

2024-UNAT-1458, Islam Said

UNAT Held or UNDT Pronouncements

The Appeals Tribunal found, in relation to the first application, that Ms. Said has produced no evidence of harm, much less of harm caused by an illegality, and therefore the request for damages was denied.

As to the second application, the Appeals Tribunal found that the investigation had been closed with no action taken, and no adverse material from that investigation had been placed in Ms. Said's Official Status File. In the absence of an appealable administrative decision, the Appeals Tribunal was satisfied that the UNRWA DT was correct in finding that the second application was not receivable *ratione materiae*. As a result, Ms. Said's request for material damages was dismissed. To the extent that Ms. Said sought moral damages in connection with her second application, the Appeals Tribunal only found one irregularity, i.e. the procedural error of failing to rule on Ms. Said's motions for translation. The Appeals Tribunal found that Ms. Said had presented no evidence of moral damages caused by that error and, accordingly, denied her request for such damages.

Finally, the Appeals Tribunal found no grounds to reverse the decision of the UNRWA DT not to refer any individuals to the Commissioner-General to enforce accountability.

The Appeals Tribunal dismissed the appeal and affirmed Judgment No. UNRWA/DT/2023/015.

Decision Contested or Judgment/Order Appealed

Ms. Said filed two applications before the UNRWA Dispute Tribunal contesting: first, UNRWA's decision to issue her a letter of reprimand in relation to alleged misconduct which the Agency found established as a result of an investigation; and

second, the purported decision to place adverse material in her Official Status File in relation to a second investigation.

The UNRWA DT disposed of both applications in consolidated Judgment No. UNRWA/DT/2023/015. In relation to her first application, the UNRWA DT rescinded the decision to issue Ms. Said a letter of reprimand finding that the Agency's determination that Ms. Said had committed misconduct could not stand; the UNRWA DT however declined to award her moral and material damages. The UNRWA DT dismissed as not receivable *ratione materiae* Ms. Said's second application challenging the purported decision to place adverse material in her Official Status File. The UNRWA DT found that the Agency had never placed any material in Ms. Said's OSF related to that investigation and that as such there was no appealable administrative decision.

Ms. Said filed an appeal.

Legal Principle(s)

There are three fundamental prerequisites for an award of compensatory relief, including for moral damages: the harm; an illegality; and a nexus between the illegality and the harm. Moreover, before moral damages may be awarded, there must generally be a medical or psychological report or other evidence of the harm.

Fundamental principles of fairness and equality of access to the internal justice system lead to the conclusion of determining such motions for translation of documents and providing translations, if called for, prior to resolving the merits of the matter.

An application is receivable only if it contests an administrative decision that produces direct legal consequences affecting a staff member's terms or conditions of appointment.

The UNRWA DT has discretion to make a referral for accountability, but such power is to be exercised sparingly and only when the evidence discloses serious flaws in the underlying conduct.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Islam Said

Entity

UNRWA

Case Number(s)

2023-1839

Tribunal

UNAT

Registry

New York

Date of Judgement

26 Jul 2024

President Judge

Judge Ziadé

Judge Sandhu

Judge Forbang

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Evidence of harm

Subject matter (*ratione materiae*)

Procedure (first instance and UNAT)

Referral for accountability

Non-pecuniary (moral) damages

Pecuniary (material) damages

Compensation

Jurisdiction / receivability (UNDT or first instance)

Applicable Law

UNAT Statute

- Article 2.1(d)
- Article 9.3

UNRWA DT Statute

- Article 10.5(b)
- Article 10.8

Related Judgments and Orders

2021-UNAT-1118

2023-UNAT-1329

2014-UNAT-460