

2024-UNAT-1507, Mahmoud Ahmad Ali

UNAT Held or UNDT Pronouncements

The UNAT held that the UNRWA DT rightly identified that the standard of proof for placing the staff member on ALWOP was whether there was reasonable suspicion or reasonable grounds to believe that the staff member had committed the alleged misconduct.

The UNAT rejected the staff member's argument that his ex-wife's withdrawal of the complaint against him in a national court should have stopped all investigations against him. The UNAT noted that the national court had provided the case records to the Agency, and the Agency, following its complete assessment of the situation, can proceed with an investigation even if the initial complaint against him was withdrawn. The goal of the disciplinary process within UNRWA is not designed to assess the subjective claims between the parties, but rather to ascertain whether misconduct, contrary to the public interests of the Agency, was committed.

Finally, the UNAT held that the UNRWA DT did not err in concluding that there was sufficient evidence to support reasonable grounds that Mr. Ali had committed misconduct in order for the Agency to place him on ALWOP pending the outcome of its investigation.

The UNAT dismissed the appeal and affirmed Judgment No. UNRWA/DT/2023/044.

Decision Contested or Judgment/Order Appealed

In Judgment No. UNRWA/DT/2023/044, the Dispute Tribunal for the United Nations Relief and Works Agency (UNRWA) dismissed the application of Mr. Ali, an UNRWA staff member who challenged the Agency's decision to place him on Administrative Leave Without Pay (ALWOP) pending the outcome of an investigation into

misconduct.

The staff member appealed.

Legal Principle(s)

Suspension from functions through administrative leave, with or without pay, is not a disciplinary sanction, but rather a temporary preventive measure which the Agency may impose on the staff member during investigations conducted against him or her. As such, the applicable standard of proof for the Agency to impose administrative leave is not comparable to the proof required for the imposition of disciplinary measures.

The concepts of “prima-facie” and “probable cause” both share the requirement of serious or reasonable grounds to believe (with stronger emphasis in the case of “probable cause”), that the staff member might have in fact committed the alleged misconduct. The Administration is not, therefore, required, at an early stage of investigation, to satisfy itself that there is a preponderance of evidence to support the misconduct allegation, or to meet the higher bar of clear and convincing evidence. Evidence showing reasonable grounds would suffice for the decision of placing a staff member on ALWP or on ALWOP.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Mahmoud Ahmad Ali

Entity

UNRWA

Case Number(s)

2024-1887

Tribunal

UNAT

Registry

New York

Date of Judgement

20 Dec 2024

President Judge

Judge Sheha

Judge Sandhu

Judge Ziadé

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Non-disciplinary

Non-disciplinary/administrative measures

Burden of proof

Disciplinary matters / misconduct

Applicable Law

UNAT Statute

- Article 2.1(e)

UNRWA Area Staff Regulations

- Regulation 10.4

UNRWA Area Staff Rules

- Rule 110.2

UNRWA Personnel Directives

- PD A/10/Rev.3

Related Judgments and Orders

2013-UNAT-292

2011-UNAT-110

2022-UNAT-1187

2019-UNAT-973