



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2024-UNAT-1442

Alaa Yasir Al-Bustanji
(Respondent/Applicant)

v.

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

JUDGMENT

Before:	Judge Nassib G. Ziadé, Presiding Judge Katharine Mary Savage Judge Leslie F. Forbang
Case No.:	2023-1780
Date of Decision:	22 March 2024
Date of Publication:	30 May 2024
Registrar:	Juliet E. Johnson

Counsel for Alaa Yasir Al-Bustanji: Amer Abu-Khalaf, LOSA

Counsel for Commissioner-General: Natalie Boucly

JUDGE NASSIB G. ZIADÉ, PRESIDING.

1. Ms. Alaa Yasir Al-Bustanji (Ms. Al-Bustanji) contested the decisions of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency): i) to place her on Administrative Leave With Pay (ALWP) pending the completion of an investigation into an allegation of misconduct; and ii) to serve her with a written reprimand letter (contested decisions).
2. By Judgment No. UNRWA/DT/2022/052 (impugned Judgment),¹ the Dispute Tribunal of UNRWA (UNRWA DT or UNRWA Dispute Tribunal) dismissed Ms. Al-Bustanji's application. It concluded that the part of her application contesting the decision to place her on ALWP pending the completion of an investigation was not receivable *ratione materiae* because she did not submit any request for decision review of that contested decision. The UNRWA DT also found that the Agency's decision to serve her with a written reprimand letter was a rational and proportionate administrative measure. However, the UNRWA DT ordered the Agency to amend the title of the reprimand letter in Ms. Al-Bustanji's Official Status File (OSF) to remove any reference to it being a disciplinary measure letter and to pay her compensation in the amount of JOD 400 for moral damages resulting from the Agency's undue delays during the investigative process.
3. The Commissioner-General lodged an appeal against the UNRWA DT's award of moral damages with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

5. Ms. Al-Bustanji joined the Agency in 2007. At the relevant time of events, she was a Mathematics Teacher at Taibeh Elementary Girls' School, Jordan Field Office (JFO).
6. On 6 and 13 September 2018, the Intake Committee, JFO (IC/JFO) received two allegations of misconduct against Ms. Al-Bustanji.
7. On 13 September 2018, the Director of UNRWA Affairs in Jordan (DUA/J) informed Ms. Al-Bustanji that she was placed on ALWP pending the outcome of an investigation into the

¹ *Al Bustanji v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2022/052.

second allegation of misconduct, i.e., for allegedly having shouted at the Deputy School Principal of the Taibeh Elementary Girls' School, JFO and having attempted to physically assault her with a paper stapler.

8. On 22 September 2018, Ms. Al-Bustanji was diagnosed with a “severe nervous breakdown” by a psychiatrist.²

9. On 23 September 2018, the IC/JFO recommended that an investigation be conducted regarding the second allegation of misconduct, in accordance with paragraph 9 of the Department of Internal Oversight Services (DIOS) Technical Instruction 02/2016 on UNRWA’s Investigation Policy (DTI 02/2016).

10. On 19 August 2019, the DUA/J authorized the investigation into the second allegation of misconduct against Ms. Al-Bustanji.

11. On 10 September 2019, the DIOS issued its investigation report, concluding that “the allegation of physical assault was not substantiated but that [Ms. Al-Bustanji] had failed to comply with professional workplace standards”.³

12. On 9 March 2020, the Officer-in-Charge, Deputy DUA/J (Operations) served Ms. Al-Bustanji “with a written reprimand letter for failing to comply with professional standards by behaving inappropriately towards other staff members”.⁴

13. On 5 August 2020, Ms. Al-Bustanji requested a review of the decision to serve her with a written reprimand letter. On 11 August 2020, the Agency responded to the request and upheld the contested decision.⁵

14. On 21 October 2020, Ms. Al-Bustanji revisited the psychiatrist, who noted that she “still suffere[d] from some symptoms” and diagnosed her with “symptoms of depression, anxiety, tension, stomach and intestinal irritation and various body pains”.⁶

² Medical report dated 22 September 2018.

³ Impugned Judgment, para. 10.

⁴ Ms. Al-Bustanji acknowledged receipt of the second contested decision on 9 June 2020. *Ibid.*, paras. 13-14.

⁵ *Ibid.*, paras. 15-16.

⁶ Medical report dated 21 October 2020.

15. On 15 November 2020, Ms. Al-Bustanji filed an application with the Dispute Tribunal challenging the contested decisions.

Impugned Judgment

16. On 29 November 2022, the UNRWA Dispute Tribunal issued the impugned Judgment. First, it determined that the part of Ms. Al-Bustanji's application contesting the decision to place her on ALWP pending the completion of an investigation was not receivable *ratione materiae* because she did not submit any request for decision review of that contested decision.⁷

17. Second, with regard to the part of Ms. Al-Bustanji's application contesting the decision to serve her with a written reprimand, the UNRWA DT noted that she did not contest yelling at another staff member. It found that her conduct "amounted to a minor breach of the Agency's regulatory framework" and that the decision to serve her with a written reprimand was deemed a rational and proportionate administrative measure to address her conduct.⁸

18. Third, the UNRWA DT concluded that the contested decision was procedurally correct. It observed that Ms. Al-Bustanji had not contended that the decision was flawed by procedural irregularities.⁹ Nevertheless, the UNRWA DT found that the unexplained 11-month delay for the Administration to authorize the investigation into the second allegation of misconduct was "objectively excessive" and "inconsistent with [the Administration's] obligation to respect [Ms. Al-Bustanji]'s due process rights" as it was by far exceeding the 10-day deadline provided for in paragraph 9 of DTI 02/2016.¹⁰

19. However, referring to Appeals Tribunal jurisprudence, the UNRWA DT noted that for such a delay to be compensable, Ms. Al-Bustanji "[had to] show not just that her due process rights were violated by the delay but also that she was directly harmed or prejudiced by this violation".¹¹ In the present case, the UNRWA DT further found that as "the Tribunal ha[d] upheld the legality of the second contested decision, [Ms. Al-Bustanji] [had to] show that the psychological harm at issue

⁷ Impugned Judgment, para. 54.

⁸ *Ibid.*, paras. 58-59.

⁹ *Ibid.*, para. 60.

¹⁰ *Ibid.*, paras. 62-63 and 67.

¹¹ *Ibid.*, para. 63.

directly resulted from the investigative delays themselves”.¹² In its analysis, the UNRWA DT considered:¹³

(1) a brief medical report from a psychiatrist dated 22 September 2018 diagnosing [Ms. Al-Bustanji] with a severe nervous breakdown, (2) a written statement from her husband describing the impact on [Ms. Al-Bustanji] for being suspended and ongoing difficulties she experienced, including damage to her reputation, and claiming that he was not rostered in two recruitments due to the unjustified long suspension, and (3) a 21 October 2020 letter from the same psychiatrist noting that in addition to her previous diagnosis, she now suffered additional mental and physical ailments.

20. The UNRWA DT identified several flaws in these three documents: i) the medical report dated 22 September 2018 reflected harm that predated the investigative delays; ii) the written statement from Ms. Al-Bustanji’s husband indicated ongoing difficulties but did not attribute them solely to the investigative delays; and iii) the medical report dated 21 October 2020 indicated new psychological harm but did not specify to what extent this harm stemmed from the investigative delays. Nevertheless, the UNRWA DT found that the written statement from Ms. Al-Bustanji’s husband and the medical report dated 21 October 2020 partially corroborated Ms. Al-Bustanji’s statement and were sufficient to establish not only that she had “suffered psychological harm from the series of events culminating in the contested decisions” but also that her “new psychological harm was at least partially caused by the delays themselves”. Consequently, the UNRWA DT concluded that Ms. Al-Bustanji had met her burden of proof and that the delay of 11 months was “so objectively excessive that it would distress an average person”.¹⁴

21. Therefore, the UNRWA DT dismissed Ms. Al-Bustanji’s application but nevertheless ordered the Agency to amend the title of the reprimand letter in her OSF to remove any reference to it being a disciplinary measure letter and to pay her compensation in the amount of JOD 400 for moral damages resulting from the Agency’s undue delays during the investigative process.¹⁵

¹² *Ibid.*, para. 65. See also *AAD v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1267/Corr. 1, para. 81.

¹³ Impugned Judgment, para. 64. See also Statement from Ms. Al-Bustanji’s husband undated and medical reports dated 22 September 2018 and 21 October 2020.

¹⁴ Impugned Judgment, paras. 65-67.

¹⁵ *Ibid.*, paras. 68 and 71.

Procedure before the Appeals Tribunal

22. On 27 January 2023, the Commissioner-General filed an appeal against the impugned Judgment with the Appeals Tribunal, to which Ms. Al-Bustanji responded on 28 February 2023.

Submissions

The Commissioner-General's Appeal

23. The Commissioner-General requests the Appeals Tribunal to vacate the portion of the impugned Judgment awarding moral damages.¹⁶

24. The Commissioner-General submits that the UNRWA DT erred in law in awarding compensation for moral damages without sufficient evidence thereof. Indeed, the Commissioner-General observes that pursuant to Article 10(5) of the UNRWA DT Statute, the UNRWA Dispute Tribunal may award compensation for harm only if such harm is supported by evidence. Moreover, relying on *Israbhakdi*, the Commissioner-General also recalls that:¹⁷

... It is not enough to demonstrate an illegality to obtain compensation: the claimant bears the burden of proof to establish the existence of negative consequences, able to be considered damages, resulting directly from the illegality on a cause-effect lien. If these (...) two elements of the notion of responsibility are not established, only the illegality can be declared but compensation cannot be awarded.

25. In the present case, the Commissioner-General contends that “[t]he UNRWA DT at best could have declared the illegality and not awarded moral damages”.

26. The Commissioner-General argues that the UNRWA DT erred in finding that Ms. Al-Bustanji's husband's written statement partially corroborated her statement. On the contrary, the Commissioner-General argues that her husband's statement lacks appropriate evidentiary value for compensation, as it is not sworn or given under oath. Furthermore, it is deemed of no probative value as it addresses matters beyond the scope of Ms. Al-Bustanji's application, i.e., alleged workplace harassment and the impact on his daughter. The Commissioner-General further observes that “[t]he only closely relevant part of the statement

¹⁶ Appeal form.

¹⁷ *Israbhakdi v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-277, para. 2.

relates to the impact of her placement on [ALWP]. Yet, this aspect of the application was found not to be receivable (...) so it cannot be a basis to support a claim for moral damages”.

27. Last, the Commissioner-General submits that the UNRWA DT erred in relying on the medical report dated 21 October 2020, which fails to establish a cause-effect lien between the alleged harm and the illegality because, as the UNRWA DT acknowledged itself, that evidence “does not specify to what degree this harm stemmed from the delays”.¹⁸

28. Therefore, the Commissioner-General contends that Ms. Al-Bustanji’s statement lacked corroboration, thus providing no basis for the award of moral damages.

Ms. Al-Bustanji’s Answer

29. Ms. Al-Bustanji requests the Appeals Tribunal to dismiss the appeal in its entirety and to uphold the part of the impugned Judgment awarding damages.

30. Ms. Al-Bustanji submits that the UNRWA DT did not err in awarding her damages for the Agency’s failure to respect her due process rights. She notes that the UNRWA DT carefully analyzed the legal framework that applied to the DIOS investigation and gave “solid reasons” for its award of damages.

31. Ms. Al-Bustanji contends that the Commissioner-General’s argument that the award of compensation was due to her husband’s statement is misleading. On the contrary, she observes that the UNRWA DT explicitly determined that the compensation resulted “from the Agency’s undue delays during the investigative process”.¹⁹

32. With regard to the evidence considered by the UNRWA DT, Ms. Al-Bustanji argues that her husband’s statement had probative value and strengthened her case as he was “the only witness who saw [her] go through pain during the investigative delays” and was therefore well-placed to express “the immense feeling of injustice to [her]”.

Considerations

33. The overarching issue presented in the case at hand is whether the UNRWA DT erred as a matter of law, or exceeded its discretion, by awarding moral damages to Ms. Al-Bustanji based on

¹⁸ Impugned Judgment, para. 66.

¹⁹ *Ibid.*, para. 71 iv).

the excessive and undue delay by the Agency in authorizing an investigation and the evidence Ms. Al-Bustanji presented regarding the impact of the delay on her well-being. While the Commissioner-General's primary contention is that there was an insufficient evidentiary basis for the award of moral damages, it is necessary to first address the antecedent question of whether, as a matter of law, the UNRWA DT could properly award moral damages based on its finding of procedural irregularities and absent a finding of substantive illegality on the merits of the contested decision.

34. This Tribunal has often stressed the prerequisite of a finding of illegality for any award of damages. The Tribunal has stated, for example, that “compensation for harm shall be supported by three elements: the harm itself; an illegality; and a *nexus* between both. (...) If one of these three elements is not established, compensation cannot be awarded”.²⁰ It has also stated: “[W]e (...) have to adhere to our consistent jurisprudence that the right to compensation is inextricably linked to the illegality of the impugned administrative decision”.²¹

35. This Tribunal has also awarded moral damages, even absent an express finding of substantive illegality, when there has been an unreasonable delay in the underlying proceedings, which was detrimental to a staff member's well-being. We recall in this regard *AAM*, in which the Tribunal affirmed the award of moral damages in light of excessive delay, despite a finding that the contested decision was lawful on the merits, in order to vindicate “the principle of efficiency of the Organization and [considering] the fact that the improper delay would obviously cause a degree of anxiety and stress to [the staff member]”.²² Furthermore, in *Applicant*, the Tribunal affirmed the finding of no substantive illegality while awarding “compensation for moral damages as a result of the cumbersome process and undue delay in completing the investigation and the resulting anxiety and stress or moral and physical harm”.²³ The Tribunal has also upheld an award of moral damages, in the form of 25 months of net base salary, for an “excessive delay in carrying out [an] investigation”, which the UNRWA DT had found to have “breached the principles of natural justice”.²⁴ A “violation of rights (...)”

²⁰ *Kebede v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-874, para. 20.

²¹ *Applicant v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1133, para. 66.

²² *AAM v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1372, para. 61.

²³ *Applicant v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1001, para. 42.

²⁴ *Abu Nada v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-514, paras. 19 and 23.

suffered as a result of (...) excessive delay”²⁵ may thus be tantamount to an illegality for purposes of providing a basis for a moral damage award.

36. Such an award, if supported by the evidence, is consistent with the underlying UNRWA DT Statute. The UNRWA DT is authorized to order “[c]ompensation for harm supported by evidence, which shall normally not exceed the equivalent of two years’ net base salary of the applicant”.²⁶ It may also “in exceptional cases order the payment of a higher compensation”.²⁷ The UNRWA DT acts as the finder of fact and is empowered to exercise its discretion in the formulation of appropriate remedies, provided they are consistent with the evidence, its authorizing Statute and the fair administration of justice. It bears emphasis that the governing law requires that, to be compensable, any award for harm, moral or otherwise, must be “supported by evidence”.²⁸

37. Decisions regarding such compensation will generally not be reversed, unless patently excessive or demonstrably improper in the circumstances. It has been held in this respect: “[T]his Tribunal should always give deference to the UNDT in the exercise of its discretion and will not lightly disturb the quantum of damages. The UNDT is best placed to conclude from the evidence, records, or otherwise, whether or not a claim for moral damages is established and to calculate an appropriate award.”²⁹ As the Tribunal has also held in *Kebede*: “Much will depend on the circumstances of the situation at hand, as the existence of moral damages shall be assessed on a case-by-case basis.”³⁰

38. In the impugned Judgment, the UNRWA DT correctly found a range of significant irregularities and shortcomings in the contested decision. Pursuant to paragraph 9 of DTI 02/2016, the investigation should have been authorized within 10 days of the Intake Committee’s report; yet here, the authorization to investigate took 11 months to be given.³¹ The investigation itself was simple, and Ms. Al-Bustanji was only found to have committed a minor breach of the rules.³² Moreover, there was an inaccurate reference in the contested decision,

²⁵ *Ibid.*, para. 31.

²⁶ Article 10(5)(b) of the UNRWA DT Statute.

²⁷ *Ibid.*

²⁸ *AAM Judgment, op. cit.*, para. 60; *Applicant Judgment, op. cit.*, para. 43; *Kebede Judgment, op. cit.*, para. 21; *Rehman v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-885, para. 25; *Kallon v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742, para. 60.

²⁹ *Kallon Judgment, op. cit.*, para. 71. See also *Al-Moued v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-458, para. 19.

³⁰ *Kebede Judgment, op. cit.*, para. 22.

³¹ Impugned Judgment, paras. 61-62.

³² *Ibid.*, para. 68.

which referred to the written reprimand letter as being a disciplinary measure, and the UNRWA DT ordered the removal of such reference.³³ That order is not contested on appeal.

39. The Commissioner-General argues that the evidence presented did not support the award of moral damages. In that regard, we recall that the Dispute Tribunal, as the trier of fact, is in the best position to interpret and apply the evidence presented. The issue of moral damages is necessarily unique in each case. There is no absolute rule regarding the nature or quantum of evidence required to support a moral damage claim. Sufficient evidence beyond the staff member's testimony may take the form of the overall underlying circumstances, testimony of percipient witnesses, or expert testimony.

40. Here, Ms. Al-Bustanji presented various forms of evidence regarding the causal nexus between the delay in the authorization of the investigation and the alleged psychological harm: the underlying facts concerning the procedure followed and actions taken; her own statement; a medical report and letter from a treating psychiatrist; and a written statement from her husband.

41. In review of that evidence, and giving due regard for the UNRWA DT's role as the primary finder of fact, we agree with the Commissioner-General's appeal that Ms. Al-Bustanji's husband's written statement lacks by itself appropriate evidentiary value for compensation, as it is not given under oath or even dated. We further agree with the impugned Judgment that the 22 September 2018 medical report "reflects harm that predated the investigative delays and thus could not have been caused by those delays".³⁴ Crucially, however, we also agree with the impugned Judgment that the 21 October 2020 letter from the psychiatrist, noting Ms. Al-Bustanji's additional mental and physical ailments, corroborates her testimony.³⁵ We further agree with the UNRWA DT that the delay of 11 months to authorize the investigation is "so objectively excessive that it would distress an average person".³⁶ The Tribunal's earlier observation in *Al-Hallaj* is equally applicable here: "[T]he undisputed objective facts of the situation and its context corroborate the medical report. (...) [T]he UNDT built a direct link

³³ *Ibid.*, paras. 13 and 71 iii).

³⁴ *Ibid.*, para. 66.

³⁵ *Ibid.*, para. 67. A medical professional's report, such as the 21 October 2020 letter, which is decisive here, need not be precisely crafted to track the "causal nexus" language utilized by this Tribunal. Such a report or letter need only provide factual or expert support helpful to the decision-maker who must determine, based on the totality of the record, whether there is such a connection between the misconduct and the asserted moral damages.

³⁶ *Ibid.*

between facts and harm, by means of evidentiary presumption, corroborated by the context in which the situation occurred and the expected impact the acts would have on an average person”.³⁷

42. In sum, the evidence, when carefully examined, weighed, and interpreted, supports the UNWRA DT’s conclusion that Ms. Al-Bustanji had met her burden of proof to support an award of moral damages. We find no reason to overturn that conclusion, which is supported by the record and consistent with prior Appeals Tribunal decisions as well as the fair administration of justice.

43. Nor is there any basis upon which to find that the award in this case was excessive. The moral damages awarded in this case is minimal and largely symbolic (one-half of Ms. Al-Bustanji’s one-month salary), while Article 10(5)(b) of the UNRWA DT Statute allows compensation of up to two years’ net base salary of the applicant, and even higher compensation in exceptional cases. Therefore, the assessment of the compensation is fair and reasonable in the present circumstances.

³⁷ *Al Hallaj v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-810, para. 52.

Judgment

44. The Commissioner-General's appeal is dismissed, and Judgment No. UNRWA/DT/2022/052 is hereby affirmed.

Original and Authoritative Version: English

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

(Signed)

Judge Ziadé, Presiding

(Signed)

Judge Forbang

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

(Signed)

Juliet E. Johnson, Registrar

Judge Savage's Dissenting Opinion

1. I have had the benefit of reading the Judgment of my colleague, with which I am respectfully unable to agree.

2. Article 9(1)(b) of the Appeals Tribunal Statute (Statute) and Article 10(5)(b) of the Dispute Tribunal Statute (UNDT Statute) were amended in terms of 2014 General Assembly resolution 69/203, with the similar amendment to Article 10(5)(b) of the UNRWA DT Statute coming into effect on 1 January 2018. These amendments introduced the requirement that an award of compensation for harm is to be “supported by evidence”.

3. As stated in *Kallon*, the purpose of the amendment to Article 10 of the UNDT Statute (with the UNRWA DT Statute amended on the same basis) was:³⁸

... (...) to introduce an express requirement that compensation for harm can only be awarded where there is a sufficient evidentiary basis establishing that harm has in fact occurred. As such, it is a prudent and legitimate reminder to judges that harm should not be too readily assumed on an insubstantial factual basis, whatever the nature of the harm and the damages in issue, be they patrimonial or non-patrimonial.

4. Article 10(7) of the UNDT Statute prohibits the UNDT from awarding exemplary or punitive damages, with it emphasized in *Kallon* that “[t]he dividing line between moral and exemplary damages is not very distinct. And for that reason, a proper evidentiary basis must be laid supporting the existence of moral harm before it is compensated”.³⁹

5. It follows that for an award of compensation for harm in the form of non-pecuniary or moral damages to be justified, there must exist proof of an illegality, harm, and a nexus between the two.

6. DTI 02/2016 states that:⁴⁰

9. A recommendation by the Intake Committee should endeavor to be made on every new allegation as quickly as possible and whenever possible within *20 days* after it has been received. The authorized decision-maker should endeavor to provide his/her response and/or comments within *10 days* of receipt of the recommendation of

³⁸ *Kallon v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742, para. 67.

³⁹ *Ibid.*, para. 62.

⁴⁰ Emphasis added.

the Intake Committee. Thus, a decision for every case should be made as soon as possible, preferably within *30 days* of the receipt of any complaint/allegation.

10. At the intake stage, the decision for action will be one of the following:
 - (i) Decline: Where the facts alleged, if proved, would not constitute misconduct. (...)
 - (ii) Preliminary Assessment: In principle, each case should go through a preliminary assessment. This phase allows collection of additional information needed to make an informed decision as to which other response option is most appropriate. The Intake Committee may decide, based on the information available, to proceed without a preliminary assessment. The preliminary assessment will usually be limited to an interview with the complainant, review of relevant documents and a brief assessment of the facts. The authorized decision-maker can then, based on the preliminary assessment, initiate an investigation or close the case as appropriate. Preliminary assessments should be completed, as far as practicable, within *60 days* from the date of receipt of any complaint/allegations.

...

12. All investigations should endeavor to be completed as quickly as possible, and within *6 months* of their initiation whenever possible. In allocating existing resources to the conduct of investigations, priority should be given to those allegations where the misconduct is the most serious, taking into account financial, security and/or reputational risks to the Agency. Accelerated procedures may be applied to priority investigations as required to address risks.

7. In *Vijay Neekhra*,⁴¹ this Tribunal upheld the UNRWA DT's finding that the provisions of DTI 02/2016 do not impose absolute deadlines on the Agency. It was also determined that all investigations should endeavour to be completed "as quickly as possible" and within six months of their initiation "whenever possible". This aligns with the decision of the UNRWA DT in *Al Khatib*,⁴² in which it was found that the deadlines contained in DTI 02/2016 are not absolute deadlines binding on the Agency, but rather recommendatory in nature.

8. In *Vijay Neekhra*, this Tribunal therefore found that the appellant's due process rights were not violated by a delay in the investigation proceedings and that a nine-month interval from the referral to DIOS until the conclusion of the investigation report did not constitute an excessive delay. The current matter differed in a material respect from *Vijay Neekhra* in that, following the investigation conducted, Ms. Al-Bustanji received a reprimand for her conduct.

⁴¹ *Vijay Neekhra v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2023-UNAT-1335, paras. 24 and 51-52.

⁴² *Al Khatib v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2020/063, para. 53.

Yet, for reasons similar to those set out in *Vijay Neekhra*, the view I take of the matter is that the delay of 11 months to authorize the investigation into Ms. Al-Bustanji's conduct was not in itself sufficient to violate her due process rights.

9. In *AAD*,⁴³ this Tribunal found that when a staff member's misconduct has been upheld, moral damages can only be awarded if some "extenuating circumstances" are present. No such circumstances were found to be present in that matter, despite the three-year period that had elapsed before the investigation and disciplinary process had been completed. In the absence of an illegality or proof as to how the delay had violated AAD's due process rights, and with no direct prejudice shown to have been suffered from the delay "particularly (...) [as] the facts underlying her misconduct [were] not disputed", the claim for moral damages was dismissed.⁴⁴ In the current matter, and given that a reprimand was received by Ms. Al-Bustanji, no extenuating circumstances have been advanced by her to support her claim of illegality or a breach of her due process rights, nor in support of her claim for moral damages.

10. Where moral damages have been awarded by this Tribunal, such as in the matter of *AAM*,⁴⁵ in which USD 2,500 was awarded in non-pecuniary damages as a consequence of a delay of approximately two and a half years in a substantive decision being made by the Administration, clear medical or other evidence has been relied upon to prove that compensation for any harm found to have been suffered. In that matter, a medical report from AAM's psychiatrist corroborated the claim of stress caused by the delay in the investigation process. Moral damages were therefore awarded despite the fact that only "a mere procedural flaw"⁴⁶ was found to exist and that the contested decision was found not to be unlawful on the merits.⁴⁷ In that case, given "the principle of efficiency of the Organization and the fact that the improper delay would obviously cause a degree of anxiety and stress to AAM, and the fact that AAM presented the medical opinion of his psychiatrist to support his account of moral damages", the Appeals Tribunal upheld "the UNDT's finding that AAM established the required nexus between his harm and the protracted process".⁴⁸ Ms. Al-Bustanji has failed to

⁴³ *AAD v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1267/Corr. 1, paras. 80-81.

⁴⁴ *Ibid.*, para. 81.

⁴⁵ *AAM v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1372, paras. 61-62.

⁴⁶ *Ibid.*, para. 62.

⁴⁷ *Ibid.*, para. 61.

⁴⁸ *Ibid.*

advance any such medical evidence which proves her claim that the stress caused to her was occasioned by the delay in the investigation process.

11. Similarly, in 2020, in *Applicant*,⁴⁹ the UNDT's award of USD 5,000 in moral damages was affirmed for stress and anxiety suffered as a result of 20-month delay on the part of the Administration in giving notice of the outcome of the investigation. In doing so, it was noted that there must be supporting evidence beyond a staff member's testimony. In that case, expert testimony from a doctor was advanced which indicated that the applicant had suffered anxiety, stress and had a "depressive mood" related to the work environment and to the delays in the investigation that followed his complaint.⁵⁰ Reliance was also placed on a psychiatric report and numerous e-mail exchanges between the applicant and the Administration regarding his complaint of harassment, the delays in the investigation, and the appointment of panel members. Given that the medical reports relied upon by Ms. Al-Bustanji do not provide a link between the anxiety and stress suffered by her and the delay in the investigation process, we have before us only her own evidence. In this regard, I am unable to agree with my colleague that such a nexus can be inferred from the content of the medical reports provided even if these make no mention of such a nexus. This is all the more so since prior to the delay, the first medical report recorded that Ms. Al-Bustanji had already suffered from a nervous breakdown, which was therefore entirely unrelated to the delay.

12. For these reasons, in accordance with our jurisprudence in *Vijay Neekhra*, it is clear that the provisions of DTI 02/2016 do not impose absolute deadlines on UNWRA, but rather time frames of a recommendatory nature. It follows that every delay which arises, whether in the course of an investigation or otherwise, does not in itself amount to a procedural unfairness, nor does it warrant, without clear evidence of as much, a finding that an individual's due process rights have been violated by such delay.

13. This Tribunal has recognized, in relation to the proof of a moral injury, that while not the only permissible evidence, the best evidence of the nature, degree and ongoing impact of such harm is "expert medical or psychological evidence attesting to the nature and predictable

⁴⁹ *Applicant v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1001/Corr. 1, paras. 17 and 42-43.

⁵⁰ *Applicant v. Secretary-General of the United Nations*, Judgment No. UNDT/2019/129/Corr. 1, para. 97.

impact of the harm and the causal factors sufficient to prove that the harm can be directly linked or is reasonably attributable to the breach or violation”.⁵¹

14. My colleague correctly accepts that the letter of the psychiatrist consulted by Ms. Al-Bustanji dated 22 September 2018 pre-dated the investigation delay. It does not, therefore, assist in proving harm suffered as a result of such delay. The relevance of the letter is only to record that prior to the delay, Ms. Al-Bustanji was diagnosed as suffering from a “severe nervous breakdown” for which she was prescribed medication.

15. The subsequent letter relied upon by Ms. Al-Bustanji from the psychiatrist, dated 21 October 2020, stated that:⁵²

... After examining [Ms. Al-Bustanji’s] psychological and mental state, and asking her about her personal and family history and previous illness, it turned out that she still suffers from some symptoms, although she says that she has been regularly taking the medicines prescribed to her.

... The examination today showed that she still suffers from symptoms of depression, anxiety, tension, stomach and intestinal, irritation and various body pains. We advised her to continue to regularly take the medicines and make regular visits to the clinic for an unspecified period and until full recovery.

16. I am unable to agree with my colleague, however, that this letter proves a nexus between the procedural delay and any harm suffered by Ms. Al-Bustanji as a result of it. The reference by the psychiatrist to the fact that Ms. Al-Bustanji “still suffers from some symptoms, although she says that she has been regularly taking the medicines prescribed to her”, permits a reasonable conclusion to be drawn that the symptoms from which Ms. Al-Bustanji’s “still suffers” are those related to her nervous breakdown. Furthermore, it is apparent from the examination conducted by the psychiatrist that Ms. Al-Bustanji “still suffers from symptoms of depression, anxiety, tension, stomach and intestinal, irritation and various body pains”. Since no reference is made to any medical diagnosis other than her nervous breakdown, it can reasonably be concluded that the symptoms from which Ms. Al-Bustanji “still suffers” are therefore those related to such breakdown. This is so in that no other medical evidence was advanced which would allow for a different conclusion to be drawn in this regard. It follows that no medical evidence was advanced by Ms. Al-Bustanji to prove that harm, in the form of

⁵¹ *Kallon Judgment, op. cit.*, para. 70.

⁵² Medical report dated 21 October 2020.

stress or anxiety directly linked or reasonably attributable to the procedural delay, had been suffered by her.

17. In addition, I am not satisfied that any other evidence advanced by Ms. Al-Bustanji proved that harm had been suffered by her as a result of the delay. Ms. Al-Bustanji's testimony on its own regarding the impact of the delay on her was not sufficiently substantial to prove as much, especially when considered in light of the medical evidence presented, which failed to show a nexus between the delay and harm suffered as a result of it.

18. Regard must properly be given to the caution expressed in *Kallon* that awards of moral damages are not to be too readily assumed on an insubstantial factual basis.⁵³ No substantial factual basis exists in this matter to allow for an award of moral damages, no matter how reduced the quantum of the damages awarded may be. It follows therefore that, having regard to the evidence placed before the UNRWA DT, the UNRWA Dispute Tribunal erred, in my view, in awarding moral damages to Ms. Al-Bustanji given that she had failed to prove an entitlement to such an award.

19. For these reasons, I would have upheld the appeal and reversed the decision of the UNRWA DT to award moral damages to Ms. Al-Bustanji.

Original and Authoritative Version: English

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

(Signed)

Judge Savage

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

(Signed)

Juliet E. Johnson, Registrar

⁵³ *Kallon* Judgment, *op. cit.*, para. 67.