Rasha Aladdin Al Osta (Appellant)

v.

Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (Respondent)

Judgment

Before: Judge Graeme Colgan, Presiding

Judge Leslie F. Forbang

Judge Abdelmohsen Sheha

Case No.: 2024-1935

Date of Decision: 27 June 2025

Date of Publication: 4 August 2025

Registrar: Juliet E. Johnson

Counsel for Appellant: Mohammad Mustafa Abdullah

Counsel for Respondent: Stephen Margetts

JUDGE GRAEME COLGAN, PRESIDING.

- 1. Rasha Aladdin Al Osta, a staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or the Agency), contested the Agency's decision not to select her for either of two vacant posts of Chief Area Office, Grade 20, All Areas, UNRWA (Post) (contested decision).
- By Judgment No. UNRWA/DT/2024/002 (impugned Judgment), the UNRWA Dispute 2. Tribunal (UNRWA DT) dismissed the application on the merits.
- Ms. Al Osta has appealed the impugned Judgment with the United Nations 3. Appeals Tribunal (Appeals Tribunal or UNAT).
- For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the 4. impugned Judgment.

Facts and Procedure²

- At the relevant time of events, Ms. Al Osta was employed by the Agency as Emergency 5. Coordinator, Grade H, Step 2, at the Emergency Coordination Unit, Jordan Field Office (JFO).3
- 6. On 16 June 2019, the Agency published, internally and externally, a Vacancy Announcement (VA) to fill the two Posts. The minimum qualifications for the Post included, pertinently:4

Advanced university degree in business, public administration, political science, sociology or other related discipline.

At least ten years of relevant experience of which five years should have been in a large governmental or international organization at a senior level.

Under "Equivalency", the VA set out the following:5 7.

¹ Al Osta v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, Judgment dated 16 January 2024.

² Summarized from the impugned Judgment as relevant to the appeal.

³ Impugned Judgment, para. 4.

⁴ Ibid., para. 5.

⁵ Ibid.

When the minimum requirements are not fully met, the Field Director may exceptionally substitute part of the unmet requirements with a combination of relevant academic qualifications, additional professional training and progressive relevant work experience.

- 8. On 25 September 2019, the Agency announced a new deadline for applications in order "to attract more qualified candidates".⁶
- 9. On 21 October 2019, Ms. Al Osta applied for the Post. In her Personal History Profile (PHP), she submitted as her qualifications:⁷

Education

Bachelor—English Literature

Experience

- March 2005

 –January 2010, Tracing Assistant, the International Committee of the Red Cross
- February 2005–October 2015, Senior Tracing Assistant, the International Committee of the Red Cross
- November 2015–April 2016, Project and Reporting Officer, UNRWA
- May 2016–October 2019, Emergency Coordinator, UNRWA
- 10. The Agency received a total of 335 applications during the two application periods. Twenty-eight candidates were shortlisted for a written test, including Ms. Al Osta and the selected candidate, on an equivalency basis. Six candidates, including Ms. Al Osta, scored above the passing grade.⁸
- 11. On 16 September 2020, a "Grading and Equivalency Determination Form" was prepared in respect of Ms. Al Osta which recommended that she be considered to have met the requirements of the Post on an equivalency basis because her first-level university degree was supplemented by additional years of experience.⁹
- 12. On 20 September, an Interview Panel (Panel) interviewed six candidates. The Panel unanimously recommended two candidates, including Ms. Al Osta, to be appointed to the two

7 Ibid., para. 7.

⁶ *Ibid.*, para. 6.

⁸ Ibid., para. 8.

⁹ *Ibid.*, para. 9.

vacant Posts. The Recruitment Report did not indicate whether any candidates had been considered on an equivalency basis.¹⁰

- 13. On 28 September 2020, the Director of UNRWA Affairs, Jordan, approved the equivalency determination for Ms. Al Osta and the Panel's recommendation for both appointments.¹¹
- 14. On 18 October 2020, the Director of Human Resources (DHR) confirmed the Panel's recommendation and referred the case to the Advisory Committee on Human Resources (ACHR).¹²
- 15. On 8 November 2020, the ACHR held a meeting. According to the minutes of the meeting, the ACHR noted that the Human Resources colleagues at JFO had provided additional clarification that Ms. Al Osta met the requirements of the Post on an equivalency basis and had asserted to the ACHR that she should be considered for the Post. However, the ACHR found that even if she had a total of 15 years and 5 months experience on an equivalency basis, her 10 years' experience as Tracing and Senior Tracing Assistant at the International Committee of Red Cross had not been at a supervisory level and was not directly relevant to the Post, and that only 5 years at the Agency would count as relevant supervisory experience. The ACHR concluded that Ms. Al Osta should not have been shortlisted as she did not meet the minimum experience and education requirements of the Post, and that the recruitment process had been flawed at the shortlisting stage. Therefore, the ACHR did not support the Panel's recommendation to appoint her.¹³
- 16. On 25 November 2020, Ms. Al Osta was informed of the contested decision not to select her.¹⁴
- 17. On 23 January 2021, she submitted a request for decision review (RDR). The Agency did not respond to her RDR. 15
- 18. On 20 May 2021, Ms. Al Osta filed her application with the UNRWA DT.

¹⁰ *Ibid.*, para. 10.

¹¹ *Ibid.*, para. 11.

¹² *Ibid.*, para. 12.

¹³ *Ibid.*, para. 13.

¹⁴ *Ibid.*, para. 14.

¹⁵ *Ibid.*, para. 15.

The impugned Judgment

- 19. The UNRWA DT dismissed the application.
- 20. The UNRWA DT noted that the minimum requirements for the Post were clear. Ms. Al Osta does not contest that she did not have an advanced university degree. The Agency shortlisted her on an equivalency basis, as she did not meet the educational requirement.¹⁶
- 21. The UNRWA DT found that the Agency had no discretion to shortlist Ms. Al Osta on an equivalency basis, as there were already a sufficient number of candidates who met the minimum requirements for shortlisting under the relevant provisions of UNRWA Area Staff Personnel Directive No. A/4/Part II/Rev.7/Section I (Area Staff Selection Policy).¹⁷ Hence, she had no foreseeable chance of being selected for the Post. As a result, any later errors in the recruitment process had no ultimate impact on her non-selection. Accordingly, it was unnecessary to review whether the Agency erred in finding her experience irrelevant for the Post.¹⁸

Procedure before the Appeals Tribunal

22. On 24 June 2024, Ms. Al Osta filed an appeal of the impugned Judgment with the Appeals Tribunal, to which the Commissioner-General filed an answer on 23 August 2024.

Submissions

Ms. Al Osta's Appeal

- 23. Ms. Al Osta requests the Appeals Tribunal to reverse the impugned Judgment, rescind the contested decision and order compensation in lieu of rescission, and grant her compensation for moral harm. Alternatively, she asks that the UNAT remand the case to the UNRWA DT for consideration by a different Judge.
- 24. Ms. Al Osta argues that the UNRWA DT erred procedurally by refusing to hold an oral hearing. By simply accepting the Commissioner-General's justification that she did not have 10 years of relevant experience, the UNRWA DT failed to exercise its mandate and took on the role

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¹⁶ Ibid., para. 29.

¹⁷ Citing Al-Thaher v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, Judgment No. UNRWA/DT/2023/046, paras. 33-35 and footnote 2, concerning the same recruitment exercise, the UNRWA DT noted that the selected candidate had likewise been wrongly shortlisted on an equivalency basis.

¹⁸ Impugned Judgment, paras. 31-32.

of counsel. The conclusion reached by the ACHR and the UNRWA DT raises questions about the selected candidate, including why that individual was shortlisted on an equivalency basis. The UNRWA DT should have used its authority to obtain answers to those questions at an oral hearing.

25. Ms. Al Osta contends that the UNRWA DT, by ignoring that she was a victim of discrimination, arrived at an unjust and irrational judgment. Likewise, the UNRWA DT did not address the Agency's failure to respond to her RDR.

The Commissioner-General's Answer

- 26. The Commissioner-General requests the Appeals Tribunal to dismiss the appeal.
- 27. The Commissioner-General argues that Ms. Al Osta has failed to establish any reversible error of fact, law, or procedure by the UNRWA DT, warranting intervention by the Appeals Tribunal. While being legally represented, she has failed to adduce the necessary grounds of appeal.
- 28. The Commissioner-General submits that the UNRWA DT properly exercised its jurisdiction when it denied Ms. Al Osta's request for an oral hearing. She did not advance any particular reasons in her application why an oral hearing was required. Her submissions regarding the qualifications of the selected candidate were not made before the UNRWA DT and thus cannot be introduced for the first time on appeal.¹⁹ The UNRWA DT conducted an extensive discovery process and issued production orders. She has failed to identify any relevant evidence that she may have adduced in the course of an oral hearing.
- 29. The Commissioner-General contends that the UNRWA DT did not commit an error regarding whether Ms. Al Osta had 10 years of experience. She has not shown that any additional submissions in this regard would have altered the outcome of the case. The issue was a question of law applied to the fact that she had been improperly shortlisted.
- 30. The Commissioner-General submits that the UNRWA DT did not err by not recognizing Ms. Al Osta's allegations of discrimination. Her claim is unsubstantiated and no specific error by the UNRWA DT has been identified.

¹⁹ The Commissioner-General submits that Ms. Al Osta's situation was considerably different from that of the selected candidate who had 26 years of experience and was recommended for appointment by the ACHR but, in any event, even if shortlisting the selected candidate was unlawful, Ms. Al Osta cannot rely on the unlawful treatment having conferred a benefit on the selected candidate.

31. The Commissioner-General argues that the relief sought by Ms. Al Osta has no legal basis as she has failed to establish any reversible error by the UNRWA DT.

Considerations

- 32. As to whether the UNRWA DT erred in law by directing that the case before it was to be decided on the papers and without an in-person hearing, we confirm that both the UNRWA DT Statute and UNAT jurisprudence vest in the Dispute Tribunal the discretion to determine such questions.
- 33. The UNRWA DT Rules of Procedure provide, at Article 11 that the "Judge hearing a case may hold oral hearings", and at Article 14 that the "Tribunal may, at any time, either on an application of a party or of its own initiative make any order or give any direction which appears to the judge to be appropriate for a fair and expeditious disposal of the case and to do justice to the parties".
- 34. Case law applicable to this question includes *Abu Hatab*, which is authority for the proposition that not only must procedural error be established but also that the Appeals Tribunal must be satisfied that this error must have affected the outcome of the case before the Dispute Tribunal.²⁰ This second requirement is mandated by Article 2(1)(d) of the Appeals Tribunal Statute.
- 35. The UNRWA DT dealt with Ms. Al Osta's application for an oral hearing in two brief paragraphs (22 and 23) of its substantive Judgment. Having cited the relevant statutory powers, it held that the case before it was "sufficient to render a judgment without an oral hearing" and therefore denied the application. Although this reasoning is economical, Ms. Al Osta has not persuaded us that there were issues brought to the Dispute Tribunal's attention that could not have been justly decided simply on the documents and submissions adduced to the UNRWA DT. For example, there was no disputed issue of fact resolvable by determining credibility of witnesses, or an issue or issues of law on which the Tribunal could only be persuaded by oral argument of the parties. The case before the UNRWA DT was able to be decided by applying relevant and undisputed facts to the applicable legal principles.

²⁰ Ismail Said Abu Hatab v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, Judgment No. 2023-UNAT-1350, paras. 28-30 (internal citations omitted).

- 36. Ms. Al Osta's argument is that the UNRWA DT should have convened a hearing at which it ought to have conducted a wide-ranging investigation not only of her circumstances, but also of the qualifications and experience for the role of the person or persons who were appointed and who Ms. Al Osta contends were also subject to equivalency considerations as she was. For reasons we set out subsequently, this is not the role of the UNRWA DT. It was not only unnecessary for there to have been a hearing, but it would have been inappropriate for the Dispute Tribunal to have held one to consider these arguments. We have not been persuaded that, despite its economical reasoning, the Dispute Tribunal erred in law in refusing Ms. Al Osta's request for an oral hearing.
- 37. We turn now to Ms. Al Osta's substantive grounds of appeal, those being whether the applicable selection procedure was followed and whether her application for the Post was given fair and adequate consideration.
- 38. As already noted, Ms. Al Osta's appeal is directed in significant part against the suitability of the selected candidate(s) rather than the merits of her own non-selection. That focus, if accepted, would be to misapply the process of judicial review of the contested decision not to appoint Ms. Al Osta. The process focuses on the correctness in fact and in law of the contested decision rather than on the comparative merits of candidates. If the Agency complied with the relevant appointment processes, then the merits of its decisions to appoint and not to appoint staff members are generally left to the discretion of the officials best placed to make those decisions so long as the Administration's discretion is exercised lawfully.
- 39. Despite having been successful in the preliminary selection processes and having been recommended for appointment by the Panel, was Ms. Al Osta wrongfully not selected for appointment because she did not have the requisite educational qualifications and/or 10 years of experience?
- 40. Ms. Al Osta conceded before the UNRWA DT that she did not hold an advanced university degree. Therefore, she was only able to advance in the recruitment process on an equivalency basis if equivalency had been met in her case. The UNRWA DT correctly concluded that, there having been 27 other candidates for the Post, she had been wrongly shortlisted because there were sufficient candidates who met the VA's educational criteria under the Area Staff Selection Policy. Because she was wrongly shortlisted, her participation in the remainder of the recruitment process was unlawful and any errors in that subsequent unlawful process affecting her (including an

assessment of her professional experience) could not have altered her situation and, in particular, could not have led to her appointment to the Post.

- 41. The relevant norms governing the procedures for selection and appointment were as follows:
- a) Area Staff Personnel Directive No. A/4/Part II/Rev.7/Section I (Area Staff Selection Policy)

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AUTHORITY FOR STAFFING

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10. The DHR may, at his/her discretion, refer any recruitment case at grade 18 and above to the ACHR for review and recommendation to the Commissioner-General.

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RESPONSIBILITIES OF THOSE INVOLVED IN THE AREA SELECTION PROCESS

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Director of Human Resources

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18. For posts at grade 18 and above, the DHR will scrutinize all recruitment recommendations received from Directors for compliance with policies and procedures, and will exercise the option to refer cases which are incomplete or procedurally flawed back to the Hiring Director for resubmission. After clearing a recommendation, the DHR will submit it to the Commissioner-General for decision. The DHR also has the discretion to refer a case to the ACHR, for review and recommendation to the Commissioner-General.

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SELECTION POLICY AND RELATED PROCESSES

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Competitive recruitment of internal and external candidates - Major steps

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Evaluation of applications

- 35. After the closing date of a vacancy the Recruitment Administrator reviews the applications, and generates a long list of applicants who meet all or most of the post requirements set out in the job description and vacancy announcement.
- 36. The shortlist is decided by the Hiring Director in conjunction with the Recruitment Administrator via the e-recruitment system.

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Second review and equivalency

45. If an insufficient number of candidates who fully meet the post requirements remain during or at the end of the assessment process, the Hiring Director can request the Recruitment Administrator to conduct a second review of applications received to identify further potential candidates.

46. Where, as a result of a second review, applicants are identified who are potentially suitable but do not fully meet the post requirements set out in the vacancy notice, the Hiring Director has the option to request an equivalency determination from the Recruitment Administrator.

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Selection recommendation/decision

49. In conjunction with the Recruitment Section, the Hiring Director will provide a selection report which will contain the following information, as applicable:

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List of candidates short-listed for personal interview, including justifications (it
must be indicated if candidates were included on an equivalency basis, and how equivalency
was determined);

...

50. The Hiring Director will record his/her selection decision on the report (for posts at grade 17 and below), or forward the selection report together with his/her selection recommendation to the DHR (for posts at grade 18 and above) who will scrutinize the recommendation for compliance with policies and procedures and then present the case to the Commissioner-General for decision. The DHR has the discretion to instead refer the case back to the Hiring Director for resubmission and/or to the ACHR for review and recommendation to the Commissioner-General.

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Equivalency determinations

70. In cases where there are insufficient candidates who fully meet the post requirements, candidates with an equivalent combination of relevant academic qualifications, professional training and progressive work experience may also be considered. Equivalency determinations will be made by the Recruitment Administrator, and approved by the respective Field Director for posts in the Field, and the Chief of the Personnel Services Division for posts in HQ.

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b) Area Staff Selection Guidelines

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MODULE 2: Equivalency Determination and Application

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Recruitment Administrator (Field Personnel Division/Recruitment Section at HO)

10. The Recruitment Administrator is responsible for:

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- Preparing the Equivalency Determination form for all candidates who are to be short-listed based on equivalency;
- Ensuring the final recruitment report also includes information on the candidates who were evaluated based on equivalency.

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Equivalency Procedures

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- 12. After the closing date of the vacancy, the Recruitment Administrator reviews and evaluates the number of fully qualified applicants to be considered. Equivalency will be considered if there is not a sufficient number of candidates (normally around three to five per vacancy) who fully meet the post requirements.
- 13. Where there were a sufficient number of fully qualified candidates but a candidate was not able to be selected, a Hiring Manager may request the Recruitment Administrator to conduct a second review and re-screening of applications to identify further potential candidates that may be considered on equivalency.

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- 16. Once the equivalency determination has been approved, the Recruitment Administrator will forward all necessary information on short-listed candidates to the Hiring Manager for their review and consideration. Approved equivalency determination forms may be made available to hiring managers if requested.
- 17. Once the Hiring Manager receives this information, the normal review and recruitment process will continue. The candidates may continue to the telephone screening, testing or interviewing phase of the recruitment process, as applicable.
- 42. In is important to reiterate that Ms. Al Osta was among the 28 candidates shortlisted for a written test from an applicant pool of 335. Six candidates, including Ms. Al Osta, scored above the passing grade in this written test. On 16 September 2020, a "Grading and Equivalency

Determination Form" was prepared by the Agency recommending that she be considered to have met the VA's requirements on an equivalency basis, her years of experience said to supplement her lack of an advanced university degree.

- 43. On 20 September 2020, the Interview Panel interviewed those six candidates and unanimously recommended Ms. Al Osta, as the second-selected candidate, for appointment to one of the two Posts. The Recruitment Report was erroneously silent as to whether she had been considered on an equivalency basis.
- 44. On 28 September 2020, Ms. Al Osta's equivalency determination and the Panel's recommendations for appointment were approved by the Director of UNRWA Affairs, Jordan.
- 45. On 18 October 2020, the DHR confirmed the Panel's recommendation of Ms. Al Osta's appointment and referred this to the ACHR. It was at the meeting of the ACHR on 8 November 2020 that there was first apparent disagreement with the recommendation of Ms. Al Osta and the expression of its view that the recruitment process was flawed at and after the shortlisting stage. Following further consultation, the ACHR concluded that Ms. Al Osta could only have had 5 years' supervisory experience at UNRWA, her other 10 years' experience not having been relevant to the position applied for and not having been at a supervisory level. Ms. Al Osta not having met the educational qualifications, a majority of the ACHR concluded that her experience did not qualify her for equivalency, i.e. a combination of relevant academic qualifications, additional professional training and progressive relevant work experience.
- 46. How Ms. Al Osta came to be considered for equivalence by the Agency, let alone recommended for appointment to the Post by the Agency itself, is enigmatic. Not only does it appear that her relevant experience (as confirmed by her in her application) was manifestly insufficient in terms of the VA's requirement that this be "in a large governmental or international organization at a senior level", her educational qualification (a Bachelor's degree in English literature) could not have met the requirement that this be "an advanced university degree in business, public administration, political science, sociology or other related discipline". There appears to have been a series of obvious errors or failings by the Agency which culminated in her being recommended for appointment. Added to this are two pertinent factors.
- 47. First, the other, and ultimately successful, candidate appears from the Dispute Tribunal's Judgment to have suffered from the same or similar ineligibility as Ms. Al Osta and yet appears to have been appointed to the Post. The second compounding factor is the Agency's failure to respond

to Ms. Al Osta's RDR when it was obliged to address her complaints and decide them. While the Agency's failure to do so allowed her to bring her claim to the UNRWA DT, there is no explanation why the RDR was not addressed by the Agency as required. No explanation of that omission appears to have ever been provided. Decision review is an essential process to address staff members' challenges to administrative decisions and to allow an opportunity for these to be addressed by the Administration, rather than by the Dispute Tribunal with its necessarily attendant delay and costs to all concerned. In these circumstances, Ms. Al Osta's complaints about her non-selection are understandable, even if they may ultimately be unmeritorious.

- 48. This case as conducted by the Commissioner-General also raises and exemplifies an issue of law that might be perceived (almost certainly by Ms. Al Osta) as being inequitable. The Commissioner-General defends the claim in reliance on several self-admitted errors of law committed by the Agency's officials. Put another way, the Commissioner-General seeks to justify the lawfulness of the administrative action in not appointing Ms. Al Osta by relying on what the Commissioner-General concedes was a series of serious errors of law committed by the Agency in relation to the recruitment process that led belatedly to Ms. Al Osta's disqualification from that process.
- 49. We have considered whether equity should permit the Commissioner-General to rely on the Agency's unlawful actions to justify its subsequent decision disadvantaging Ms. Al Osta.
- 50. There is established case law to the effect that the Administration should not only be permitted to correct its prior errors in such circumstances, but indeed has a duty to do so and that such correction should not be held against it in subsequent litigation.²¹ Few could argue with such a correction being made in favour of the staff member previously and wrongfully subjected to such error. However, in this case it cannot be said, as in *Rixen*, that the staff member acted to her detriment in reliance on the Agency's errors.²² Mr. Rixen's case was one of termination of employment in which he was assured of a temporary extension of a fixed-term agreement and acted in reliance on this. The present case is distinguishable. Ms. Al Osta could have had no legitimate expectation of appointment due to her insufficient qualifications and experience and did

²¹ See, for example, Kauf v. Secretary-General of the United Nations, Judgment No. 2019-UNAT-934, para. 31; Kellie v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, Judgment No. 2018-UNAT-875, paras. 30-32 (internal citation omitted); and Muwambi v. Secretary-General of the United Nations, Judgment No. 2017-UNAT-780, paras. 10 and 58.

 $^{^{22}}$ Michel Raymond Marie Rixen v. Secretary-General of the World Meteorological Organization, Judgment No. 2023-UNAT-1399, paras. 74-75.

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2025-UNAT-1562

not act to her detriment in reliance on the Agency's errors before being advised of the decision not to appoint her.

51. While these multiple and serial errors do not avail the outcome of Ms. Al Osta's appeal, they do cause us to consider whether, despite dismissing the appeal, we can do justice to Ms. Al Osta's case by awarding her costs, particularly as she has had privately retained counsel. Article 9(2) of the UNAT Statute allows an award of costs in circumstances where the UNAT is satisfied that "a party has manifestly abused the appeals process...". Unfortunately for Ms. Al Osta, the Agency's acts or omissions of which we are critical cannot be said to have manifestly abused the appeals process so we are unable to award costs against the Agency in these circumstances.

Judgment

52. Ms. Al Osta's appeal is dismissed, and Judgment No. UNRWA/DT/2024/002 is hereby affirmed.

Original and Authoritative Version: English

Dated this 27th day of June 2025 in New York, United States.

(Signed) (Signed)

Judge Colgan, Presiding Judge Forbang Judge Sheha

Judgment published and entered into the Register on this 4th day of August 2025 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar