

**Judgment No. 2023-UNAT-1356**



**Counsel for Mr. Loubani:**

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**Counsel for Commissioner-**





7. By Judgment No. UNRWA/DT/2021/042, the UNRWA DT rescinded the “decision to redefine [Mr. Loubani’s] duties and responsibilities without proper notification and without granting him a promotion or an SA” and ordered the Agency “to take a nesd





20. He underscores that the Commissioner-General did not appeal Judgment No. UNRWA/DT/2021/042. The UNRWA DT did not err in law. The Commissioner-General's arguments on appeal have already been examined on the merits in Judgment No. 2021-UNAT-1086, Judgment No. UNRWA/DT/2021/042 and the impugned Judgment.

21. Mr. Loubani submits that the UNRWA DT did not err in awarding costs against the Commissioner-General, whose arguments are without legal basis, manifestly unreasonable, misconceived and misleading. Litigation must come to an end. Appearing before the tribunals in the same case for nearly three years with the same subject matter, which has already been decided on, consumes the tribunals' resources and is not in the interests of justice. The UNRWA DT did not commit any error in procedure or in law or fact such as to affect the decision on the award of costs.

### **Considerations**

#### *Execution of Judgment No. UNRWA/DT/2021/042*

22. The question on appeal is whether in the impugned Judgment, the UNRWA DT committed an error of law or fact by granting Mr. Loubani's application for execution of Judgment No. UNRWA/DT/2021/042 and ordering the Commissioner-General to issue a new decision upgrading Mr. Loubani's post or granting him an appropriate SA.

23. We agree with the Commissioner-General that the impugned Judgment is erroneous.

24. By Judgment No. UNRWA/DT/2021/042, the Commissioner-General was ordered to "take a new decision with respect to [Mr. Loubani's] request in view of the increase in his managerial and budgetary duties and responsibilities." The Commissioner-General was not ordered to upgrade Mr. Loubani's post or to grant him an SA.

25. In paragraph 34 of Judgment No. UNRWA/DT/ 2021/042, the UNRWA DT elaborated:<sup>18</sup>

(...) it is recalled that, in cases of discretionary decisions, it is not for the Tribunal to substitute its own decision for that of the Agency. Therefore, the Tribunal is not in a position to determine *whether* and how the Applicant is to be compensated in view of a

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<sup>18</sup> Emphasis added, footnotes omitted.

remarkable increase in his managerial and budgetary duties and responsibilities, as shown above by a comparison between his initial PD and its present version. The only recourse is to order the Agency to take a new decision. Hence, *it is the Agency's responsibility to take a new decision with respect to the Applicant's request, especially, by giving a proper reconsideration to the Applicant's supervisor's letter dated 23 January 2019.*

26. It is evident from this reasoning that the UNRWA DT did not intend to order the Commissioner-G -



**Judgment**

31. The Commissioner-General's