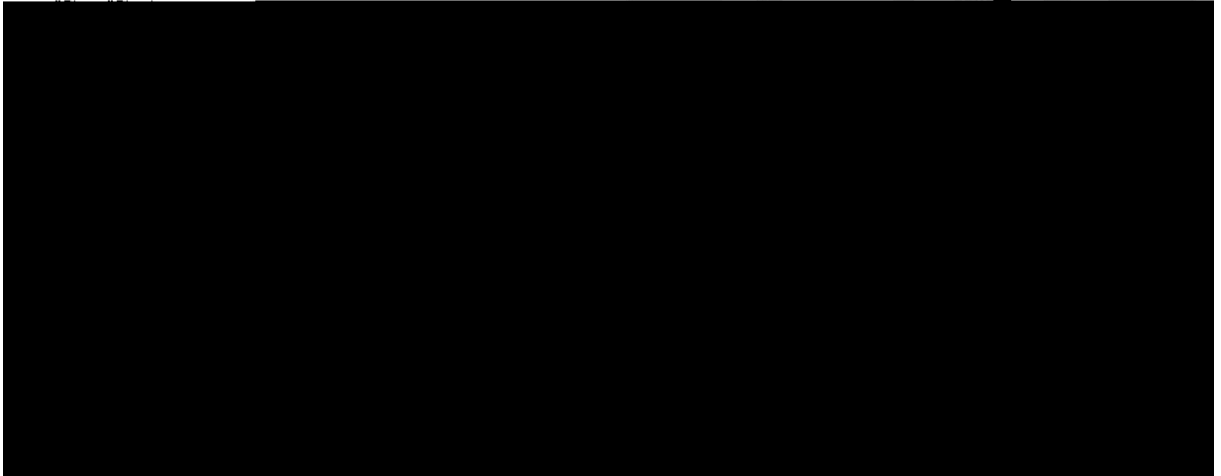


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Counsel for Appellant:

Ghada Yasin

Counsel for Commissioner-Gen

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Furthermore, I had to buy medications according to specialists['] prescriptions on my own expense – bills of some NIS. [new Israel shekels] 3000.[<sup>2</sup>]

...

This car accident has had physical, material and emotional impact on me, and I am wondering how to settle the hospitalization bills, medication cost and I am puzzled by the type of insurance policy if any that applies to me *while driving after duty hours*. ... (emphasis added)

6. In a memorandum to Mr. Hushiyeh dated 23 September 2002, the Assistant Director of UNRWA Operations, West Bank, memorialized a discussion between the Officer in Charge, Department of Legal Affairs, Field Legal Officer (FLO), and Mr. Hushiyeh:

... UNRWA has filed a claim with Baltica Insurance [Baltica] to cover the costs from your car accident. Given the circumstances of your case (driving off-duty), and the fact that you requested UNRWA to file the claim 10 months after the accident when UNRWA is no longer insured with Baltica, we cannot be sure of the outcome of this claim.

... If UNRWA is unable to obtain full satisfaction of its claim, the Field Office will, at that time, consider recommending to the Commissioner-General an *ex gratia* payment in your case.

9. On 30 August 2010, the FLO sent a memorandum to the DUO/WB recommending an *ex-gratia* payment to Mr. Hushiyeh to compensate him for the injuries he suffered during the accident. In the memorandum, the FLO set forth: the Agency's rules for making an *ex-gratia* payment; an explanation of the circumstances leading to the request for an *ex-gratia* payment; the reasons for the absence of legal liability and the justifications for accepting moral or other responsibility; the amount of the proposed payment of NIS 20,000 (approximately USD 5,361.39); and the rationale for determining the amount under Palestinian law. On the same date, the DUO/WB concurred with the recommendation and forwarded it to the Agency's Director of Finance. The Director of Finance also concurred with the recommendation.

10. On 25 October 2010, the Agency's Director of Human Resources advised the Director of Finance that she agreed with the proposed *ex-gratia* payment to Mr. Hushiyeh in the amount of NIS 20,000.

11.

discretionary power and did not violate any Area Staff Regulations or Rules affecting the terms of Mr. Hushiyeh's appointment or his other rights as a staff member.

#### Submissions

##### Mr. Hushiyeh's Appeal

15. The UNRWA DT erred on a question of fact when it determined that Mr. Hushiyeh

**The Commissioner-General's Answer**

20. The appeal should be dismissed in its entirety because Mr. Hushiyeh has failed to show that the UNRWA DT erred on questions of fact resulting in an unreasonable judgment or erred on a question of law warranting reversal of the Judgment.

21. The UNRWA DT properly found that Mr. Hushiyeh was not on duty at the time of the accident because he presented no evidence showing that he was on official duty when the accident occurred; the record is devoid of documentary proof.

r  
22. Mr. Hushiyeh merely repeats arguments he made before the UNRWA DT when he

parties – for the Tribunal to extend the time limit under Article 6 and accept the late filing of the Respondent’s reply. Therefore, the Tribunal grants the Respondent leave to take part in the proceedings and accepts his late reply.<sup>3</sup>

26. Mr. Hushiyeh claims that the UNRWA DT erred when it granted the Respondent’s motion to file a late reply since the Respondent failed to file a request for an extension of time and the UNRWA Dispute Tribunal failed to issue an order extending the time limit. There is no merit to this claim. When the UNRWA DT granted the Respondent’s motion to participate in the proceedings despite his failure to file a timely reply, the UNRWA DT inferentially granted the Respondent an extension of time. Moreover, it is now settled that the UNRWA DT may rule on such motions in the Judgment, rather than in a separate written order.<sup>4</sup> Thus, the UNRWA Dispute Tribunal did not err.

27. In his application, Mr. Hushiyeh requested that the UNRWA DT order the Agency “to reconsider the ex-gratia amount” that the Agency had offered him. Mr. Hushiyeh contended the amount was grossly inadequate. It is solely in this context that the Appeals Tribunal considers Mr. Hushiyeh’s arguments that the UNRWA DT erred in fact and law.

28. Mr. Hushiyeh claims that the UNRWA DT made errors of fact and law when it failed to consider the following in reaching its decision: (1) that all medical expenses and costs resulting from his accident should be covered

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37. The UNRWA DT explained in detail its reasons for finding no merit to Mr. Hushiyeh's challenge to the *ex-gratia* payment as too low, stating:

The evidence shows that the Agency calculated the amount of the *ex-gratia* payment, i.e. NIS 20,000, under Palestinian law, taking into consideration [Mr. Hushiyeh's] 10 percent disability and other factors, such as the sums it had paid for his medical treatment, the salaries paid to him which he was on extended sick leave, as well as the absence of future loss of wages since he returned to work and his salary was unaffected by his disability. The record demonstrates that the Agency also took into account [his] long service with the Agency and the pain and suffering he endured due to the accident.

... It must be clarified that an *ex-gratia* payment, by nature, is not based on a right of the staff member or a legal obligation on the part of the Agency. It is rather a *gratia*, a favour. An *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. It follows thus that the contested decision, i.e. the amount awarded to [Mr. Hushiyeh] as an *ex-gratia* payment, did not violate [his] terms of appointment or contract of employment or any Area Staff Regulation, Rule or other administrative issuance.<sup>10</sup>

38.

Original and Authoritative Version: English

Dated this 27<sup>th</sup> day of June 2014 in Vienna, Austria.

*(Signed)*

Judge Chapman, Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Lussick

Entered in the Register on 29<sup>th</sup> day of August 2014 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar