures were instituted following an investigation into a complaint, alleging that Mr. Loubani had shouted at one of his subordinates and made derogatory remarks to her. UNRWA DT in its Judgment No. UNRWA/DT/2021/028 rejected Mr. Loubani's application and found that the imposition of the disciplinary measures was lawful.

Legal Principle(s)

As in all cases of due process failures, it is necessary to weigh the significance of the failure against what would have been the outcome had the failure(s) not occurred. This is sometimes referred to as the "no difference" principle and indeed the UNRWA DT did apply it to the one due process failure it found UNRWA was responsible for.

Due process rights apply not only to proceedings before a dispute tribunal. Due or fair process rights also apply to the manner in which the agency investigates allegations of misconduct which may lead to sanctions including

serious sanctions affecting the rights of a staff member to continue working for the Agency. Once such fair process right is that a staff member being investigated is entitled to expect that any decision or recommendation made by the investigation will have considered relevant matters and will not have considered irrelevant matters. If a proposed witness has evidence to give to an investigation that is relevant to its subject matter, if the investigators are made aware of the general nature of that evidence to enable them to confirm its prima facie relevance, and if the staff member being investigated requests that the investigators interview such a witness, there is a real risk that, by failing to do so, the investigation will reach a conclusion following a failure to take into account relevant matters. That is why fair process rights in an investigation of alleged misconduct are important.

It is a fundamental precept of natural justice and fair process that before a staff member is able to be sanctioned for misconduct which has been investigated and decided upon that the staff member is entitled to know what was found and why. It does not matter that such a right may not be specified in relevant procedures; it is such a fundamental element of workplace natural justice that it should go without saying.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Ezzedine Loubani

Entity

UNRWA

Case Number(s)

2021-1582

Tribunal

UNAT

Registry

New York

Date of Judgement

18 Jul 2022

President Judge

Judge Raikos

Judge Murphy

Judge Colgan

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Assault (verbal and physical)

Investigation

Due process

Discretionary authority

Applicable Law

None