

2024-UNAT-1463, AAW

UNAT Held or UNDT Pronouncements

The UNAT noted that the UNRWA DT had ordered each party to nominate a psychiatrist, who in turn were to designate a third psychiatrist to review whether the staff member's mental condition at the time he committed the burglary, sentencing for which had been the grounds for his separation in the interest of the Agency. The Commissioner-General failed to comply with this instruction, without explanation, thereby leaving the UNRWA DT with no medical information about AAW's condition at the time of the burglary.

The UNAT found that the Commissioner-General had clearly and manifestly abused the proceedings by a series of intentional acts and serious omissions which had the effect of significantly obstructing and delaying the proceedings and had deprived the staff member of his right to substantive justice. Considering the gravity of the Commissioner-General's abuse of process, the UNAT increased the amount awarded to the staff member from USD 4,000 to USD 15,000.

The UNAT was of the view that the UNRWA DT had erred, fundamentally, by making crucial inferences in favour of the obstructing party. The UNAT held that on remand, the UNRWA DT should consider it within its jurisdiction to directly appoint a psychiatrist to conduct an appropriate examination and provide the medical opinion.

The UNAT held that the UNRWA DT issuing its judgment without waiting until the staff member received the Arabic translation of the Commissioner-General's closing arguments had not comported with the standards of good practice but that this error had not affected the substance of the judgment.

The UNAT granted the appeal, modified the UNRWA DT's Judgment in respect of the award of costs and reversed it in the remaining part, and remanded the case to a different judge of the UNRWA DT for a review on the merits.

Decision Contested or Judgment/Order Appealed

A former staff member contested the decision to terminate his appointment in the interest of UNRWA due to having been convicted of burglary and sentenced to one year of imprisonment.

In Judgment No. UNRWA/DT/2023/014, the UNRWA DT dismissed the application on the merits and awarded costs against the Commissioner-General in the amount of USD 4,000 for abuse of process in favour of the staff member.

The staff member appealed.

Legal Principle(s)

It is incumbent upon the Appeals Tribunal to determine whether the Dispute Tribunal exceeded, or failed to exercise, its jurisdiction, or erred on a question of law, procedure or fact to the extent it was exercising its jurisdiction.

When a party to an administrative or judicial proceeding fails to comply with an order regarding the production of evidence or to comply with orders regarding the formation of a record for decision, the appropriate consequence is the making of inferences adverse to that party or estopping that party from maintaining a factual position on the subject.

Outcome

Appeal granted, Case remanded

Outcome Extra Text

The UNAT increases the award of costs against the Commissioner-General for abuse of process.

Full judgment

[Full judgment](#)

Applicants/Appellants

AAW

Entity

UNRWA

Case Number(s)

2023-1828

Tribunal

UNAT

Registry

New York

Date of Judgement

2 Aug 2024

President Judge

Judge Ziadé

Judge Forbang

Judge Sheha

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Costs

Conduct of counsel

Subject matter (ratione materiae)

Case management

Separation from service
Production of documents
Abuse of process before UNDT/UNAT
Conduct
Jurisdiction / receivability (UNDT or first instance)
Procedure (first instance and UNAT)

Applicable Law

Laws of other entities (rules, regulations etc.)

- UNRWA Agency Policy in respect of Staff who are arrested

UNAT Statute

- Article 2.1
- Article 2.1(d)
- Article 2.4(b)
- Article 9.2
- Article 2.6

UNRWA DT RoP

- Article 13.2
- Article 14

UNRWA DT Statute

- Article 10.6
- Article 9.1
- Article 11.3

Related Judgments and Orders

2020-UNAT-1011

2020-UNAT-1046