

2023-UNAT-1402, Faten Hatim Al Dawoud

UNAT Held or UNDT Pronouncements

The UNAT considered an appeal by the staff member.

The UNAT held that the UNRWA DT's reasoning for refusing an oral hearing because the staff member failed to establish that her appeal was receivable, was *ex post facto* and, thereby, erroneous.

The UNAT found that there was an error in the UNRWA DT's calculation of compensation in lieu of rescission of the non-selection decision as there was no evidence to support the conclusion that the UNRWA would have found her unsuitable for the role at the end of the probationary period.

The UNAT was of the view that the UNRWA DT's methodology of fixing the moral damages was flawed but considered that the evidence did not warrant an increase on appeal to the sum awarded by the UNRWA DT.

The UNAT held that an allegedly corrupt dealing by the UNRWA with the staff member's application for a vacant role, the consequence of which was to disentitle her from being appointed on her merits, amounted to taking an administrative decision that was non-compliant with her terms or contract of employment, and concluded that her application was receivable.

The UNAT granted the appeal in part, modified Judgment No. UNRWA/DT/2020/031 and remanded the case in part: it set the compensation in lieu of rescission to JOD 5,160; decided that the claim in relation to the validation decision was receivable by the UNRWA DT and remanded it for judgment on the merits with a recommendation to the parties that a mediated settlement be considered first; and it dismissed the appeal against the amount of the award of moral damages.

Decision Contested or Judgment/Order Appealed

A staff member contested the decision to cancel her invitation to an interview for the post of Deputy Chief of a programme at UNRWA and the decision to approve irregularities allegedly committed during the recruitment process for the post of Chief of the programme, which resulted in her non-selection.

In Judgment No. UNRWA/DT/2022/031, the UNRWA DT concluded that the staff member had been wrongfully excluded from the recruitment process and rescinded the interview cancellation decision. It directed UNRWA to pay her compensation instead of rescission, equivalent to JOD 1,700, and compensation for moral damages in the amount of JOD 1,500. It dismissed as unreceivable her second application but referred one UNRWA senior official, and the circumstances of the case generally, for possible action to enforce accountability.

Legal Principle(s)

If procedural irregularities are established sufficiently to set aside the Judgment at first instance, the appropriate remedy will be to remand the case to the UNRWA DT for re-hearing including, if appropriate, by the hearing of evidence.

The UNRWA DT has broad discretion to make orders for the just and effectual disposal of litigation before it.

Except for setting a presumptive but exceedable maximum award for moral damages, there is no logical causative or similar link in law between such suffering, and the staff member's salary. Such compensation must be fixed by reference to the harm caused to the staff member.

Receivability is a gateway test: assuming an applicant is correct on the merits, will this constitute non-compliance by the Administration with the terms of appointment or contract of the staff member's employment?

The obligation of UNRWA to act lawfully, fairly and reasonably is implicit in the employment relationship and the staff member has the right to expect it.

Outcome

Appeal dismissed on merits; Appeal granted in part
Case remanded

Outcome Extra Text

The staff member's appeal is granted in part, Judgment No. UNRWA/DT/2020/031 is modified and the case is remanded in part. The compensation in lieu of rescission awarded to the staff member is set to JOD 5,160. Her claim in relation to the validation decision is receivable by the UNRWA DT and is remanded for decision on the merits with a recommendation to the parties that a mediated settlement be considered first. Her appeal against the amount of the award of JOD 1,500 for moral damages, as set by the UNRWA DT, is dismissed.

Full judgment

[Full judgment](#)

Applicants/Appellants

Faten Hatim Al Dawoud

Entity

UNRWA

Case Number(s)

2023-1773

Tribunal

UNAT

Registry

New York

Date of Judgement

12 Dec 2023

President Judge

Judge Colgan

Judge Gao

Judge Sheha

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Definition

Implied administrative decision

Notification

Compensation

In-lieu compensation

Non-pecuniary (moral) damages

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Procedure (first instance and UNAT)

Case management

Oral hearings

Staff selection (non-selection/non-promotion)

Full and fair consideration

Applicable Law

Other UN issuances (guidelines, policies etc.)

- UNRWA Area Staff Selection Guidelines

Staff Rules

- Rule 11.2 (d)

UNAT Statute

- Article 2.5
- Article 8.2

UNRWA Area Staff Regulations

- Regulation 11.1

UNRWA Area Staff Rules

- Rule 111.2

UNRWA DT Statute

- Article 2.1(a)
- Article 8
- Article 8.1(c)
- Article 8.3

UNRWA Personnel Directives

- PD A/4/Part II/Rev.7

UNRWA International Staff Rules

- Rule 111.2

Related Judgments and Orders

2013-UNAT-309

2012-UNAT-201

2017-UNAT-742

2014-UNAT-459

2018-UNAT-830