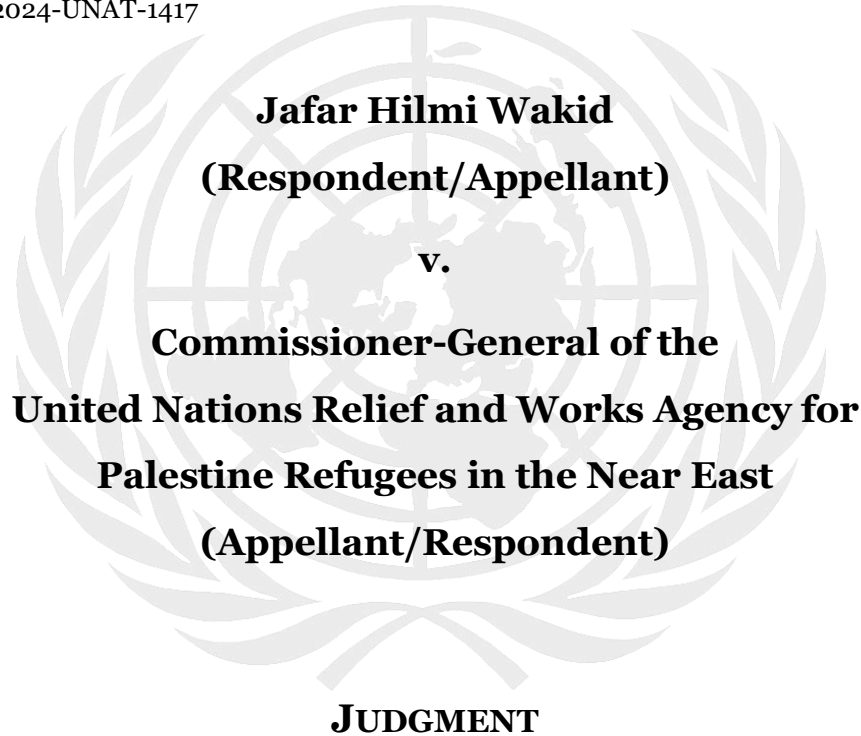




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2024-UNAT-1417



**Jafar Hilmi Wakid
(Respondent/Appellant)**
v.
**Commissioner-General of the
United Nations Relief and Works Agency for
Palestine Refugees in the Near East
(Appellant/Respondent)**

JUDGMENT

Before:	Judge Abdelmohsen Sheha, Presiding Judge Katharine Mary Savage Judge Kanwaldeep Sandhu
Case Nos.:	2023-1802 & 2023-1822
Date of Decision:	22 March 2024
Date of Publication:	26 April 2024
Registrar:	Juliet E. Johnson

Counsel for Mr. Wakid:	Self-represented
Counsel for Commissioner-General:	Natalie Boucly & Stephen Margetts

JUDGE ABDELMOHSEN SHEHA, PRESIDING.

1. In Judgment No. UNRWA/DT/2023/013 (impugned Judgment), the Dispute Tribunal for the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or Dispute Tribunal) rescinded the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) to impose the disciplinary measure of separation from service without termination indemnity (contested decision) on Mr. Jafar Hilmi Wakid.
2. In the event that the Agency declined to rescind the contested decision, the UNRWA DT awarded in-lieu compensation in an amount equivalent to four years' of Mr. Wakid's net-base salary, his termination indemnity, and compensation for moral damages in the amount of USD 3,000.
3. In Case No. 2023-1802, the Commissioner-General appeals the compensation award as excessive and seeks to reduce the in-lieu compensation amount and to vacate the award of moral damages and disbursement of termination indemnity. In Case No. 2023-1822, Mr. Wakid appeals the compensation award as insufficient, and seeks an increase in the in-lieu compensation and moral damages. These cases were consolidated for decision by the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).¹
4. For the reasons set forth herein, the Appeals Tribunal grants the Commissioner-General's appeal, dismisses Mr. Wakid's appeal and modifies the impugned Judgment.

Facts and Procedure

5. As neither party appeals the rescission of the contested decision, only those facts and procedure that are relevant to the dispute over compensation and termination indemnity are recited herein.²
6. Mr. Wakid was at the time of the events in question, a School Principal, Grade 15, Step 8 at Awajan Boys' Preparatory School (Awajan School), Jordan Field Office (JFO).

¹ *Jafar Hilmi Wakid v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Order No. 545 (2023).

² The facts are drawn from the impugned Judgment, paras. 2-14.

7. On 15 August 2016, a mother of a student at the Awajan School (Complainant) submitted a complaint alleging sexual exploitation and abuse of her by Mr. Wakid.
8. An investigation was initiated on 23 August 2016, and it concluded on 11 April 2017, eight months later. According to General Services Circular (GSC) No. 07/2010, it is mandatory that such investigations are concluded within three months.
9. Mr. Wakid was informed of the investigation findings and allowed an opportunity to respond to the allegations of misconduct flowing therefrom.
10. On 12 June 2018, the Director of UNRWA Operations in the Jordan Field Office (DUO/J) imposed on Mr. Wakid the disciplinary measure of separation from service without termination indemnity.
11. On 13 November 2018, Mr. Wakid filed an application with the UNRWA DT challenging the contested decision. As part of his application, he submitted an undated letter signed by the Complainant in which she retracted her initial complaint and stated that Mr. Wakid was innocent.
12. In Judgment No. UNRWA/DT/2020/064, the Dispute Tribunal upheld the Agency's decision and dismissed his application.
13. Mr. Wakid appealed to the Appeals Tribunal, which in Judgment No. 2022-UNAT-1194 reversed the aforementioned UNRWA DT Judgment and remanded the case for additional factfinding and rehearing before a different judge.³ The Appeals Tribunal found that the misconduct had not been proven to the clear and convincing evidence standard because the Dispute Tribunal had not heard testimony from the Complainant, dismissed her written retraction based on reasons not supported by evidence, and accepted Mr. Wakid's testimony without oath or affirmation.⁴
14. On remand, the Dispute Tribunal issued several orders to secure the testimony of the Complainant at the hearing, but the Agency was unable to produce her and she did not attend.⁵

³ *Jafar Hilmi Wakid v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2022-UNAT-1194, para. 75.

⁴ *Ibid.*, para. 65.

⁵ Impugned Judgment, paras. 64-65.

The rehearing took place on 15 and 16 November 2022, and the Tribunal heard from Mr. Wakid (under oath), three witnesses, and two expert witnesses.

15. On 19 March 2023, the UNRWA DT issued the impugned Judgment.

Impugned Judgment

16. The UNRWA DT concluded that in the absence of the Complainant's testimony at the rehearing, the Dispute Tribunal could not find that her original complaint was credible, and the clear and convincing evidence standard could not be met. Accordingly, the Dispute Tribunal rescinded the disciplinary measure of separation from service without termination indemnity.⁶

17. In accordance with Article 10(5)(a) of the UNRWA DT Statute, the Dispute Tribunal was required to set an amount of in-lieu compensation. The Tribunal noted that in-lieu compensation should not exceed two years' net base salary unless exceptional circumstances were present.⁷

18. The Dispute Tribunal noted that Mr. Wakid's permanent appointment had been terminated on 12 June 2018, and that he had testified at the hearing that he had been unemployed since then, or for about four and a half years. The Tribunal considered Mr. Wakid's "lengthy unemployment, his eventual difficulties to find a similar employment as a Palestine refugee in Jordan, the unproven sexual harassment allegations and his contractual status as permanent teaching staff" and set in-lieu compensation at the equivalent of four years' net base salary.⁸

19. The Dispute Tribunal rejected Mr. Wakid's request for compensation for various allowances, pension benefits and loss of medical insurance, finding that the in-lieu compensation award sufficiently compensated for these losses.⁹

20. The Dispute Tribunal considered Mr. Wakid's claim to moral damages under Article 10(5)(b) of the UNRWA DT Statute for his psychological and reputational harm, and for the violation of his due process rights by the delay in the investigation.

21. With regard to the delay in the investigation, the Dispute Tribunal observed that GSC No. 07/2010 sets a mandatory three-month deadline for the Agency to complete an investigation

⁶ *Ibid.*, para. 78.

⁷ *Ibid.*, para. 83.

⁸ *Ibid.*, para. 88.

⁹ *Ibid.*, para. 89.

report in cases involving allegations of sexual exploitation and abuse, and that in this case, the report was completed eight months after the initial complaint. The Tribunal found this delay to be “excessive” and inconsistent with the Agency’s obligation to respect Mr. Wakid’s due process rights.¹⁰

22. The Dispute Tribunal also reviewed what it characterized as “less persuasive documents”,¹¹ namely, a brief medical report from a psychiatrist dated 30 September 2018 that diagnosed Mr. Wakid with hypertension, major depression and post-traumatic stress disorder.

23. The Dispute Tribunal noted that it was not clear from the evidence before it to what degree Mr. Wakid’s alleged psychological and reputational harm stemmed from the investigative delay, but concluded that the five-month delay was “so objectively excessive that it would distress an average person”.¹²

24. The Dispute Tribunal acknowledged that Mr. Wakid’s own testimony about his psychological and reputational harm was not sufficient to establish compensable harm but found that his testimony was corroborated by the medical report. Although the medical report did not specify the causes of the issues therein, the Tribunal considered that: “the temporal nexus between the period of delay, the date of [Mr. Wakid’s] termination and the date of medical report is sufficient under a preponderance of the evidence standard to establish that [he] suffered psychological and reputational harm from the series of events culminating in the contested decision”.¹³ Accordingly, the Tribunal held that compensation of USD 3,000, approximately two months of Mr. Wakid’s salary, was an appropriate sum.

25. Lastly, the Dispute Tribunal held that, in line with the Appeals Tribunal’s Judgment in *Kaddoura*,¹⁴ and Area Staff Rule 109.9(3)(B), Mr. Wakid was entitled to his termination indemnity, including interest, calculated at the U.S. Prime Rate from the date he was terminated.¹⁵

¹⁰ *Ibid.*, para. 91.

¹¹ *Ibid.*, para. 92.

¹² *Ibid.*, para. 93.

¹³ *Ibid.*, para. 94.

¹⁴ *Nadine Kaddoura v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees of the Near East*, Judgment No. 2021-UNAT-1185.

¹⁵ Impugned Judgment, para. 97.

26. The Commissioner-General filed an appeal of the impugned Judgment on 17 May 2023, which was registered as Case No. 2023-1802 on the docket of the Appeals Tribunal. Mr. Wakid did not file an answer to this appeal.

27. Mr. Wakid received an Arabic translation of the impugned Judgment on 17 May 2023. He subsequently filed an appeal on 11 July 2023, which was registered as Case No. 2023-1822 on the docket of the Appeals Tribunal. The Commissioner-General filed an answer to this appeal on 11 September 2023.

Submissions

Case No. 2023-1802

Commissioner-General's Appeal

28. The Commissioner-General submits that that UNRWA DT erred on a question of law in setting compensation in lieu of recission, awarding compensation for moral damages, and ordering disbursement of a termination indemnity.

29. The Commissioner-General submits that this was not an exceptional case warranting higher compensation as contemplated by Article 10(5)(a) of the UNRWA DT Statute. The Commissioner-General objects to the factors considered by the UNRWA DT in awarding exceptional compensation.

30. First, the Commissioner-General states that the fact that Mr. Wakid has been unemployed for four and a half years is not a relevant factor. The Commissioner-General observes that there was no evidence as to Mr. Wakid's efforts to find suitable employment. The Commissioner-General also states that there was no evidence to support that Mr. Wakid was a Palestinian refugee or that this status made it more difficult to find employment in Jordan. Even if this was true, the Commissioner-General submits that the Agency is not responsible for the employment environment in Jordan and this cannot justify exceptional compensation.

31. Second, the Commissioner-General submits that the UNRWA DT's reliance on the "unproven sexual harassment allegations" as a factor for extraordinary compensation is without merit. The Commissioner-General points out that the Agency had evidence to support the allegations, and the mere fact that the Complainant could not be located and/or persuaded to

appear at the hearing cannot justify an exceptional award. If the non-appearance of a witness automatically translated into a higher award, this does not comport with established jurisprudence that the nature of the allegations and degree of irregularities committed by the Agency is of no legal relevance to the pecuniary value of the ordered rescission.¹⁶

32. The Commissioner-General submits that exceptional compensation should be awarded only when there is an egregious violation of the staff member's rights, and that is not the case here. This is a case where the allegations remained untested because the Complainant did not testify before the UNRWA DT.

33. The Commissioner-General submits that the UNRWA DT erred in awarding moral damages of USD 3,000 without sufficient proof.

34. The Commissioner-General notes that for compensation for harm, Appeals Tribunal jurisprudence requires three elements: the harm itself, an illegality, and a nexus between both.¹⁷ If one element is missing, there can be no award. The Commissioner-General argues that the UNRWA DT erred by, on the one hand acknowledging that the medical report did not establish causation, and on the other hand finding that Mr. Wakid had met his burden of proof. The UNRWA DT erred by inferring that Mr. Wakid suffered distress based on the investigative delay and the date of the medical report.

35. The Commissioner-General submits that the UNRWA DT erred in ordering the Agency to pay Mr. Wakid his termination indemnity and payment of interest thereon. Relying on Appeals Tribunal jurisprudence, the Commissioner-General argues that if the termination is rescinded and there is no termination, then no payment of termination indemnity can be made.¹⁸

36. The Commissioner-General further argues that the UNRWA DT erroneously relied on the Appeals Tribunal's Judgment in *Kaddoura*,¹⁹ which is distinguishable from the present case.

¹⁶ The Commissioner-General points to *Faraj El-Awar v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2022-UNAT-1265.

¹⁷ The Commissioner-General relies on *Sarah Coleman v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1228.

¹⁸ The Commissioner-General relies on *James Michel Songa Kilauri v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1304.

¹⁹ *Kaddoura* Judgment, *op. cit.*

37. For the foregoing reasons, the Commissioner-General requests that the Appeals Tribunal reduce the in-lieu compensation, and vacate the award of moral damages and disbursement of the termination indemnity.

Mr. Wakid's Answer

38. Mr. Wakid did not file an answer to the appeal in Case No. 2023-1802.

Case No. 2023-1822

Mr. Wakid's Appeal

39. Mr. Wakid separately appealed the impugned Judgment and requests an increase in the amount of alternative compensation and moral damages, payment of termination indemnity from the date of appointment to the date of payment by the Agency, and payment of interest on the amount of the termination indemnity.

40. Mr. Wakid states at the outset that he still has not received relief, more than five years after the contested decision and seven years after the complaint. During this time he has been effectively “imprisoned” in his “house bereft of work, reputation, dignity or consideration” and that he and his family have undergone significant suffering throughout this lengthy litigation.

41. Mr. Wakid asks that the Appeals Tribunal find that his appeal is admissible as filed within 60 calendar days of his receipt of the Arabic translation of the impugned Judgment. Mr. Wakid acknowledges that the impugned Judgment was handed down on 19 March 2023, but he did not receive the Arabic translation until 17 May 2023.

42. Mr. Wakid submits that the UNRWA DT erred in failing to award him sufficient compensation. Relying on the Appeals Tribunal's decision in *Lucchini*,²⁰ Mr. Wakid avers that he should have been awarded compensation from the date of his termination, 20 June 2018, to the date that the decision was rescinded, or five years. He also claims that the in-lieu compensation should cover his losses of various benefits and health insurance coverage over this period of time.

²⁰ *Alex Lucchini v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1211.

43. Mr. Wakid submits that the UNRWA DT erred in its calculation of material and moral damages under Article 10(5)(b) of the UNRWA DT Statute. Mr. Wakid argues that it was a flagrant violation of justice that the investigation report was not completed for eight months, even though the relevant rules require its completion in three months. He acknowledges that the UNRWA DT awarded him USD 3,000 for the violation of his due process rights, but he submits that this is an extremely small sum that is not in any way commensurate with the suffering that he and his family endured due to these allegations.

44. Mr. Wakid submits that the UNRWA DT erred when it ignored the fact that when the decision was rescinded, he would have had only five more years until he could retire from the Agency. Mr. Wakid noted that he has worked for the Agency since 27 December 1990, and that he had 28 years of service with distinction when the Agency terminated his appointment. When the Agency did so, he was without any prospects for re-employment given his age.

45. Mr. Wakid submits that the Agency's decision to terminate him had numerous consequences on him. He has suffered from shock, depression, isolation and insomnia. He has been riddled with chronic diseases, including diabetes, high blood pressure and cholesterol. He states that his wife and children have also been afflicted by various diseases and they have been unable to receive treatment because they have no health insurance.

46. Mr. Wakid submits that Eastern society abhors the type of moral accusations that were levied at him, and thus he and his family have had to live in isolation and seclusion.

47. Mr. Wakid submits that he has been unable to find work and has been cut off from income. He states that it is difficult for a Palestinian refugee to find work in the country where he lives (Jordan).

48. Mr. Wakid summarizes his pleas for increased compensation by asking for: (1) an increase in compensation in lieu of rescission to take into account raises, promotions, retirement benefits, interest on savings and loss of health insurance from the date of dismissal to the date of payment by the Agency; (2) an increase in the amount of moral damages from the USD 3,000 awarded by the UNRWA DT; (3) payment of the full termination indemnity, which is an acquired right, calculated from the date of his appointment to the date of payment by the Agency; (4) payment of interest on the amount of the termination indemnity calculated at the United States prime interest rate from the date of termination to the date of payment;

and (5) assessment of material damages for the ten remaining years of service through what would have been his retirement age at 20 June 2028, because he was left without an employer at an age when it was impossible for him to get another job.

Commissioner-General's Answer

49. The Commissioner-General has no issue with the admissibility of Mr. Wakid's appeal. The Commissioner-General notes that it is well-settled that the date of the receipt of the translation of the impugned Judgment is the date used for the purposes of the computation of time limits under Article 7(1) of the Appeals Tribunal Statute (Statute).

50. The Commissioner-General submits that the UNRWA DT already considered Mr. Wakid's alleged lengthy non-employment status, the loss of benefits and insurance, and that these were factored into the Dispute Tribunal's "exceptional granting" of four years' net base salary. No further increase is warranted.

51. The Commissioner-General submits that Mr. Wakid has not established any error of law or manifestly unreasonable factual finding in the grant of USD 3,000 for moral damages. Mr. Wakid's view that this was very meagre is not sufficient to overturn the UNRWA DT's award.

52. The Commissioner-General submits that it is speculative to assume that Mr. Wakid would still be in service through to his retirement age, and that this is not a basis to award him greater compensation.

53. The Commissioner-General argues that there is no legal basis to enhance either the in-lieu compensation or moral damages awards in this case.

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

Considerations

55. The scope of the present appeals, as defined by the parties, is limited to the three following questions: (i) whether the UNDT erred in considering Mr. Wakid's case exceptional, thus warranting an enhanced award of compensation, (ii) whether the UNDT erred in setting

the amount of compensation in lieu and compensation for harm, (iii) and whether the UNDT erred in its order of disbursement of termination indemnity.

56. The Agency does not contest the impugned Judgment in respect of the order for rescission. This part of the impugned Judgment is therefore *res judicata*.

Whether Mr. Wakid's case was exceptional

57. In the impugned Judgment, the UNRWA DT considered the case of Mr. Wakid exceptional, warranting compensation in lieu of rescission equivalent to four years' net base salary, in addition to USD 3000 as compensation for harm. Both the Commissioner-General and Mr. Wakid contested the forementioned determination. While the Commissioner-General submits that the case is not exceptional and requests to reduce that amount to the statutory cap of two years' net base salary, Mr. Wakid asks to enhance the amount awarded to a just and appropriate level, ensuring full compensation for the past and future losses of his salary and for the harm he suffered.

58. We shall consider the Commissioner-General's contention first. If he succeeds, there will be no need to assess Mr. Wakid's request for an enhanced award.

59. Article 10(5) of the UNRWA DT Statute reads:

As part of its judgement, the Dispute Tribunal may order one or both of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;

(b) Compensation for harm supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm supported by evidence and shall provide the reasons for that decision.

60. Article 10(5)(b) of the UNRWA DT Statute, to which subparagraph (a) is subject, sets a two years' net base salary cap on awardable compensation. The only exception is when the Dispute Tribunal views a case as exceptional, justifying an enhanced award.

61. There is no clear definition of "exceptional cases". The term is, in fact, far from being self-evident. This is not necessarily a fault in the legal system. "Exceptional cases", so much as "reasonable delays" or "reasonable expectations", refer to what is commonly known as "legal

standards”. These types of legal norms are not self-evident because, unlike legal rules, they do not by themselves create specific rights and obligations. Rather, legal standards exist on a continuum that gain greater precision with the accumulation of practical examples stemming from case law.

62. Nonetheless, while legal standards are imprecise in terms of the rights and obligations they create, each legal standard still has a scope that depends on the interpretation of its components. The term “exceptional cases” notably comprises the word “exceptional”. Referring to *Morsy*, “exceptional simply mean[s] something out of the ordinary, quite unusual, special, or uncommon. To be exceptional, a circumstance or reason need not be unique or unprecedented or very rare, but it cannot be one which is regular or routinely or normally encountered”.²¹ Interpreted in the context of compensation under Article 10(5)(b) of the UNRWA DT Statute, “exceptional cases” would mean a case where (i) unusual factors (ii) led to aggravated harm for the staff member, justifying an enhanced award for compensation to the appropriate extent.²²

63. To consider a case exceptional, the consistent jurisprudence of this Tribunal, in line with the case-law of the former United Nations Administrative Tribunal, requires the existence of egregious factors. Egregious factors may include reckless abuse of power,²³ blatant harassment,²⁴ discrimination,²⁵ retaliatory threats and hostility,²⁶ humiliation,²⁷ lack of good faith,²⁸ manifest unfairness or disproportionality,²⁹ grave violations of due process,³⁰ or manipulation.³¹ The common ground of all these exceptional factors is the existence of bad faith or reckless disregard on the side of the Administration that directly led to aggravating the

²¹ *Morsy v. Secretary-General of the United Nations*, Judgment No. UNDT/2009/036, para. 50.

²² *Kasmani v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-305, paras. 30-33.

²³ *Mmata v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-092, paras. 32-33. Although the UNAT was referring to Article 10(5) of the UNDT Statute, the same reasoning remains applicable to the case of the UNRWA DT whose Statute is identical to the Statute of the UNDT in this regard.

²⁴ *Hersh v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-433-Corr. 1, para. 38.

²⁵ *Aly et al. v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-622, para. 50.

²⁶ *Mmata* Judgment *op. cit.*, para. 32.

²⁷ Former Administrative Tribunal Judgment No. 936, *Salama* (1999), para. VII.

²⁸ *Ibid.*

²⁹ *Applicant v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1187, para. 80; *Mmata* Judgment, *op. cit.*, para. 32.

³⁰ *Angioli Rolli v. Secretary-General of the World Meteorological Organization*, Judgment No. 2023-UNAT-1346, para. 79; *Cohen v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-124, para. 21.

³¹ Former Administrative Tribunal Judgment No. 1008, *Loh* (2001), para. IX.

staff member's grief. This reflects the misuse of authority by the Administration and the deviation from the public interest. This is why those exceptional cases were, in more than one instance, associated with referrals for accountability.³² In one instance, an exceptional case was also identified, although in *obiter dictum*, as being when the rendering of a judgment was unreasonably delayed.³³ In any event, Article 10(5)(b) of the UNRWA DT Statute "does not require a formulaic articulation of aggravating factors; rather it requires evidence of aggravating factors which warrant higher compensation".³⁴

64. In the impugned Judgment, the UNRWA DT relied on four factors to justify the enhanced award: (i) Mr. Wakid's lengthy unemployment from the date of termination on 12 June 2018 to the date of Judgment on 19 March 2023, (ii) Mr. Wakid's difficulties in securing similar employment due to his status as a Palestinian refugee in Jordan, (iii) the unproven sexual harassment allegations, and (iv) Mr. Wakid's contractual status as a permanent teaching staff member of UNRWA.³⁵

65. We disagree with the UNRWA DT's assessment. In our view, none of the reasons provided by the UNRWA DT, considered individually or collectively, is convincing enough to consider the case exceptional.³⁶ To begin with, Mr. Wakid's contractual status as a permanent teaching staff member cannot be considered an unusual circumstance. Indeed, the type of appointment may have an impact on the extent of compensation. However, the type of appointment *per se* cannot be considered as an abnormal circumstance under Article 10(5) of the UNRWA DT Statute. As to Mr. Wakid's status as a Palestinian refugee in Jordan, and supposing *in arguendo* that this status hinders him from pursuing his professional career, it remains that this element is extraneous to the Administration and beyond its control. Considering otherwise would mean that potential cases of every and each Palestinian staff member of UNRWA in Jordan would be exceptional. We also find, in general, that Mr. Wakid's case was not egregious. The Agency had a case to make, made it properly, and the allegations of sexual harassment were not truly tested on the merits. The allegations failed, not because of their lack of merit, but due to the undated letter of retraction of the Complainant, and her failure to appear in court to testify. We further note, in this regard, that the due process rights

³² See *Hersh Judgment, op. cit.*, para. 45; *Salama Judgment, op. cit.*, para. VIII.

³³ *Mmata Judgment, op. cit.*, para. 29.

³⁴ *Ibid.*, para. 33.

³⁵ Impugned Judgment, para. 88.

³⁶ See *El-Khalek v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-442, para. 30.

of Mr. Wakid were, albeit quite belatedly, globally preserved and nothing in the record indicates that he suffered any form of harassment, abuse of power, or otherwise, before, during, or after the investigation. Finally, if judicial proceedings took more than five years to come to an end, this was not an unjustified or unreasonable delay, considering the legal and factual complexity of the case that led *in fine* to some sort of moral vindication or satisfaction to Mr. Wakid.

66. For these reasons, we find that the UNRWA DT erred in fact, resulting in a manifestly unreasonable decision, and in law in considering the circumstances of Mr. Wakid's case exceptional.

The amount of compensation awarded to Mr. Wakid

67. As Mr. Wakid's case is not exceptional, any award of compensation must respect the statutory cap of two years' net base salary.

68. We first note our disagreement with the UNRWA DT's assessment in respect of compensation for moral damage.

69. We remind that the UNRWA DT awarded Mr. Wakid USD 3,000 as compensation for moral harm caused by both the procedural irregularity and the contested unlawful decision of dismissal. The Commissioner-General submits that the UNRWA DT erred in its determination as the harm was not proven on a cause-effect lien with the breach. On the opposite side, Mr. Wakid requests this Tribunal to enhance the quantum of compensation for harm awarded.

70. We agree with the Commissioner-General.

71. As we ruled in *Kebede*, "compensation for harm shall be supported by three elements: the harm itself; an illegality; and a *nexus* between both. 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 from the illegality on a cause-effect lien".³⁷

72. Indeed, our Tribunal is ordinarily "reluctant to interfere with an award of compensation by the UNDT because the amount of compensation is necessarily a matter of

³⁷ *Kebede v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-874, para. 20.

estimation and discretion. However, the Appeals Tribunal is entitled and obliged to interfere where: i) there has been an irregularity or misdirection (such as considering irrelevant facts; ignoring relevant ones; or a material error of law); ii) no sound or reasonable basis exists for the award made by the UNDT; or iii) there is a substantial variation or a striking disparity between the award made by the UNDT and the award that the Appeals Tribunal considers ought to have been made.”³⁸

73. To order the award of compensation for moral damages, the UNRWA DT relied essentially on a “brief medical report” from a psychiatrist dated 30 September 2018. The brief report diagnosed Mr. Wakid with hypertension, major depression, and post-traumatic stress disorder. The UNRWA DT noted that the evidence “does not make clear if or to what degree [Mr. Wakid’s] alleged psychological and reputational harm stemmed from the investigative delay”.³⁹ However, the UNRWA Dispute Tribunal considered that the investigative delay of five months was objectively excessive and would distress an average person.

74. Although we agree with the UNRWA DT on the existence of breach and harm, we find it difficult to agree on the establishment of nexus between them. The medical report on which the UNRWA DT relied, although establishing a medical condition, did not make any reference to the cause of Mr. Wakid’s illness. As noted before, the absence of formal nexus between the breach and the harm was conceded by the UNRWA DT in the impugned Judgment. It is therefore legitimate to believe that Mr. Wakid’s illness may have been, at the relevant time of events, the result of personal or professional circumstances other than the fact of his dismissal, and the associated delay in investigations, that took place several months before the diagnosis of his medical condition. On the balance of probabilities, it is hard to know whether the dismissal or the investigative delay was the triggering factor that led to illness, an aggravating factor that worsened Mr. Wakid’s medical condition, or otherwise. In these circumstances, we believe that the evidentiary weight of the medical report was not sufficient to support the establishment of nexus between the breach and the harm, or to corroborate Mr. Wakid’s testimony on his own medical condition. It follows that without convincing evidence, the request for compensation for moral damages ought to have been rejected.

75. This does not mean that Mr. Wakid will not be entitled, after all, to any compensation. We affirm the UNRWA DT’s Judgment that considering Mr. Wakid’s type of appointment as a

³⁸ *Haroun v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-909, para. 32.

³⁹ Impugned Judgment, para. 93.

permanent teacher, and the time left to him before retirement, he should be allowed the maximum awardable in-lieu compensation of two years' net base salary.

Termination indemnity

76. This leaves us with the Commissioner-General's and Mr. Wakid's contentions regarding the termination indemnity.

77. We remind that the UNRWA DT ordered that if the Agency chooses not to rescind the contested decision, it must disburse the entirety of the termination indemnity to Mr. Wakid in accordance with Area Staff Rule 109.9(3)(B).

78. The Commissioner-General takes issue with that determination. He alleges that when a termination is rescinded, and there is no termination, no termination indemnity should be paid. On the opposite side, Mr. Wakid requests this Tribunal to set an interest rate payment on the termination indemnity ordered from the date of appointment to the date of termination.

79. We first note that the UNRWA DT considered termination indemnity as "additional compensation not provided for under Article 10(5)".⁴⁰ Yet, the UNRWA DT ordered disbursement of such compensation. While we agree with the UNRWA DT's statement that it made an "additional" award, we find that it erred when it did so, because such an award was in manifest excess of the remedial powers exclusively and explicitly provided for under Article 10(5) of its Statute.

80. This Tribunal has already held in *James Michel Songa Kilauri* that "if the termination is rescinded and there is no termination, no payment *in lieu* of notice, and indemnity payment can be made".⁴¹ This holding applies not only when the Administration opts for rescission, but also when it opts to pay an alternative compensation. This means that in-lieu compensation excludes a termination indemnity.

81. Compensation in lieu represents a monetary alternative to rescission. Its objective is to place the staff member in the same position had the contested decision not been taken. It follows that compensation in lieu of rescission means that rescission is not performed and the contested decision, albeit unlawful, is allowed to persist in the legal order. In exchange, the

⁴⁰ *Ibid.*, p. 22 (subheading).

⁴¹ *Kilauri Judgment, op. cit.*, para. 31.

Administration bears the monetary consequences of a hypothetical reinstatement. This is why the consistent jurisprudence of this Tribunal considers compensation in lieu as the economic equivalent of rescission.

82. The economic or pecuniary value of rescission is calculated by the appropriate assessment of past, and possibly future, financial entitlements that would normally result from retrospective reinstatement. In receiving this package of alternative compensation, the staff member, although not effectively reinstated, is treated financially as if he/she has pursued his/her employment with the Organization until the end of his/her appointment.

83. Termination indemnity, on the other hand, relies on the logic of being prematurely terminated in the interest of the Organization. Hence, from the date of his/her termination, the staff member does not receive any salaries or allowances.

84. It follows that termination indemnity cannot be part of compensation in lieu, not only due to difference in purpose,⁴² but most of all due to difference in the underlying philosophy and implications. While compensation in lieu presumes a hypothetical continuation of appointment and entitlement to salary that results thereof, termination indemnity stands on the premise of a premature separation from service. Therefore, compensation in lieu and termination indemnity cannot coexist. This explains why this Tribunal decided in many instances to deduct the amount of termination indemnity received by the staff member on dismissal from the amount of compensation in lieu awarded after judicial proceedings, i.e., to avoid an excess in the payment of compensation.⁴³

85. Therefore, as termination indemnity is not part of compensation in lieu and not an express remedy provided for under Article 10(5) of the UNRWA DT Statute, we find that the UNRWA DT exceeded its jurisdiction when it ordered its disbursement.

⁴² *El-Kholy v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-730, para. 39. The UNAT held in that case “[t]he purpose of the compensation is an alternative to rescission, so that the person would receive the same amount had the unlawful decision not occurred, the objective of the termination indemnity is to provide sufficient means of survival for the staff member to identify a regular placement in the labour market”.

⁴³ See *Kilauri* Judgment, *op. cit.*, paras. 29-34; *Andreyev v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-501, para. 31. *Cf. El-Kholy* Judgment, *op. cit.*, para. 39; *Zachariah v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-764, para. 36; *Fasanella v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-765, para. 34; *Eissa v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-469, para. 27; *Sannoh v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-451, para. 18.

86. In light of the foregoing, the Commissioner-General's appeal succeeds, and Mr. Wakid's appeal is dismissed.

Judgment

87. The Commissioner-General's appeal is granted, and the compensation for harm and the order to disburse termination indemnity are vacated. The impugned Judgment No. UNRWA/DT/2023/013 is modified to the extent that the amount of in-lieu compensation awarded to Mr. Wakid is reduced to the equivalent of two years' net base salary. Mr. Wakid's appeal is dismissed.

88. Unless the Commissioner-General opts for rescission, the amount of compensation mentioned here-above shall be payable with interest at the U.S. Prime Rate accruing from the date of Mr. Wakid's termination to the date of payment. If the amount is not paid within the 60-day period counting from the date of issuance of this Judgment, interest at the U.S. Prime Rate plus an additional five per cent shall accrue until the date of payment.

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 Sandhu

Judgment published and entered into the Register on this 26th day of April 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar