

2024-UNAT-1417, Jafar Wakid

UNAT Held or UNDT Pronouncements

The UNAT held that none of the factors that the UNRWA DT considered as warranting exceptional compensation, were indeed exceptional, either individually or collectively. The UNAT found that the former staff member's permanent staff status, his long service, his difficulties in finding subsequent employment, his status as a refugee, the unproven nature of the sexual harassment allegations, and the delays in his case, were not the type of circumstances that would warrant an exceptional compensation award. The UNAT held that the UNRWA DT erred in awarding in-lieu compensation above the statutory cap of two years' net base pay.

The UNAT further held that the UNRWA DT erred in relying on the medical report submitted by the former staff member as a basis for moral damages. The UNAT found that the medical report did not demonstrate any nexus between the investigative delays and his illness. The UNAT held that the moral damages award should be rejected.

Lastly, the UNAT held that the UNRWA DT exceeded its jurisdiction in awarding a termination indemnity.

Judgment No. UNRWA/DT/2023/13 was modified.

Decision Contested or Judgment/Order Appealed

In Judgment No. UNRWA/DT/2023/013, the UNRWA DT rescinded the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East to impose the disciplinary measure of separation from service without termination indemnity on Mr. Jafar Wakid. The UNRWA DT set in-lieu compensation at four years' net-base salary, and awarded his termination indemnity and compensation for moral damages in the amount of USD 3,000.

The Commissioner-General appealed the compensation award as excessive and sought a reduction of the in-lieu compensation and vacatur of the termination indemnity and moral damages awards. The staff member appealed the award of in-lieu compensation as insufficient, and also sought an increase of moral damages.

Legal Principle(s)

Interpreted in the context of compensation under Article 10(5)(b) of the UNRWA DT Statute, “exceptional cases” means a case where (i) unusual factors (ii) led to aggravated harm for the staff member, justifying an enhanced award for compensation to the appropriate extent.

To consider a case exceptional requires the existence of egregious factors such as reckless abuse of power, blatant harassment, discrimination, retaliatory threats and hostility, humiliation, lack of good faith, manifest unfairness or disproportionality, grave violations of due process, or manipulation.

The Appeals Tribunal is entitled and obliged to interfere in a compensation award where: i) there has been an irregularity or misdirection (such as considering irrelevant facts; ignoring relevant ones; or a material error of law); ii) no sound or reasonable basis exists for the award made by the UNDT; or iii) there is a substantial variation or a striking disparity between the award made by the UNDT and the award that the Appeals Tribunal considers ought to have been made.

Compensation in lieu presumes a hypothetical continuation of appointment and entitlement to salary that results, whereas termination indemnity stands on the premise of a premature separation from service. Therefore, compensation in lieu and termination indemnity cannot coexist.

Outcome

Appeal dismissed on merits; Appeal granted

Outcome Extra Text

In-lieu compensation was reduced to two years' net base salary. The award of termination indemnity and moral damages was reversed.

Full judgment

[Full judgment](#)

Applicants/Appellants

Jafar Wakid

Entity

UNRWA

Case Number(s)

2023-1802

2023-1822

Tribunal

UNAT

Registry

New York

Date of Judgement

26 Apr 2024

President Judge

Judge Sheha

Judge Sandhu

Judge Savage

Language of Judgment

English

Arabic

Issuance Type

Judgment

Categories/Subcategories

In-lieu compensation

Non-pecuniary (moral) damages

Compensation

Applicable Law

UNRWA Area Staff Rules

- Rule 109.9(3)

UNRWA DT Statute

- Article 10.5(b)

Related Judgments and Orders

2018-UNAT-874

2014-UNAT-442

UNDT/2009/036

2013-UNAT-305

2010-UNAT-092

2014-UNAT-433-Corr.1

2016-UNAT-622

2022-UNAT-1187

2023-UNAT-1346

2019-UNAT-909

2017-UNAT-730

2015-UNAT-501

2022-UNAT-1304