



Counsel for Mr. Abu Fardeh: Self-represented

Counsel for Commissioner-General: Rachel Evers/Michael Schoiswohl

*Reissued for technical reasons on*

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1. This case arose from the decision by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) to terminate the service of Mr. Tayseer Salah Salameh Abu Fardeh on medical grounds. The UNRWA Dispute Tribunal found that the Agency's decision to convene a medical board less than five months after Mr. Abu Fardeh's service-incurred injury in order to evaluate his fitness for continued service was manifestly unreasonable. It ordered rescission of the contested decision or payment of USD 12,500 as in-lieu compensation. Both parties appealed. For the reasons stated below, we grant the Commissioner-General's appeal. We also grant Mr. Abu Fardeh's appeal, in part.

#### Facts and Procedure

2. Effective 11 October 2008, Mr. Abu Fardeh joined the Agency on a three-year fixed-term appointment, Grade 1, Step 1, as Sanitation Labourer at Jarash Camp, Jordan Field Office (JFO). At the time of his termination, Mr. Abu Fardeh was at Grade 2.

3. On 11 March 2017, Mr. Abu Fardeh slipped and fell at work and injured his left knee. He was first taken to an UNRWA clinic and then referred to a hospital in Amman where he was seen by an orthopedist and received an MRI. On the same day, another orthopedist saw Mr. Abu Fardeh. Both doctors prescribed conservative treatment. Four months later, a third orthopedist saw Mr. Abu Fardeh and advised the continuation of conservative treatment without surgical intervention. Mr. Abu Fardeh was on sick leave from 11 March 2017 onwards.

4. On 6 July 2017, Mr. Abu Fardeh submitted a complaint of prohibited conduct against the Chief, Field Health Programme (C/FHP). But the complaint was subsequently dismissed by the Director of UNRWA Operations, JFO (DUO/J).

5. On a form titled "Medical Board proceedings", the Human Resources Services Officer, JFO, entered a request dated 19 July 2017 that a medical board be convened to evaluate Mr. Abu Fardeh's fitness for continued service with the Agency



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10. On 21 November 2017, the Head, Field Human Resources Office, JFO (H/FHRO/J) informed Mr. Abu Fardeh that, following the findings of the Medical Board and in the absence of a vacant post of messenger, his services with the Agency would be terminated on medical grounds under Area Staff Rule 109.7, effective 9 December 2017.

11. On 3 December 2017, Mr. Abu Fardeh submitted a request for review of the decision to terminate his appointment on medical grounds. There was no response from the Agency.

12. On 31 January 2018, Mr. Abu Fardeh filed with the UNRWA Dispute Tribunal an application against the Agency's decision to terminate his appointment on medical grounds. The Commissioner-General filed his reply, followed by Mr. Abu Fardeh's observations on the reply and the Commissioner-General's comments on Mr. Abu Fardeh's observations.

13. On 3 February 2019, Mr. Abu Fardeh filed a motion with the UNRWA Dispute Tribunal requesting that the Commissioner-General translate his comments into Arabic.

14. In Order No. 035 dated 14 February 2019, the UNRWA Dispute Tribunal denied Mr. Abu Fardeh's translation request. In its view,

15. In its Judgment No. UNRWA/DT/2019/023 dated 7 May 2019, the UNRWA Dispute Tribunal ordered rescission of the decision to terminate Mr. Abu Fardeh's service on medical grounds or payment of USD 12,500 to Mr. Abu Fardeh as an in-lieu compensation. The UNRWA Dispute Tribunal considered that the Agency's decision to convene a medical board less than five months after Mr. Abu Fardeh's service-incurred injury in order to examine his fitness for continued service was manifestly unreasonable, because the Agency had failed to give Mr. Abu Fardeh an "adequate time for recovery",<sup>2</sup> in violation of Area Staff Rule 106.4. It noted that there was no evidence indicating

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able to recover and be apt to work as a sanitation labourer. It also noted that even the Medical Board did not specify that Mr. Abu Fardeh could or would not recover in a reasonable time, and moreover, that the medical certificates that Mr. Abu Fardeh had submitted after the Medical Board had completed its work strongly indicated a serious chance to recover. Estimating that Mr. Abu Fardeh had 75% of the chances to recover and resume his duties, the UNRWA Dispute Tribunal set the monetary compensation as an alternative to rescission at 75% of Mr. Abu Fardeh's two-years' net base salary, or USD 12,500. However, the UNRWA Dispute Tribunal declined to award Mr. Abu Fardeh any moral damages.

16. Both parties appealed the UNRWA Dispute Tribunal Judgment to the United Nations Appeals Tribunal (Appeals Tribunal). The Commissioner-General filed an appeal on 5 July 2019. No answer has been received from Mr. Abu Fardeh. The case was registered under Case No. 2019-1283. Mr. Abu Fardeh filed an appeal on 8 July 2019, to which the Commissioner-General filed an answer on 6 September 2019. The case was registered under Case No. 2019-1285. As per Order No. 361

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The Commissioner-General's Answer

27. The UNRWA Dispute Tribunal did not fail to exercise its jurisdiction by not determining that the contested decision was tainted by a procedural irregularity, namely that





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35. Area Staff Rule 104.4 (Medical examinations)

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38. The Commissioner-General alleges that the UNRWA DT ignored both the Medical Board process established in the Agency's regulatory framework and the recommendations of the Board.



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regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance" <sup>9</sup> is not competent to create an obligation to find the staff member a suitable placement.

43. Therefore, the Commissioner-General rightly submits that the UNRWA DT erred in law and exceeded its competence by challenging the authority of the Medical Board's conclusion without clear and convincing medical evidence, by placing significant value on the medical certificates submitted by Mr. Abu Fardeh after his examination by the Medical Board and by deciding, , in the absence of medical expert opinion, that the chances of recovery and resumptvichances of recBT 4 189 Tc 40 0 0 40 712.9171 674TmTm /TT4 1 Tf [(de) -588. le plaMedf 3.92 cr



of the Camp to provide a translation of the invitation, he nevertheless appeared before the Medical Board on 9 August 2017.

47. It is therefore reasonable to conclude that if he had not understood the invitation or it had not been translated by Mr. Al Amoudi, Mr. Abu Fardeh would have requested a translation from FHRO or would not have appeared before the Medical Board.

48. Mr. Abu Fardeh asks the Appeal Tribunal to find that the UNRWA DT erred in fact and law and/or erred by failing to exercise its jurisdiction because, after rescinding the decision to terminate his appointment on medical grounds, it did not order that he be paid compensation for material damage.

49. We confirm the conclusions of the Medical Board that Mr. Abu Fardeh was not fit for continued service in his current position as a Sanitation Labourer. Consequently, he could not expect to be reinstated in this position. Mr. Abu Fardeh is therefore not entitled to further compensation for material damage resulting from the termination of his appointment.

50. Mr. Abu Fardeh did not submit any evidence for the award of any compensation for moral damages. Further, the UNRWA DT did not err in finding that the Appellant, "with respect to his request for compensation for moral damages for psychological harm he suffered, has not attained the threshold required for proof of harm to be awarded compensation in accordance with the provisions of Article 10(5) of the Tribunal's Statute".

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52. In its Order No. 35 (UNRWA/DT//2019), the UNRWA DT decided, in paragraph 19:

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### Judgment

55. In Case No. 1283, the Commissioner-General's appeal is granted.

56. In Case No. 1285, the appeal of Mr. Abu Fardeh is granted, in part. The Agency is ordered to reimburse 80 Jordanian Dinars to Mr. Abu Fardeh.

Original and Authoritative Version: English

Dated this 26<sup>th</sup>