



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2024-UNAT-1421

Nuha Yahya Abduh Mohammad
(Appellant)

v.

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

JUDGMENT

Before:	Judge Abdelmohsen Sheha, Presiding Judge Katharine Mary Savage Judge Leslie F. Forbang
Case No.:	2023-1807
Date of Decision:	22 March 2024
Date of Publication:	30 April 2024
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Muhammad Mustafa Abdullah
Counsel for Respondent:	Natalie Boucly

JUDGE ABDELMOHSEN SHEHA, PRESIDING.

1. Ms. Nuha Yahya Abduh Mohammad, a staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or the Agency), contested two decisions: a decision to issue her a written reprimand of 9 March 2021 (first contested decision) and a decision to issue her a written reprimand of 23 March 2021 (second contested decision).
2. By Judgment No. UNRWA/DT/2023/007, the UNRWA Dispute Tribunal (UNRWA DT or Dispute Tribunal) dismissed the application in respect of the first contested decision as not receivable and in respect of the second contested decision on the merits (impugned Judgment).¹
3. Ms. Mohammad lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure²

5. At the material time, Ms. Mohammad was employed by the Agency on a temporary indefinite appointment as Teacher of Special Needs Students, Grade 11, Step 12, at Jofeh Elementary Girls' School (Jofeh School), Jordan Field Office (JFO), UNRWA.³
6. At the beginning of the first semester of the 2020/2021 scholastic year, Ms. Mohammad was assigned to teach English lessons in certain classes.⁴
7. On 30 August 2020, she objected to the Education Specialist, JFO, (ES/JFO) that she had been assigned to teach English lessons despite being a special education teacher and that this would negatively affect her students with learning difficulties.⁵

¹ *Mohammad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, UNRWA DT's Judgment dated 16 February 2023.

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

³ Impugned Judgment, para. 3.

⁴ *Ibid.*, para. 4.

⁵ *Ibid.*, para. 5.

8. At the beginning of the second semester of the 2020/2021 scholastic year, Ms. Mohammad was again assigned to teach English lessons.⁶

9. By message dated 8 March 2021, she informed the School Principal, Jofeh School, (SP/JS)—who was on sick leave—that she declined to teach English to the first-grade students and asked the SP/JS to find a replacement for her.⁷

10. On 9 March 2021, the SP/JS informed Ms. Mohammad of the first contested decision.⁸ In the reprimand letter (First Reprimand Letter), issued to her for refusing to teach assigned class periods on 7 and 9 March 2021, the SP/JS stated that her absence from the classroom put students at risk because she was responsible for them and their safety during her class periods.

11. On 14 March 2021, in an exchange of WhatsApp messages between Ms. Mohammad and the SP/JS, she complained about the First Reprimand Letter and stated that she had never consented to teach English, that the SP/JS did not listen to her although she had verbally refused to teach English several times during both the first and the second semesters, and that there were English teachers available who could be assigned to the English classes.⁹ Additionally, she reminded the SP/JS that she was a special education teacher and that she was not qualified to teach English. She also stated that she had informed the Acting SP/JS of her absence on 7 March 2021 and the SP/JS on 8 March 2021.

12. In response, the SP/JS repeatedly asked Ms. Mohammad to continue to teach English and advised her to wait for her return from sick leave to discuss her objections.¹⁰ The SP/JS stated that Ms. Mohammad had agreed to teach English at the beginning of the scholastic year, that she had been performing her duties for seven months, and that she could not absolve herself of her duties by declaring herself unable to teach English in the middle of the semester. Additionally, the SP/JS informed her that notifying the SP/JS or the Acting SP/JS of her absence did not authorize her to immediately stop teaching, especially when the SP/JS had refused her request.

13. On 16 March 2021, by e-mail to the ES/JFO, Ms. Mohammad explained her situation and informed the ES/JFO that she would no longer teach English classes because she already had a full

⁶ *Ibid.*, para. 6.

⁷ *Ibid.*, para. 7.

⁸ *Ibid.*, para. 8.

⁹ *Ibid.*, para. 9.

¹⁰ *Ibid.*, para. 10.

teaching load and was not qualified to teach English.¹¹ She further noted that she had been asked to continue teaching English classes despite her previous verbal and written refusals.

14. On 17 March 2021, by e-mail to the Chief Field Education Programme, Ms. Mohammad reiterated the arguments from her 16 March 2021 e-mail.¹² She also stated that the ES/JFO had put psychological pressure on her.

15. On 23 March 2021, the Area Education Officer, South Amman, JFO, (AEO/JFO) informed Ms. Mohammad of the second contested decision.¹³ In the reprimand letter (Second Reprimand Letter) issued to her for her refusal to teach English class periods from 8 to 23 March 2021, the AEO/JFO stated that her behavior had resulted in the students not learning English in that instance and that, despite instructions from her supervisors, she did not complete her work.

16. On 27 April 2021, Ms. Mohammad submitted a Request for Decision Review (RDR).¹⁴

17. On 19 May 2021, the Director of UNRWA Affairs, Jordan, (DUA/J) responded to Ms. Mohammad's RDR and upheld the second contested decision on the grounds that she had not followed her supervisors' instructions and left her students without an English teacher, without prior coordination with the SP/JS, which resulted in an interruption of the educational process.¹⁵

18. On 8 August 2021, Ms. Mohammad filed an application with the UNRWA DT.¹⁶ She requested that the UNRWA DT rescind the contested decisions and remove them from her official file, compensate her for moral harm and material damage and refer the case to the Commissioner-General for possible action to enforce accountability.¹⁷

The impugned Judgment

19. By Judgment No. UNRWA/DT/2023/007 dated 16 February 2023, the UNRWA DT dismissed the application.

¹¹ *Ibid.*, para. 11.

¹² *Ibid.*, para. 12.

¹³ *Ibid.*, para. 13.

¹⁴ Annex 5 to the Commissioner-General's answer to the appeal.

¹⁵ Impugned Judgment, para. 15.

¹⁶ Annex to the impugned Judgment, para. 1.

¹⁷ Ms. Mohammad's application form, Section VII (Annex 6 to the Commissioner-General's answer to the appeal).

20. The UNRWA DT considered that the record before it was sufficient to render a judgment without an oral hearing.¹⁸ It is not enough to allege that some witnesses are willing to testify on Ms. Mohammad's behalf. If the witnesses had relevant information to provide, she should have submitted witness statements.

21. The UNRWA DT noted that in her RDR, Ms. Mohammad challenged only the Agency's decision to serve her with the Second Reprimand Letter on 23 March 2021.¹⁹ As she did not submit a RDR regarding the Agency's decision to issue her the First Reprimand Letter of 9 March 2021, this part of the application is not receivable *ratione materiae*.

22. Turning to the merits of the application in respect of the second contested decision, the UNRWA DT observed that Ms. Mohammad acknowledged that she did not teach English from 8 to 23 March 2021.²⁰ She did not contest the decision to assign her to teach English classes in her application. She did not provide any evidence to substantiate her assertion that the Acting SP/JS had agreed to her decision to stop teaching English classes. Evidence submitted by her shows that the SP/JS repeatedly asked her to continue teaching. Similarly, the evidence shows that she merely notified the SP/JS that she would no longer teach the class.

23. The UNRWA DT held that in these circumstances it was not irrational or unreasonable of the Agency to conclude that Ms. Mohammad's abrupt decision to quit teaching English classes without prior coordination with her supervisors amounted to a "minor breach" under paragraph 43 of Area Personnel Directive (PD) No. A/10/Rev.3 (Disciplinary Measures and Procedures).²¹ She has not shown that issuing a reprimand letter was disproportionate.

24. The UNRWA DT found that the Second Reprimand Letter was issued as a result of Ms. Mohammad's continuing refusal to teach English following the First Reprimand Letter.²² This constitutes a distinct minor breach for which the Agency could properly issue a separate reprimand.

¹⁸ Impugned Judgment, para. 24.

¹⁹ *Ibid.*, para. 27.

²⁰ *Ibid.*, para. 31.

²¹ *Ibid.*, para. 34.

²² *Ibid.*, para. 35.

Procedure before the Appeals Tribunal

25. On 29 May 2023, Ms. Mohammad filed an appeal of the impugned Judgment with the Appeals Tribunal, to which the Commissioner-General filed an answer on 31 July 2023.

Submissions

Ms. Mohammad's Appeal

26. Ms. Mohammad requests the Appeals Tribunal to reverse the impugned Judgment and award all the remedies she sought in the application or, alternatively, remand the case to the UNRWA DT for consideration by a different judge.

27. Ms. Mohammad argues that the UNRWA DT erred in facts and in law when it held that she had failed to request decision review of the first contested decision dated 9 March 2021 and that the part of the application related thereto was not receivable.

28. She notes that she did not have the benefit of legal representation when she filed her RDR. Even so, she explicitly complained about the issuance of the reprimand on 9 March 2021, describing it in her RDR as unjust.²³ Moreover, she demanded a letter of apology from the persons who had taken the contested decisions, including her immediate supervisor, the SP/JS.²⁴ Without legal representation, she might be excused for requesting an apology with regard to the first contested decision, instead of a more appropriate remedy of rescission.

29. Ms. Mohammad contends that a reasonable and honest person could understand from her submission in the RDR that she was challenging two decisions. In addition to making submissions about the first contested decision, she also attached the First Reprimand Letter. The present challenge was the first she had ever filed. One might wonder why the UNRWA DT did not issue an order explicitly and openly asking her to provide proof that she had requested decision review of the first contested decision. The UNRWA DT failed to exercise its mandate in this regard.

30. On another level, Ms. Mohammad argues that the UNRWA DT erred in procedure when it refused to hold an oral hearing, failed to issue an order for her to name her witnesses and specify

²³ Ms. Mohammad refers to her submission on pages 5-6 of the RDR, in section titled "What staff rights of yours have been violated by the decision at issue?" (Annex 5 to the Commissioner-General's answer to the appeal).

²⁴ Ms. Mohammad refers to her request in section titled "What remedy do you seek through this decision review?" of the RDR (Annex 5 to the Commissioner-General's answer to the appeal).

their details, and failed to issue an order to those witnesses to provide their sworn testimony under protection.

31. Ms. Mohammad states that she had explained to the UNRWA DT that she sought an oral hearing to allow her to call witnesses from whom she had been unable to obtain written testimony, owing to *force majeure*.²⁵ She has no authority to ask other employees to submit themselves to that position. It is incomprehensible why the UNRWA DT did not issue an order to name the witnesses and specify the details of their testimonies on the issues in dispute. It would have been reasonable for the UNRWA DT to order those witnesses to give sworn testimony.

32. Ms. Mohammad contends that the error in procedure resulted in the UNRWA DT erring on an important issue of fact when it found that she had not provided any evidence to substantiate her assertion that the Acting SP/JS agreed to her decision to stop teaching English classes. The UNRWA DT failed to exercise its role as a court of evidence. Hence, Ms. Mohammad submits that the error in procedure led to an erroneous outcome.

33. In addition, Ms. Mohammad contends that the second contested decision also violated the general legal principle that an employee may not be punished twice for the same infraction. Therefore, the UNRWA DT erred in finding the second contested decision lawful.

34. Finally, Ms. Mohammad argues that the UNRWA DT erred in not imposing costs on the Commissioner-General for manifest abuse of judicial process and for prolonging litigation without any reason.²⁶

The Commissioner-General's Answer

35. The Commissioner-General requests that the Appeals Tribunal dismiss the appeal in its entirety.

36. The Commissioner-General argues that UNRWA DT did not err in fact, law or procedure when it dismissed the part of the application relating to the first contested decision as not receivable. Ms. Mohammad's RDR reveals that she was categorical as to the decision to be

²⁵ Ms. Mohammad refers to the section of the application form concerning the remedies sought and her reiteration of that request in her submission dated 19 June 2022.

²⁶ Ms. Mohammad refers to Order No. 016 (UNRWA/DT/2022) dated 7 February 2022 wherein the UNRWA DT denied her motion to impose costs on the Commissioner-General (impugned Judgment, para. 14).

reviewed.²⁷ It was open to and correct of the UNRWA DT to conclude that she had not submitted the RDR in respect of the First Reprimand Letter. The narrative of facts reveals that it was attached to the RDR only for context. Ms. Mohammad clearly identified the official who issued the contested decision as the AEO/JFO, not her immediate supervisor.

37. The Commissioner-General contends that the UNRWA DT did not err on procedure, such as to affect the decision of the case, in denying Ms. Mohammad's request for an oral hearing. It gave due consideration to the request. She did not demonstrate to the UNRWA DT the nature of the evidence the intended witnesses could provide. She did not describe the alleged "compelling impediments" to obtaining written testimonies. The alleged circumstances of fear of retaliation and reluctance on the part of the SP/JS were not put before the UNRWA DT, cannot be introduced for the first time on appeal and are inadmissible arguments.

38. The Commissioner-General submits that the UNRWA DT did not err in fact and law in determining that Ms. Mohammad's refusal for teaching underlying the second contested decision constituted a distinct minor breach. For the Commissioner-General, Ms. Mohammad's arguments are merely an attempt to reargue the case. The principle of double jeopardy is not applicable to this case.²⁸

39. The Commissioner-General argues that the UNRWA DT did not err in law by declining to impose costs for abuse of process. Ms. Mohammad has not criticized the UNRWA DT's finding on the issue. At any rate, the UNRWA DT did not determine that a party has manifestly abused the proceedings.

Considerations

40. The present appeal raises four main issues that we address in turn. We first examine whether the UNRWA DT erred in fact or in law in finding that, absent a RDR, the challenge to the First Reprimand Letter was not receivable *ratione materiae*. Secondly, we address whether the UNRWA DT committed an error in procedure, such as to affect the decision of the case, when it rejected Ms. Mohammad's request to hold an oral hearing. Thirdly, we examine whether the UNRWA DT erred in fact or in law in holding that the Second Reprimand Letter was lawful.

²⁷ The Commissioner-General refers to sections titled "Specify the decision you are requesting us to review (...)" and "When was the decision taken/when did you become aware of it?" of the RDR (Annex 5 to the answer).

²⁸ The Commissioner-General cites *Ainte v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-388, para. 30.

Fourthly, we consider whether the UNRWA DT erred in fact or in law in rejecting Ms. Mohammad's motion to impose costs on the Commissioner-General for manifest abuse of judicial proceedings.

Receivability of the challenge to the First Reprimand Letter

41. Ms. Mohammad takes issue with the UNRWA DT's finding of non-receivability *ratione materiae* of her challenge to the First Reprimand Letter. She contends that her RDR could have been reasonably and fairly interpreted as challenging not only the Second Reprimand Letter of 23 March 2021, but also the First Reprimand Letter of 9 March 2021.

42. We remind first that UNRWA Area Staff Rule 111.2(1) (Decision review) directs a staff member to submit a RDR:

A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her terms of appointment or the contract of employment, including all pertinent regulations and rules and all relevant administrative issuances pursuant to Staff Regulation 11.1 (A), shall, as a first step, submit a written request for a decision review (...).

43. In conjunction with Area Staff Rule 111.2(1), Article 8 of the UNRWA DT's Statute provides that the submission of a RDR is a prerequisite of receivability of an application and that the deadline for submitting it may not be waived by the Tribunal:

1. An application shall be receivable if:

...

(c) An applicant has previously submitted the contested administrative decision for decision review (...).

...

3. (...) The Dispute Tribunal shall not suspend, waive or extend the deadlines for decision review.

44. This Tribunal has on multiple occasions affirmed the importance of decision review as a mandatory first step before raising the issue to the first-instance tribunal. This process of decision review has its own rationale of enabling the Administration to reassess the situation and correct mistakes or errors without the need for judicial review. Hence, absent a request

for decision review, the Dispute Tribunal shall have no jurisdiction to review the administrative decision brought before it.²⁹

45. In the same vein, we ruled that only a clear request for decision review, identified through a fair and objective reading, gives the Administration a proper opportunity to review the contested decision.³⁰ Thus, it is the staff member's responsibility to make sure that the decision he or she disagrees with was clearly included in his or her request for decision review prior to bringing his or her case before the Dispute Tribunal. In the absence of a clear request to review a certain decision, the Dispute Tribunal lacks legal power to extend its jurisdiction thereto.³¹

46. In the present case, an objective reading of Ms. Mohammad's RDR shows clearly that she was only contesting the Second Reprimand Letter of 23 March 2021.³² Ms. Mohammad identified the decision under review expressly as the "official reprimand that was issued by Ms. Sahira Dweik, South Amman Area Education Officer". Moreover, she referred to the date of the contested decision as 23 March 2021 and to the date of notification as 4 April 2021. Finally, under the section on the remedies sought, Ms. Mohammad requested rescission of the Second Reprimand Letter only. Those elements together confirm that the Second Reprimand Letter of 23 March 2021 issued by the AEO/JFO was the subject of the RDR, and not the First Reprimand Letter issued by the SP/JS on 9 March 2021. The fact that Ms. Mohammad included a copy of the First Reprimand Letter as an annex to her RDR does not suffice to consider it as having been submitted for review. As the RDR itself did not clearly and objectively challenge that decision, the mere fact of attaching a copy of the First Reprimand Letter can be legitimately understood as serving to provide context to the challenged decision.

47. We understand that it might be expected of a well-advised staff member to have intended to request decision review of both the First and the Second Reprimand Letters, especially as such decisions were consecutive, issued within a short period. However, considering the clear language used by Ms. Mohammad herself in her RDR that was presented on a pre-established form intended to facilitate the task for the aggrieved staff member, the

²⁹ *Said Ali Tamalawi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2023-UNAT-1349, para. 28 (internal citations omitted).

³⁰ *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-311, para. 42.

³¹ *Survo v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-595, paras. 83-85.

³² Annex 5 to the Commissioner-General's answer to the appeal.

Dispute Tribunal had no choice but to adhere to the objective reading of the RDR. The Tribunals' powers are limited in this regard. Therefore, we find that the UNRWA DT did not err in fact or in law when it considered that Ms. Mohammad had not submitted a RDR in respect of the First Reprimand Letter of 9 March 2021 and found the application in the respective part not receivable *ratione materiae*.

48. Without casting doubt on our finding, we take the opportunity to remind of the importance of seeking legal assistance prior to drafting formal requests. This could be assistance provided by the Legal Office of Staff Assistance of UNRWA (LOSA) or by a private attorney. Indeed, it is up to each staff member to opt for representation or choose to be self-represented and we do not interfere with that choice.

Not holding an oral hearing

49. Ms. Mohammad contends that the UNRWA DT committed an error in procedure, which affected the decision of the case, when it denied her request to hold oral hearings where, in particular, the Acting SP/JS could have provided witness testimony.

50. The Commissioner-General maintains that the UNRWA DT did not commit such an error. In the Commissioner-General's view, Ms. Mohammad did not demonstrate the nature of the evidence that could have been provided by witnesses and how the failure to hold an oral hearing affected the decision in the case.

51. We remind that Article 2(1)(d) of the UNAT Statute provides the relevant ground of appeal as follows:

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

...

(d) Committed an error in procedure, such as to affect the decision of the case (...).

52. With regard to demonstrating the impact of the alleged procedural error, our Tribunal held in *Nadeau* that:³³

(...) [A] party, in order to be successful on appeal, not only has to assert and show that the UNDT committed an error in procedure but also that this error affected the decision

³³ *Nadeau v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-733/Corr.1, para. 31.

on the case. As Mr. Nadeau has given no convincing reason on appeal as to why and how an oral hearing before the UNDT would have had an impact on the decision of the case, on this ground alone his appeal must fail. (...)

53. Like in *Nadeau*, and without need to examine the alleged procedural error, we find that Ms. Mohammad does not show how that error of not holding an oral hearing would have affected the outcome of her case.

54. We remind that Ms. Mohammad's narrative before the UNRWA DT suggests that she coordinated with the Acting SP/JS on 7 March 2021 before ceasing to teach English classes. Drawing on such alleged coordination, she contended that the SP/JS should not have served her with the First Reprimand Letter of 9 March 2021. This appears to be the reason why Ms. Mohammad submitted that the Acting SP/JS should have been called to testify before the UNRWA DT.

55. Indeed, it is possible that the testimony of the Acting SP/JS, if the merits of the First Reprimand Letter were to be examined, could have changed the outcome of the case. However, we remind that the challenge of the First Reprimand Letter was not receivable *ratione materiae*. We also note that the Second Reprimand Letter of 23 March 2021 was issued for a distinct breach, committed after the first contested decision. That subsequent infraction started after the issuance of the First Reprimand Letter of 9 March 2021 asking Ms. Mohammad to perform the tasks assigned to her and not to take unilateral decisions that may hamper the educational process. Regardless of Ms. Mohammad's views about its lawfulness, the first contested decision enjoyed the presumption of regularity and was to be respected, until and unless the Administration, or otherwise the Dispute Tribunal, decided to rescind it. The coordination with the Acting SP/JS allegedly took place on 7 March 2021, not during the period from 9 March to 23 March 2021. Therefore, we find that the procedural error alleged by Ms. Mohammad would not in any case have affected the decision of the case regarding the Second Reprimand Letter. For this reason alone, this part of the appeal fails.

Lawfulness of the Second Reprimand Letter of 23 March 2021

56. Based on a sole ground of error in law, Ms. Mohammad contends that the UNRWA DT erred when it ignored the double jeopardy suffered by her for being served with two reprimand letters for the same act committed within a few days of the same month.

57. In the impugned Judgment, the UNRWA DT found that “the Second Reprimand Letter was issued as a result of [Ms. Mohammad’s] continuing refusal to teach English following the First Reprimand Letter” and that “[t]his constitute[d] a distinct minor breach for which the Agency could properly issue a separate reprimand letter”.³⁴

58. The principle of double jeopardy protects staff members from being punished twice for the same act, that took place at the same moment or during the same period of time. The principle has therefore two dimensions that must be concomitant, i.e., a material dimension reflected in the committed act, and a temporal dimension reflected in the time when such act occurred. If one of those dimensions differs, the principle shall not be applicable.³⁵

59. In the present case, the principle of double jeopardy is not applicable. Although otherwise characterized by unity of action, Ms. Mohammad’s conduct addressed in each reprimand letter covered a distinct period of time. We remind that Ms. Mohammad first ceased teaching English in the period from 7 to 9 March 2021, for which she was served with the First Reprimand Letter asking her to assume her duties. Despite this, Ms. Mohammad continued to commit the same infraction from 10 to 23 of March 2021, which is a distinct period. We acknowledge that both reprimand letters were partially conflicting, in respect of 8 and 9 March 2021, and the Second Reprimand Letter should not have punished Ms. Mohammad for the alleged infraction on those two days. However, as the Second Reprimand Letter covered, in any event, a different period of time, running from 10 to 23 March 2021, the principle of double jeopardy does not apply.

60. Ms. Mohammad’s contention is therefore without merit.

Manifest abuse of judicial proceedings before the UNRWA DT

61. Article 10(6) of the UNRWA DT Statute, governing the imposition of costs for manifest abuse of judicial proceedings, reads:

Where the Dispute Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against that party.

62. In this regard, our Tribunal has consistently held that awarding costs for abuse of judicial proceedings remains exceptional, reserved for the rare cases that warrant sanction. An

³⁴ Impugned Judgment, para. 35.

³⁵ See also *Ainte v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-388, para. 30.

award of costs against a party may normally be made after the latter has been fairly warned that the continuation of abusive acts or omissions would result in awarding costs against him or her.³⁶

63. In determining whether a party has manifestly abused the process, the Dispute Tribunal exercises discretion and, on appeal, the Appeals Tribunal considers whether the Dispute Tribunal exercised that discretion reasonably and rationally.³⁷ With regard to the apprehension of delays within the context of abuse of judicial proceedings, our Tribunal held in *Bi Bea* that:³⁸

(...) A delay, in and of itself, is not a manifest abuse of proceedings. In order to award costs against the Secretary-General, it was necessary for the UNDT to be satisfied on the evidence that, in causing the delay, the Secretary-General had “manifestly abused the proceedings”. The plain language of those words meant that before the UNDT could lawfully award costs against the Secretary-General, it was necessary to determine on the evidence that the delay was clearly and unmistakably a wrong or improper use of the proceedings of the court. Proof that the delay was frivolous or vexatious would have satisfied this requirement.

64. With respect to the UNRWA DT’s directions in requesting a reply from a respondent, our Tribunal has consistently affirmed the position of giving some degree of deference to the first-instance tribunal in matters of case management. As we held in *Leboeuf*, “the UNDT is in the best position to decide what is appropriate for the fair and expeditious disposal of a case and to do justice to the parties and this Tribunal will not lightly interfere with the broad discretion of the UNDT in the management of cases”.³⁹

65. Ms. Mohammad contends that the UNRWA DT erred in fact and in law in denying her motion to award costs for manifest abuse of proceedings against the Commissioner-General

³⁶ *Zaqqout v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2022-UNAT-1219, para. 59 (internal citation omitted). Although the case was related to manifest abuse of appeals proceedings before the UNAT, the same principle remains applicable here.

³⁷ *Mohammad Yahya Al Othman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2022-UNAT-1196, para. 121; *Monarawila v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-694, para. 37.

³⁸ *Bi Bea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-370, para. 30.

³⁹ *Leboeuf et al. v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-354, para. 8. Although that case involved a decision of the UNDT, the same principle remains applicable for the UNRWA DT as well.

for submitting a late reply on the merits. For such a contention to succeed, the Tribunal must be satisfied that the UNRWA DT manifestly erred in its determination.

66. In the present case, the course of relevant events can be summarized as follows:

(a) On 8 August 2021, Ms. Mohammad submitted her application to the UNRWA DT.

(b) On 29 November 2021, the Commissioner-General filed a reply on receivability.⁴⁰

(c) On 1 December 2021, the UNRWA DT issued Order No. 156 (UNRWA/DT/2021), requesting the Commissioner-General to submit a reply on the merits on or before 31 December 2021.⁴¹

(d) On 30 December 2021, the Commissioner-General filed a reply on the merits.⁴²

(e) On 22 January 2022, Ms. Mohammad filed a motion to award costs against the Commissioner-General for manifest abuse of proceedings.⁴³

67. We understand Ms. Mohammad's disappointment. However, the sequence of events does not convince us that the high threshold of a manifest abuse of proceedings had been attained. The UNRWA DT exercised its discretionary powers of case management lawfully and rendered Order No. 156 (UNRWA/DT/2021) of 1 December 2021. In it, the Tribunal ordered the Commissioner-General to submit views on the merits within a specified reasonable time frame and the Respondent did so. Therefore, we do not find that the UNRWA DT erred in fact or in law, or committed an error in procedure, when it dismissed Ms. Mohammad's motion to award costs against the Commissioner-General for manifest abuse of proceedings.

68. In light of the foregoing, the appeal must fail.

⁴⁰ Annex to impugned Judgment, para. 4.

⁴¹ *Ibid.*, para. 5.

⁴² *Ibid.*, para. 6.

⁴³ *Ibid.*, para. 12.

Judgment

69. Ms. Mohammad's appeal is dismissed, and Judgment No. UNRWA/DT/2023/007 is hereby affirmed.

Original and Authoritative Version: English

Dated this 22nd day of March 2024 in New York, United States.

(Signed)

Judge Sheha, Presiding

(Signed)

Judge Savage

(Signed)

Judge Forbang

Judgment published and entered into the Register on this 30th day of April 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar