



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

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Judgment No. 2024-UNAT-1442

**Alaa Yasir Al-Bustanji  
(Respondent/Applicant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Nassib G. Ziadé, Presiding Judge Katharine Mary Savage Judge Leslie F. Forbang
Case No.:	2023-1780
Date of Decision:	22 March 2024
Date of Publication:	30 May 2024
Registrar:	Juliet E. Johnson

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Counsel for Alaa Yasir Al-Bustanji: Amer Abu-Khalaf, LOSA

Counsel for Commissioner-General: Natalie Boucly

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directly resulted from the investigative delays themselves”.<sup>12</sup> In its analysis, the UNRWA DT considered:<sup>13</sup>

(1) a brief medical report from a psychiatrist dated 22 September 2018 diagnosing [Ms. Al-Bustanji] with a severe nervous breakdown, (2) a written statement from her husband describing the impact on [Ms. Al-Bustanji] for being suspended and ongoing difficulties she experienced, including damage to her reputation, and claiming that he was not rostered in two recruitments due to the unjustified long suspension, and (3) a 21 October 2020 letter from the same psychiatrist noting that in addition to her previous diagnosis, she now suffered additional mental and physical ailments.

20. The UNRWA DT identified several

*Procedure before the Appeals Tribunal*

22. On 27 January 2023, the Commissioner-General filed an appeal against the impugned Judgment with the Appeals Tribunal, to which Ms. Al-Bustanji responded on 28 February 2023.

**Submissions**

**The Commissioner-General's Appeal**

23. The Commissioner-General requests the Appeals Tribunal to vacate the portion of the impugned Judgment awarding moral damages.<sup>16</sup>

24. The Commissioner-General submits that the tmmf-0.Tmf.Ttmmf-.Tmf-.T







suffered as a result of (...) excessive delay”<sup>25</sup> may thus be tantamount to an illegality for purposes of providing a basis for a moral damage award.

36. Such an award, if supported

which referred to the written reprimand letter as being a disciplinary measure, and the UNRWA DT ordered the removal of such reference.<sup>33</sup> That order is not contested on appeal.

39. The Commissioner-General argues that the evidence presented did not support the award of moral damages. In that regard, we recall that the Dispute Tribunal, as the trier of fact, is in the best position to interpret and apply the evidence presented. The issue of moral damages is necessarily unique in each case. There is no absolute rule regarding the nature or quantum of evidence required to support a moral damage claim. Sufficient evidence beyond the staff member's testimony may take the form of the overall underlying circumstances, testimony of percipient witnesses, or expert testimony.

40. Here, Ms. Al-Bustanji presented various forms of evidence regarding the causal nexus between the delay in the authorization of the investigation and the alleged psychological harm: the underlying facts concerning the procedure followed and actions taken; her own statement; a medical report and letter from a treating psychiatrist; and a written statement from her husband.

41. In review of that evidence, and giving due regard for the UNRWA DT's role as the primary finder of fact, we agree with the Commissioner-General's appeal that Ms. Al-Bustanji's husband's written statement lacks by itself appropriate evidentiary value for compensation, as it is not given under oath or even dated. We further agree with the impugned Judgment that the 22 September 2018 medical report "reflects harm that predated the investigative delays and thus could not have been caused by those delays".<sup>34</sup> Crucially, however,

between facts and harm, by means of evidentiary presumption, corroborated by the context in which the situation occurred and the expected impact the acts would have on an average person”.<sup>37</sup>

42. In sum, the evidence, when carefully examined, weighed, and interpreted, supports the UNWRA DT’s conclusion that Ms. Al-Bustanji had met her burden of proof to support an award of moral damages. We find no reason to overturn that conclusion, which is supported by the record and consistent with prior Appeals Tribunal decisions as well as the fair administration of justice.

43. Nor is there any basis upon which to find that the award in this case was excessive. The moral damages awarded in this case is minimal and largely symbolic (one-half of Ms. Al-Bustanji’s one-month salary), while Article 10(5)(b) of the UNRWA DT Statute allows compensation of s3460.08 Tm0737j-0.004 Tc 0.9.96w10w 09.96w86.0 T59.76 Tm07 0 Td41.615 -1.728

**Judgment**

44. The Commissioner-General's appeal is dismissed, and Judgment No. UNRWA/DT/2022/052 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 22<sup>nd</sup> day of March 2024 in New York, United States.

*(Signed)*

Judge Ziadé, Presiding

*(Signed)*

Judge Forbang

Judgment published and entered into the Register on this 30<sup>th</sup> day of May 2024 in New York, United States.

*(Signed)*

Juliet E. Johnson, Registrar



the Intake Committee. Thus, a decision for every case should be made as soon as possible, preferably within *30 days* of the receipt of any complaint/allegation.

10. At the intake stage, the decision for action will be one of the following:

(i) Decline: Where the facts alleged, if proved, would not constitute misconduct.

(...)

(ii) Preliminary Assessment: In principle, each case should go through a preliminary assessment. This phase allows collection of additional information needed to make an informed decision as to which other response option is most appropriate. The Intake Committee may decide, based on the information available, to proceed without a preliminary assessment. The preliminary assessment will usually be limited to an interview with the complainant, review of relevant documents and a brief assessment of the facts. The authorized decision-maker can then, based on the preliminary assessment, initiate an investigation or close the case as appropriate. Preliminary assessments should be completed, as far as practicable, within *60 days* from the date of receipt of any complaint/allegations.

...

12. All investigations should endeavor to be completed as quickly as possible, and within *6 months* of their initiation whenever possible. In allocating existing resources to the conduct of investigations, priority should be given to those allegations where the misconduct is the most serious, taking into account financial, security and/or reputational risks to the Agency. Accelerated procedures may be applied to priority investigations as required to address risks.

7.

In *Vijay Neekhrai* (e)1ypanTJ0 Tc.0 Tw30.0.476 (g)6 (a).004)Tw(s-as)-n12 330s)-n.20-1.4333/TT5

Yet, for reasons similar to those set out in *Vijay Neekhra*, the view I take of the matter is that the delay of 11 months is not unreasonable.

advance any such medical evidence which proves her claim that the stress caused to her was occasioned by the delay in the investigation process.

11. Similarly, in 2020, in *Applicant*,<sup>49</sup> the UNDT's award of USD 5,000 in moral damages was affirmed for stress and anxiety suffered as a result of 20-month delay on the part of the Administration in giving notice of the outcome of the investigation. In doing so, it was noted that there must be supporting evidence beyond a staff member's testimony. In that case, expert testimony from a doctor was advanced which indicated that the applicant had suffered anxiety, stress and had a "depressive mood" related to the work environment and to the delays in the investigation that followed his complaint.<sup>50</sup> Reliance was also placed on a psychiatric report and numerous e-mail exchanges between the applicant and the Administration regarding his complaint of harassment, the delays in the investigation, and the appointment of panel members. Given that the medical reports relied upon by Ms. Al-Bustanji do not provide a link between the anxiety and stress suffered by her and the delay in the investigation process, we have before us only her own evidence. In this regard, I am unable to agree with my colleague that such a nexus can be inferred from the content of the medical reports provided even if these



impact of the harm and the causal factors sufficient to prove that the harm can be directly linked or is reasonably attributable to the breach or violation”.<sup>51</sup>

14. My colleague correctly accepts that the letter of the psychiatrist consulted by Ms. Al-Bustanji dated 22 September 2018 pre-dated the investigation delay. It does not,

