

2024-UNAT-1442, Alaa Yasir Al-Bustanji

UNAT Held or UNDT Pronouncements

The UNAT held that the UNRWA DT correctly identified several procedural irregularities in the contested decision. Pursuant to paragraph 9 of the Department of Internal Oversight Services (DIOS) Technical Instruction 02/2016 on UNRWA's Investigation Policy (DTI 02/2016), the investigation should have been authorized within 10 days of the Intake Committee's report; yet here, the authorization to investigate took 11 months to be given. The UNAT found that this delay was so excessive that it would distress an average person.

Analyzing the evidence presented by the staff member regarding the nexus between the delay in the authorization of the investigation and the alleged harm, the UNAT found that while her husband's written statement lacked credibility, and the 22 September 2018 medical report from her treating psychiatrist reflected harm that predated the investigative delays, the 21 October 2020 letter from her psychiatrist, noting her mental and physical ailments, corroborated her testimony.

The UNAT concluded that the staff member met her burden of proof to support an award of moral damages of JOD 400 and that this compensation was reasonable, especially since the amount awarded was minimal and largely symbolic (i.e., one-half of the staff member's one-month salary), while Article 10(5)(b) of the UNRWA DT Statute allows compensation of up to two years' net base salary.

The UNAT dismissed the appeal and affirmed Judgment No. UNRWA/DT/2022/052, with Judge Savage dissenting.

Decision Contested or Judgment/Order Appealed

UNRWA DT Judgment: A staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) contested the decisions of the Agency: i) to place her on Administrative Leave With Pay (ALWP) pending the completion of an investigation into an allegation of misconduct; and ii) to serve her with a written reprimand letter.

In its Judgment No. UNRWA/DT/2022/052, the UNRWA DT dismissed the staff member's application. It concluded that the part of her application contesting the decision to place her on ALWP pending the completion of an investigation was not receivable *ratione materiae* because she did not submit any request for decision review of that contested decision. The UNRWA DT also found that the Agency's decision to serve her with a written reprimand letter was a rational and proportionate administrative measure. However, the UNRWA DT ordered the Agency to amend the title of the reprimand letter in the staff member's Official Status File (OSF) to remove any reference to it being a disciplinary measure letter and to pay her compensation in the amount of JOD 400 for moral damages resulting from the Agency's undue delays during the investigative process.

The Commissioner-General appealed against the UNRWA DT's award of moral damages.

Legal Principle(s)

Three elements must be proved in order for compensation for harm to be awarded to a staff member, namely: (i) an illegality; (ii) the harm itself; and (iii) a nexus between these two requirements. Nevertheless, the first instance tribunal can properly award moral damages based on its finding of procedural irregularities, such as undue delays in the completion of the investigative process, even in the absence of an express finding of substantive illegality on the merits of the case, when such procedural irregularities were detrimental to the staff member's well-being.

Compensation must be determined on a case-by-case basis. The UNAT should always give deference to the UNDT in exercising its discretion and should not lightly disturb the quantum of damages. Indeed, the UNDT is best placed to conclude from the evidence, records, or otherwise, whether or not a claim for moral damages is established and to calculate an appropriate award.

There is no absolute rule regarding the nature or evidence required to support a claim for moral damages. Sufficient evidence beyond the staff member's testimony may take the form of the overall underlying circumstances, testimony of percipient witnesses, or expert testimony.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Alaa Yasir Al-Bustanji

Entity

UNRWA

Case Number(s)

2023-1780

Tribunal

UNAT

Registry

New York

Date of Judgement

30 May 2024

President Judge

Judge Ziadé

Judge Savage

Judge Forbang

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Evidence of harm

Non-pecuniary (moral) damages

Due process

Delay

Investigation

Due process

Applicable Law

Other UN issuances (guidelines, policies etc.)

- UNRWA Investigation Policy (DIOS Technical Instruction 02/2016)

UNRWA DT Statute

Related Judgments and Orders

2018-UNAT-874

2021-UNAT-1133

2023-UNAT-1372

2020-UNAT-1001

2015-UNAT-514

2018-UNAT-810

2018-UNAT-885

2017-UNAT-742