

# **2024-UNAT-1421, Nuha Yahya Abduh**

## **Mohammad**

### **UNAT Held or UNDT Pronouncements**

The UNAT found that an objective reading of the staff member's request for decision review showed clearly that she had only contested the second and not the first reprimand, both issued for not performing assigned teaching tasks. The UNAT considered references to the official having issued it, its date and the remedy sought indicated in the request. The UNAT therefore held that the UNRWA DT had not erred in fact or in law when it considered that the staff member had not submitted a request for decision review in respect of the first reprimand and found the application in the respective part not receivable *ratione materiae*.

The UNAT found that the staff member did not show how the alleged error of not holding an oral hearing would have affected the outcome of her case.

The UNAT was of the view that the principle of double jeopardy was not applicable because, although otherwise characterized by unity of action, the staff member's conduct addressed in the second reprimand letter had covered a different period of time. The UNAT observed that she had continued to commit the same infraction after having been served with the first reprimand letter asking her to assume her duties.

The UNAT, having regard to the sequence of events, was not convinced that the high threshold of a manifest abuse of proceedings had been attained by the Commissioner-General. The UNAT found that the UNRWA DT had exercised its discretionary powers of case management lawfully by ordering the Commissioner-General to submit views on the merits within a specified reasonable time frame and the Commissioner-General had done so.

The UNAT dismissed the appeal and affirmed the UNRWA DT's Judgment.

## Decision Contested or Judgment/Order Appealed

A staff member contested two written reprimands.

In Judgment No. UNRWA/DT/2023/007, the UNRWA DT dismissed the application in respect of the first reprimand as not receivable *ratione materiae* and in respect of the second reprimand on the merits.

The staff member appealed.

### Legal Principle(s)

Only a clear request for decision review, identified through a fair and objective reading, gives the Administration a proper opportunity to review the contested decision.

It is the staff member's responsibility to make sure that the decision he or she disagrees with was clearly included in his or her request for decision review prior to bringing his or her case before the Dispute Tribunal. In the absence of a clear request to review a certain decision, the Dispute Tribunal lacks legal power to extend its jurisdiction thereto.

It is up to each staff member to opt for representation or choose to be self-represented and the UNAT does not interfere with that choice.

The principle of double jeopardy protects staff members from being punished twice for the same act, that took place at the same moment or during the same period of time. It has two dimensions that must be concomitant, i.e., a material dimension reflected in the committed act, and a temporal dimension reflected in the time when such act occurred. If one of those dimensions differs, the principle of double jeopardy shall not be applicable.

Awarding costs for abuse of judicial proceedings remains exceptional, reserved for the rare cases that warrant sanction. An award of costs against a party may normally be made after the latter has been fairly warned that the continuation of abusive acts or omissions would result in awarding costs against him or her.

In determining whether a party has manifestly abused the process, the Dispute Tribunal exercises discretion and, on appeal, the Appeals Tribunal considers whether the Dispute Tribunal exercised that discretion reasonably and rationally.

## Outcome

Appeal dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Nuha Yahya Abduh Mohammad

## Entity

UNRWA

## Case Number(s)

2023-1807

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

30 Apr 2024

## President Judge

Judge Sheha

Judge Savage

Judge Forbang

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Abuse of process before UNDT/UNAT

Manifest abuse

Disciplinary matters / misconduct

Non-disciplinary/administrative measures

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Procedure (first instance and UNAT)

Admissibility of evidence

Oral hearings

## Applicable Law

UNAT Statute

- Article 2.1(d)

UNRWA Area Staff Rules

- Rule 111.2(1)

UNRWA DT Statute

- Article 10.6
- Article 8

## Related Judgments and Orders

2023-UNAT-1349

2013-UNAT-311

2015-UNAT-595

2017-UNAT-733

2022-UNAT-1219

2022-UNAT-1196

2013-UNAT-370

2013-UNAT-354

2013-UNAT-388