

# First Activity Report of the UNRWA Dispute Tribunal

June 2011 to December 2014

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## Introduction

In 2007, the United Nations General Assembly decided to introduce a new system for handling internal disputes and disciplinary matters in the United Nations. This came as a result of extensive discussions on the issue of administration of justice, and a keen recognition by both management and staff that the existing system no longer met the needs of the United Nations organizations. The goal was to have a system that was independent, professionalised, efficient, transparent and decentralised, with a stronger emphasis on resolving disputes through informal means, before resorting to formal litigation. Accordingly, the Joint Appeals Board ("JAB"), the Joint Disciplinary Committee ("JDC") and the United Nations Administrative Tribunal were abolished and the new system of administration of justice came into effect on 1 July 2009, pursuant to General Assembly Resolution 63/253, i.e. the establishment of the United Nations Dispute Tribunal.

In line with the new system of administration of justice, and in agreement with the Secretary-General of the United Nations, the United Nations Relief and Works Agency for Palestine Refugees in the Near East ("UNRWA"/"Agency") implemented its own first instance Dispute Tribunal, which conforms to the General Assembly's requirements and is modeled after the United Nations Dispute Tribunal ("UNDT"). The UNRWA Dispute Tribunal ("Tribunal") considers and decides on cases filed by or on behalf of current and former staff members appealing administrative decisions either (a) alleged to be in non-compliance with their terms of appointment or (b) relating to disciplinary measures. The professional Judges conduct hearings, issue Orders and render binding Judgments. Both staff members and the Agency have a right to appeal the Judgments of the Tribunal to the United Nations Appeals Tribunal ("UNAT").

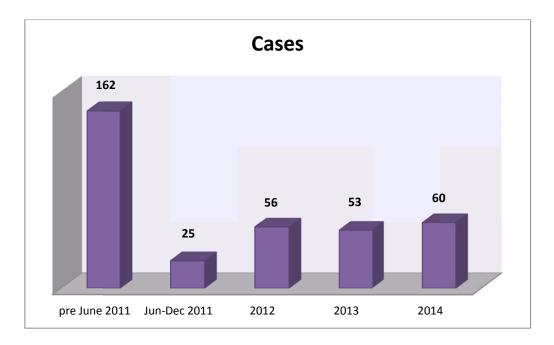
The Tribunal was established by Area and International Staff Regulation 11.3 effective 1 June 2010. The Tribunal became operative on 1 June 2011. The Statute of the Tribunal provides that Judges are selected by the Internal Justice Committee, which is comprised of three external jurists, representatives of area and international staff, and management. At present there are two part-time Judges and five full-time staff members who provide, *inter alia*, legal, administrative and translation services to the Judges.

The Tribunal is pleased to issue the First Activity Report on the activities of the Tribunal from June 2011 to December 2014. This report provides statistical information on cases that have been adjudicated by the Tribunal and summaries of major legal pronouncements that have been formulated in Judgments rendered during that period.

# **Statistics**

#### Cases

At the time the Tribunal opened its doors on 1 June 2011, there were **162** cases pending resolution, many dating back several years. The number of cases<sup>1</sup> brought before the Tribunal to date totals **356**.



#### Per Field Offices and HQs:

| Fields & HQs    |            |     |     |     |     |            |      |  |
|-----------------|------------|-----|-----|-----|-----|------------|------|--|
|                 | <b>GFO</b> | HQA | HQG | JFO | LFO | <b>SFO</b> | WBFO |  |
| Number of Cases | 42         | 58  | 10  | 85  | 91  | 31         | 39   |  |
| Percentage      | 12%        | 16% | 3%  | 24% | 25% | 9%         | 11%  |  |

<sup>&</sup>lt;sup>1</sup> The Tribunal notes that the term "cases" as used herein includes the former "appeals" that were transferred from the former system and "applications" that have been filed on or after 1 June 2010. In addition to the 162 pending cases at the start, 25 new applications were filed between 1 June 2011 and 31 December 2011; 56 new applications were filed in 2012; 53 in 2013 and 60 in 2014. More than 80% of the applications are filed by male staff members.

## Categories of cases

The nature of cases before the Tribunal consists of two main categories: (1) disciplinary and (2) other administrative decisions.

In the category of **disciplinary** cases, the decisions<sup>2</sup> being contested include:

- termination for misconduct (including summary dismissal)
- termination in the interest of the Agency
- written censure
- transfer
- demotion
- special leave with pay
- suspension without pay
- multiple sanctions, i.e. more than one sanction was imposed

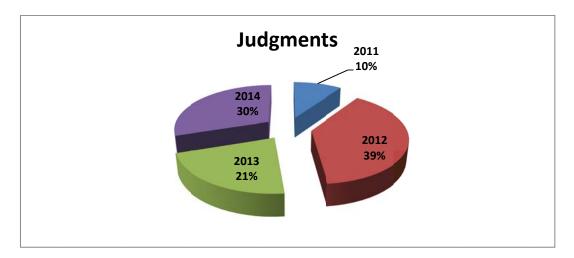
In the category of other administrative decisions, the decisions being contested include:

- benefits/entitlements
- transfer
- · redundancy/abolishment of post
- non-renewal/non-extension/non-confirmation
- non-selection/non-promotion
- denial of special leave with or without pay
- reclassification
- work-related injuries
- reprimand
- termination in the interest of the Agency
- suspension with pay pending investigation
- multiple

<sup>&</sup>lt;sup>2</sup> The Tribunal recognizes that the decisions of "termination in the interest of the Agency", "transfer", and "special leave with pay" are not disciplinary measures *per se* as enumerated in Staff Rule 110.1(1). However, the context in which these actions were taken by the Agency involved disciplinary matters, and thus the cases were treated accordingly by the Tribunal.

## **Judgments**

From 1 June 2011 through 31 December 2014, the Tribunal issued 177 Judgments<sup>3</sup> disposing of 231 cases.<sup>4</sup> Sixty-one cases were withdrawn at the request of the Applicants. Thus the total number of cases resolved is 292. The number of cases pending before the Tribunal at the end of 2014 was 64 plus two cases on remand from the UNAT. The Judges work on the cases generally in chronological order of the date of the filing of the application, with few exceptions. The Judges are currently finishing cases that were filed in 2013 and working on 2014 cases. Therefore, there remains a backlog of cases. A backlog will continue until a point in time is reached where the cases filed within a given year can be disposed of in that same year.

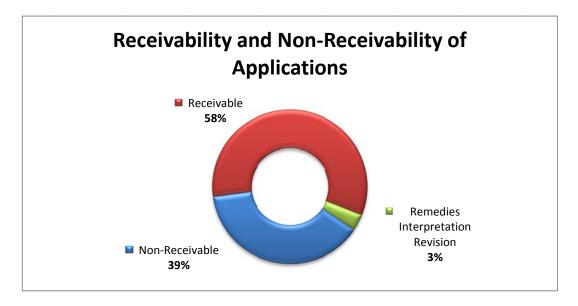


| Year | Judgments      |                                |                                      |                        |  |  |  |
|------|----------------|--------------------------------|--------------------------------------|------------------------|--|--|--|
|      | Single<br>Case | Multiple Case (see footnote 4) | Remedies/Interpretation/<br>Revision | On Remand from<br>UNAT |  |  |  |
| 2011 | 17             | 0                              | 0                                    | 0                      |  |  |  |
| 2012 | 63             | 2                              | 3                                    | 0                      |  |  |  |
| 2013 | 36             | 2                              | 0                                    | 0                      |  |  |  |
| 2014 | 43             | 6                              | 3                                    | 2                      |  |  |  |

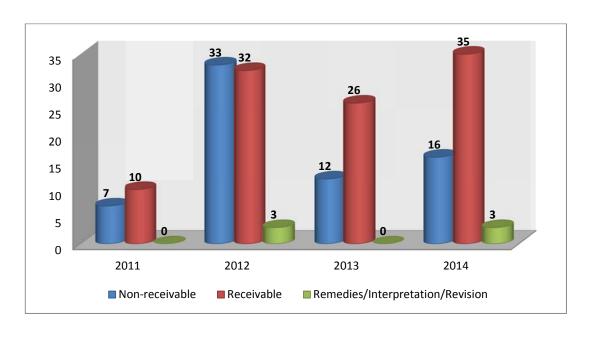
<sup>&</sup>lt;sup>3</sup> Six of the 177 Judgments are on remedies only or on a request for an interpretation or a revision of a Judgment, and 2 Judgments are in cases that had been remanded from the UNAT. See Annex **A** for a list of these cases.

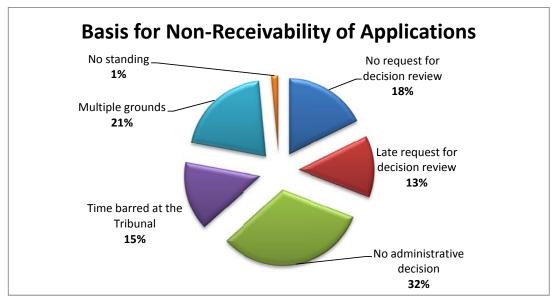
<sup>&</sup>lt;sup>4</sup> In 10 of the Judgments, the Tribunal consolidated applications filed by multiple Applicants based on common issues of law and fact. These ten Judgments resolved 72 cases and are noted in the chart as "Multiple Case" meaning one Judgment resolved multiple cases. See Annex **B** for a list of the Judgments resolving multiple cases.

In **68** of **171** Judgments (excluding the six mentioned in footnote 3 which addressed matters other than the merits), after a thorough review of the parties' submissions and the applicable Regulations, Rules and case law, the applications were judged to be **non-receivable** pursuant to the Statute and Rules of Procedure for the Tribunal and therefore were dismissed. The grounds for non-receivability include: (1) there is no appealable administrative decision; (2) the Applicant failed to make a request for a review of the contested decision prior to filing his/her application; (3) the request for decision review was untimely; (4) the application filed with the Tribunal is time-barred; and (5) the Applicant has no standing to contest the decision.



See Annex **C** for a list of applications deemed receivable and Annex **D** for applications adjudicated non-receivable.

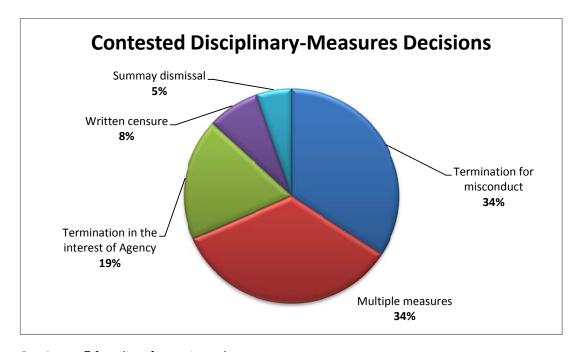




See Annex **D** for a list of cases in each category.

In the remaining **103** Judgments *on the merits*, **38** involved disciplinary actions taken against staff members for numerous types of alleged violations including sexual harassment, sexual exploitation and/or abuse, violence or corporal punishment, theft/embezzlement, negligence, fraud, failure to report improper conduct by others, abuse of authority or mismanagement, misleading or attempting to mislead an investigation, possession of illegal drugs, arrest and imprisonment, improper association with political/militant group, unauthorised absence, refusal to transfer, misrepresentation of qualifications, irregularities in dispensing medicine, examination cheating and solicitation of bribes. The breakdown of the number of cases contesting a particular disciplinary measure is as follows:

- multiple measures were imposed including written censure, suspension without pay, special leave with pay, demotion and transfer (13)
- termination for misconduct (13)
- termination in the interest of the Agency (based on allegations of misconduct) (7)
- written censure (3)
- summary dismissal (2)

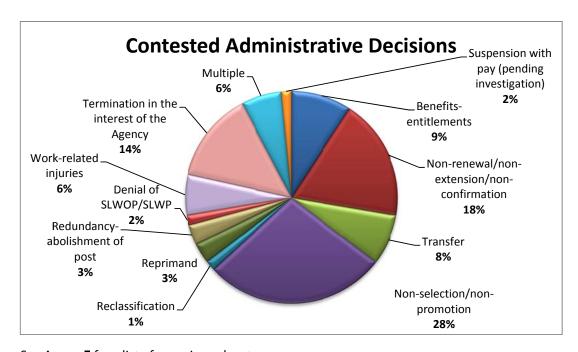


See Annex **E** for a list of cases in each category.

The Tribunal ruled in favour of the Applicant in full or in part in 10 of the 38 Judgments (5 involving termination for misconduct or in the interest of the Agency), and the remaining applications were dismissed on the merits.

In the **65** cases contesting administrative decisions other than disciplinary measures, the breakdown of the types of decisions is as follows:

- non-selection/non-promotion (18)
- non-renewal/non-extension/non-confirmation (12)
- termination in the interest of the Agency (9)
- benefits/entitlements (6)
- transfer (5)
- work-related injuries (4)
- multiple grounds (4)
- reprimand (2)
- redundancy/abolishment of post (2)
- denial of special leave without pay (SLWOP)/special leave with pay (SLWP) (1)
- reclassification (1)
- suspension with pay (pending investigation) (1)



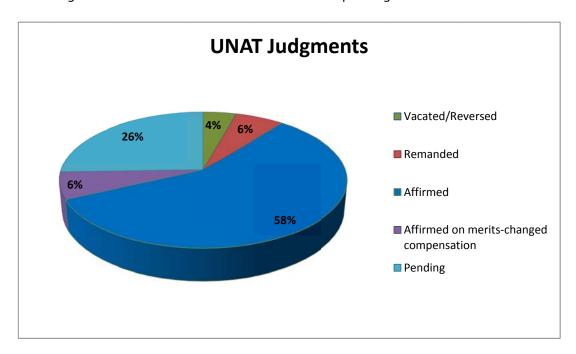
See Annex **F** for a list of cases in each category.

The Tribunal ruled in favour of the Applicant in full or in part in 11 cases and dismissed the remaining 54.

## United Nations Appeals Tribunal

Forty-seven of the Tribunal's Judgments have been appealed to the UNAT:<sup>5</sup>

- ❖ The Agency appealed 8 of the 20 Judgments which had been decided in favour of the Applicant in full or in part. The UNAT vacated the Tribunal's Judgment in 2 cases, reversed and remanded in 1 case, affirmed the Judgment in 1 case, and affirmed the merits of the Judgment in 2 cases but reversed or reduced the amount of compensation that had been awarded to the Applicant. The remaining 2 appeals filed by the Agency are pending.
- ❖ In 3 instances where the Tribunal's Judgment had been decided in favour of the Applicant, the Applicant appealed the remedies that had been awarded, contending that the remedies were not sufficient. **Two** Judgments were affirmed by the UNAT and 1 is pending.
- ❖ Thirty-six appeals have been filed by Applicants. In 24 cases, the UNAT either affirmed the decision of the Tribunal or dismissed the appeal on other grounds (i.e. not receivable at the UNAT). In 1 case, the UNAT did not vacate the decision but awarded damages to the Applicant. Two Judgments were reversed and remanded and 9 are pending.



See Annex **G** for a list of cases in each category

<sup>&</sup>lt;sup>5</sup> The Tribunal notes that this is the total number of cases *filed* with the UNAT up to 31 December 2014. At the UNAT's 2015 spring session, decisions were rendered in 6 cases. These 6 Judgments are included in the statistics in this report.

#### **Orders**

In addition to Judgments, the Tribunal issued a total of **326** Orders since its inception, which relate to case management and/or motions/requests filed by the parties.



#### Trends and Observations

The Tribunal notes that the number of new applications filed each year steadily increases, and the ratio of receivable cases to non-receivables increased substantially in 2013-2014. This could be attributable to staff members becoming more familiar with the Staff Regulations and Rules, especially pertaining to the administration of justice process, and with the jurisprudence of the Tribunal.

The Tribunal takes this opportunity to encourage the staff and Administration to mediate and settle cases whenever possible as a joint resolution lends itself to moving forward into a more positive relationship between staff and management.

# Challenges

## Staffing

The Tribunal has been faced with a number of challenges since opening its doors on 1 June 2011. One major challenge has been in the area of staffing. The Tribunal, which serves more than 30,000 employees, is limited in General Fund posts to one full-time Judge and one Registrar. This, of course, is woefully inadequate – especially in comparison to the staffing at each of the UNDT's three locations, which consists of one full-time Judge, one ad-litem Judge, one part-time Judge, one Registrar, three Legal Officers and several other legal assistants and administrative staff. It is noted that, on average, the number of new applications filed with the Tribunal each year is on par with those filed in each of the three Registries of the UNDT in terms of number of cases per Judge. Because of the lack of adequate General Fund posts assigned to the Tribunal, the Tribunal has had to request additional resources from the Agency in order to function. These resources currently include one Legal Officer, one Associate Legal Officer and a part-time legal consultant. The continued productivity of the Tribunal is, of course, directly linked to the Agency being able to provide an adequate budget and legal staffing year-to-year, which is far from ideal.

In addition, the Tribunal lacks the proper resources to deal with the volume of documents that require translation. Unlike the UNDT which utilises a pool of translators employed by the United Nations Secretariat, the Tribunal has only one full-time translator. The lack of translation resources delays the process, which negatively affects both the Applicants and the Agency. The Tribunal believes that disputes should be dealt with as expeditiously as possible in order to allow the parties to move past the dispute and to restore a positive work environment.

## Compliance/Understanding

A second area of challenge has been in the lack of awareness and understanding of the Tribunal's Rules of Procedure and Practice Directions, and the enforcement thereof with respect to both parties, as well as the lack of understanding on the part of Applicants with regard to the overall process. Although the Tribunal has seen a general improvement in compliance with the Rules of Procedure and Practice Directions, the Tribunal believes that more outreach and training in the administration of justice procedures would reduce the delays in case management and improve the quality of the submissions.

The Tribunal would like to see a commitment by the Agency to ensuring adequate General Fund staffing for the Tribunal and more outreach to all staff in order for the Tribunal to be able to service the Applicants and the Agency in a fair, judicious and more expeditious manner.

# Summary of Main Legal Pronouncements<sup>6</sup>

#### I. RECEIVABILITY

# A. <u>Cases dismissed for lack of subject matter jurisdiction where there was no appealable administrative decision</u>

In *Dartell* UNRWA/DT/2011/001, the Applicant contested the decision not to grant him accelerated salary increments for passing the UN Language Proficiency Examination. The Tribunal held that UNRWA's International Staff Regulations and Rules (in contrast to other organizations within the UN common system) do not provide any language proficiency incentive; therefore the decision not to pay the Applicant accelerated salary increments for passing the UN Language Proficiency Examinations is not an appealable administrative decision.

In *Am Ali* UNRWA/DT/2011/002, the Applicant contested the decision not to accept her request to rescind her previous request for early voluntary retirement ("EVR"). The Tribunal noted that "the Applicant's decision to take early retirement was a voluntary, unilateral action performed on her own volition and not at the behest of the Respondent" and that "Area Staff Rule 109.2 does not provide for rescission of the voluntary unilateral action of retirement once initiated by a staff member". Therefore, there was no appealable administrative decision, and the application was dismissed. *See also Darwish* UNRWA/DT/2012/029 (appeal to UNAT dismissed in 2013-UNAT-369).

In *Alfout* UNRWA/DT/2011/015, the Applicant contested the decision not to accept his request to withdraw his resignation and be transferred to another department. The Applicant contended that he resigned under pressure by his managers, and that he was not aware of the rules. The Tribunal noted that the Agency has no obligation to accept a request for withdrawal of resignation. "[T]he Applicant's resignation was a voluntary unilateral action which he initiated." Following the jurisprudence of the UNAT, the Tribunal held that the Agency's refusal to allow a staff member to withdraw a unilateral, voluntary decision to resign did not give rise to an appealable administrative decision. *See also Abu Jubran* UNRWA/DT/2013/02 (also late request for decision review); *El Salous* UNRWA/DT/2013/016.

In *Fuheili* UNRWA/DT/2011/003, the Applicant contested the Agency's decision that he was not entitled to a termination indemnity upon his retirement at age 60 because, according to Personnel Directive A/4, he had not completed 10 years of continuous service with the Agency as of the date of his separation. The application was dismissed, and the Tribunal stated that "[t]he Applicant does not 'create' an appealable administrative decision by asking for a benefit that is not provided in the relevant Area Staff Regulations and Rules and then complaining when it is denied". UNRWA's determination of the separation benefits payable to the Applicant upon his retirement is not an appealable administrative decision. *See also Abu Awad* UNRWA/DT/2011/005.

In *Ghatasheh* UNRWA/DT/2011/012, the Applicant challenged the calculation of his retirement benefits. The Tribunal dismissed his application finding that the retirement benefits were correctly calculated in accordance with the applicable Area Staff Regulations and Rules. "[T]he determination of the base salary for the purpose of calculating the retirement benefits of a staff member does not

<sup>&</sup>lt;sup>6</sup>These Legal Pronouncements are short excerpts taken from the Judgments and are not intended to represent full summaries. The full Judgments can be found on the Staff Gateway and the intranet/internet. It is also noted that some cases are mentioned more than once.

constitute an administrative decision..." The application was dismissed. Likewise in *Hamad* UNRWA/DT/2011/013 (appeal to UNAT dismissed 2012-UNAT-269), the Applicant challenged the calculation of her retirement benefits. The Tribunal found that "there is no rule or term of employment which provides that a special interest rate be applied other than the last published interest rate in effect at the time a staff member applies to withdraw from the Provident Fund". The Tribunal stated that "[i]f the Applicant is contesting the manner by which the Provident Fund Secretariat calculated the balance of separating participants, she is reminded that this does not constitute an administrative decision". *See also Abu Ayyash* UNRWA/DT/2014/011 (also application was time-barred) (appeal to UNAT is pending in case 2014-624).

In Sanbar UNRWA/DT/2012/007, the Tribunal held that the Applicant was seeking to re-litigate a matter that had been adjudicated by the former UN Administrative Tribunal and dismissed the application on the ground it was beyond the competence of the Agency's International Joint Appeals Board, and consequently of the UNRWA Dispute Tribunal.

In Ashour UNRWA/DT/2012/008, the Applicant challenged his performance evaluation. The Tribunal noted that under the Agency's regulatory framework at that time there was no rebuttal process available for a staff member to challenge his performance evaluation. The Tribunal stated that "[w]hile this might appear to be unfair, it is not in the Tribunal's jurisdiction to enact new rules or to provide a forum to advocate for regulatory reform".

In Sanbar UNRWA/DT/2012/010 (appeal to UNAT dismissed in 2013-UNAT-312), the Applicant sought to challenge a recommendation regarding the need to upgrade the Information Technology capabilities within the Department of Internal Oversight Services, which the Applicant claimed constituted a serious insult to his person. The Tribunal held that this was not an appealable administrative decision and noted that the application was frivolous.

In *Harrich* UNRWA/DT/2012/018, the Applicant contested the process surrounding his rebuttal of his performance evaluation. The Tribunal held that the Applicant had not presented any appealable administrative decision.

In *Barmawi* UNRWA/DT/2012/019, the Applicant contested the decision not to pay him a termination indemnity. The Tribunal found that the decision not to pay the Applicant a termination indemnity conformed with Area Staff Rule 109.9, paragraph 1. "[T]he Applicant's appointment was not terminated under Area Staff Regulation 9.1 in the interest of the Agency, but rather the Applicant's service with the Agency ceased upon the expiry of the Applicant's fixed-term appointment." Therefore, no termination indemnity was owed to the Applicant, and the application was dismissed as non-receivable.

In *Nazzal* UNRWA/DT/2012/035, the Applicant challenged the decision not to grant him a supplementary allowance of 20% of his base salary which had been granted to certain categories of staff including para-medical posts from which the Applicant, an ambulance driver, felt he had been unfairly excluded. The Tribunal held: "To the extent that the Applicant is seeking by this application to have his post as Ambulance driver classified as a para-medical post, and therefore qualify for the supplementary allowance on that basis, the Applicant is reminded that the Tribunal is not the proper forum to advocate for regulatory reform as it has no jurisdiction to enact new regulations, rules or administrative issuances. [...] The classification of posts and the payment of supplementary allowance, like the payment of hazard pay, are policy prerogatives of the Agency". *See also Bustan* UNRWA/DT/2012/036.

In *Brisson* UNRWA/DT/2012/043 (appeal to UNAT dismissed in 2013-UNAT-371), the Applicant contested the decision not to compensate the Applicant for his loss of earning capacity beyond the normal age of retirement. The Tribunal found that: "An actionable administrative decision arises in the application of specific International Staff Regulations and Rules ... [and] no such Regulation or Rule provides for compensation for loss of earning capacity beyond the normal age of retirement". Therefore, there was no appealable administrative decision and accordingly the application was dismissed.

In *El Madhoun* UNRWA/DT/2012/053, the Applicant contested the Agency's decision not to include his dependents in his UNLP. The Tribunal found that "[t]he terms of the appointment included the clear statement that he was to be 'considered as a locally recruited staff member ... subject to the local terms and conditions of Area staff based at HQ (Amman) with no additional benefits to your status' ". Therefore, the Applicant did not have any of the benefits of expatriate status, and he had signed his acceptance of the offer on these terms. The application was dismissed.

In *Khader* UNRWA/DT/2012/068, the Applicant contested the termination of his services on the grounds of post redundancy. The Tribunal held that "the Agency's initial decision to terminate his employment on grounds of post redundancy was superseded and never executed. The Applicant ... cannot contest a decision that was never implemented". Furthermore, the Applicant had failed to request decision review. The application was dismissed.

In *Mansour* UNRWA/DT/2013/010, the Applicant contested the decision not to include his post among those that were reclassified. The Tribunal held that the "decision to conduct a wide reclassification of finance posts is *per se* an administrative act rather than an administrative decision, as it is not of individual application and does not have direct legal consequences on the Applicant's rights and obligations derived from his terms of employment or contract of employment".

In *El Madhoun* UNRWA/DT/2013/030, the Tribunal dismissed the application contesting the decision not to pay the Applicant Travel Subsistence Allowance (TSA). The Tribunal held that the decision was a correct one and in compliance with the relevant Area Staff Regulations and Rules, in particular Area Staff Rules 107.1, 107.2 and 107.5.

In consolidated Judgment *Abdullah et al.* UNRWA/DT/2014/046, eight Applicants contested the results of a salary survey conducted in Lebanon in November 2012. The Applicants' main argument was that the UNRWA salary survey did not consider the minimum wage set by the Lebanese Government for civil service staff. Three applications were found not receivable *ratione personae* as the Applicants were not staff members but were contractors and daily paid workers. Four applications were found not receivable *ratione materiae* because they did not present an appealable administrative decision. One application raised a related issue which the Tribunal found receivable; however upon review on the merits the application was dismissed.

In *Ahmad* UNRWA/DT/2014/047, the Applicant requested a transfer and listed her five choices in order of preference. The Applicant was then transferred to her fourth selection, and she contested this transfer. The Tribunal found that it was the Applicant's unilateral request to be transferred. According to the jurisprudence of the UNAT, "a staff member does not have legal standing to contest a decision that she/he has unilaterally requested. Such a request does not give rise to an administrative decision for the purpose of an appeal and is therefore not receivable". *See also El Saleh* UNRWA/DT/2014/026 (no decision was made).

In *Chahrour* UNRWA/DT/2014/032, the Tribunal issued summary judgment finding that the Applicant was trying to re-litigate an administrative decision that had already been decided by the Tribunal and appealed to the UNAT. In Judgment UNRWA/DT/2013/005, the Tribunal had dismissed the application as non-receivable. This Judgment was affirmed by the UNAT in *Chahrour* 2014-UNAT-406. Noting that the Applicant challenged the same administrative decision, the application was dismissed. *See also Al Sayyed* UNRWA/DT/2013/017.

#### B. Where there has been a failure to request decision review, the application is not receivable

In Al Hariri et al. UNRWA/DT/2012/005, the application was dismissed ratione materiae because the Applicants had failed to request a decision review of the contested decision. The Tribunal noted that the request for decision review is an essential element of the recourse procedure and must be complied with. Following the UNAT jurisprudence, the Tribunal held that "it does not have jurisdiction over complaints that were not subject to administrative review" and that this preliminary step must be exhausted before the jurisdiction of the Tribunal can be invoked. See also Am Ali UNRWA/DT/2011/002; Harrich UNRWA/DT/2012/018; Barmawi UNRWA/DT/2012/019; Abu Ghosh UNRWA/DT/2012/020/Corr.01 (regarding one of the contested decisions); Harrich UNRWA/DT/2012/023; Darwish UNRWA/DT/2012/029 (appeal to UNAT dismissed in 2013-UNAT-UNRWA/DT/2012/061; 369); Salem Khader UNRWA/DT/2012/068: UNRWA/DT/2013/003/Corr.01; Azzouz UNRWA/DT/2013/013 (appeal to UNAT dismissed in 2014-UNAT-494); Shamiyeh UNRWA/DT/2014/025; Ramadan UNRWA/DT/2014/050.

In *Ashkar* UNRWA/DT/2012/042, the request for decision review was sent to the Commissioner-General rather than to the Field Office Director of Lebanon per former Area Staff Rule 111.3, which was applicable at the time. The Applicant was informed that he had written to the wrong person, but he never rectified this mistake. The Tribunal noted that "[t]he Agency's regulatory framework is of a prescriptive nature and therefore staff members are required to follow the Regulations, Rules and other issuances of the Agency exactly as set out". The application was dismissed as non-receivable.

In *Brouder* UNRWA/DT/2012/046/Corr.01, the Applicant contested the decision not to extend his fixed-term appointment, asserting that he had requested decision review in a meeting at such a time that would have fallen within the requirements. The Tribunal considered, however, that "a mere verbal request does not amount to compliance with the requirement of International Staff Rule 111.2 that provides for the compulsory submission of a written request for decision review". The application was dismissed. *See also Abu Niaj* UNRWA/DT/2012/058.

In *Ramadan* UNRWA/DT/2014/050, the Applicant contested the decision that his alleged illnesses were not attributable to the performance of his official duties. The Tribunal did not find in the case file any document which could be considered as a request for review of the contested decision. The Tribunal pointed out that the "[a]pplicant has the burden of proof to establish that he has complied with the mandatory requirements of Area Staff Rule 111.2". The Tribunal found that the Applicant had not demonstrated that he requested at any time review of the contested decision prior to filing an application before the Tribunal and accordingly dismissed the application.

In *Niedermayr* UNRWA/DT/2014/054, the Applicant contested the decision not to register his family with the UNDSS as UN dependents residing in Lebanon. The application was dismissed because the Applicant failed to timely contest the initial decision. He contested, in fact, a confirmation of the decision at a later stage. In quoting the UNAT, the Tribunal held that: " 'a mere statement of his

original claim ... did not stop the deadline for contesting the decision from running or give rise to a new administrative decision thereby restarting the time period in which to contest [the decision]' (*Sethia* 2010-UNAT-079)". The Applicant's request for decision review was time-barred and thus his application was not receivable.

# C. Where there has been failure to request a timely administrative review, the application is not receivable

The Tribunal in *Al-Hariri et al.* UNRWA/DT/2012/005, held that it has no jurisdiction to waive deadlines for management evaluation or administrative review. "While the former Area Staff Rule 111.3, paragraph 4, allowed the JAB to waive time limits in exceptional circumstances, under the current system, the Tribunal's Statute expressly forbids waiving deadlines for decision review per Article 8(3)." *Kinawi* UNRWA/DT/2011/010 (one issue was found non-receivable); *Sanbar* UNRWA/DT/2012/009 (appeal to UNAT dismissed in 2012-UNAT-279); *Rabee* UNRWA/DT/2012/021 (appeal to UNAT dismissed in 2013-UNAT-296); *Al-Surkhi et al.* UNRWA/DT/2012/022 (appeal to UNAT dismissed in 2013-UNAT-304); *Zahran* UNRWA/DT/2012/045; *Nasr* UNRWA/DT/2012/066; *El Khatib* UNRWA/DT/2013/004; *Chahrour* UNRWA/DT/2013/005 (appeal to UNAT dismissed in 2014-UNAT-406); *Hasan* UNRWA/DT/2013/020 (appeal to UNAT dismissed in 2015-UNAT-504); *El Rush* UNRWA/DT/2013/021; *Audeh* UNRWA/DT/2013/024 (appeal to UNAT dismissed in 2014-UNAT-452); *Anabtawi* UNRWA/DT/2014/012; *Khaleel* UNRWA/DT/2014/016 (appeal to UNAT is pending in case 2014-632); *El Shobaki* UNRWA/DT/2014/022 (some issues non-receivable); *Chaaban* UNRWA/DT/2014/024 (appeal to UNAT is pending in case 2014-669).

In *Abu Ghosh* UNRWA/DT/2012/020/Corr.01, following the jurisprudence of the UNAT, the Tribunal reminded the Applicant that "repeated submissions do not toll the deadlines for contesting the decision or give rise to a new administrative decision, thereby restarting the time period". The application was dismissed as non-receivable. *See also Sawalmeh* UNRWA/DT/2012/060.

#### D. An untimely filed application without justification is not receivable

In *Al-Hariri et al.* UNRWA/DT/2012/005, the Tribunal set forth the leading principle on applications filed after the 90-day deadline. "[I]t is the Applicant's burden to demonstrate that he or she was prevented from filing his or her application in due time due to serious reasons or circumstances beyond his or her control, as affirmed by the [UNAT]." The applications were dismissed as untimely without justification. *See also Diab* UNRWA/DT/2012/030 (appeal to UNAT dismissed in 2015-UNAT-495); *Isleem* UNRWA/DT/2012/032; *Chaaban* UNRWA/DT/2012/038/Corr.01 (appeal to UNAT dismissed in 2013-UNAT-363); *Abdullah* UNRWA/DT/2012/044; *Abdul Rahman* UNRWA/DT/2012/050; *Sawalmeh* UNRWA/DT/2012/060; *Al Hussein* UNRWA/DT/2012/063; *Abu Jubran* UNRWA/DT/2013/002; *Hasan* UNRWA/DT/2013/020 (appeal to UNAT dismissed in 2015-UNAT-504); *El Rush* UNRWA/DT/2013/021; *Abu Ayyash* UNRWA/DT/2014/011 (appeal to UNAT is pending in case 2014-624); *Abu Rish* UNRWA/DT/2014/015.

In *Murad* UNRWA/DT/2012/055, the application contesting the decision not to shortlist the Applicant for a position was dismissed for his failure to file a timely application. The Applicant did not receive a reply to his request for administrative review, and he filed his application outside of the 90-day deadline which began running the day after the 30-day response period had expired. He did not provide any facts or arguments justifying the delay. The Tribunal noted that "[w]hat constitutes an 'exceptional case' is to be considered on a case-by-case basis".

In Faraj UNRWA/DT/2012/028 (reversed and remanded by UNAT in 2013-UNAT-331), the Applicant contested the decision to terminate his appointment in the interest of the Agency. The Tribunal had found that he submitted four requests for a decision review over a period spanning almost 3 months. He received a response after his second request which was beyond the 30-day period from his first request. The Tribunal rejected the Applicant's claim that the application was untimely because he had been given erroneous instructions about the appeals process from the Director of UNRWA Operations in his Field Office. In reversing the Tribunal's decision, the UNAT held: "Whilst under normal circumstances, Mr. Faraj should indeed have filed his appeal within 60 days [under former Staff Rule 111.3 applicable at the time] of his unanswered request for review, the circumstances of his case and, in particular, the actions of UNRWA do not support such a conclusion". The UNAT found that the Applicant had been misled as to the appeals procedure, and that in responding late to the request for decision review, "the Commissioner-General effectively reset the clock".

In *Achkar* UNRWA/DT/2014/031 (appeal to UNAT is pending in case 2014-673), the application filed in 2013 contesting a decision taken in 2002 was dismissed as untimely.

#### E. The applicant does not have standing

In Zeidan & Al Abdullah UNRWA/DT/2014/002, a non-selection case, the Tribunal determined that one of the Applicants did not have *locus standi* (standing) because his non-selection was not the result of an administrative decision, but rather he refused to participate in the written test.

In *Abdullah et al.* UNRWA/DT/2014/046, the Tribunal held that the applications of three Applicants were not receivable *ratione personae* because the Applicants were not staff members; rather they were contractors and daily paid workers. *See also Abu Shammalah* UNRWA/DT/2014/044.

#### F. Other

In *Chaaban* UNRWA/DT/2014/017 (appeal to UNAT is pending in case 2014-639), an application was filed contesting the UNAT's Judgment. The Tribunal dismissed the application, holding that the "application [was] manifestly inadmissible in that no tribunal has the power to modify a judgment issued by the UNAT – the highest tribunal in the United Nations system of administration of justice".

In *El Saleh* UNRWA/DT/2014/026, the Applicant contested the Agency's decision to upgrade his post from a Grade 15 to Grade 16, but the Tribunal held that, in reality, he was contesting not being upgraded to a Grade 17. The Tribunal found that the Applicant had never made a request to be upgraded to a Grade 17 and thus no decision had been made. Therefore, the application was dismissed as not receivable.

#### II. APPEALS IN CONNECTION WITH DISCIPLINARY PROCESSES

#### A. <u>Disciplinary measures other than termination</u>

In *Barakat* UNRWA/DT/2011/017, following the jurisprudence of the UNAT in *Haniya* 2010-UNAT-024, the Tribunal articulated the principles it applies when reviewing cases of misconduct: (i) whether the facts on which the sanction is based have been established; (ii) whether the established facts qualify as misconduct; and (iii) whether the sanction imposed is proportionate to the offence. In this case the Tribunal was satisfied with the facts on which the Respondent's decision was based.

"[T]he establishment of the facts regarding the Applicant's impersonation of another (i.e. a former senior staff member) for the apparent purpose of eliciting information that could be used to malign others legally supports the determination of misconduct." The censure and suspension were found to be proportionate to the offence.

In *Mansour* UNRWA/DT/2012/004, the Applicant contested the decision to censure and transfer him when he allowed materials to be taken from the storehouse and failed to report the theft. In quoting jurisprudence from the UNAT, the Tribunal noted that " '[i]t is the duty of every staff member to safeguard the property of his or her organization'". When considering proportionality, the Tribunal took special note of the nature of the Applicant's post. "As Head Storekeeper, the Applicant was entrusted with a heightened duty of care to safeguard the Agency's assets and he is reminded that his loyalty should go to the Agency, not to colleagues committing illegal acts." The sanctions imposed were found to be proportionate to the offence.

In *Shuheimat* UNRWA/DT/2012/006, the Applicant contested a censure he received after having been found to have inflicted corporal punishment on a student. The Tribunal found that his misconduct was particularly grave in light of the position he held and the responsibilities he was entrusted with. The censure was found to be proportionate to the offence.

In *Abu Al Hasan* UNRWA/DT/2012/034, the Applicant contested the decision to demote and transfer him to another post after a finding that he had failed to properly report misconduct and to take appropriate action to correct such conduct once he was aware of it. The Agency charged him with managerial negligence, and the facts showed that the Applicant's irresponsible conduct facilitated some of the acts of misconduct committed. *On proportionality:* As determined by the UNAT, " 'the level of the sanction falls within the remit of the Administration and can only be reviewed in cases of obvious absurdity or flagrant arbitrariness' ". The decision to demote the Applicant to another post was found to be proportionate to the offence, and his transfer was a natural consequence of his demotion.

In *Abu Ghuneim* UNRWA/DT/2012/062, the Applicant was censured and suspended without pay for his involvement in concealing corporal punishment. The Tribunal upheld the Agency's decision and held that the sanctions were proportionate to the offence.

In *Barakat* UNRWA/DT/2012/064, the Applicant contested his censure, suspension without pay for one week, and a deduction from his annual leave for refusing to follow his supervisor's instruction concerning his temporary transfer, as well as his failure to report to his new duty station for over a period of 22 days. The Agency's decision was upheld along with a decision to deduct days from his annual leave due to his unauthorised absence from duty.

In *Al Khatib* UNRWA/DT/2013/001, the Applicant contested his demotion and transfer to another school. The Tribunal found that while the decision to demote the Applicant was a disciplinary measure, the decision to transfer him to another school was an appropriate administrative decision taken in order to prevent a possible retaliation against the subject student. The application was dismissed.

In *Musa* UNRWA/DT/2013/007 (appeal to UNAT dismissed in 2014-UNAT-431), the Applicant contested his demotion and transfer after it was discovered that unauthorized electrical connections were syphoning electricity from an UNRWA School where he was the Acting Head Teacher. The Tribunal found that the Applicant had demonstrated a lack of management skills and had failed to

discharge his duty of care towards the Agency's properties, and as such, a charge of misconduct was legally supported. The application was dismissed.

In *Thweib & AI Hasanat* UNRWA/DT/2013/028, the Tribunal had excluded the Respondent from participating in the proceedings for filing a reply out of time. On appeal, the UNAT in *Thweib & AI Hasanat*, 2014-UNAT-449 set aside the decision and remanded the case to the Tribunal for a new review before a different Judge, holding that due process applies to both sides. Meanwhile, in the interim, the Agency had rescinded the contested decisions. On remand, due to the Agency's decision to rescind the contested decisions, the Tribunal held that the applications were moot and therefore dismissed. *Thweib* UNRWA/DT/2015/003; *AI Hasanat* UNRWA/DT/2015/004.

In *Rantisi* UNRWA/DT/2013/033 (appeal to UNAT dismissed in 2015-UNAT-528), the Applicant contested, *inter alia*, her suspension without pay for one week and a written censure for misconduct. The Tribunal found "that there was a fundamental breach of due process when the Agency failed to provide the Applicant with sufficient particulars of the evidence against her so as to enable her to mount a proper defence". The decision to sanction the Applicant was rescinded.

In *Rantisi* UNRWA/DT/2013/033 (appeal to UNAT dismissed in 2015-UNAT-528), the Tribunal held that the Agency did not have the authority to place the Applicant on special leave once a disciplinary investigation had been concluded and rescinded the Agency's decision to do so. Specifically, the Tribunal noted that Area Staff Rule 105.2 and Area Personnel Directive A/5/Rev.6 set out a policy that allows staff members to apply for special leave for a number of specified reasons. "The initiative is expected to come from the staff member requesting the leave as indicated by the language of the policy which refers to 'granting' and 'approving' leave. To the extent that the policy grants the Commissioner-General or the 'appropriate authorities' discretion, it is the discretion to approve or decline a request initiated by a staff member. There is no justification in the policy for the unilateral *imposition* of special leave on a staff member once the disciplinary investigation had been concluded. That is clear from Area Staff Rule 110.2."

In *Al Bustanji* UNRWA/DT/2013/014, the Applicant contested the decision to issue him a written censure and final warning for the Applicant's conduct in engaging in an argument and trading insults with another staff member. The Tribunal found that there was sufficient evidence that the Applicant had engaged in conduct not compatible with the proper discharge of his duties and that a written censure was appropriate; however, a "final warning" is not provided for in the Area Staff Regulations. By adding the words "final warning" to the disciplinary censure, the penalty for misconduct was not proportionate to the offence. The disciplinary measure of "a written censure and final warning" was rescinded and the letter was to be reissued with the reference to "final warning" removed.

In *Abdo* UNRWA/DT/2013/034, the Applicant contested a letter of censure, demotion from Head Teacher to Teacher and suspension without pay for 30 days following an investigation revealing that the Applicant had exercised corporal punishment. "As the facts on which the sanction was based have been established, as the Applicant has been properly found to have engaged in misconduct...the Tribunal is of the opinion that the disciplinary measures imposed were not so disproportionate or unwarranted as to amount to an injustice." The application was dismissed.

In *Mustapha* UNRWA/DT/2014/007, the Applicant contested the decision to censure and suspend him without pay for two weeks for his alleged involvement in a dishonest scheme whereby an attempt had been made to confer an unfair advantage on an examination candidate. The Tribunal

concluded that the evidence was not sufficient to link the Applicant to an improper scheme as alleged. The inculpatory evidence was "wholly circumstantial" and the "conclusions drawn therefrom were riddled with speculation". The decision to issue the written letter of censure and suspend the Applicant was rescinded. The application was successful.

In *Hasan* UNRWA/DT/2014/014 (appeal to UNAT is pending in case 2014-622), the Applicant contested the decision to serve him with a letter of censure and suspend him from duty without pay for one week based on a charge that he had instigated a student to complain against a teacher under false pretenses. The Tribunal found the evidence to be questionable, and consequently, the facts on which the sanction was based had not been established. The application was successful.

In *Hsayyan* UNRWA/DT/2013/015, the Applicant was issued a letter of censure and suspended without pay for one week based on evidence compiled by an audit committee showing that the Applicant had (i) duplicated medicine registration; and (ii) dispensed medicines without prescriptions. The Tribunal found that the evidence legally supported the characterisation of misconduct and dismissed the application.

In *El Felou* UNRWA/DT/2013/032, the Applicant contested the decision to demote and suspend her without pay after a Board of Investigators had established that she had inflicted corporal punishment on a student. The Tribunal held that "[t]he findings of the review report confirmed that the Applicant had exercised physical violence against the student ... and that the Applicant had attempted to cover up the incident by putting pressure on the student to have her lie to her parents about it". The record clearly indicated that the Agency had sufficient evidence to conclude that the Applicant's actions constituted misconduct. The application was dismissed.

#### B. Termination for misconduct

In *Al-Jishi* UNRWA/DT/2011/008, the Applicant contested his termination after an investigation showed that he had been involved in the embezzlement of Agency food parcels. The Tribunal found that the facts had been reasonably established to support the decision to terminate the Applicant's appointment for misconduct. The Applicant failed to provide convincing evidence to substantiate his allegations of prejudice, arbitrariness, procedural irregularity or error of law with respect to the investigation. The application was dismissed. *See also Kinawi* UNRWA/DT/2011/010; *Najjar* UNRWA/DT/2012/002.

In *Wishah* UNRWA/DT/2012/014 (case reversed and remanded by UNAT in 2013-UNAT-289), the Applicant had contested his termination for misconduct for his participation in a physical assault. The Tribunal dismissed the application, and the UNAT held that "the failure to provide Mr. Wishah with the investigation report prejudiced his right to due process" and reversed and remanded the case. On remand, in *Wishah* UNRWA/DT/2014/008, a different Judge of the Tribunal rescinded the decision to terminate the Applicant on the basis of the insufficiency of the evidence and ordered reinstatement or an amount of compensation in lieu of reinstatement. The Respondent's appeal to UNAT is pending in case no. 2014-UNAT-613.

In *Abu Ghali* UNRWA/DT/2012/024 (appeal to UNAT dismissed in 2013-UNAT-366), the Applicant contested his termination following the Agency's determination that he was in possession of illicit drugs which had been confiscated from the UNRWA vehicle he was driving. The Tribunal found that the Applicant knew, or at the very least, should have reasonably known that there were drugs in the boxes or that something illegal was going on. On standard of proof, the Tribunal guoted *Molari* 

2011-UNAT-164: "'Disciplinary cases are not criminal. Liberty is not at stake. But when termination might be the result, we should require sufficient proof. We hold that, when termination is a possible outcome, misconduct must be established by clear and convincing evidence. Clear and convincing proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt – it means that the truth of the facts asserted is highly probable' ". The application was dismissed.

In *Al Bawab* UNRWA/DT/2012/048, the Applicant contested his termination for allegations that he had stolen money from a colleague. The Tribunal held that "[t]he evidence pointing to guilt was clear and convincing". The Applicant was treated fairly at every stage of the investigation and his due process rights were observed. The application was dismissed.

In *El Baz* UNRWA/DT/2012/059/Corr.02, the Applicant contested his termination for being involved in unauthorised political activities. The Tribunal held that "the Respondent breached due process, failed to conduct a proper investigation and ignored documentary evidence exonerating the Applicant [...] and instead has made conclusions based on unreliable fact-finding, evidence which is not only useless but a violation of the Applicant's due process rights". Concluding that the Respondent had failed to establish the facts on which the sanction was based, the application succeeded.

In Fararjeh UNRWA/DT/2013/006, the Applicant contested his termination for charges of sexual harassment made by four students in the school. The Tribunal found that the allegations were properly investigated and credible and upheld the decision to terminate the Applicant. The application was dismissed.

In *Walden* UNRWA/DT/2013/011 (reversed by UNAT in 2014-UNAT-436), the Applicant contested his termination for misrepresenting his academic credentials. The Tribunal had held that the facts were insufficient to establish that he knowingly misrepresented his academic qualifications during the recruitment process and that termination was disproportionate. In reversing the Tribunal's decision, the UNAT held: "[t]he undisputed fact is that Mr. Walden knowingly presented non-existent credentials in spite of questioning the ethics of accepting the document with his qualifications". The UNAT found that the Tribunal had applied the right test but arrived at the wrong conclusion when determining termination as disproportionate to the misconduct.

In *Abdel Khaleq* UNRWA/DT/2013/022 (UNAT affirmed but reduced compensation in 2014-UNAT-442), the Applicant contested his termination resulting from the Agency's finding that he had committed sexual exploitation of a student. The Tribunal found that the Agency had failed to establish by clear and convincing evidence that the alleged misconduct took place. The Tribunal further found that "the Applicant was treated appallingly, in breach of due process and it would not be overstating the case to say that the treatment accorded to him has all the hallmarks of a prejudgment". The application was successful.

In *Ghattas* UNRWA/DT/2013/036, the Applicant contested the decision to terminate him for misconduct for his possession and sale of a drug. Based on the evidence in the file, the Tribunal affirmed the decision. The Applicant could not rebut the allegations against him with reliable evidence. "The Applicant is reminded that in the absence of tangible evidence, unsubstantiated allegations, such as hearsay, do not carry much weight." The application was dismissed.

In Saleh UNRWA/DT/2014/010, the Applicant contested his termination for sexual exploitation and abuse. The Tribunal upheld the decision and found that "the Applicant has not provided any convincing evidence to demonstrate that the decision to terminate him was exercised arbitrarily or capriciously, motivated by prejudice or extraneous factors, or flawed by procedural irregularity or error of law". The application was dismissed.

#### C. Termination in the interest of the agency

In *Abu Alouf* UNRWA/DT/2011/004, the Applicant contested his termination in the interest of the Agency where the Agency had determined that the Applicant had repeatedly used his actual and perceived position of authority within the organization to sexually harass female employees, thus creating a hostile work environment. The Tribunal upheld the Agency's decision and dismissed the application.

In *Habash* UNRWA/DT/2011/011, the Applicant contested his termination in the interest of the Agency for a finding that, while transporting cash from the bank to the West Bank Field Office, the Applicant was allegedly robbed. Evidence was presented to the Board of Inquiry ("Bol") that the Applicant regularly took detours on his way from the bank to the office. The Bol's conclusion was that, although the robbery "was considerably enabled by the existence of a number of systemic failures", it was the Applicant's gross negligence that was directly responsible for the events. Citing *Abu Hamda* 2010-UNAT-022, the Tribunal held that "[r]egardless of the purported lack of any explicit written prohibition against making detours while transporting cash, 'it is the duty of every staff member to safeguard the property of his or her organization'". The sanction was proportionate to the offence, and the application was dismissed.

In *Abu Jarbou* UNRWA/DT/2012/011 (appeal to UNAT dismissed in 2013-UNAT-292), the Applicant contested his termination following a Bol's finding that the Applicant had "exercised and orchestrated a policy of coercion, discrimination, prejudice, slander and intimidation on a number of staff members" in the Rehabilitation Centre for the visually impaired. He was also found to have badly mismanaged the Centre's human resources and finances. The Tribunal held that the Applicant failed to adduce convincing evidence that the Bol was prejudiced against him. The application was dismissed.

In *Jibara* UNRWA/DT/2012/025 (Judgment vacated by UNAT in 2013-UNAT-326), the Tribunal had rescinded the Agency's decision to terminate the Applicant in the interest of the Agency for his detention and imprisonment. In reversing, the UNAT held that "[t]he UNRWA DT lacks jurisdiction to decide the scope of the Oslo Accords signed by Israel and the PNA [Palestinian National Authority] or the legality of the detention and imprisonment".

In *Al Azzeh* UNRWA/DT/2012/026, the Applicant was suspended with pay pending an investigation of a charge of sexual abuse of two minor boys. Although the Tribunal noted that the direct evidence was not conclusive as to the Applicant having sexually assaulted the two minors, the parties did not contest the fact that the Applicant had picked up two boys in his car. The Tribunal found that the Applicant's explanations for his actions made no sense and were contradictory. The Tribunal found that those actions indeed constituted misconduct as they were "incompatible with the proper discharge of [his] duties with the Agency within the meaning of Area Staff Regulation 1.4", and as such his termination in the interest of the Agency was justified. The application was dismissed.

In *Qur'an* UNRWA/DT/2012/067, the Applicant contested his termination in the interest of the Agency as a result of his arrest by the Israeli Defence Force ("IDF") for harbouring wanted activists of the Shuhada Al-Aqsa Brigade and his subsequent conviction based on his own admission in a plea bargain. Before the Tribunal, the Applicant denied committing the offence, but he failed to explain the inconsistency between his two positions. The application was dismissed.

In *Mohammad* UNRWA/DT/2014/020, the Applicant contested his termination in the interest of the Agency for engaging in corporal punishment. Before the Tribunal he did not deny that he had done so; however, he claimed that the decision of termination was not proportionate to the acts he committed. The Tribunal pointed to ETI No. 1/08 which provides that "UNRWA staff proven to have been involved in administering, aiding or concealing corporal punishment will be liable to severe disciplinary measures" including "termination". The application was dismissed.

#### D. Summary dismissal for serious misconduct

In *Younes* UNRWA/DT/2012/012, the Applicant contested his summary dismissal for sexual exploitation of vulnerable female beneficiaries. The Tribunal held that the facts were established and the disciplinary measure was proportionate to the offence. The application was dismissed.

In *Abu Nada* UNRWA/DT/2013/038 (appeal to UNAT dismissed in 2015-UNAT-514), the Applicant contested his summary dismissal for being employed as a Colonel in Gaza's *de facto* authority's police force at a time when he was under suspension without pay from the Agency pending an investigation. The Tribunal recalled that employees on suspension with or without pay remain UNRWA staff members and as such are obliged by the Area Staff Regulations not to engage in any activity that is incompatible with the proper discharge of their duties with the Agency. The facts of the misconduct were reasonably established. The sanction was proportionate and untainted by procedural irregularities, prejudice or other extraneous factors. The application was dismissed. However, the Tribunal awarded moral damages to the Applicant for the excessive delay in the investigation.

#### **III. APPEALS IN CONNECTION WITH APPOINTMENT**

#### A. Non-promotion/non-selection

In *Diab* UNRWA/DT/2011/016, the Applicant contested his non-selection to the post of Senior Medical Officer. Quoting from the UNAT in *Abbasi* 2011-UNAT-112, the Tribunal noted that "'[t]he UNDT has jurisdiction to rescind administrative decisions concerning the selection of staff on certain grounds. A decision not to select a staff member may be rescinded in circumstances where he or she did not receive fair and adequate consideration, there has been any kind of discrimination or bias against the staff member, or the proper staff selection procedures were not...followed'". The Applicant was short-listed and interviewed for the post, and the Tribunal found no evidence of procedural impropriety or bias due to his disability as alleged by the Applicant. The application was dismissed.

In *Purcell* UNRWA/DT/2012/015, the Applicant contested his non-selection to the post of Deputy Director of UNRWA Operations, West Bank. It was held that it is not for the Tribunal to assess the merits of the candidates. Rather, as held by the UNAT in *Rolland* 2011-UNAT-122, "[a] candidate challenging the denial of promotion must prove through clear and convincing evidence that procedure was violated, the members of the panel exhibited bias, irrelevant material was considered

or irrelevant material ignored. [...] There is always a presumption that official acts have been regularly performed. This is called a presumption of regularity. But this presumption is a rebuttable one. If the management is able to even minimally show that the Appellant's candidature was given a full and fair consideration, then the presumption of law stands satisfied. Thereafter the burden of proof shifts to the Applicant who must show through clear and convincing evidence that he was denied a fair chance of promotion". The Tribunal dismissed the application holding: "Looking at the evidence in the file, the Tribunal notes that the Agency has complied with International Staff Regulations, Chapter IV, and with Personnel Directive No. I/104.2 regarding recruitment policy and procedures, appointment and promotion". See also Purcell UNRWA/DT/2012/017 (Applicant contested the decision not to short-list him for the post of Deputy Director of UNRWA Operations, Jordan).

In Shanaa UNRWA/DT/2012/016, the Applicant contested the decision not to select him for the post of Senior Medical Officer, alleging that the selection process was flawed. The Tribunal found that there was no regulatory or administrative basis to support the Applicant's claim that, where the selected candidate declined the appointment, it would be the Applicant's turn or right to fill the post automatically. The evidence in the file showed that the interview panel found that the Applicant was not suitable for the post as he lacked, *inter alia*, the managerial and leadership skills required. The Applicant offered no evidence to support his allegations of a biased procedure lacking transparency, and the application was dismissed.

In *Dannan* UNRWA/DT/2012/039 (appeal to UNAT dismissed in 2013-UNAT-340), the Applicant contested the decision not to appoint him to Field Personnel Officer and contended, *inter alia*, that the decision was arbitrary and not effected according to procedure. The Tribunal reiterated its previous rulings that "[i]t is not the role of the Tribunal to assess the merits of the candidates for the post under consideration". The Tribunal referred to the presumption of regularity as stated in *Rolland* 2011-UNAT-122 and held that the Respondent had put forward cogent reasons as to how and on what basis the successful candidate was preferred. The application was dismissed. *See also Abu Zaineh* UNRWA/DT/2012/031.

On appeal, the UNAT said: "It is not sufficient for Mr. Dannan to state that he disagrees with the UNRWA Dispute Tribunal's findings of fact and to repeat the argument submitted before that Tribunal, as the UNRWA Dispute Tribunal has a broad discretion to determine the weight to be attached to the evidence before it. The Appeals Tribunal has previously emphasised that the appeals procedure is of a corrective nature is thus not an opportunity for a party to reargue his or her case". See also Hassan 2015-UNAT-504 (dismissing appeal in Hassan UNRWA/DT/2013/020).

In *Diab* UNRWA/DT/2012/041, in contesting the decision not to select him for the post of Chief, Field Health Programme, the Applicant called into question the integrity of the selected candidate as well as the selection panel. The Tribunal noted that "[i]t is not sufficient to make allegations, particularly where a successful candidate's professional standing is called into question or where the integrity of a properly constituted selection panel is being impugned, without providing at least a credible supposition based on a sufficiency of facts rather than mere speculation". The application was dismissed.

In *Jouda* UNRWA/DT/2012/047, the Applicant contested the decision not to short-list him for the post of Project Manager. "The Tribunal believes that the Respondent's failure to follow Step 5 of the Recruitment Process explains the confusion and the poorly drafted vacancy announcement prepared by the Recruitment Section." However, this being so, the Tribunal still believed that the

Applicant was nevertheless properly left off the short list, his experience being too narrow for the profile of the post. "The Tribunal will not take into account vague references to possible discrimination or mere statements by the parties, i.e. unsubstantiated allegations, as they do not constitute probative evidence." The application was dismissed.

In *Al Sadeq* UNRWA/DT/2012/057, the Applicant contested his non-selection to the post of Deputy Field Administration Officer. The Tribunal found that the Applicant had failed to include his current work experience with UNRWA on his P-11 and thus he was considered an external candidate and not short-listed. The Applicant was reminded that there is no basic inherent right to be short-listed for a test. "Short-listing is based on meeting specific, objectively set and measurable criteria for a test. The Applicant has only himself to blame for not providing complete and accurate information in his P-11." The application was dismissed.

In Za'atreh UNRWA/DT/2013/018, in ruling on the Applicant's claim contesting his non-selection to the post of General Services Supervisor, the Tribunal stated: "The Applicant was appointable to the post and would have been recommended but for the fact that on the day he was beaten by a better candidate". The Agency's policy and procedures were followed in the selection process. The application was dismissed.

In *Arya* UNRWA/DT/2013/031, the Applicant contested the reclassification of his post, his non-selection for the new post and his termination in the interest of the Agency. The Tribunal noted that: "The Commissioner-General has the discretionary authority to reorganize and restructure the Agency and its various departments and posts in order to meet the needs and objectives of the Agency at a particular time. It is not for the Tribunal to dictate to the Commissioner-General how to manage the Agency. The Tribunal will not interfere with a genuine restructuring even if it may have resulted in the loss of employment of a staff member; provided, however, that the decision was not motivated by retaliatory or other extraneous factors and was not procedurally flawed". The application was dismissed.

In *Kiwan* UNRWA/DT/2013/026, the Applicant contested the decision not to invite the Applicant to sit the examination for the post of Area Relief and Social Services Officer. The Tribunal found that all of the candidates had been assessed according to the same standard, i.e. there were no procedural irregularities noted, and the Applicant did not qualify. The application was dismissed.

In Zeidan and Al Abdullah UNRWA/DT/2014/002, the Applicants contested the recruitment process following their non-selection to the post of Chief Area Officer. The Tribunal held that Mr. Al Abdullah lacked standing because his non-selection was not the result of an administrative decision pursuant to Article 2 of the Tribunal's Statute; rather it was a result of his voluntary decision not to participate in the written test. On the recruitment procedure, the Tribunal held: "[I]f the Respondent carried out a bona fide recruitment exercise for the relevant post, it is not for the Tribunal to intervene and pass judgment on the format of the examination that was administered. [...] It is not for the Tribunal to second guess the assessment of a properly-constituted selection panel". The application was dismissed.

In *Ghuneim* UNRWA/DT/2014/006/Corr.01, in a case contesting the Applicant's non-selection to the post of Principal Training Centre, the Tribunal found that the Applicant had indicated in her application that she had experience as an Assistant Head Teacher, but she did not set out any additional details. "[I]t is the responsibility of each candidate to clearly demonstrate in their application that they meet the minimum qualifications for posts for which they are applying. This

should include a full and detailed description of duties and responsibilities for each post." The application was dismissed.

In *El Roubi* UNRWA/DT/2014/028, the Applicant challenged a recruitment process, and the Tribunal found: "The record is clear that the Panel was cognizant of the candidates' experience and results of the written examination. The Report includes an assessment of each candidate, a summary of his or her qualifications, experience, the result of the interview and the recommendations of the Panel. The Applicant was provided with a copy of the recruitment report and it is not for the Tribunal to assess the relative merits of the candidate". The application was dismissed. *See also Abu el Hatal* UNRWA/DT/2014/029 (quoting *El Roubi*).

In *Barakat* UNRWA/DT/2014/035, the Applicant contested his non-selection for a post, and the Tribunal found that "[t]he record clearly shows that the Applicant failed to score a passing grade on the exam and was, therefore, not short-listed. [...] There is nothing in the record that shows that the Applicant was not given fair and adequate consideration". The Tribunal further found that the Applicant has failed to produce any convincing evidence that he was the subject of prejudice or discrimination. Based on the record, the Tribunal found that the Agency had complied with its regulatory framework, and the Applicant was provided with fair consideration in the recruitment process. The application was dismissed.

In *Ihmaideh* UNRWA/DT/2014/037, the Applicant contested his non-selection to a post for which he had been previously included on a roster as the fourth "suitable candidate". The Tribunal found that, under Area Personnel Directive No. PD/A/4/Part II/Rev.7 at paras. 33 and 34, inclusion on a roster does not guarantee appointment. The Tribunal further found that the Applicant's supervisors paid due regard to securing the highest standards of efficiency, competence and integrity per Area Staff Regulation 4.3. The Tribunal declined to disturb the decision and dismissed the application.

In *Chahrour* UNRWA/DT/2014/038, the Applicant contested the decision not to invite him to take a written test for a post to which he applied. The Tribunal found that the evidence showed that the Applicant had not been invited to take the test because the Administration properly considered that he did not have the experience required for the post as set out in the vacancy announcement. It is within the discretion of the Administration to evaluate the Applicant's experience. The Tribunal found that the decision was properly taken and that the Applicant has not provided any convincing evidence that this decision was arbitrary or tainted by prejudice or improper motives or flawed by procedural irregularity or error of law. The application was dismissed.

In *Abu Zeina* UNRWA/DT/2014/052, the Applicant contested the decision not to select him for the post of Deputy Principal in the Wadi Seer Training Centre, claiming that the selected candidate did not meet the requirements of the post description. The Respondent did not deny that the successful candidate did not meet all of the criteria. Rather, per Area Personnel Directive No. PD/A/4/Part II/Rev 7, para. 35, the recruitment administrator may long-list a candidate who meets most of the requirements. In this case, the successful candidate lacked the experience necessary for the post but met all of the other criteria and was therefore lawfully selected. The Applicant failed to produce convincing evidence to support his allegation that he was discriminated against. The application was dismissed.

#### B. Non-renewal/non-extension of contract

In *Rantsiou* UNRWA/DT/2011/006 (appeal to UNAT dismissed in 2012-UNAT-250), the Applicant contested her non-renewal. The Tribunal held that the fixed-term appointment does not carry any expectation of renewal or conversion to any other type of appointment per International Staff Rule 104.3(a). "The jurisprudence requires a 'clear action by the Administration' to create a legal expectancy of renewal, and in the case at bar, the Tribunal notes no such action by the Agency." The application was dismissed.

On appeal, the UNAT said: "Before this Tribunal, Ms Rantsiou has raised no new arguments, but has only repeated her contentions thoroughly considered and rejected by the UNRWA DT. [...] As repeatedly stated in the jurisprudence of this Court, which was already quoted in the Judgment under appeal, fixed-term appointments carry no expectancy of renewal and there are no circumstances that would take Ms Rantsiou's situation out of this general rule".

In *Badawi* UNRWA/DT/2011/007 (appeal to UNAT dismissed in 2012-UNAT-261), the Applicant contested her non-extension based on the fact that she had been "confirmed" in her post at the end of her probationary period. The Tribunal held that "[t]he confirmation of the Applicant's fixed-term appointment, acknowledging that she had satisfactorily completed her probationary period, does not create any right to an extension and should not be interpreted to create any expectancy of renewal, as confirmed consistently by the jurisprudence". The application was dismissed. *See also Said* UNRWA/DT/2012/013 (appeal to UNAT is pending).

In *Bello* UNRWA/DT/2012/033, the Applicant contested his non-extension, and the Tribunal found that "[t]he record in the file indicates that the Respondent's decision not to extend the Applicant's fixed-term appointment was based on shortcomings of the Applicant during his probationary period which had been identified and properly documented". The application was dismissed.

In *Ahmad* UNRWA/DT/2012/037, the Applicant contested her non-transfer and non-extension. The Tribunal noted: "Decisions on transfer applications and whether or not to offer a staff member an extension of appointment on the expiry of a fixed-term appointment [are] a matter of discretion. Absent extraneous factors or improper considerations the administration is not obliged to grant every transfer request nor is there an automatic right to an extension of appointment on the expiry of a fixed-term contract". The Tribunal, however, found that the Applicant had a legal expectancy that he would be transferred at the end of the project. The application was successful.

In *Beqai* UNRWA/DT/2013/012 (appeal to UNAT dismissed in 2014-UNAT-434), the Applicant contested his non-renewal. The Tribunal affirmed the principle that "a fixed-term appointment does not carry any expectancy of renewal or conversion to any other type of appointment, *Jennings*, 2011-UNAT-184". The application was dismissed. *See also Riano* UNRWA/DT/2013/035: On appeal, in 2015-UNAT-529, the UNAT confirmed that "[a] fixed term contract ends with the effluxion of time and in the usual course of things a person employed under such a contract does not have a right or legitimate expectations of its renewal. Mr. Riano was employed on a one-year fixed-term contract and there is no evidence that an express promise was made to him by anyone in authority to extend the life of said contract. [...] Therefore, there is no basis to support Mr. Riano's claim of legitimate expectations and/or rights for the renewal of his contract".

In Kalil UNRWA/DT/2014/027 (appeal to UNAT is pending in case 2014-675), the Applicant contested the Agency's decision to offer him a one-year contract renewal and not a three-year renewal. The

Applicant sought damages in the amount of 33 months net base salary he would have received had he been awarded a three-year appointment. In dismissing the application, the Tribunal held: "It is very clear to the Tribunal that these alleged lost wages are not the result of the decision to offer the Applicant a one-year extension. It was the Applicant who voluntarily tendered his resignation, and any alleged damages were caused by his own actions".

In *Ismail* UNRWA/DT/2014/041, the Applicant contested the decision not to renew his fixed-term appointment for three more years beyond its expiration. The Tribunal found that "according to Personnel Directive A/9 Rev. 9 ... and based on the fact that the Applicant had taken [Early Voluntary Retirement] previously, the Agency had no discretionary authority to grant any renewal of the Applicant's contract. The Agency did not have any other choice but to decide not to renew the Applicant's appointment". The application was dismissed. *See also Al-Shafie* UNRWA/DT/2014/042; *Daghash* UNRWA/DT/2014/043.

In *Salem* UNRWA/DT/2014/036 (appeal to UNAT is pending), the Applicant filed three applications that related to the same issue, i.e. her separation from service, one decision being not to confirm her appointment after a probationary period. The Tribunal held that the contested decision was unlawful as it was tainted by several procedural irregularities and by abuse of power, and as such it was rescinded.

#### (i) Extension of service beyond the age of retirement

In *Adawi* UNRWA/DT/2014/040, the Applicant appealed the decision not to grant him a second extension of service beyond the age of retirement. In accordance with Area Staff Rule 109.2, the Applicant was retired on the date of his 60<sup>th</sup> birthday. The Applicant's supervisor requested that the Applicant be given a one-year extension beyond the age of retirement. The Applicant was then given a six-month extension of contract. At the expiration of the six months, the Applicant requested a second extension of service. This request was denied by the Agency. The Respondent explained that it was in the interest of the Agency to fill the post with a permanent staff member, by means of internal transfer, as opposed to a short-term renewal in extending the Applicant's period of service. While Area Staff Rule 109.2 authorises the extension of staff beyond the age of retirement, the Tribunal noted that this is not a right. Rather, the Rule clearly identifies that retirement at the age of 60 is the general rule and that extension of service beyond the age of 60 is an exception to the rule. The Commissioner-General has the power to grant such an exceptional extension or deny such a request. The application was dismissed.

#### (ii) Extension of probationary period

In Fahjan UNRWA/DT/2014/039, the Applicant contested the extension of his probationary period and his placement under the "Opportunity to Improve" process. It had been decided to extend the Applicant's 12-month probationary period by 6 months. The Applicant submitted that the evaluation of his performance was not fair. The Tribunal found that the case file showed that the Applicant had been repeatedly told that his performance was unsatisfactory well before the evaluation of his performance. "Moreover, when a staff member has challenged his performance rating, there is no rule prohibiting the Agency from extending a staff member's probationary period ... as mentioned above, satisfactory probationary service is a condition for confirmation of appointment." The application was dismissed.

In *Musleh* UNRWA/DT/2014/053, the Applicant contested the decisions to extend the duration of his probationary period and to subsequently not confirm his appointment. In dismissing the application, the Tribunal determined that, based on the evidence in the file, the Agency's decisions were justified and in compliance with the Applicant's letter of appointment and the Agency's regulatory framework.

#### C. Transfer

In *Abdullah* UNRWA/DT/2013/037/Corr.01 (vacated in part in 2014-UNAT-482), the Applicant contested the decision to transfer him from his position as a teacher to another teaching post at the same grade and step, claiming that the transfer was a disciplinary measure in disguise. The Tribunal had found that the Respondent acted in the interest of the Agency by transferring the Applicant to another school and highlighted that this was not a demotion as the Applicant's grade and step had been preserved. Thus, it was not a disciplinary measure. The UNAT disagreed, holding that the contested decision to transfer the Applicant "took on the hallmarks of a disguised disciplinary sanction", and awarded moral damages to the Applicant.

In *Hammoudeh* UNRWA/DT/2014/030, the Applicant contested his transfer. The Tribunal found that "it is obvious that the mutual acrimonious behaviour of the two Head Teachers, each formally complaining against the other, produced an irreparable breakdown in their relationship". Moreover, the "lack of cooperation between the Applicant and the [Head Teacher] had adversely impacted the school environment and was not conducive to a healthy workplace". The Applicant suffered no economic prejudice, and the Tribunal considered that the Agency's decision was a proper use of discretionary power of the Commissioner-General in light of the unhealthy working environment. The application was dismissed.

In Al Mashni UNRWA/DT/2014/023, in a case where the Applicant contested his transfer, the Tribunal found that the motives behind the transfer – the Applicant's admissions that he was unhappy in his post and disputes between the Applicant and his supervisors which had a negative influence on his performance and the efficiency of the Training Centre – were legitimate and that the transfer was in the best interest of the Agency. Based on the above, the Tribunal held that the decision could not be considered a disciplinary measure, as was argued by the Applicant. The application was dismissed.

In Ahmad UNRWA/DT/2014/047, the Applicant was transferred upon her own request, and then she filed an application contesting the transfer. The Tribunal ruled that as it was the Applicant's unilateral request to be transferred she did not have legal standing to contest the decision that she had unilaterally requested; such a request does not give rise to an administrative decision for purposes of an appeal. The application was dismissed as non-receivable.

In *Shanti* UNRWA/DT/2014/049, with regard to the contested decision to transfer the Applicant, the Tribunal held that, due to the admitted breakdown in relationships, the decision to transfer the Applicant was not a disguised disciplinary measure; rather, the transfer was a proper exercise of the Commissioner-General's discretionary authority pursuant to Area Staff Regulations 1.2 and 4.3. The application was dismissed.

In *Hamayel* UNRWA/DT/2013/029 (appeal to UNAT granted in part in 2014-UNAT-459), the Applicant contested the decision to transfer him at the conclusion of his second year of SLWOP. The Application was successful on the basis that the Agency had failed to inform him that if he took a second year of SLWOP his job would not be held for him. The Tribunal recognized that "the Agency

enjoys broad discretion in assigning its employees to different functions as deemed appropriate. In general, it is for the Agency to determine how best to allocate its resources. It is not for the Tribunal to intervene unless the decision to transfer the staff member is arbitrary, based on improper motives, or procedurally flawed. And while there is no requirement to obtain the consent of a staff member before transferring or reassigning them, as recognized by the UNDT (*Allen*, UNDT-2010-009), there is a responsibility to both consult with the staff member concerned and give due regard to his or her interests and concerns (*Goddard*, UNDT-2010-196)". The decision to transfer the Applicant was rescinded. The UNAT affirmed that decision but vacated the award of moral damages.

In *Rantisi* UNRWA/DT/2013/033 (appeal to UNAT dismissed in 2015-UNAT-528), the Tribunal held that the transfer of the Applicant to a new post was a disciplinary measure in disguise and therefore illegal.

In *Barakat* UNRWA/DT/2014/035, the Applicant contested the decision to transfer him to another post. The Tribunal found that the basis of the Applicant's transfer was to cope with the Department's needs. Given that the Applicant remained at the same grade and step, the Tribunal did not find any prejudice. Moreover, the Applicant failed to provide any evidence that the transfer caused him a decrease in salary or caused him economic loss. The application was dismissed.

#### D. Special leave

In *Mahfouz* UNRWA/DT/2013/008 (appeal to UNAT dismissed in 2014-UNAT-414), the Applicant contested the Agency's denial of his request for SLWP or SLWOP. In dismissing the application, the Tribunal held that there is no obligation on the Agency to grant every request.

In *Hamayel* UNRWA/DT/2013/029 (appeal to UNAT granted in part in 2014-UNAT-459), as noted above under subsection "*Transfel*".

#### E. <u>Termination – in the interest of the agency</u>

#### (i) For unsatisfactory performance

In *Abu Ajami* UNRWA/DT/2013/019, the Applicant contested the decision to terminate him in the interest of the Agency because of his alleged poor performance, claiming that he performed poorly due to his medical condition. In upholding the Agency's decision, the Tribunal found that the Applicant's evidence of the medical report was insufficient because the report was issued *after* the decision to terminate the Applicant's was made; therefore, the evidence did not serve to prove that the decision was unlawful. The application was dismissed.

In *Al Khatib* UNRWA/DT/2013/023, the Applicant contested the decision to terminate his employment in the interest of the Agency. The Tribunal found that "[i]ndeed, the decision to terminate his appointment in the interest of the Agency is not a disciplinary measure as per Personnel Directive No. A/10/Rev.1, but rather an administrative decision taken as a result of the Applicant's failure to improve his work performance". The application was dismissed.

In *Obeid* UNRWA/DT/2014/018, the Applicant contested his termination in the interest of the Agency for his unsatisfactory performance. The Tribunal found that the Applicant had been twice evaluated as a "staff member with an unsatisfactory performance". There was no doubt for the

Tribunal that the interest of the Agency justified the contested decision, and the Applicant failed to produce any evidence of improper motive for the decision. The application was dismissed.

#### (ii) During probation

In *Kharrousheh* UNRWA/DT/2011/009, the Applicant contested his termination in the interest of the Agency for unsatisfactory performance during his probationary period. The Tribunal determined that the record supported this decision. Despite warnings and a letter of reprimand, the Applicant continued to be inefficient and to exercise poor judgment. Quoting from the UNAT (*Assad* 2010-UNAT-021), the Tribunal ruled: "The Staff Rules applicable to staff members on probation provide that the Administration has broad discretionary authority to terminate the appointments of such staff during the probationary period. They provide that a probationary appointment may be terminated without advance notice at any time". The application was dismissed. *See also Al Fayoumi* UNRWA/DT/2011/014.

In *Nijim* UNRWA/DT/2012/051, the Applicant contested the termination of her employment during her probationary period alleging that she was entitled to receive protection from the Agency as a whistle-blower under General Staff Circular No. 5/2007. The Tribunal upheld the contested decision finding that she only raised the allegation of misconduct against the health clinic *after* she had been told by management that her performance was unsatisfactory. The Tribunal found the Applicant's evidence inadequate to prove retaliation. The application was dismissed.

In *Ishaish* UNRWA/DT/2014/033, the Applicant contested the decision to terminate him during his probationary period for poor performance. The Tribunal noted that the "Opportunity to Improve Process" is not applicable to staff members during their probationary period and that the Agency had not demonstrated that the Director of UNRWA Operations, Jordan ("DUO/J") had delegated her authority to the FHRO in accordance with Area Personnel Directive A/9/Rev9 at para 4.1. However, the Tribunal found that the Applicant had failed to perform his duties in a satisfactory manner and that, had the DUO/J herself imposed the termination as she should have, she would have taken the same decision.

#### (iii) Other

In *Riano* UNRWA/DT/2013/035 (appeal by Applicant dismissed in 2015-UNAT-529), the Tribunal rescinded the contested decision to terminate the Applicant's appointment in the interest of the Agency on the basis the termination was procedurally flawed.

In Faraj UNRWA/DT/2014/034 (appeal to UNAT is pending in case 2014-683), on remand from the UNAT, the Tribunal stated: "When the reality of a resignation is challenged by the staff member, the evidence of such a significant decision can only be in a written document or at least in an unequivocal testimony". The Tribunal found that the decision to terminate the Applicant in the interests of the Agency could not be justified. The application was successful.

#### F. Redundancy

In *Al Zawawi* UNRWA/DT/2014/009, the Applicant contested the non-extension of her contract based on her post being abolished and being declared redundant. The Tribunal stated that it was "left with the inescapable inference that the ongoing restructuring was used as a vehicle for not extending the Applicant's appointment. Further the abject failure on the part of senior managers to ensure that the Agency's procedures were properly followed, and the inexplicable refusal to offer

the Applicant alternative employment, notwithstanding her good performance appraisals, are entirely consistent with an ulterior and not a benign motive". The decision was rescinded.

In *Al Mouea* UNRWA/DT/2013/025 (appeal to UNAT dismissed in 2014-UNAT-458), the Applicant contested the redundancy of his functions. The Tribunal found that the Agency had provided sufficient documentary evidence that there was a genuine redundancy situation and that the Agency had acted in accordance with paragraph 15.8.2 of Area Personnel Directive A/9 by protecting the Applicant's salary at two grades higher than the post to be occupied, and at the incremental step that most closely approximated that which had been applicable in his previous grade. The application was dismissed.

#### G. Benefits/entitlements/salary/allowances/reclassifications

In *Dartell* UNRWA/DT/2011/001, the Applicant contested the decision not to grant him accelerated salary increments for passing the UN Language Proficiency Examination. The Tribunal held that UNRWA's International Staff Regulations and Rules (in contrast to other organizations within the UN common system) do not provide any language proficiency incentive; therefore, the decision not to pay the Applicant accelerated salary increments for passing the UN Language Proficiency Examinations is not an appealable administrative decision, and the application was dismissed as non-receivable.

In *Ghatasheh* UNRWA/DT/2011/012, the Applicant challenged the calculation of his retirement benefits. The Tribunal dismissed his application as non-receivable finding that the retirement benefits were correctly calculated in accordance with the applicable Area Staff Regulations and Rules. "[T]he determination of the base salary for the purpose of calculating the retirement benefits of a staff member does not constitute an administrative decision ..." The application was dismissed.

In Hamad UNRWA/DT/2011/013 (appeal to UNAT dismissed in 2012-UNAT-269), the Applicant had challenged the calculation of her retirement benefits, and the Tribunal found that "there is no rule or term of employment which provides that a special interest rate be applied other than the last published interest rate in effect at the time a staff member applies to withdraw from the Provident Fund". Moreover, the Tribunal found that "[i]f the Applicant is contesting the manner by which the Provident Fund Secretariat calculated the balance of separating participants, she is reminded that this does not constitute an administrative decision ..." The application was dismissed as non-receivable.

In Jaber UNRWA/DT/2012/001, the Applicant contested the decision to deny him benefits for an injury he claimed to have been service-incurred. The Tribunal held that the Applicant's injuries were deemed to be service incurred based on the facts that: 1) the accident occurred at the Applicant's place of work; 2) during working hours and; 3) was connected to his official duties as a sanitation labourer and not as a result of a family vendetta. The application was successful. See also Musleh UNRWA/DT/2014/013.

In *Barmawi* UNRWA/DT/2012/019, the Applicant contested the decision that he was not entitled to a termination indemnity. The Tribunal found that "the decision not to pay the Applicant a termination indemnity was in complete conformity with Area Staff Rule 109.9, paragraph 1, as the Applicant did not satisfy the criteria set out in this Rule for entitlement to a termination indemnity as the Applicant's appointment was not terminated under Area Staff Regulation 9.1 in the interest of the Agency, but rather the Applicant's service with the Agency ceased upon the expiry of the

Applicant's fixed-term appointment". The application was non-receivable as there was no appealable administrative decision.

In *Anabtawi* UNRWA/DT/2012/049, the Applicant contested the decision not to consider his injuries as service-incurred. The Tribunal found that the evidence submitted, i.e. the medical opinions, supported the conclusion that the Respondent's decision not to consider the Applicant's surgery as a service-incurred injury was properly made. Therefore, the decision not to compensate the Applicant for an alleged service-incurred injury was lawful. The application was dismissed. *See also Anabtawi* UNRWA/DT/2012/052.

In *Abu Ruz* UNRWA/DT/2012/065/Corr.01, the Applicant contested the decision not to pay the Applicant retroactively for his claimed overtime. The Tribunal held that the Applicant was not entitled to compensation from overtime accrued prior to 24 February 2009, as he had not complied with the time limits for written claims for compensation of overtime, as laid out in the Rules and Regulations.

In *Hushiya* UNRWA/DT/2013/009 (appeal to UNAT dismissed in 2014-UNAT-435), the Applicant contested the amount of an *ex-gratia* payment by the Agency. The Tribunal held that "[a]n *ex-gratia* payment is not based on positive law and, as such, is a payment not legally required. Therefore, the amount of an *ex-gratia* payment is totally discretionary and cannot be determined as satisfactory or not, as far as the procedure to grant it is properly followed". The application was dismissed.

In *Tahrawi* UNTWA/DT/2013/027, the Applicant contested the decision not to grant him a Special Occupational Allowance ("SOA"). The Tribunal found that the Agency had complied with the relevant staff circular and policy and that no evidence had been received to suggest that the decision was other than a proper exercise of the Agency's discretion. The application was dismissed.

In *El Madhoun* UNRWA/DT/2012/053, the Applicant contested the Agency's decision not to include his dependents in his UNLP. The Tribunal found that "[t]he terms of the appointment included the clear statement that he was to be 'considered as a locally recruited staff member ... subject to the local terms and conditions of Area staff based at HQ (Amman) with no additional benefits to your status' ". Therefore, the Applicant did not have any of the benefits of expatriate status, and he had signed his acceptance of the offer on these terms. The application was dismissed as non-receivable.

In *Khashan* UNRWA/DT/2014/001 (appeal to UNAT dismissed in 2015-UNAT-502), the Applicant contested the decision not to include, in his end-of-service retirement benefit, an allowance that he had received in addition to his base salary. The Tribunal held that Area Staff Rule 109.2(7) explicitly states that the meaning of "monthly salary" is to be taken from Rule 112.3(D) which defines it as net contractual salary and increments only. "The Tribunal cannot ignore the plain interpretation of the Staff Rules." The application was dismissed.

In *Shubeita* UNRWA/DT/2014/019, the Applicant made two applications, one contesting the decision to refuse the Applicant's request for health insurance upon his termination on medical grounds and the other, the decision to refuse his request for disability benefits upon his termination on medical grounds. The Tribunal found that when the Applicant submitted his request for EVR he was entitled to it. "Therefore, the DUO/J was required to review and accept his request as of that date and not to terminate his appointment on medical grounds." The decision to refuse the Applicant's request for EVR was unlawful, and consequently the decision to terminate his appointment on medical grounds was also unlawful. Thus, the decision to refuse the Applicant's

request for GMIP's coverage on the sole reason that his appointment had been terminated on medical grounds was also unlawful. The decisions were rescinded.

In *El Shobaki* UNRWA/DT/2014/022, the Applicant contested the denial of her request for Travel Subsistence Allowance ("TSA"). The Tribunal found that the request was denied per Area Staff Rule 107.9(4), which provides " '[w]here a change of official duty station is authorized at the request of or solely for the personal convenience of a staff member the TSA...shall not be payable' ". The application was dismissed as non-receivable.

In *Abdullah et al.* UNRWA/DT/2014/046, one of the Applicants contested the decision not to pay him a lump sum and salary increase. In dismissing the application, the Tribunal stated that the Commissioner-General has the discretionary power to determine the category of staff members eligible to receive a retroactive lump sum, and the Applicant had not established any inequality in the decision. The Tribunal also found the application non-receivable.

In *Al Lababidi* UNRWA/DT/2014/048, the Applicant contested a decision regarding classification of his post. The Tribunal held that the case was receivable, despite the Respondent's contention that it was not. The application, however, was dismissed because the decision not to reclassify the Applicant's post at that time was due to financial constraints and thus lawful.

### H. Letters of reprimand

In *Abu Shawish* UNRWA/DT/2012/054, the Applicant contested the decision to issue her a letter of reprimand relating to her professional conduct and performance. Referencing Judgments issued by the former UN Administrative Tribunal, the Tribunal noted that " [a]lthough a written reprimand is not considered a disciplinary measure within the meaning of [S]taff [R]ule 110.3, a reprimand can have legal consequences to the detriment of the staff member ...' ". As such "the issuance of reprimands is subject to the same principles of fairness and due process as apply to disciplinary decisions". Nevertheless, the application was dismissed.

In *Namrouti* UNRWA/DT/2014/045, the Applicant contested a letter of reprimand for his verbal communications during a meeting. "The Tribunal has held before that it does not interfere in the normal day-to-day supervision of staff members which includes the proper and lawful exercise of power to secure appropriate standards of conduct and performance. However, a written reprimand is in reality adverse material in a staff member's personnel file. Therefore, the Tribunal finds that the Respondent needs to show that the alleged facts instigating the issuance of the contested reprimand are established." On the issue of proportionality, the Tribunal recalled that a letter of reprimand is not a disciplinary measure, "but it is used to draw the staff member's attention to minor breaches of rules and instructions, or to relatively unsatisfactory conduct". In the final analysis, the Tribunal held that the facts had been established to support the reprimand and that the measure was proportionate to the incident. The application was dismissed.

### I. Performance evaluations

In *Al Fayoumi* UNRWA/DT/2011/014, the Tribunal reminded the Applicant that "although he did not sign his PER, the HT noted that it had been discussed with him, and refusal to sign a PER does not vitiate its contents".

In Riano UNRWA/DT/2013/035 (appeal by Applicant dismissed in 2015-UNAT-529), the Tribunal quoted Simmons, 2012-UNAT-222: " 'Importance of annual e-PAS reports cannot be underestimated. These reports are important for the staff member because they inform the staff member of how well or poorly she has performed and how her performance has been judged by her reporting officers. This gives the staff member an opportunity to improve her performance' ". The Tribunal stated that "[i]n accordance with [Personnel Directive] No. I/112.6/15 in all circumstances in which a staff member is terminated or separated from service, a PER must be produced unless a report on the relevant staff member has been made in the last six months. The PER that the Agency is required to produce in these circumstances is to be regarded as a developmental tool, in which the staff member concerned is 'directly involved in the reporting process rather than merely being the object of the report' as envisaged by the performance management policy in effect at the time. The Performance Evaluation Report provides staff members with an opportunity to describe their accomplishments during the review period in the Self-Appraisal section, however the bulk of the assessment comes from the First Reporting Officer who provides ratings on each of the eleven performance indicators, and associated comments, and an overall performance rating. If a supervisor has already decided to recommend termination of a staff member, and the staff member knows it, as in this case, then it is difficult to see how the performance evaluation process can result in a 'constructive dialogue' ". Supervisors and managers should keep an open mind until after the PER process is completed.

In *Kalil* UNRWA/DT/2014/027 (appeal to UNAT is pending in case 2014-675), the Tribunal stated that "if the Applicant is objecting to the delays in conducting the procedures of his PER for the periods of 2009-2010 and 2010-2012, and if the Tribunal admits that these evaluation have not been done in accordance with the applicable rules, it is nevertheless established that the Applicant received an overall performance rating of ... 'meets performance expectations' for the two consecutive PERs. Consequently, he cannot maintain that these evaluations have caused him either material or moral damages".

In *Obeid* UNRWA/DT/2014/018, in the context of the Applicant's challenge to the decision to terminate him for unsatisfactory performance, although dismissing the application, the Tribunal stated that it "would like to emphasise that, if the Agency chooses to take into account the personal problems of staff members, these problems should not lead to consecutive unsatisfactory performance evaluations in a two-year period".

### J. Other

In *Beidas* UNRWA/DT/2014/021, the Applicant contested the decision to deduct from his monthly salary and allowances the amount of USD957 for damages to an UNRWA vehicle caused by a car accident for which he was found to be at fault. The Tribunal upheld the decision and dismissed the application. "[T]he salaries of staff members are not immune from deduction and therefore, the Agency has the legal right to recover up to 10 percent of the staff member's monthly salary plus allowances when the staff member is deemed at fault in an automobile accident."

In *Zubeidi* UNRWA/DT/2014/003, the Applicant contested his suspension from duty with full pay, pending the outcome of an investigation into possible misconduct. "Given the nature and seriousness of the allegations it was not unreasonable for the administration to wish to avoid the risk that the Applicant's continued presence in the office may jeopardise the investigation ..." The decision was properly and lawfully effected and the application was dismissed.

#### **IV. REMEDIES**

#### A. No compensation where no harm has been suffered

In *Abu Alouf* UNRWA/DT/2011/004, the Applicant requested compensation, and the Tribunal, referencing jurisprudence from the UNAT, stated: "As the disciplinary sanction was based on established facts, the Tribunal finds that there is no basis for this claim and no compensation will be awarded 'when absolutely no harm has been suffered' ". *See also Badawi* UNRWA/DT/2011/007 (appeal to UNAT dismissed in 2012-UNAT-261); *Diab* UNRWA/DT/2011/016.

In *Salem* UNRWA/DT/2014/036 (appeal to UNAT is pending), the decision not to confirm the Applicant's appointment was rescinded. With regard to the amount of compensation to be paid in lieu of reinstatement, the Tribunal stated the following: "The UNAT held in *Antak*i 2010-UNAT-095 that '[c]ompensation may only be awarded if it has been established that the staff member suffered damages' and reaffirmed in *Bertucci* 2011-UNAT-114 'its disapproval for the awarding of compensation in the absence of actual prejudice'. As the Applicant has not justified her material damages, the Tribunal cannot grant her any compensation in this regard and decides that, if the Agency chooses not to reinstate the Applicant, no amount of money will be paid for material damages".

### B. Award of compensation for material damages and compensation in lieu of reinstatement

In Jaber UNRWA/DT/2012/001, in rescinding the Agency's decision that the Applicant's injuries were not service-incurred, the Tribunal held that the Applicant was entitled to repayment of the salary that had been cut as a result of his sick leave, plus interest, and to compensation for his medical expenses resulting from his service-incurred injuries. "The Applicant's 30% permanent functional disability should be accommodated by transferring the Applicant to a post that is less physically strenuous as the Agency erred in not addressing this in the Medical Board's terms of reference." On an application filed by the Respondent for "interpretation" of the Judgment, the Tribunal in Jaber UNRWA/DT/2012/003, quoted jurisprudence from the UNAT and stated that the "very purpose of compensation is to place the staff member in the same position he or she would have been in had the Organization complied with its contractual obligations' Azzouni 2011-UNAT-162, paragraph 23". Accordingly, the UNAT has determined on more than one occasion, most recently in Azzouni, that compensation with interest is to be calculated as of the date of the breach of the staff member's contractual rights and not the date of judgment.

In Wishah UNRWA/DT/2014/008 (appeal to UNAT is pending in case 2014-613), the Tribunal ordered that the decisions to suspend the Applicant without pay and to terminate his employment be rescinded. Compensation in lieu of rescission was set at two years' net base salary.

In Ahmad UNRWA/DT/2012/056/Corr.01, a decision on remedies following the Tribunal's Judgment in Ahmad UNRWA/DT/2012/037, the Tribunal, in awarding damages to the Applicant, noted that damages may only be awarded to compensate for negative effects of a proven breach and the award should be proportionate to the established harm suffered by the Applicant, citing Crichlow, 2010-UNAT-035. The purpose of compensation is to place the staff member in the same position he or she would have been in had the Organization complied with its contractual obligations. The Tribunal pointed out that Article 10(5) appears to limit the total of all compensation ordered under subparagraphs (a), (b), or both, to the equivalent of two years' net base salary, unless higher compensation is warranted and reasons are given to explain what makes the case exceptional. The

Tribunal ordered that the income the Applicant had received from various daily paid contracts was to be deducted from his award for loss of income over the period between his termination and reemployment. The Applicant was granted medical expenses and amendment of entry on duty so that his employment with the Agency would be deemed continuous. He was also placed at the appropriate grade and step by the addition of steps retroactively. The Tribunal denied the Applicant's request to order an apology from the Agency stating that it is not appropriate to order the Agency to apologise. "It is in the very nature of an apology that it has to be voluntary. To order someone to apologise is in the Tribunal's view a pointless exercise." See also Mustapha UNRWA/DT/2014/007.

In *El Baz* UNRWA/DT/2012/059/Corr.02, the Tribunal set aside the decision of the Respondent and ordered the Agency to re-instate the Applicant in his post with the same grade and administrative entitlements, and to pay the Applicant his financial entitlements. "Pursuant to Article 10 of the Statute of the Tribunal, '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 [...] (emphasis added).' The Statute also provides that compensation shall not normally exceed the equivalent of two years' net base salary, and the [UNAT] has consistently held the UN Dispute Tribunals to this limit; however in exceptional cases the Tribunal may order the payment of a higher compensation and shall provide the reasons for that decision." Taking guidance from *Mwamsaku* 2012-UNAT-246, *Harding* 2011-UNAT-188 and *Cohen* 2011-UNAT-131, the Tribunal found exceptional circumstances and set the amount of compensation at 30 months' net base salary.

In *Abdel Khaleq* UNRWA/DT/2013/022, the Tribunal rescinded the decision to terminate the Applicant, and as an alternative to reinstatement and specific performance, the Tribunal set the amount of compensation at four years' net base salary, due to the exceptional nature of the case. The UNAT affirmed the ruling, but reduced the amount of compensation to two years' net base salary. *El Khalek* 2014-UNAT-442 (the UNAT spelled the name differently).

In *Riano* UNRWA/DT/2014/004, in a Judgment on remedies following *Riano* UNRWA/DT/2013/035 (appeal by Applicant dismissed in 2015-UNAT-529), the decision to terminate the Applicant's contract was rescinded and the Respondent was ordered to pay the Applicant the salary and other emoluments and benefits to which he would have been entitled had his contract continued until its expiration date. The Applicant was not entitled to "double benefit" of termination indemnity and payment of entitlements. Thus, the Respondent was entitled to subtract the termination indemnity amount from the final amount owed. Noting that, as the Applicant was employed on a fixed-term contract with no right of expectation of renewal, the Tribunal dismissed his claim for an award of damages.

In *Mustapha* UNRWA/DT/2014/007, the Tribunal ordered that all records of the written censure be expunged from the Applicant's official status file, and the Respondent was to pay the Applicant all salary and emoluments to which he would have been entitled had he not been suspended without pay for two weeks.

In *Al Zawawi* UNRWA/DT/2014/009, the decision was rescinded, with the alternative compensation amount set at 18 months' net base salary.

In *Faraj* UNRWA/DT/2014/034 (appeal to UNAT is pending in case 2014-683), on remand from the UNAT, the Tribunal rescinded the decision to terminate the appointment of the Applicant. In lieu of reinstatement, the Respondent could elect to pay USD18,500 material damages (two years' net base salary minus earnings received from other employers over that period).

In *Salem* UNRWA/DT/2014/036 (appeal to UNAT is pending), the decision not to confirm the Applicant's appointment was rescinded. "As the Applicant has not justified her material damages, the Tribunal cannot grant her any compensation in this regard and decides that, if the Agency chooses not to reinstate the Applicant, no amount of money will be paid for material damages."

In *Musleh* UNRWA/DT/2014/013, the Applicant contested the decision to adopt the conclusions of a medical board that he was fit for service, thus returning him to duty as a Laundry Supervisor at the Amman Training Centre. The Tribunal was concerned about the three divergent medical opinions with regard to the Applicant's fitness for service and wondered how the medical board could have found that the Applicant was fit for duty when it was faced with three divergent medical opinions, two of which were contrary to him being fit for duty. The Tribunal ordered that the Applicant be transferred to a post better suited to his hand injury, reimbursed for deducted sick and annual leave and paid his salaries and entitlements.

In *Ishaish* UNRWA/DT/2014/033, the Tribunal rescinded the Agency's decision to terminate the Applicant based on his poor performance because the Agency could not produce evidence that the person who had made the decision had the delegated authority to make such a decision in accordance with Area Personnel Directive A/9/Rev9 at para 4. (Although the Tribunal found that since the Applicant had failed to perform his duties in a satisfactory manner, had the DUO/J herself imposed the termination as she should have, she would have taken the same decision. Therefore, the Tribunal held that "[s]hould the [Agency] elect not to execute the above rescission order, no compensation shall be paid to the Applicant".)

See Rantisi 2015-UNAT-528: in affirming Rantisi UNRWA/DT/2014/005 (Judgment on remedies), the UNAT held that under Article 10(5)(a) of the Statute of the Tribunal, the Tribunal is constrained by the mandatory requirement to set an amount of compensation as an alternative to an order rescinding a decision on appointment, promotion or termination, but this does not apply to the rescission of a decision on transfer.

### C. Moral damages

In Ahmad UNRWA/DT/2012/056/Corr.01, in following the jurisprudence of the UNAT, the Tribunal held: "Moral damages may not be awarded without specific evidence supporting the award, Zhouk, 2012-UNAT-224. The Dispute Tribunal Judge is best placed to assess from the evidence, records or otherwise whether 'particular circumstances' exist such as to give rise to a claim for moral damages, Cienewicz, 2012-UNAT-232. [...] [A]n explicit promise made to the Applicant was broken without any consideration being given the legitimate feelings and expectations of the Applicant. He was extremely upset and such feelings were not disproportionate to the harm suffered". The Respondent was ordered to pay USD5,000 in moral damages.

In *Abdel Khaleq* UNRWA/DT/2013/022, the Tribunal awarded USD20,000 in moral damages for violations of the Applicant's due process. On appeal, the UNAT affirmed the award of moral damages but reduced the amount of compensation from four years' net base salary to two years'

net base salary that could be paid by the Agency in lieu of reinstatement (*El Khalek* 2014-UNAT-442) (UNAT spelled name differently).

In *Abdullah* UNRWA/DT/2013/037/Corr.01, the Tribunal had dismissed the application contesting the Applicant's transfer. On appeal, the UNAT in *Abdullah* 2014-UNAT-482 held that the transfer was in breach of the conditions of employment and awarded the Applicant three months' net base salary as compensation for moral injury.

In *Abu Nada* UNRWA/DT/2013/038 (appeal to UNAT dismissed in 2015-UNAT-514), the Tribunal found "that the Agency's excessive delay in carrying out the investigation and making its final decision was a violation of natural justice and the direct cause of the Applicant's stress and anxiety. The Applicant is awarded 25 months' net base salary for moral damages due to the excessive delay of investigation".

In Wishah UNRWA/DT/2014/008 (appeal to UNAT pending in case no. 2014-613), the Tribunal found "that the suspension without pay was not only in breach of the Agency's procedures but caused the Applicant much hardship and contributed to the distress of having lost employment after more than 20 years of employment with limited prospect of obtaining another job". The Applicant was awarded USD15,000 in moral damages.

In *Riano* UNRWA/DT/2014/004, in a Judgment on remedies following *Riano* UNRWA/DT/2013/035 (appeal by Applicant dismissed in 2015-UNAT-529), the Tribunal awarded the Applicant USD8,000 in moral damages.

In *Rantisi* UNRWA/DT/2014/005, in a Judgment on remedies following *Rantisi* UNRWA/DT/2013/033 (appeal to UNAT dismissed in 2015-UNAT-528), the Tribunal awarded the Applicant USD40,000 in moral damages.

In *Mustapha* UNRWA/DT/2014/007, the Tribunal found that the reputation of the Applicant was affected by the decision. The decision caused him anxiety and made him reluctant to seek advancement in a career in which he had previously excelled. "He is entitled to be compensated for the affects of the decision on his reputation and mental well-being." The Applicant was awarded USD5,000 in moral damages.

In *Al Zawawi* UNRWA/DT/2014/009, the Tribunal stated: "Each case is to be assessed on its own facts and the unique characteristics of the individual, the manner in which s/he has been treated and the impact of the treatment on the individual concerned (see, for instance, the Appeals Tribunal in *Solanki* 2010-UNAT-044, *Warren* 2010-UNAT-059, *lanelli* 2010-UNAT-093, *Zhouk* 2012-UNAT-224). A principled approach minimizes the risk of awards being disproportionate". The Applicant was awarded USD12,000 in moral damages based on the Tribunal's decision that the restructuring and abolishment of the Applicant's post was a vehicle to end the Applicant's appointment.

In *Faraj* UNRWA/DT/2014/034 (appeal to UNAT is pending in case 2014-683), on remand from the UNAT, the Applicant was awarded USD5,000 moral damages as the Tribunal considered that his anxiety and stress were caused by the decision.

In *Salem* UNRWA/DT/2014/036 (appeal to UNAT is pending), with regard to moral damages, the Tribunal found that "the Applicant has given evidence that after her separation, she suffered from anguish and stress. The Tribunal finds that her physical and moral suffering are the result of her

unlawful separation from service and, above all, are the consequences of being a victim of abuse of power. Therefore, the Tribunal decides to grant her compensation in the amount of USD16,000".

In *Musleh* UNRWA/DT/2014/013, the Tribunal awarded six months' net base salary for violations of the Applicant's due process.

#### V. ANCILLARY MATTERS

#### A. Burden and standards of proof

# (i) In cases where the Applicant has contested disciplinary measures imposed by the Agency

In *Al-Jishi* UNRWA/DT/2011/008, in a case involving termination for misconduct, the Tribunal noted that the Agency is not required to prove its case beyond reasonable doubt. *See also Mansour* UNRWA/DT/2012/004; *Younes* UNRWA/DT/2012/012; *Habash* UNRWA/DT/2011/011; *Najjar* UNRWA/DT/2012/002; *Shuheimat* UNRWA/DT/2012/006; *Abu Ghali* UNRWA/DT/2012/024 (appeal to UNAT dismissed in 2013-UNAT-366); *Al Azzeh* UNRWA/DT/2012/026.

In *Musa* UNRWA/DT/2013/007 (appeal to UNAT dismissed 2014-UNAT-431), in a case involving a demotion and transfer of the Applicant, the Tribunal reminded the Applicant that "as held by the [UNAT] in *Hepworth* 2011-UNAT-178, the burden of proof rests on him when he alleges improper motivation in the exercise of the Respondent's discretionary authority and that he must adduce convincing evidence to substantiate his allegations".

In *Abu Ghali* UNRWA/DT/2012/024 (appeal to UNAT dismissed 2013-UNAT-366), following the jurisprudence of the UNAT, the Tribunal held that: "the Applicant has not provided satisfactory proof justifying the conduct in question, rather his contradictory statements impact negatively on his credibility". As noted by the UNAT in *Molari* 2011-UNAT-164: "'Disciplinary cases are not criminal. Liberty is not at stake. But when termination might be the result, we should require sufficient proof. We hold that, when termination is a possible outcome, misconduct must be established by clear and convincing evidence. Clear and convincing proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt – it means that the truth of the facts asserted is highly probable'". *See also Al Bawab* UNRWA/DT/2012/048; *Saleh* UNRWA/DT/2014/010.

# (ii) In cases where the Applicant has contested administrative decisions other than disciplinary measures

In *Rantsiou* UNRWA/DT/2011/006 (appeal to UNAT dismissed in 2012-UNAT-250), in a case of non-renewal/extension, the Tribunal held: "It is of the utmost importance to remember that where a staff member seeks to vitiate [a decision] on the basis of prejudice, improper motive or other extraneous factors, the burden of proving such prejudice or improper motive is on the staff member, who must adduce convincing evidence, United Nations Administrative Tribunal, Judgement No. 834, *Kumar* (1997)". *See also* Dannan UNRWA/DT/2012/039 (appeal to UNAT dismissed in 2013-UNAT-340); *Abu Jarbou* UNRWA/DT/2012/011 (appeal to UNAT dismissed in 2013-UNAT-292); *Barakat* UNRWA/DT/2012/064.

In *Diab* UNRWA/DT/2011/016, the Applicant claimed that the selection process was improper. "The Applicant is reminded that when he alleges that the Respondent's exercise of his discretionary authority was tainted with 'discrimination' and motivated by 'revenge', the jurisprudence of the

UNAT and the former UN Administrative Tribunal is clear that the burden of proof rests on the Applicant, and that he must adduce convincing evidence in support of his allegations." *See also Ashour* UNRWA/DT/2012/008; *Farajeh* UNRWA/DT/2013/006; *Said* UNRWA/DT/2012/013 (appeal to UNAT is pending); *Purcell* UNRWA/DT/2012/015; *Kharrousheh* UNRWA/DT/2011/009; *Al Fayoumi* UNRWA/DT/2011/014.

In Jouda UNRWA/DT/2012/047, where the Applicant claimed that he was discriminated against in the selection process, the Tribunal reminded the Applicant that "in order for the Tribunal to consider any allegation made by either side, documentary evidence is required. The Tribunal will not take into account vague references to possible discrimination or mere statements by the parties, i.e. unsubstantiated allegations, as they do not constitute probative evidence. As held by the [UNAT] in Azzouni 2010-UNAT-081: 'When a staff member alleges discrimination, he or she bears the burden of proving on a preponderance of evidence that discrimination occurred'".

In *Dannan* UNRWA/DT/2012/039 (appeal to UNAT dismissed in 2013-UNAT-340), where the Applicant contested his non-selection to a post, the Tribunal held that the Respondent "made more than the minimal showing within the meaning of the Judgment in *Rolland* [2011-UNAT-122] in that cogent reasons have been put forward as to how and on what basis the successful candidate was preferred. In the circumstances the burden shifts to the Applicant who has to show that he was denied a fair chance of being promoted".

In *Al-Hariri et al.* UNRWA/DT/2012/005, where the application was time-barred and thus non-receivable, the Tribunal held: "it is the Applicant's burden to demonstrate that he or she was prevented from filing his or her application in due time due to serious reasons or circumstances beyond his or her control, as affirmed by the [UNAT] in *Diagne et al.* 2010-UNAT-067".

In *Shanaa* UNRWA/DT/2012/016, quoting *Roland* 2011-UNAT-122, the Tribunal stated: "There is always a presumption that official acts have been regularly performed. This is called a presumption of regularity. But this presumption is a rebuttable one. If the management is able to even minimally show that the Appellant's candidature was given a full and fair consideration, then the presumption of law stands satisfied. Thereafter the burden of proof shifts to the Appellant who must show through clear and convincing evidence that she was denied a fair chance of promotion".

### B. Evidence

In Jaber UNRWA/DT/2012/001, the Tribunal noted: "In the Tribunal's opinion, hearsay evidence does not carry the same weight or have the same probative value as a police report". See also El Baz UNRWA/DT/2012/059/Corr.02; Hsayyan UNRWA/DT/2013/015.

In *Najjar* UNRWA/DT/2012/002, the Tribunal noted: "Applicants are reminded that in the absence of tangible evidence, unsubstantiated allegations will not be examined".

In *Anabtawi* UNRWA/DT/2012/049, the Tribunal found that the evidence submitted, i.e. the medical opinions, supported the conclusion that the Respondent's decision not to consider the Applicant's surgery as a service-incurred injury was properly made. Therefore, the decision not to compensate the Applicant for an alleged service-incurred injury was lawful. The application was dismissed.

In *Abdel Khaleq* UNRWA/DT/2013/022 (UNAT affirmed but reduced the amount of compensation in 2014-UNAT-442), with regard to evidence presented by the Respondent as to misconduct on the

part of the Applicant, the Tribunal notedd that "[w]hilst psychological profiling is often useful as an aid to criminal investigations, it is not a substitute for evidence or to be used as a mask to obfuscate investigative failures".

In Saleh UNRWA/DT/2014/010, in the context of a misconduct charge of sexual exploitation, on the issue of anonymous witnesses, "[t]he Tribunal remains guided by this principle of law and under normal circumstances would not accept hearsay evidence from anonymous witnesses to be included in the record. However, this is an exceptional case and should be distinguished from this general rule because of (1) the Middle Eastern cultural and social traditions where a woman's honour is of paramount importance; and (2) honour killings are a usual recourse to maintain the family honour".

In *Musleh* UNRWA/DT/2014/013, the Applicant contested the decision to adopt the conclusions of a medical board that he was fit for service and returning him to duty as a Laundry Supervisor at the Amman Training Centre. With regard to a review of an expert advisory body, the Tribunal stated: "The Tribunal would like to refer to the jurisprudence of the former United Nations Administrative Tribunal Judgement No. 917, *Ali* (1999), paragraph V, cited by the Respondent with regard to the review of expert advisory bodies: '... the findings of a medical board, as an expert advisory body, are subject to a more limited review, since such findings are based on the technical medical knowledge of the Board's members. The Tribunal can only review such a decision if it is tainted by abuse of discretion, and can only review a medical board's recommendation if there is evidence of improper motive or some substantive or procedural irregularity.... Procedural irregularities include undue delay or lack of due process' ". In this case, the Tribunal was concerned about the three divergent medical opinions with regards to the Applicant's fitness for service and wondered how the medical board could have found that the Applicant was fit for duty when it was faced with three divergent medical opinions, two of which were contrary to him being fit for duty. The Tribunal ordered that the Applicant be transferred to a post better suited to his hand injury.

In *Faraj* UNRWA/DT/2014/034 (appeal to UNAT is pending in case 2014-683), the Tribunal held that "[w]hen the reality of a resignation is challenged by the staff member, the evidence of such a significant decision can only be in a written document or at least in an unequivocal testimony".

#### (i) Secret recordings

In *Al Bawab* UNRWA/DT/2012/048, where a staff member had taken a secret recording of another staff member, the Tribunal noted its concerns "about the Applicant's complaint of entrapment and wishes to make it clear that if the Agency had carried out secret surveillance of its staff it would have constituted a fundamental breach of the right to privacy and the outcome might well have been different. However, in this case a fellow staff member, claiming that he had apparently lost money from his locker, took it upon himself to place a secret camera in the expectation of catching the culprit. The Agency took no part in this activity but could not ignore the evidence of misconduct which they were presented with".

In *Riano* UNRWA/DT/2013/035 (appeal by Applicant dismissed in 2015-UNAT-529), where the Applicant had secretly recorded discussions with personnel from the department of human resources, the Tribunal stated: "There is no universally accepted practice or legal principle against the admissibility of secret recordings of discussions so long as the information sought to be admitted is relevant and probative of the issues to be determined. Furthermore, the evidence must be necessary for a fair and just disposal of the proceedings. As a matter of good employment relations, the Tribunal considers that secret recordings in the workplace undermine the important

relationship of trust and confidence and are to be strongly discouraged. Any motion to admit such material will be subject to utmost scrutiny. Nothing in this judgment should be taken as giving comfort to those who engage in the practice of clandestine recordings".

# C. <u>Ignorance of the law is no excuse</u>

In Badawi UNRWA/DT/2011/007 (appeal to UNAT dismissed in 2012-UNAT-261), the Tribunal pointed out that "... ignorance of the law is no excuse and every staff member is deemed to be aware of the provisions of the Staff Rules, as affirmed by the [UNAT] in Diagne et al. 2010-UNAT-067". See also Kinawi UNRWA/DT/2011/010 (issue was non-receivable as time-barred); Hamad UNRWA/DT/2011/013 (appeal to UNAT dismissed in 2012-UNAT-269); Alfout UNRWA/DT/2011/015; UNRWA/DT/2012/032 (application dismissed as non-receivable); Ruz UNRWA/DT/2012/065/Corr.01; Nada Daour UNRWA/DT/2013/003/Corr.01; Abu UNRWA/DT/2013/038 (appeal to UNAT dismissed in 2015-UNAT-514).

In *Azzouz* UNRWA/DT/2013/013 (appeal to UNAT dismissed in 2014-UNAT-494), where the application was dismissed as non-receivable, the Tribunal noted that "[t]he Applicant should know about his obligations as provided in the Area Staff Regulations and Rules. Ignorance or unawareness is no excuse, as all staff members have a duty to know the provisions of the Regulations and Rules which govern their terms of employment. The Applicant cannot take recommendations made by supervisors to transfer him to the post of Assistant Housemaster as a commitment to secure him employment. Furthermore, when his post was declared redundant for three months and the Agency tried to 'find him a suitable alternative post', such statement cannot be relied upon or considered as creating 'false hopes'. The Tribunal does not find that the above statement was an attempt by the Agency to 'beguile' or 'mislead' the Applicant, as submitted in his rejoinder. These are indeed the Applicant's interpretations. There is no evidence in the record that the Applicant was prevented or advised to refrain from requesting decision review of the impugned decision. The Applicant cannot blame anyone but himself for not acting in compliance with the Area Staff Regulations and Rules ..."

### D. Abuse of process

In Sanbar UNRWA/DT/2012/010 (appeal to UNAT dismissed in 2013-UNAT-312), in dismissing the application as non-receivable, the Tribunal stated: "The Tribunal notes that this is the third application filed by the Applicant. The first two applications, filed in 2006 and in 2007 respectively, have been dismissed. The Tribunal is of the opinion that the Applicant's legal actions constitute an abuse of process, not to mention a waste of time and resources. One would reasonably expect that as a former staff member of UNRWA for 40 years, 13 of which were spent as Senior Auditor, the Applicant would have a better knowledge and understanding of UNRWA Staff Regulations and Rules, and would not have lodged an application so frivolous".

In Al Sayyed UNRWA/DT/2013/017, the Tribunal stated: "This Tribunal has taken the time to spell out for the benefit of the Applicant matters which should have been clear to him on the basis of the judgment of UNAT. But for the fact that it is entirely understandable that a former staff member who is acquitted by a national court may feel that he has a legitimate basis for attempting to reopen a matter that had been well and truly closed by the judgment of UNAT, the Tribunal would have considered whether the Applicant's attempt to re-litigate this matter amounted to an abuse of process. The Applicant's conduct had come close to supporting such a finding."

In *Chaaban* UNRWA/DT/2014/024 (appeal to UNAT is pending in case 2014-669), in dismissing the application as non-receivable, it was noted: "the Tribunal draws the Applicant's attention to Article 10, paragraph 6 of its Statute which provides that '[w]here the Dispute Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against that party'. The submission of applications like the one under examination could be considered by the Tribunal as an abuse of litigation. However, as it is the first time the Applicant has filed such an application, the Tribunal limits itself to advise him in this regard".

#### E. <u>Due process</u>

#### (i) In the context of misconduct cases

In *Abu Ghali* UNRWA/DT/2012/024 (appeal to UNAT dismissed in 2013-UNAT-366), with regard to the investigation that had been conducted finding the Applicant had committed misconduct, the Tribunal found "that the Agency's investigation was conducted in an objective manner, affording due process to the Applicant and the other persons interviewed, and that the Applicant was advised of the nature of the inquiry, and was accorded full opportunity to rebut the conclusions of the report of investigation. [...] 'When the Administration wishes to have such matters investigated, the Tribunal is satisfied that there are no mandatory procedures or requirements as to how this should be done and that there is no legal obligation as to the number of persons appointed to carry out such investigations. What is paramount is that such investigations should be carried out fairly and that no actual or perceived injustice or denial of fair procedures should be apparent'".

In *Abu Shawish* UNRWA/DT/2012/054, the Tribunal, on the issue of official reprimands and quoting the former United Nations Administrative Tribunal in Judgment No. 1404 at paragraph III, stated: "'Although a written reprimand is not considered a disciplinary measure within the meaning of staff rule 110.3, a reprimand can have legal consequences to the detriment of the staff member, particularly when it is placed and kept in his file (see Judgements No. 941, *Kiwanuka* (1999) and No. 1176, *Parra* (2004)). The [former UN Administrative] Tribunal has stated in its Judgement No. 1167, *Olenja* (2004), that the issuance of reprimands is subject to the same principles of fairness and due process as apply to disciplinary decisions'". *See also Namrouti* UNRWA/DT/2014/045.

In Abdel Khaleq UNRWA/DT/2013/022 (UNAT affirmed but reduced the amount of compensation in 2014 UNAT-442), on the issue of due process, the Tribunal stated: "Due process safeguards which are enshrined in the rules are and must be regarded by all concerned within the United Nations as essential components of a fair and just system of dealing with and resolving disputes. This Tribunal has been established to give effect to principles enshrined in the Charter of the United Nations, highlighted in various decisions and utterances of appropriate organs of the United Nations System and further emphasized and developed by the case law of the former Administrative Tribunal. In paragraph XIV of Judgment No. 815, Calin (1997), the Administrative Tribunal stated with regard to due process: 'The Tribunal ... respects the Secretary-General's authority to exercise his discretion in defining serious misconduct and in determining appropriate penalties. However, the Tribunal will affirm the Respondent's exercise of discretionary authority only when satisfied that the underlying allegation of misconduct has been proven through a procedure that respects due process and that is not tainted by prejudice, arbitrariness, or other extraneous factors.' [...] While the Agency is free to adopt its own Regulations, Rules and issuances governing the conditions of employment, rights and obligations of staff members, there are certain core rights, particularly those arising out of the principles of due process and natural justice, that cannot be denied, either by omission or explicit decree".

In *Mustapha* UNRWA/DT/2014/007, the Tribunal found that "the failure to notify the Applicant, at the earliest opportunity, that the Agency considered that he was a possible suspect, and that he was therefore one of the subjects of the investigation, was a further due process breach which infected the investigation". In quoting the former Administrative Tribunal in *Sokoloff* at paragraph V, "the assurances of due process and fairness, as outlined by the General Assembly and further developed in the rules of the UNDP, mean that, as soon as a person is identified, or reasonably concludes that he has been identified, as a possible wrongdoer in any investigation procedure and at any stage, he has the right to invoke due process with everything that this guarantees. Moreover, the Tribunal finds that there is a general principle of law according to which, in modern times, it is simply intolerable for a person to be asked to collaborate in procedures which are moving contrary to his interests, *sine processu*".

In *Rantisi* UNRWA/DT/2013/033 (appeal to UNAT dismissed in 2015-UNAT-528), on due process, the Tribunal found that: "there was a fundamental breach of due process when the Agency failed to provide the Applicant with sufficient particulars of the evidence against her so as to enable her to mount a proper defence. The fact that the 7 December letter was drafted by a group including at least two lawyers is a searing indictment of the Agency's procedural lapses and is evidence of a concerted campaign to damage the Applicant notwithstanding the paucity of evidentiary underpinning".

In *Abu Nada* UNRWA/DT/2013/038 (appeal to UNAT dismissed in 2015-UNAT-514), the Tribunal urged the Agency to take appropriate steps to ensure that the entire regulatory framework be translated into Arabic in a timely manner. At the time 21 Area Staff Personnel Directives – with binding legal authority – had yet to be translated. "The Tribunal finds the Agency's failure to translate the Regulations and Rules into Arabic before 2009 and its continued failure to translate the remaining regulatory framework to be a violation of due process." [In *Faraj* 2013-UNAT-331, the UNAT noted that UNRWA did not dispute the claim that the UNRWA Area Staff Rules and Regulations and the UNRWA JAB Procedures were not disseminated in Arabic. The UNAT stated: "The Appeals Tribunal trusts that UNRWA has rectified this situation and that it appreciates the importance of disseminating such texts in the official, and operational, languages used".]

In Wishah UNRWA/DT/2014/008 (appeal to UNAT is pending in case 2014-UNAT-613), on the issue of translations, the Tribunal stated: "Furthermore, the Administration's failure to provide the Applicant with an Arabic translation of crucial letters, the contents of which were clearly moving against his interest, was not only in breach of the Agency's own practice in Gaza but a significant breach of due process".

In Abu Nada UNRWA/DT/2013/038 (appeal to UNAT dismissed in 2015-UNAT-514), the Tribunal found that the Agency's investigation spanned a total of 26 months and that "the Agency's excessive delay in carrying out the investigation and making its final decision was a violation of natural justice and the direct cause of the Applicant's stress and anxiety".

In *Hasan* UNRWA/DT/2014/014 (appeal to UNAT is pending in case 2014-622), the Tribunal found that "the Agency's failure to disclose to the Applicant the appendices attached to the [Fact Finding Committee]'s findings, as well as the witness statements referred to in the 27 September 2012 letter from the DUO/J to the Applicant, did not comport with notions of due process. Therefore, the Agency's decision was illegal and irrational".

# (ii) Other administrative decisions

In *Rantsiou* UNRWA/DT/2011/006 (appeal to UNAT dismissed 2012-UNAT-250), in the context of a case of non-renewal/extension, on the issue of documentary evidence, the Tribunal stated that "[t]he Tribunal would like to be clear that it will not use any document against either party unless the party first has an opportunity to examine it, *Bertucci* 2011-UNAT-121".

In *Musleh* UNRWA/DT/2014/013, in a case contesting a decision regarding the Applicant's fitness for service, the Tribunal expressed that it was "troubled by the practice of the Agency to deny a staff member the right to read and understand in his language, which is the predominant language of the Agency, a document he is asked to sign and worse, to provide him – intentionally or unintentionally – with false information about the document he is signing. The Tribunal finds that this is a denial of due process".

In *Salem* UNRWA/DT/2014/036 (appeal to UNAT is pending), in the context of claims of non-confirmation, abuse of power and discrimination, the Tribunal held that "[i]t results from all that has been stated above that the decision not to confirm the Applicant's appointment as CAO and to separate her from service upon the expiry of her appointment is unlawful as it was tainted by several procedural irregularities and by abuse of power, and as such, it must be rescinded".

# F. Jurisdiction

In *Dartell* UNRWA/DT/2011/001, it was stated: "The internal law of one organization is not necessarily applicable to others." (quoting former UN Administrative Tribunal in Judgment No. 689, *Metcalfe* (1995)) (application was dismissed as non-receivable based on no appealable administrative decision).

In *Badawi* UNRWA/DT/2011/007 (appeal to UNAT dismissed 2012-UNAT-261), in a case contesting a non-renewal/extension, the Tribunal held that, as to "the Applicant's claim that stricter rules should be established in favour of employees in cases of non-renewal, the Tribunal has no jurisdiction to enact new rules and this claim does not constitute a basis for an application". *See also AI-Hariri* UNRWA/DT/2012/005 (non-receivable); *Ashour* UNRWA/DT/2012/008; *Sanbar* UNRWA/DT/2012/009 (application dismissed as non-receivable) (appeal to UNAT dismissed in 2012-UNAT-279).

In *Ghatasheh* UNRWA/DT/2011/012, a case challenging the calculation of retirement benefits, the Tribunal stated that "it is not in the Tribunal's jurisdiction to enact new rules and therefore, it is not the proper forum to advocate for regulatory reform". The application dismissed as non-receivable.

In Nazzal URWA/DT/2012/035, where the applicant sought to have his post of ambulance driver reclassified as a para-medical post, the Tribunal dismissed the application as non-receivable and reminded the Applicant that "... the Tribunal is not the proper forum to advocate for regulatory reform as it has no jurisdiction to enact new regulations, rules or administrative issuances. The Tribunal cannot substitute itself to the Administration or change the working conditions provided in an applicant's Letter of Appointment. The classification of posts and the payment of supplementary allowance, like the payment of hazard pay, are policy prerogatives of the Agency".

In *Brisson* UNRWA/DT/2012/043 (appeal to UNAT dismissed 2013-UNAT-371), where the Applicant sought additional benefits beyond the age of retirement as a result of his loss of earning capacity due to a service-incurred injury, the Tribunal noted that "[a]s for tort law, which the Applicant is

invoking, he is reminded that the Agency staff are governed <u>solely</u> and <u>exclusively</u> by UNRWA Staff Regulations and Rules". The application was dismissed as non-receivable.

In *El Tahrawi* UNRWA/DT/2013/027, where the Applicant contested the denial of a Special Occupational Allowance, it was stated: "The Tribunal does not have power to enact new policy nor is there evidence that may permit the Tribunal to rescind the decision in the Applicant's case on the grounds that the practice adopted on this occasion is inconsistent with the relevant staff circular and policy".

### (i) National law does not apply

In Am Ali UNRWA/DT/2011/002, a case in which the Applicant contested the decision not to rescind her Early Voluntary Retirement, the Applicant referenced Syrian law. The Tribunal rejected the application of this law stating "with all due respect to the laws of the countries where UNRWA staff members are working, the laws governing their relations with the Administration are governed exclusively and solely by UNRWA Staff Regulations and Rules and other relevant issuances".

In Abu Ghali UNRWA/DT/2012/024 (appeal to UNAT dismissed 2013-UNAT-366), where the Applicant's conviction was reversed by an appellate court and in light of this the Applicant argued that he could not be found quilty of misconduct. The Tribunal reminded the Applicant of the former United Nations Administrative Tribunal Judgments holding that Judgments of national courts are not binding on the Commissioner-General in the exercise of his discretionary power. "Indeed, the judgment of a national court is neither binding on the Agency nor determinative of whether a staff member's conduct amounted to 'misconduct' under the applicable Staff Regulations and Rules. [...] Moreover, the standards of conduct, the burden of proof, the rules of evidence, to name but these, are different when it comes to criminal proceedings and disciplinary matters. Proceedings before the Gaza Courts have little relevance to the application of the Agency's Staff Regulations and Rules relating to conduct and discipline." This was affirmed by the UNAT in Abu Ghali 2013-UNAT-366: "Misconduct based on underlying criminal acts does not depend upon the staff member being convicted of a crime in a national court. As the former United Nations Administrative Tribunal concluded, 'different onuses and burdens of proof would arise in the ... domestic criminal proceedings than would arise under an investigation for misconduct under the [Agency's] appropriate Regulations and Rules.' " See also Wishah UNRWA/DT/2014/008 (appeal to UNAT is pending in case 2014-613).

In *Anabtawi* UNRWA/DT/2012/052: "The Tribunal would like to take a moment to clarify to the Applicant and all future applicants that reference to vague law of the host country has no application and is not relevant to his case as the conditions of his employment are governed <u>solely</u> and <u>exclusively</u> by the Agency's Area Staff Regulations and Rules and other relevant issuances, as amended by the Agency." *See also Anabtawi* UNRWA/DT/2012/049.

#### G. Miscellaneous

#### (i) Re-opening the case

In Al Sayyed UNRWA/DT/2013/017, the Tribunal stated: "This application is in all material respects no different from the appeal that was filed with UNAT and which was comprehensively dismissed. The one new element in the case is the judgment of the Lebanese court. Given that the UNAT judgment is dated 16 March 2012 it is difficult to discern from the papers whether the Applicant had the opportunity to introduce this element in the course of his appeal before UNAT. [...] In any event,

what the Applicant is in reality seeking to do is to reopen the appeal that he lost before UNAT. The Tribunal draws the Applicant's attention to Article 11(1) of the UNAT Statute, set out above, which states that an application to UNAT for revision of judgment must be made within one year of the date of the judgment. Given that the date of the UNAT judgment in this case was 16 March 2012, the Applicant is out of time and no longer has recourse to the revision of judgment procedure".

#### (ii) Informal resolution outside the Agency

In *Shuheimat* UNRWA/DT/2012/006, the Tribunal stated that it "would like to make it clear that the resolution of issues through *sulha* or other forms of non-Agency led mediation, effective as they may be between perpetrators and victims, does not impact the nature of UNRWA's relationship with its staff, specifically UNRWA's required standards of conduct. Staff members should understand that *sulha* or other forms of mediation do not supersede the Agency's Staff Regulations, Rules, Personnel Directives and other issuances, and will not prevent the Agency from applying these Regulations and Rules to its staff members".

#### (iii) Retaliation

In *Nijim* UNRWA/DT/2012/051, where the Applicant contested the decision to terminate her during the probationary period and claimed retaliation, the Tribunal stated: "The [UNAT] has ruled in *Koumoin* 2011-UNAT-119 that in cases of retaliation, an Applicant has to establish that he was a 'genuine whistle-blower' and that he was [the] subject of retaliation following a report of possible misconduct".

In *Arya* UNRWA/DT/2013/031, the Applicant appealed three decisions and claimed they were retaliatory acts against him. The Tribunal stated that "[i]n any case, paragraph 4 of GSC 5/2007 provides: 'The procedures set out in this circular are without prejudice to the rights of an individual claiming to have suffered from retaliation to seek redress through the Agency's normal recourse mechanisms. An individual may raise violation of the provisions of this circular in any such proceedings'. Accordingly, the Tribunal may consider a complaint of retaliation regardless of whether the complainant utilized the internal procedures set out in GSC 5/2007".

#### (iv) Reviewing performance evaluations

In *Riano* UNRWA/DT/2013/035 (appeal by Applicant dismissed in 2015-UNAT-529), the Tribunal noted: "Where a staff member appeals against a decision based on his or her alleged professional shortcomings, the Tribunal shall not assess the staff member's performance, *Assad*, 2010-UNAT-021. It is not for the Tribunal to make judgments and assessments as to the competence of individuals. However the Tribunal will examine the facts to see if the decision taken accorded with due process and procedural propriety or was influenced by an improper motive".

In *Al Fayoumi* UNRWA/DT/2011/014, the Applicant was reminded that "although he did not sign his PER, the HT noted that it had been discussed with him, and refusal to sign a PER does not vitiate its contents".

In *Kalil* UNRWA/DT/2014/027 (appeal to UNAT is pending in case 2014-675), in addressing the myriad claims made by the Applicant, the Tribunal stated: "Finally, if the Applicant is objecting to the delays in conducting the procedures of his PER for the periods 2009-2010 and 2010-2012, and if the Tribunal admits that these evaluations have not been done in accordance with the applicable rules, it is nevertheless established that the Applicant received an overall performance rating of a

staff member that 'meets performance expectations' for the two consecutive PER's. Consequently, he cannot maintain that these evaluations have caused him either material or moral damages".

### (v) Confidentiality

In *Kalil* UNRWA/DT/2014/027 (appeal to UNAT is pending in case 2014-675), the Applicant repeatedly requested to keep his identity confidential. The Tribunal stated that "[s]taff members challenge many types of employment-related decisions before the internal justice system. Some of these decisions pertain to personal matters, such as disability or illness, and others pertain to the staff member's performance – even to claims of serious misconduct. If confidentiality attached to the staff member's identity in each case, there would be no transparency regarding the operations of the Agency, which would be contrary to one of the General Assembly's purposes and goals for the internal justice system. The application concerns the failure to renew a fixed-term appointment for three years. The Applicant's discomfort with having his name attached to the Judgment is no ground to grant confidentiality [...]".

### (vi) Late replies

In *Tweib & Al Hasanat* UNRWA/DT/2013/028 (appeal to UNAT allowed in part and remanded to the Tribunal in 2014-UNAT-449), the Tribunal had excluded the Respondent from participating in the proceedings due to a late filed reply to the application. On appeal, the UNAT held: "The discretion afforded the UNRWA DT under Article 14 is not one-sided; it refers to both parties. Nowhere in its Judgment did the UNRWA DT consider the impact on the fair trial rights of the Commissioner-General of refusing to allow him to participate in the proceedings. The UNRWA DT's consideration of the right to due process was confined to the rights of the Applicants. Deciding the cases only on the evidence and submissions of the Applicants without giving the Commissioner-General a chance to be heard has resulted, in our view, in a miscarriage of justice. [...] The appeal is allowed in part. The Judgment of the UNRWA DT is set aside and the cases are remanded for hearing *de novo* before a different UNRWA DT Judge, with leave for the Commissioner-General to participate in the proceedings and file a reply in each case".

### (vii) No right to compel an investigation

In *Barakat* UNRWA/DT/2011/017, the Tribunal noted that there is no right on the part of the Applicant and no obligation on the part of the Respondent, within the Staff Regulations and Rules of the Agency, to have a further investigation conducted. The Tribunal quoted the jurisprudence of the UNAT in *Nwuke* 2010-UNAT-099, paragraph 30: "A staff member has no right to compel the Administration to conduct an investigation unless such right is granted by the Regulations and Rules". *See also Abu Alouf* UNRWA/DT/2011/004; *Abu Ghali* UNRWA/DT/2012/024 (appeal to UNAT dismissed in 2013-UNAT-366).

In *Barakat* UNRWA/DT/2014/035, the Tribunal held that an Applicant does not have a right to request an investigation into alleged misconduct of other staff members as such an investigation will not directly affect the rights of the claimant.

#### (viii) No formal delegation of authority

In *Ishaish* UNRWA/DT/2014/033, the Tribunal rescinded the Agency's decision to terminate the Applicant based on his poor performance because the Agency could not produce evidence that the person who had made the decision had the delegated authority to make such a decision in accordance with Area Personnel Directive A/9/Rev9 at para 4. (Although the Tribunal found that

since the Applicant had failed to perform his duties in a satisfactory manner, had the DUO/J herself imposed the termination as she should have, she would have taken the same decision. Therefore, the Tribunal held that "[s]hould the [Agency] elect not to execute the above rescission order, no compensation shall be paid to the Applicant".)

# (ix) Revision of Judgment

In *El Saleh* UNRWA/DT/2014/051/Corr.01, the request for revision of Judgment was denied as the Applicant did not put forth any new decisive fact that had been unknown to the Tribunal at the time of the Judgment.

# Annex A

|   | Judgments on Remedies/Interpretation/Revision |                       |                           |                                      |  |  |
|---|---|-----------------------|---------------------------|--------------------------------------|--|--|
| # | Name of Applicant                             | Area<br>International | Judgment Number           | Type of Judgment                     |  |  |
| 1 | JABER   | Area                  | UNRWA/DT/2012/003         | On Application For<br>Interpretation |  |  |
| 2 | JABER   | Area                  | UNRWA/DT/2012/040         | On Application For<br>Interpretation |  |  |
| 3 | AHMAD   | Area                  | UNRWA/DT/2012/056/Corr.01 | On Remedies                          |  |  |
| 4 | RIANO   | International         | UNRWA/DT/2014/004         | On Remedies                          |  |  |
| 5 | RANTISI                                       | Area                  | UNRWA/DT/2014/005         | On Remedies                          |  |  |
| 6 | EL SALEH                                      | Area                  | UNRWA/DT/2014/051/Corr.01 | On Application For<br>Revision       |  |  |

|    | Judgments on Cases Remanded From UNAT                                      |                   |               |                   |  |
|----|--|-------------------|---------------|-------------------|--|
| #  | # Name of Applicant First UNRWA UNAT Judgment Second UNRWA Judgment Number |                   |               |                   |  |
| 1. | WISHAH   | UNRWA/DT/2012/014 | 2013-UNAT-289 | UNRWA/DT/2014/008 |  |
| 2. | FARAJ  | UNRWA/DT/2012/028 | 2013-UNAT-331 | UNRWA/DT/2014/034 |  |

# Annex B

|     | Judgments Resolving Multiple Cases |                    |                   |                             |  |
|-----|------------------------------------|--------------------|-------------------|-----------------------------|--|
| #   | Name of Applicant                  | Area/International | Judgment Number   | Number of<br>Cases Resolved |  |
| 1.  | AL HARIRI <i>et al.</i>            | Area               | UNRWA/DT/2012/05  | 30                          |  |
| 2.  | AL-SURKHI <i>et al.</i>            | Area               | UNRWA/DT/2012/022 | 18                          |  |
| 3.  | THWEIB & AL HASANAT                | Area               | UNRWA/DT/2013/028 | 2                           |  |
| 4.  | RANTISI                            | Area               | UNRWA/DT/2013/033 | 3                           |  |
| 5.  | ZEIDAN & AL ABDULLAH               | Area               | UNRWA/DT/2014/002 | 2                           |  |
| 6.  | AL ZAWAWI                          | Area               | UNRWA/DT/2014/009 | 2                           |  |
| 7.  | SHUBEITA                           | Area               | UNRWA/DT/2014/019 | 2                           |  |
| 8.  | SALEM                              | Area               | UNRWA/DT/2014/036 | 3                           |  |
| 9.  | ABDULLAH <i>et al.</i>             | Area               | UNRWA/DT/2014/046 | 8                           |  |
| 10. | MUSLEH                             | Area               | UNRWA/DT/2014/053 | 2                           |  |

# Annex C

| Receivable Applications |                   |                    |                   |  |
|-------------------------|-------------------|--------------------|-------------------|--|
| #                       | Name of Applicant | Area/International | Judgment Number   |  |
| 1.                      | ABU ALOUF         | Area               | UNRWA/DT/2011/004 |  |
| 2.                      | RANTSIOU          | International      | UNRWA/DT/2011/006 |  |
| 3.                      | BADAWI            | Area               | UNRWA/DT/2011/007 |  |
| 4.                      | AL JISHI          | Area               | UNRWA/DT/2011/008 |  |
| 5.                      | KHARROUSHEH       | Area               | UNRWA/DT/2011/009 |  |
| 6.                      | KINAWI            | Area               | UNRWA/DT/2011/010 |  |
| 7.                      | HABASH            | Area               | UNRWA/DT/2011/011 |  |
| 8.                      | AL FAYOUMI        | Area               | UNRWA/DT/2011/014 |  |
| 9.                      | DIAB              | Area               | UNRWA/DT/2011/016 |  |
| 10.                     | BARAKAT           | Area               | UNRWA/DT/2011/017 |  |
| 11.                     | JABER             | Area               | UNRWA/DT/2012/001 |  |
| 12.                     | NAJJAR            | Area               | UNRWA/DT/2012/002 |  |
| 13.                     | MANSOUR           | Area               | UNRWA/DT/2012/004 |  |
| 14.                     | SHUHEIMAT         | Area               | UNRWA/DT/2012/006 |  |
| 15.                     | ABU JARBOU        | Area               | UNRWA/DT/2012/011 |  |
| 16.                     | YOUNES            | Area               | UNRWA/DT/2012/012 |  |
| 17.                     | SAID              | Area               | UNRWA/DT/2012/013 |  |
| 18.                     | WISHAH            | Area               | UNRWA/DT/2012/014 |  |
| 19.                     | PURCELL           | International      | UNRWA/DT/2012/015 |  |
| 20.                     | SHANA'A           | Area               | UNRWA/DT/2012/016 |  |
| 21.                     | PURCELL           | International      | UNRWA/DT/2012/017 |  |

| 22. ABU GHALI Are 23. JIBARA Are 24. AL AZZEH Are 25. ABU ZAINEH Are | ea UNRWA/DT/2012/025         |
|--|------------------------------|
| 24. AL AZZEH Are   |                              |
|  | ea UNRWA/DT/2012/026         |
| 25. ABU ZAINEH Are   |                              |
|  | ea UNRWA/DT/2012/031         |
| 26. BELLO Interna  | utional UNRWA/DT/2012/033    |
| 27. ABU AL HASAN Are   | ea UNRWA/DT/2012/034         |
| 28. AHMAD Are  | ea UNRWA/DT/2012/037         |
| 29. DANNAN Are   | ea UNRWA/DT/2012/039         |
| 30. DIAB Are   | ea UNRWA/DT/2012/041         |
| 31. JOUDA Are  | ea UNRWA/DT/2012/047         |
| 32. AL BAWAB Are   | ea UNRWA/DT/2012/048         |
| 33. ANABTAWI Are   | ea UNRWA/DT/2012/049         |
| 34. NIJIM Are  | ea UNRWA/DT/2012/051         |
| 35. ANABTAWI Are   | ea UNRWA/DT/2012/052         |
| 36. ABU SHAWISH Are  | ea UNRWA/DT/2012/054         |
| 37. AL SADEQ Are   | ea UNRWA/DT/2012/057         |
| 38. EL BAZ Are   | ea UNRWA/DT/2012/059/Corr.02 |
| 39. ABU GHUNEIM Are  | ea UNRWA/DT/2012/062         |
| 40. BARAKAT Are  | ea UNRWA/DT/2012/064         |
| 41. ABU RUZ Are  | ea UNRWA/DT/2012/065/Corr.01 |
| 42. QUR'AN Are   | ea UNRWA/DT/2012/067         |
| 43. AL KHATIB Are  | ea UNRWA/DT/2013/001         |
| 44. FARARJEH Are   | ea UNRWA/DT/2013/006         |
| 45. MOUSA Are  | ea UNRWA/DT/2013/007         |
| 46. MAHFOUZ Are  | ea UNRWA/DT/2013/008         |
| 47. HUSHIYA Are  | ea UNRWA/DT/2013/009         |
| 48. WALDEN Interna   | utional UNRWA/DT/2013/011    |
| 49. BEQAI Are  | ea UNRWA/DT/2013/012         |

| 50. | AL BUSTANJI          | Area          | UNRWA/DT/2013/014         |
|-----|----------------------|---------------|---------------------------|
| 51. | HSAYYAN              | Area          | UNRWA/DT/2013/015         |
| 52. | ZAATREH              | Area          | UNRWA/DT/2013/018         |
| 53. | ABU AJAMI            | Area          | UNRWA/DT/2013/019         |
| 54. | ABDEL KHALEQ         | Area          | UNRWA/DT/2013/022         |
| 55. | AL KHATIB            | Area          | UNRWA/DT/2013/023         |
| 56. | AL MOUED             | Area          | UNRWA/DT/2013/025         |
| 57. | KIWAN                | Area          | UNRWA/DT/2013/026         |
| 58. | EL TAHRAWI           | Area          | UNRWA/DT/2013/027         |
| 59. | THWEIB & AL HASANAT  | Area          | UNRWA/DT/2013/028         |
| 60. | HAMAYEL              | Area          | UNRWA/DT/2013/029         |
| 61. | ARYA                 | International | UNRWA/DT/2013/031         |
| 62. | EL FELOU             | Area          | UNRWA/DT/2013/032         |
| 63. | RANTISI              | Area          | UNRWA/DT/2013/033         |
| 64. | ABDO                 | Area          | UNRWA/DT/2013/034         |
| 65. | RIANO                | International | UNRWA/DT/2013/035         |
| 66. | GHATTAS              | Area          | UNRWA/DT/2013/036         |
| 67. | ABDULLAH             | Area          | UNRWA/DT/2013/037/Corr.01 |
| 68. | ABU NADA             | Area          | UNRWA/DT/2013/038         |
| 69. | KHASHAN              | Area          | UNRWA/DT/2014/001         |
| 70. | ZEIDAN & AL ABDULLAH | Area          | UNRWA/DT/2014/002         |
| 71. | ZUBEIDI              | Area          | UNRWA/DT/2014/003         |
| 72. | GHUNEIM              | Area          | UNRWA/DT/2014/006/Corr.01 |
| 73. | MUSTAPHA             | Area          | UNRWA/DT/2014/007         |
| 74. | WISHAH               | Area          | UNRWA/DT/2014/008         |
| 75. | AL ZAWAWI            | Area          | UNRWA/DT/2014/009         |
| 76. | SALEH                | Area          | UNRWA/DT/2014/010         |
| 77. | MUSLEH               | Area          | UNRWA/DT/2014/013         |

| 78.  | HASAN        | Area          | UNRWA/DT/2014/014 |
|------|--------------|---------------|-------------------|
| 79.  | OBEID        | Area          | UNRWA/DT/2014/018 |
| 80.  | SHUBEITA     | Area          | UNRWA/DT/2014/019 |
| 81.  | MOHAMMED     | Area          | UNRWA/DT/2014/020 |
| 82.  | BEIDAS       | Area          | UNRWA/DT/2014/021 |
| 83.  | AL MASHNI    | Area          | UNRWA/DT/2014/023 |
| 84.  | KALIL        | International | UNRWA/DT/2014/027 |
| 85.  | EL ROUBI     | Area          | UNRWA/DT/2014/028 |
| 86.  | ABU EL HATAL | Area          | UNRWA/DT/2014/029 |
| 87.  | HAMMOUDEH    | Area          | UNRWA/DT/2014/030 |
| 88.  | ISHAISH      | Area          | UNRWA/DT/2014/033 |
| 89.  | FARAJ        | Area          | UNRWA/DT/2014/034 |
| 90.  | BARAKAT      | Area          | UNRWA/DT/2014/035 |
| 91.  | SALEM        | Area          | UNRWA/DT/2014/036 |
| 92.  | IHMAIDEH     | Area          | UNRWA/DT/2014/037 |
| 93.  | CHAHROUR     | Area          | UNRWA/DT/2014/038 |
| 94.  | FAHJAN       | Area          | UNRWA/DT/2014/039 |
| 95.  | ADAWI        | Area          | UNRWA/DT/2014/040 |
| 96.  | ISMAIL       | Area          | UNRWA/DT/2014/041 |
| 97.  | AL SHAFIE    | Area          | UNRWA/DT/2014/042 |
| 98.  | DAGHASH      | Area          | UNRWA/DT/2014/043 |
| 99.  | NAMROUTI     | Area          | UNRWA/DT/2014/045 |
| 100. | AL LABABIDI  | Area          | UNRWA/DT/2014/048 |
| 101. | SHANTI       | Area          | UNRWA/DT/2014/049 |
| 102. | ABU ZEINA    | Area          | UNRWA/DT/2014/052 |
| 103. | MUSLEH       | Area          | UNRWA/DT/2014/053 |

# Annex D

| Non-Receivable Applications |                                  |                         |                           |  |  |
|-----------------------------|----------------------------------|-------------------------|---------------------------|--|--|
|                             | Late Request for Decision Review |                         |                           |  |  |
| #                           | Name of Applicant                | Area/International      | Judgment Number           |  |  |
| 1.                          | AL-SURKHI <i>et al.</i>          | Area                    | UNRWA/DT/2012/022         |  |  |
| 2.                          | ZAHRAN                           | Area                    | UNRWA/DT/2012/045         |  |  |
| 3.                          | NASR                             | Area                    | UNRWA/DT/2012/066         |  |  |
| 4.                          | CHAHROUR                         | Area                    | UNRWA/DT/2013/005         |  |  |
| 5.                          | AUDEH                            | Area                    | UNRWA/DT/2013/024         |  |  |
| 6.                          | ANABTAWI                         | Area                    | UNRWA/DT/2014/012         |  |  |
| 7.                          | KHALEEL                          | Area                    | UNRWA/DT/2014/016         |  |  |
| 8.                          | EL SHOBAKY                       | Area                    | UNRWA/DT/2014/022         |  |  |
| 9.                          | CHAABAN                          | Area                    | UNRWA/DT/2014/024         |  |  |
|                             | No                               | Request for Decision Re | view                      |  |  |
| #                           | Name of Applicant                | Area/International      | Judgment Number           |  |  |
| 1.                          | HARRICH                          | International           | UNRWA/DT/2012/023         |  |  |
| 2.                          | DARWISH                          | Area                    | UNRWA/DT/2012/029         |  |  |
| 3.                          | ASHKAR                           | Area                    | UNRWA/DT/2012/042         |  |  |
| 4.                          | BROUDER                          | International           | UNRWA/DT/2012/046/Corr.01 |  |  |
| 5.                          | ABU NIAJ                         | Area                    | UNRWA/DT/2012/058         |  |  |
| 6.                          | SALEM                            | Area                    | UNRWA/DT/2012/061         |  |  |
| 7.                          | KHADER                           | Area                    | UNRWA/DT/2012/068         |  |  |
| 8.                          | DAOUR                            | Area                    | UNRWA/DT/2013/003/Corr.01 |  |  |
| 9.                          | AZZOUZ                           | Area                    | UNRWA/DT/2013/013         |  |  |
| 10.                         | SHAMIYEH                         | Area                    | UNRWA/DT/2014/025         |  |  |
| 11.                         | RAMADAN                          | Area                    | UNRWA/DT/2014/050         |  |  |
| 12.                         | NIEDERMAYR                       | International           | UNRWA/DT/2014/054         |  |  |

| No Administrative Decision |                        |                           |                   |
|----------------------------|------------------------|---------------------------|-------------------|
| #                          | Name of Applicant      | Area/International        | Judgment Number   |
| 1.                         | DARTELL                | International             | UNRWA/DT/2011/001 |
| 2.                         | FUHEILI                | Area                      | UNRWA/DT/2011/003 |
| 3.                         | ABU AWAD               | Area                      | UNRWA/DT/2011/005 |
| 4.                         | GHATASHEH              | Area                      | UNRWA/DT/2011/012 |
| 5.                         | HAMAD                  | Area                      | UNRWA/DT/2011/013 |
| 6.                         | ALFOUT                 | Area                      | UNRWA/DT/2011/015 |
| 7.                         | SANBAR                 | International             | UNRWA/DT/2012/007 |
| 8.                         | ASHOUR                 | Area                      | UNRWA/DT/2012/008 |
| 9.                         | SANBAR                 | International             | UNRWA/DT/2012/010 |
| 10.                        | GHATALIA               | International             | UNRWA/DT/2012/027 |
| 11.                        | NAZZAL                 | Area                      | UNRWA/DT/2012/035 |
| 12.                        | BUSTAN                 | Area                      | UNRWA/DT/2012/036 |
| 13.                        | BRISSON                | International             | UNRWA/DT/2012/043 |
| 14.                        | EL MADHOUN             | Area                      | UNRWA/DT/2012/053 |
| 15.                        | MANSOUR                | Area                      | UNRWA/DT/2013/010 |
| 16.                        | EL SALOUS              | Area                      | UNRWA/DT/2013/016 |
| 17.                        | AL SAYYED              | Area                      | UNRWA/DT/2013/017 |
| 18.                        | EL MADHOUN             | Area                      | UNRWA/DT/2013/030 |
| 19.                        | EL SALEH               | Area                      | UNRWA/DT/2014/026 |
| 20.                        | CHAHROUR               | Area                      | UNRWA/DT/2014/032 |
| 21.                        | ABDULLAH <i>et al.</i> | Area                      | UNRWA/DT/2014/046 |
| 22.                        | AHMAD                  | Area                      | UNRWA/DT/2014/047 |
|                            | Т                      | ime Barred at The Tribuna | al                |
| #                          | Name of Applicant      | Area/International        | Judgment Number   |
| 1.                         | FARAJ                  | Area                      | UNRWA/DT/2012/028 |
| 2.                         | DIAB                   | Area                      | UNRWA/DT/2012/030 |

| 3.  | ISLEEM                  | Area                     | UNRWA/DT/2012/032         |
|-----|-------------------------|--------------------------|---------------------------|
| 4.  | CHAABAN                 | Area                     | UNRWA/DT/2012/038/Corr.01 |
| 5.  | ABDULLAH                | Area                     | UNRWA/DT/2012/044         |
| 6.  | ABDUL RAHMAN            | Area                     | UNRWA/DT/2012/050         |
| 7.  | MURAD                   | Area                     | UNRWA/DT/2012/055         |
| 8.  | AL HUSSEIN              | Area                     | UNRWA/DT/2012/063         |
| 9.  | ABU RISH                | Area                     | UNRWA/DT/2014/015         |
| 10. | ACHKAR                  | International            | UNRWA/DT/2014/031         |
|     |                         | Multiple or Other Ground | ls                        |
| #   | Name of Applicant       | Area/International       | Judgment Number           |
| 1.  | AM ALI                  | Area                     | UNRWA/DT/2011/002         |
| 2.  | AL HARIRI <i>et al.</i> | Area                     | UNRWA/DT/2012/005         |
| 3.  | SANBAR                  | International            | UNRWA/DT/2012/009         |
| 4.  | HARRICH                 | International            | UNRWA/DT/2012/018         |
| 5.  | BARMAWI                 | Area                     | UNRWA/DT/2012/019         |
| 6.  | ABU GHOSH               | Area                     | UNRWA/DT/2012/020/Corr.01 |
| 7.  | RABEE                   | Area                     | UNRWA/DT/2012/021         |
| 8.  | SAWALMEH                | Area                     | UNRWA/DT/2012/060         |
| 9.  | ABU JUBRAN              | Area                     | UNRWA/DT/2013/002         |
| 10. | EL KHATIB               | Area                     | UNRWA/DT/2013/004         |
| 11. | HASAN                   | Area                     | UNRWA/DT/2013/020         |
| 12. | EL RUSH                 | Area                     | UNRWA/DT/2013/021         |
| 13. | ABU AYYASH              | Area                     | UNRWA/DT/2014/011         |
| 14. | CHAABAN                 | Area                     | UNRWA/DT/2014/017         |
|     |                         | No Standing              |                           |
| #   | Name of Applicant       | Area/International       | Judgment Number           |
| 1.  | ABU SHAMMALAH           | Area                     | UNRWA/DT/2014/044         |

# Annex E

|     | Contested Disciplinary-Measures Decisions |                            |                           |  |  |
|-----|---|----------------------------|---------------------------|--|--|
|     | Terr                                      | nination for Misconduct    |                           |  |  |
| #   | Name of Applicant                         | Area/International         | Judgment Number           |  |  |
| 1.  | AL JISHI                                  | Area                       | UNRWA/DT/2011/008         |  |  |
| 2.  | KINAWI                                    | Area                       | UNRWA/DT/2011/010         |  |  |
| 3.  | NAJJAR                                    | Area                       | UNRWA/DT/2012/002         |  |  |
| 4.  | WISHAH                                    | Area                       | UNRWA/DT/2012/014         |  |  |
| 5.  | ABU GHALI                                 | Area                       | UNRWA/DT/2012/024         |  |  |
| 6.  | AL BAWAB                                  | Area                       | UNRWA/DT/2012/048         |  |  |
| 7.  | EL BAZ                                    | Area                       | UNRWA/DT/2012/059/Corr.02 |  |  |
| 8.  | FARARJEH                                  | Area                       | UNRWA/DT/2013/006         |  |  |
| 9.  | WALDEN                                    | International              | UNRWA/DT/2013/011*        |  |  |
| 10. | ABDEL KHALEQ                              | Area                       | UNRWA/DT/2013/022*        |  |  |
| 11. | GHATTAS                                   | Area                       | UNRWA/DT/2013/036         |  |  |
| 12. | WISHAH                                    | Area                       | UNRWA/DT/2014/008*        |  |  |
| 13. | SALEH                                     | Area                       | UNRWA/DT/2014/010         |  |  |
|     | Terminatio                                | n in The Interest of The A | gency                     |  |  |
| #   | Name of Applicant                         | Area/International         | Judgment Number           |  |  |
| 1.  | ABU ALOUF                                 | Area                       | UNRWA/DT/2011/004         |  |  |
| 2.  | HABASH                                    | Area                       | UNRWA/DT/2011/011         |  |  |
| 3.  | ABU JARBOU                                | Area                       | UNRWA/DT/2012/011         |  |  |
| 4.  | JIBARA                                    | Area                       | UNRWA/DT/2012/025*        |  |  |
| 5.  | AL AZZEH                                  | Area                       | UNRWA/DT/2012/026         |  |  |
| 6.  | QUR'AN                                    | Area                       | UNRWA/DT/2012/067         |  |  |
| 7.  | MOHAMMED                                  | Area                       | UNRWA/DT/2014/020         |  |  |

|     | Written Censure     |                    |                    |  |  |
|-----|---------------------|--------------------|--------------------|--|--|
| #   | Name of Applicant   | Area/International | Judgment Number    |  |  |
| 1.  | SHUHEIMAT           | Area               | UNRWA/DT/2012/006  |  |  |
| 2.  | AL BUSTANJI         | Area               | UNRWA/DT/2013/014* |  |  |
| 3.  | THWEIB & AL HASANAT | Area               | UNRWA/DT/2013/028* |  |  |
|     |                     | Summary Dismissal  |                    |  |  |
| #   | Name of Applicant   | Area/International | Judgment Number    |  |  |
| 1.  | YOUNES              | Area               | UNRWA/DT/2012/012  |  |  |
| 2.  | ABU NADA            | Area               | UNRWA/DT/2013/038  |  |  |
|     |                     | Multiple Measures  |                    |  |  |
| #   | Name of Applicant   | Area/International | Judgment Number    |  |  |
| 1.  | BARAKAT             | Area               | UNRWA/DT/2011/017  |  |  |
| 2.  | MANSOUR             | Area               | UNRWA/DT/2012/004  |  |  |
| 3.  | ABU AL HASAN        | Area               | UNRWA/DT/2012/034  |  |  |
| 4.  | ABU GHUNEIM         | Area               | UNRWA/DT/2012/062  |  |  |
| 5.  | BARAKAT             | Area               | UNRWA/DT/2012/064  |  |  |
| 6.  | AL KHATIB           | Area               | UNRWA/DT/2013/001  |  |  |
| 7.  | MUSA                | Area               | UNRWA/DT/2013/007  |  |  |
| 8.  | HSAYYAN             | Area               | UNRWA/DT/2013/015  |  |  |
| 9.  | EL FELOU            | Area               | UNRWA/DT/2013/032  |  |  |
| 10. | RANTISI             | Area               | UNRWA/DT/2013/033* |  |  |
| 11. | ABDO                | Area               | UNRWA/DT/2013/034  |  |  |
| 12. | MUSTAPHA            | Area               | UNRWA/DT/2014/007* |  |  |
| 13. | HASAN               | Area               | UNRWA/DT/2014/014* |  |  |

<sup>\*</sup> Judgment was in favor of the Applicant

# Annex F

| Contested Administrative Decisions |  |                    |                           |  |  |
|------------------------------------|--|--------------------|---------------------------|--|--|
| Non-Selection/Non-Promotion        |  |                    |                           |  |  |
| #                                  | Name of Applicant                          | Area/International | Judgment Number           |  |  |
| 1.                                 | DIAB                                       | Area               | UNRWA/DT/2011/016         |  |  |
| 2.                                 | PURCELL                                    | International      | UNRWA/DT/2012/015         |  |  |
| 3.                                 | SHANA'A                                    | Area               | UNRWA/DT/2012/016         |  |  |
| 4.                                 | PURCELL                                    | International      | UNRWA/DT/2012/017         |  |  |
| 5.                                 | ABU ZAINEH                                 | Area               | UNRWA/DT/2012/031         |  |  |
| 6.                                 | DANNAN                                     | Area               | UNRWA/DT/2012/039         |  |  |
| 7.                                 | DIAB                                       | Area               | UNRWA/DT/2012/041         |  |  |
| 8.                                 | JOUDA                                      | Area               | UNRWA/DT/2012/047         |  |  |
| 9.                                 | AL SADEQ                                   | Area               | UNRWA/DT/2012/057         |  |  |
| 10.                                | ZAATREH                                    | Area               | UNRWA/DT/2013/018         |  |  |
| 11.                                | KIWAN                                      | Area               | UNRWA/DT/2013/026         |  |  |
| 12.                                | ZEIDAN & AL ABDULLAH                       | Area               | UNRWA/DT/2014/002         |  |  |
| 13.                                | GHUNEIM                                    | Area               | UNRWA/DT/2014/006/Corr.01 |  |  |
| 14.                                | EL ROUBI                                   | Area               | UNRWA/DT/2014/028         |  |  |
| 15.                                | ABU EL HATAL                               | Area               | UNRWA/DT/2014/029         |  |  |
| 16.                                | IHMAIDEH                                   | Area               | UNRWA/DT/2014/037         |  |  |
| 17.                                | CHAHROUR                                   | Area               | UNRWA/DT/2014/038         |  |  |
| 18.                                | ABU ZEINA                                  | Area               | UNRWA/DT/2014/052         |  |  |
|                                    | Non-Renewal/Non-Extension/Non-Confirmation |                    |                           |  |  |
| #                                  | Name of Applicant                          | Area/International | Judgment Number           |  |  |
| 1.                                 | RANTSIOU                                   | International      | UNRWA/DT/2011/006         |  |  |
| 2.                                 | BADAWI                                     | Area               | UNRWA/DT/2011/007         |  |  |

|                       |                   | T                        |                            |  |  |
|-----------------------|-------------------|--------------------------|----------------------------|--|--|
| 3.                    | SAID              | Area                     | UNRWA/DT/2012/013          |  |  |
| 4.                    | BELLO             | International            | UNRWA/DT/2012/033          |  |  |
| 5.                    | AHMAD             | Area                     | UNRWA/DT/2012/037*         |  |  |
| 6.                    | BEQAI             | Area                     | UNRWA/DT/2013/012          |  |  |
| 7.                    | KALIL             | International            | UNRWA/DT/2014/027          |  |  |
| 8.                    | SALEM             | Area                     | UNRWA/DT/2014/036*         |  |  |
| 9.                    | ADAWI             | Area                     | UNRWA/DT/2014/040          |  |  |
| 10.                   | ISMAIL            | Area                     | UNRWA/DT/2014/041          |  |  |
| 11.                   | AL SHAFIE         | Area                     | UNRWA/DT/2014/042          |  |  |
| 12.                   | DAGHASH           | Area                     | UNRWA/DT/2014/043          |  |  |
|                       | Termination       | in The Interest of The A | gency                      |  |  |
| #                     | Name of Applicant | Area/International       | Judgment Number            |  |  |
| 1.                    | KHARROUSHEH       | Area                     | UNRWA/DT/2011/009          |  |  |
| 2.                    | AL FAYOUMI        | Area                     | UNRWA/DT/2011/014          |  |  |
| 3.                    | NIJIM             | Area                     | UNRWA/DT/2012/051          |  |  |
| 4.                    | ABU AJAMI         | Area                     | UNRWA/DT/2013/019          |  |  |
| 5.                    | AL KHATIB         | Area                     | UNRWA/DT/2013/004          |  |  |
| 6.                    | RIANO             | International            | UNRWA/DT/2013/035*         |  |  |
| 7.                    | OBEID             | Area                     | UNRWA/DT/2014/018          |  |  |
| 8.                    | ISHAISH           | Area                     | UNRWA/DT/2014/033*         |  |  |
| 9.                    | FARAJ             | Area                     | UNRWA/DT/2014/034*         |  |  |
| Benefits/Entitlements |                   |                          |                            |  |  |
| #                     | Name of Applicant | Area/International       | Judgment Number            |  |  |
| 1.                    | ABU RUZ           | Area                     | UNRWA/DT/2012/065/Corr.01* |  |  |
| 2.                    | HUSHIYA           | Area                     | UNRWA/DT/2013/009          |  |  |
| 3.                    | EL TAHRAWI        | Area                     | UNRWA/DT/2013/027          |  |  |
| 4.                    | KHASHAN           | Area                     | UNRWA/DT/2014/001          |  |  |
| 5.                    | SHUBEITA          | Area                     | UNRWA/DT/2014/019*         |  |  |
|                       |                   | 1                        | I .                        |  |  |

| 6. | BEIDAS            | Area                    | UNRWA/DT/2014/021         |  |
|----|-------------------|-------------------------|---------------------------|--|
| -  |                   | Transfer                |                           |  |
| #  | Name of Applicant | Area/International      | Judgment Number           |  |
| 1. | HAMAYEL           | Area                    | UNRWA/DT/2013/029*        |  |
| 2. | ABDULLAH          | Area                    | UNRWA/DT/2013/037/Corr.01 |  |
| 3. | AL MASHNI         | Area                    | UNRWA/DT/2014/023         |  |
| 4. | HAMMOUDEH         | Area                    | UNRWA/DT/2014/030         |  |
| 5. | SHANTI            | Area                    | UNRWA/DT/2014/049         |  |
|    | ,                 | Work-Related Injuries   |                           |  |
| #  | Name of Applicant | Area/International      | Judgment Number           |  |
| 1. | JABER             | Area                    | UNRWA/DT/2012/001*        |  |
| 2. | ANABTAWI          | Area                    | UNRWA/DT/2012/049         |  |
| 3. | ANABTAWI          | Area                    | UNRWA/DT/2012/052         |  |
| 4. | MUSLEH            | Area                    | UNRWA/DT/2014/013*        |  |
|    |                   | Multiple Grounds        |                           |  |
| #  | Name of Applicant | Area/International      | Judgment Number           |  |
| 1. | ARYA              | International           | UNRWA/DT/2013/031         |  |
| 2. | BARAKAT           | Area                    | UNRWA/DT/2014/035         |  |
| 3. | FAHJAN            | Area                    | UNRWA/DT/2014/039         |  |
| 4. | MUSLEH            | Area                    | UNRWA/DT/2014/053         |  |
|    |                   | Reprimand               |                           |  |
| #  | Name of Applicant | Area/International      | Judgment Number           |  |
| 1. | ABU SHAWISH       | Area                    | UNRWA/DT/2012/054         |  |
| 2. | NAMROUTI          | Area                    | UNRWA/DT/2014/045         |  |
| •  | Redun             | dancy/Abolishment of Po | ost                       |  |
| #  | Name of Applicant | Area/International      | Judgment Number           |  |
| 1. | AL MOUED          | Area                    | UNRWA/DT/2013/025         |  |
| 2. | AL ZAWAWI         | Area                    | UNRWA/DT/2014/009*        |  |

|   | Denial of SLWOP/SLWP |                    |                   |  |  |  |
|---|----------------------|--------------------|-------------------|--|--|--|
| #   | Name of Applicant    | Area/International | Judgment Number   |  |  |  |
| 1.  | MAHFOUZ              | Area               | UNRWA/DT/2013/008 |  |  |  |
|   | Reclassification     |                    |                   |  |  |  |
| #   | Name of Applicant    | Area/International | Judgment Number   |  |  |  |
| 1.  | AL LABABIDI          | Area               | UNRWA/2014/048    |  |  |  |
| Suspension with Pay (Pending Investigation) |                      |                    |                   |  |  |  |
| #   | Name of Applicant    | Area/International | Judgment Number   |  |  |  |
| 1.  | ZUBEIDI              | Area               | UNRWA/DT/2014/003 |  |  |  |

<sup>\*</sup> Judgment in favor of the Applicant

# Annex G

| UNAT Judgments |   |                          |                |   |  |
|----------------|---|--------------------------|----------------|---|--|
|                | Appeals of UNRWA DT Judgments in Favor of Applicant |                          |                |   |  |
| #              | Name of Applicant                                   | UNRWA DT Judgment<br>No. | Appealed By    | Outcome of UNAT<br>Judgment                           |  |
| 1.             | JIBARA  | UNRWA/DT/2012/025        | The Respondent | Reversed (vacated)                                    |  |
| 2.             | WALDEN  | UNRWA/DT/2013/011        | The Respondent | Reversed (vacated)                                    |  |
| 3.             | ABDEL KHALEQ  | UNRWA/DT/2013/022        | The Respondent | Affirmed but reduced compensation                     |  |
| 4.             | THWEIB & AL HASANAT                                 | UNRWA/DT/2013/028        | The Respondent | Reversed &<br>Remanded                                |  |
| 5.             | HAMAYEL   | UNRWA/DT/2013/029        | The Respondent | Affirmed but vacated<br>the award of moral<br>damages |  |
| 6.             | RIANO   | UNRWA/DT/2013/035        | The Applicant  | Affirmed  |  |
| 7.             | RANTISI   | UNRWA/DT/2014/005        | The Respondent | Affirmed  |  |
| 8.             | WISHAH  | UNRWA/DT/2014/008        | The Respondent | Pending   |  |
| 9.             | HASAN   | UNRWA/DT/2013/020        | The Applicant  | Affirmed  |  |
| 10.            | SALEM   | UNRWA/DT/2014/036        | The Respondent | Pending   |  |
| 11.            | FARAJ   | UNRWA/DT/2014/034        | The Applicant  | Pending   |  |

|     | Appeals of UNRWA DT Judgments in Favor of Respondent |                           |               |                             |  |
|-----|--|---------------------------|---------------|-----------------------------|--|
| #   | Name of Applicant                                    | UNRWA DT Judgment No.     | Appealed By   | Outcome of UNAT<br>Judgment |  |
| 1.  | RANTSIOU   | UNRWA/DT/2011/006         | The Applicant | Affirmed                    |  |
| 2.  | BADAWI   | UNRWA/DT/2011/007         | The Applicant | Affirmed                    |  |
| 3.  | HAMAD  | UNRWA/DT/2011/013         | The Applicant | Affirmed                    |  |
| 4.  | SANBAR   | UNRWA/DT/2012/009         | The Applicant | Affirmed                    |  |
| 5.  | SANBAR   | UNRWA/DT/2012/010         | The Applicant | Affirmed                    |  |
| 6.  | ABU JARBOU   | UNRWA/DT/2012/011         | The Applicant | Affirmed                    |  |
| 7.  | SAID   | UNRWA/DT/2012/013         | The Applicant | Pending                     |  |
| 8.  | WISHAH   | UNRWA/DT/2012/014         | The Applicant | Reversed & Remanded         |  |
| 9.  | RABEE  | UNRWA/DT/2012/021         | The Applicant | Affirmed                    |  |
| 10. | AL-SURKHI <i>et al.</i>                              | UNRWA/DT/2012/022         | The Applicant | Affirmed                    |  |
| 11. | ABU GHALI  | UNRWA/DT/2012/024         | The Applicant | Affirmed                    |  |
| 12. | FARAJ  | UNRWA/DT/2012/028         | The Applicant | Reversed & Remanded         |  |
| 13. | DARWISH  | UNRWA/DT/2012/029         | The Applicant | Affirmed                    |  |
| 14. | DIAB   | UNRWA/DT/2012/030         | The Applicant | Affirmed                    |  |
| 15. | CHAABAN  | UNRWA/DT/2012/038/Corr.01 | The Applicant | Affirmed                    |  |
| 16. | DANNAN   | UNRWA/DT/2012/039         | The Applicant | Affirmed                    |  |
| 17. | BRISSON  | UNRWA/DT/2012/043         | The Applicant | Affirmed                    |  |
| 18. | CHAHROUR   | UNRWA/DT/2013/005         | The Applicant | Affirmed                    |  |
| 19. | MUSA   | UNRWA/DT/2013/007         | The Applicant | Affirmed                    |  |
| 20. | MAHFOUZ  | UNRWA/DT/2013/008         | The Applicant | Affirmed                    |  |
| 21. | HUSHIYA  | UNRWA/DT/2013/009         | The Applicant | Affirmed                    |  |
| 22. | BEQAI  | UNRWA/DT/2013/012         | The Applicant | Affirmed                    |  |
| 23. | AZZOUZ   | UNRWA/DT/2013/013         | The Applicant | Affirmed                    |  |
| 24. | HASAN  | UNRWA/DT/2014/014         | The Applicant | Pending                     |  |

| 25. | AUDEH      | UNRWA/DT/2013/024         | The Applicant | Affirmed                              |
|-----|------------|---------------------------|---------------|---------------------------------------|
| 26. | AL MOUED   | UNRWA/DT/2013/025         | The Applicant | Affirmed                              |
| 27. | ABDULLAH   | UNRWA/DT/2013/037/Corr.01 | The Applicant | Affirmed but awarded<br>Moral damages |
| 28. | ABU NADA   | UNRWA/DT/2013/038         | The Applicant | Affirmed                              |
| 29. | KHASHAN    | UNRWA/DT/2014/001         | The Applicant | Affirmed                              |
| 30. | ABU AYYASH | UNRWA/DT/2014/011         | The Applicant | Pending                               |
| 31. | KHALEEL    | UNRWA/DT/2014/016         | The Applicant | Pending                               |
| 32. | ACHKAR     | UNRWA/DT/2014/031         | The Applicant | Pending                               |
| 33. | CHAABAN    | UNRWA/DT/2014/017         | The Applicant | Pending                               |
| 34. | CHAABAN    | UNRWA/DT/2014/024         | The Applicant | Pending                               |
| 35. | KALIL      | UNRWA/DT/2014/027         | The Applicant | Pending                               |
| 36. | EL SHOBAKY | UNRWA/DT/2014/022         | The Applicant | Pending                               |

# UNRWA DISPUTE TRIBUNAL FIRST ACTIVITY REPORT-JUNE 2011 TO DECEMBER 2014