

2024-UNAT-1429, Hakam Shahwan

UNAT Held or UNDT Pronouncements

The UNAT held that with no evidence of a manifest abuse of proceedings by the Commissioner-General before the UNRWA DT, nor any finding by the UNRWA DT of such an abuse of proceedings, the legal cost orders made by the Dispute Tribunal did not accord with the terms of Article 10 of the UNRWA DT Statute and were therefore unjustified and could not be sustained. Moreover, if the UNAT considered that the legal costs were awarded by the UNRWA DT under Article 10(5)(b) (which was not apparent from the Judgment), there existed no basis to justify such an order given the evidence before the Dispute Tribunal. Accordingly, it followed that in awarding legal costs against the Commissioner-General the UNRWA DT erred.

As to Mr. Shahwan's claim to moral damages for mental stress and anxiety, the UNAT held that in the absence of any corroborating evidence as to his mental state, the evidence of Mr. Shahwan alone was insufficient, and the Dispute Tribunal did not err in rejecting his claim.

Turning to Mr. Shahwan's claim for moral damages as a consequence of UNRWA's failure to provide him with a certificate of service and performance evaluations, the UNAT found it material that UNWRA had expressly agreed in a Separation Agreement that such documentation would be provided to him, but then inexplicably failed to do so.

The UNAT concluded that there was no serious dispute that following his termination Mr. Shahwan remained unemployed and was placed in a precarious financial position over an extended period. Without the requested personnel documentation, Mr. Shahwan was unable to prove his past employment record with the United Nations to prospective employers. The UNAT found that it was reasonable to conclude that Mr. Shahwan suffered harm as a result of the illegality committed, namely the Commissioner-General's flagrant disregard for the terms of the Separation Agreement and that there existed a nexus between such harm and the illegality. For these reasons, the UNAT held that the UNRWA DT erred in dismissing Mr. Shahwan's

claim for moral damages in this respect. The UNAT considered an award of moral damages in the amount of three months' net base salary to be appropriate.

Judgment No. UNRWA DT/2023/018 is reversed in part.

Decision Contested or Judgment/Order Appealed

In Judgment No. UNRWA DT/2023/018, the UNRWA DT decided three applications filed by Mr. Shahwan. In a consolidated judgment, the UNRWA DT rescinded the Agency's decision to place a Note in Mr. Shahwan's Official Status File and ordered the Agency to pay Mr. Shahwan 3,000 Jordanian dinars (JOD) for his legal costs but denied his other requests for compensation. The UNRWA DT also dismissed Mr. Shahwan's challenge to the Agency's denial of his sick leave request as not receivable. Lastly, the UNRWA DT rescinded the Agency's decision to refuse to complete Mr. Shahwan's performance evaluation reports and to provide a fulsome certificate of service. In connection with the latter claim, the UNRWA DT ordered the Agency to pay Mr. Shahwan an additional JOD 3,000 for his legal costs but denied his other requests for compensation.

The Commissioner-General appealed the award of legal costs to Mr. Shahwan. Mr. Shahwan appealed the denial of moral damages.

Legal Principle(s)

The Dispute Tribunal is required to make a finding that there has been a manifest abuse of the proceedings by a party in order to award legal costs pursuant to Article 10 of the UNRWA DT Statute.

To award compensation for harm, clear evidence of such harm must exist. Where the harm takes the form of legal costs incurred, evidence is required that the circumstances of a matter are of such a nature as to justify such an unusual award, including that no staff legal assistance was available to the staff member which created the need to seek external legal advice or representation.

Ordinarily, the testimony of an applicant alone, without corroboration by independent evidence, expert or otherwise, affirming that non-pecuniary harm has occurred, is not sufficient to support an award of damages. Yet, in certain cases the

evidence of the applicant, considered together with the nature of the violation and the facts surrounding it, may provide a sufficient and convincing basis for the reasonable inference that damage has been sustained of such a nature as to warrant the award of compensation for harm.

Outcome

Appeal granted; Appeal granted in part

Outcome Extra Text

The orders of legal costs made against the Commissioner-General by the UNRWA DT are reversed. Mr. Shahwan's request for compensation is granted in part. The Commissioner-General is directed to pay Mr. Shahwan compensation for non-pecuniary damage equivalent to three months' net base salary in total.

Full judgment

[Full judgment](#)

Applicants/Appellants

Hakam Shahwan

Entity

UNRWA

Case Number(s)

2023-1816

2023-1817

Tribunal

UNAT

Registry

New York

Date of Judgement

3 May 2024

President Judge

Judge Savage

Judge Gao

Judge Colgan

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abuse of process before UNDT/UNAT

Costs

Compensation

Non-pecuniary (moral) damages

Procedure (first instance and UNAT)

Oral hearings

Applicable Law

UNAT RoP

- Article 18.1

UNAT Statute

- Article 8.3
- Article 9.1(b)

UNRWA DT Statute

- Article 10.5(b)
- Article 10.6

Related Judgments and Orders

2023-UNAT-1364

2017-UNAT-712

2022-UNAT-1212

2018-UNAT-874

2021-UNAT-1095

2019-UNAT-926

2017-UNAT-774

2021-UNAT-1118

2023-UNAT-1346

2019-UNAT-939

2017-UNAT-742