

2022-UNAT-1290, Nael Mohammed Fares Jibril

UNAT Held or UNDT Pronouncements

Mr. Jibril appealed.

As regards the request for an oral hearing, the UNAT held that the factual and legal issues arising from this appeal had already been clearly defined by the parties and there was no need for further clarification. Moreover, an oral hearing would not assist in the expeditious and fair disposal of the case, as required by Article 18(1) of the UNAT Rules of Procedure. Accordingly, the request for an oral hearing is denied.

The UNAT agreed with the UNRWA DT that the challenged administrative decision to place Mr. Jibril on Administrative Leave With Pay (ALWP) was lawful. The condition of a *prima facie* well-founded charge was met based on the abovementioned material evidence, namely there objectively existed reasonable grounds (probable cause) to believe that there had been an incident of verbal and physical altercation in which Mr. Jibril was involved.

Moreover, the UNAT considered that, given the nature and seriousness of the incident, it had not been unreasonable for the Administration to wish to avoid the risk of confrontation with other staff members if Mr. Jibril had a continuing presence in the office, which would have been contrary to the interests of the Agency. Consequently, the UNRWA DT rightly concluded that the contested administrative decision to place Mr. Jibril on ALWP pending the outcome of the investigation, was properly and lawfully effected.

The UNAT also agreed with the UNRWA DT's reasoning that it was reasonable and therefore lawful for the Administration to place Mr. Jibril on ALWP for the grounds set out above and it was not within its jurisdictional remit to place itself into the shoes of the Administration and enforce the law in terms of the Administration's alleged omission to also place the other staff members who were involved in the altercation

on ALWP.

As an aside, the UNAT was of the view that, even assuming *arguendo* that there was also *prima facie* evidence that others were involved in the same verbal and physical altercation, as intimated by the UNRWA DT Judge, the fact that only Mr. Jibril was placed on ALWP does not, in and of itself, render the contested administrative decision unlawful, as Mr. Jibril incorrectly claims, namely on the ground that he was discriminated against.

The UNAT found that the UNRWA DT had correctly determined that Mr. Jibril's application regarding his placement on ALWOP had become moot. The administrative decision to place him on ALWOP was superseded by the Commissioner-General's decision to place him on ALWP and Mr. Jibril conceded before the UNRWA DT that he had received the balance of his salary and entitlements. Thus, at the administrative stage, the alleged illegality was solved after the judicial procedure had begun, rendering the latter unnecessary, as the specific remedy sought was reached. Mr. Jibril was unable to demonstrate to the UNRWA DT Judge how his rights remained adversely affected by a decision which had been superseded. Nor could he show that he was suffering any injury because of that decision.

Lastly, as regards Mr. Jibril's claim for moral damages, the UNAT held that since no illegality was found, there was no justification for the award of any compensation.

The UNAT dismissed Mr. Jibril's appeal and affirmed Judgment No. UNRWA/DT/2021/034.

Decision Contested or Judgment/Order Appealed

Mr. Jibril contested a UNRWA decision to place him on administrative leave (ALWOP amended to ALWP) from 16 to 29 June 2019, pending the outcome of a disciplinary process following two incidents of verbal and physical altercation that he was involved in.

By Judgment UNRWA/DT/2021/034, of 8 August 2021, the UNRWA DT dismissed his application.

Legal Principle(s)

The judges assigned to a case will determine whether to hold oral proceedings.

The judges hearing a case may hold oral hearings on the written application of a party or on their own initiative if such hearings would assist in the expeditious and fair disposal of the case.

A party, in order to be successful on appeal, not only has to assert and show that the UNRWA DT committed an error in procedure but also that this error affected the decision on the case.

Under Article 2(1)(d) of its Statute, the UNAT is competent to hear and pass judgment on an appeal filed against a judgment rendered by the UNRWA DT in which it is asserted that the UNRWA DT has committed an error in procedure, such as to affect the decision of the case.

The UNRWA DT has broad discretion under its Rules of Procedure to determine the admissibility of any evidence and the weight to be attached to such evidence.

The 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. The UNAT will intervene only in clear cases of denial of due process of law affecting a party's right to produce evidence.

Compensation cannot be awarded when no illegality has been established; it cannot be granted when there is no breach of the staff member's rights or administrative wrongdoing in need of repair.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Nael Mohammed Fares Jibril

Entity

UNRWA

Case Number(s)

2021-1626

Tribunal

UNAT

Registry

New York

Date of Judgement

16 Dec 2022

President Judge

Judge Knierim

Judge Raikos

Judge Sandhu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Investigation (see category: Investigation)

Subject matter (ratione materiae)

Oral hearings

Production of documents

Compensation (see also, Compensation)

Disciplinary matters / misconduct
Jurisdiction / receivability (UNAT)
Procedure (first instance and UNAT)
Remedies

Applicable Law

UNAT RoP

- Article 18.1

UNAT Statute

- Article 8.3
- Article 2.1(d)

UNRWA Area Staff Regulations

- Regulation 10.4

UNRWA Area Staff Rules

- Rule 110.2

UNRWA DT RoP

- Article 14

UNRWA Personnel Directives

- PD A/10/Rev.3

Related Judgments and Orders

2019-UNAT-960

2017-UNAT-762

2016-UNAT-675

2021-UNAT-1136

2020-UNAT-1061

2018-UNAT-849