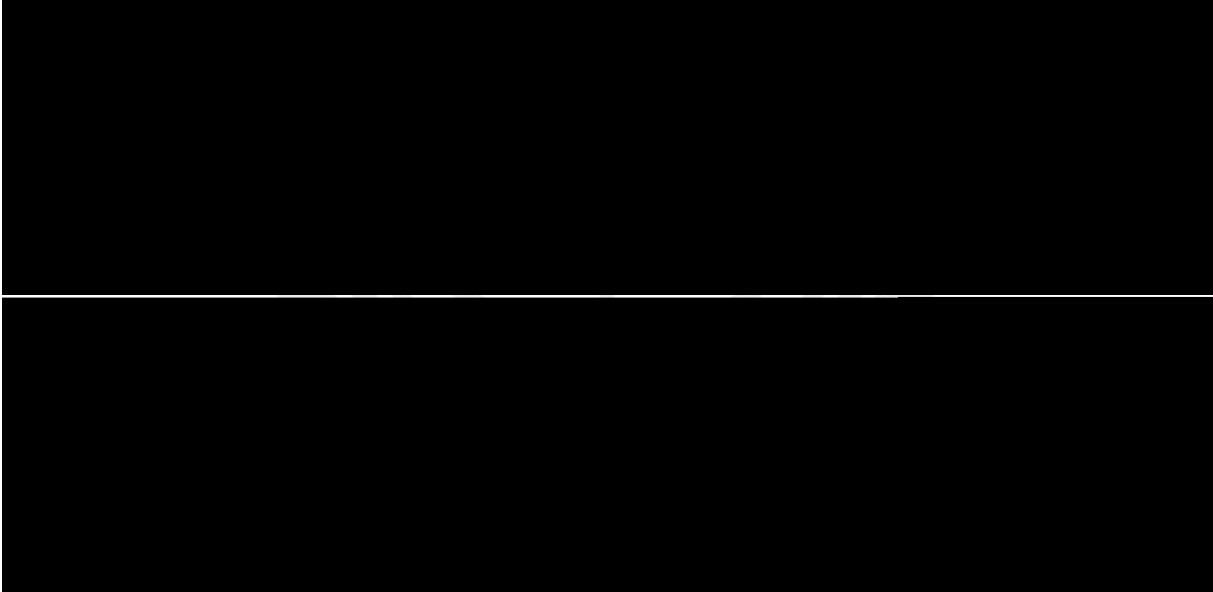

UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2021-UNAT-1185



Nadine Kaddoura
(Respondent and Appellant on Cross-Appeal)



Counsel for Nadine Kaddoura:

Pri an! a C"irimar

Counsel for Commissioner-#eneral:

\$ai% &u! i' Ana Pe ro-(lo)is

, UD\$E - ART. A . AL/ELD0PRESIDIN\$"

1. *efore t"e \$is)ute Tri3unal of t"e United Nations 4elief and 5or!s Agen2 for Palestine 4efugees in t"e Near 7ast 8UN45A \$T or UN45A \$is)ute Tri3unal and UN45A or Agen2 ' res)e2ti9el :' +s. Nadine Kaddoura 2ontested t"e de

regarding this process' requested all activities cease immediately and that further information be provided.

14. * e-mail to the former \$??C1. dated 15 August 2017 the former \$, 4 responded that the actions - it" resulted to the auditing of staff files - were ceased.

15. In 15 September 2017 Ms. Kaddoura submitted a complaint of "harassment" abuse of

20. On 28 July 2010, following the death of Mr. Kaddoura, the Applicant, the Respondent informed the Applicant of the termination indemnity to which he is entitled to one month's salary in lieu of notice and one half of the termination indemnity of the maximum as per Article 82(F). Following

2. The UN45A \$T "o-e9er 2on2luded t"at t"e e9iden2e 2learl s"o-ed t"at t"ere -as a legitimate ongoing auditing)ro2ess' t"at +s. Kaddoura "ad not e>tended t"e s2o)e of said auditing)ro2ess in t"e Com)laintant;s 2ase 3 9erif ing "is -or! e>)erien2e and t"at s"e "ad not misled t"e former \$C# t"e former \$U1?J and t"e former , ?4. in t"at regard. T"e UN45A \$T also found no merit in t"e a22usation t"at 3 ma!ing a E9eiled t"reatF of dismissal to t"e Com)laintant and gi9ing "im an unreasona3l s"ort deadline for res)onding to t"e letter' +s.

Su1#issions

T&e Co# #issioner-\$eneral's Appeal

=5. T"e UN45A \$T erred in fa2t resulting in a manifestl unreasona3le de2ision. T"e UN45A \$T' in its re9ie- of t"e e9iden2e and 2onsideration of - "et"er t"e fa2ts on - "i2" t"e san2tion - as 3ased "ad 3een esta3lis"ed' erroneousl 2on2luded t"at it - as not esta3lis"ed t"at +s. Kaddoura "ad misled t"e t"en \$C#' t"e t"en \$U1?J and t"e t"en , ?4. into 3elie9ing t"at t"ere - as an internal , 4 audit)ro2ess. T"e UN45A \$T;s finding t"at t"e t"en \$, 4 de2ided to initiate an internal Agen2 -- ide , 4 auditing)ro2ess in and around Jul 201/ and t"at a legitimate ongoing , 4 auditing)ro2ess - as 3eing 2ondu2ted manifestl disregards su3stantial e9iden2e - "i2" dire2tl 2ontradi2ts su2" a 2on2lusion. T"e testimonial e9iden2e of +s. Kaddoura' t"e t"en \$, 4 and t"e , ?4. su3mitted to 101. esta3lis"es t"at t"e 9erifi2ation)ro2ess - as initiated 3 +s. Kaddoura.

=B. +s. Kaddoura asserted t"at s"e "ad re@uested t"at t"e , ?CP. . 2"e2! t"e)ersonnel file of

8. The UN45A \$T's "olding t"at t"ere - as a legitimate ongoing auditing)ro2ess a))ears)redi2ated on t"e UN45A \$T's 2onsiderations of t"e t"en \$, 4;s letter of 10 August 201/ and "is e-mail dated 15 August 201/' 3ot" of - "i2" +s. Kaddoura "ad drafted. + oreo9er')rior to an in9ol9ement of t"e t"en \$, 4' t"e, ?CP. . 2onfirmed in "er e-mail of 26 Jul 201/ t"at 9erifi2ation of international staff files -ould o22ur from 12to3er to No9em3er. Ct is t"erefore 2lear t"at

evidence of "er un-illingness to involve the \$, 4 in the matter of the Complainant despite involving him in the matter of +s. CK. The compelling conclusion is that +s. Kaddoura misled the , 24. ' the then \$C# and \$U1?J - it" regards to the)urported ongoing , 4 audit)rocess.

51. The UN45A \$T erred in concluding that the allegation that +s. Kaddoura turned the Complainant's matter into something akin to a formal misconduct investigation had not been established. The meeting of 0 August 2017 and the subsequent letter gave the impression as described in the then \$?C1. in his e-mail of 16 August 2017 of an investigation or audit)rocess having been launched. The UN45A \$T t012(.) 19. 9982449. 08568(o) -3. 167952(e) 15. 609s2

5=. +oreo9er' t"e UN45A \$T;s 2on2lusions t"at' 3ased on UNAT%uris) ruden2e in Neocleous and Cicek' and regardless of -"et"er t"ere -as an ongoing internal , 4 auditing)ro2ess' +s. Kaddoura as t"e C, 41. \$ -as entitled to 9erif t"e Com)laint;s eligi3ilit for t"e)osition

5/. ~~court~~er' t"e UN45A \$T failed to esta3lis" t"at it e>2luded t"e e9iden2e on t"e 3asis it – as 2onsidered irrele9ant' fri9olous' or la2! ing in)ro3ati9e 9alue as sti)ulated under Arti2le 1685: of its 4ules of Pro2edure. EUnne2essar F is not one of t"ese grounds for e9identiar e>2lusion. T"e UN45A \$T t"us introdu2ed ne- 2riteria outside t"e UN45A 4egulator <rame–or!' t"ere3 e>2eeding its %urisdi2tion. Anne> 26 to t"e a))eal 3rief outlines e9iden2e e>2luded 3 t"e UN45A \$T and t"eir im)ort. , ad t"e UN45A \$T admitted and – eig"ed t"e e>2luded e9iden2e it – ould "a9e 2on2luded t"at +s. Kaddoura' not t"e \$, 4' initiated of "er o–n motion t"e audit a2ti9ities targeted against t"e Com)laintant t"at t"ere – as no ongoing agen2 -- ide , 4 audit t"at t"e audit of t"e Com)laintant;s P, Ps – as ill-moti9ated and)redi2ated on animus and t"at' 3ased on t"e instruments a9ailed to 101. and in2luded in t"e Cn9estigation 4e)ort anne>es' t"e a2ts o22asioned 3 +s. Kaddoura – ere 2learl 2ontrar to t"e Agen2 ;s 4egulator <rame–or!. Cn addition' t"e trial %udge – ould "a9e 2on2luded t"at t"e testimon

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B=. The Commissioner-General ignores the investigation findings that the \$, 4 and the \$? \$C1. Had mounted a joint campaign of harassment, discrimination and abuse of authority against Ms. Kaddoura during the entire time relevant to these events. Ms. Kaddoura continued to find ways to perform her functions with diligence and integrity despite the many obstacles and hostility created by her immediate superior and the office meant to ensure ethics and conduct investigations in UN45A. Ultimately, fearing exposure of the origin of the already identified irregularities and potential more cases of non-compliance, the \$? \$C1. directed that all, 4 audit

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- s" Kaddoura's Cross-Appeal

4. The UNAT erred in fact 3 not referring to the (A' t' e \$, 4 and t' e .) o! es) erson for a22ounta3ilit ' resulting in a manifestl unreasonable de2ision.

5. The UNAT erred in la- and fact - "en it did not 2onsider +s. Kaddoura;s 2ase as e>2e)tional -arranging 2om)ensation 3e ond t-o ears. T"e demonstrated 2ir2umstan2es meet t"e t"res"old -arranging 2onsideration of t"is 2ase as e>2e)tional res2ission must at t"e 9er minimum)arallel t"e tenure of +s. Kaddoura;s 2onfi

and the admission of Ms. Kaddoura and the former 'U17J' witness permitted before the UN45A ST at its hearing.

80. The Appeals Tribunal finds no error in the UN45A ST Judgment. There are two issues to be dealt with in this respect. Firstly, the admission of the evidence before the UN45A ST. Article 1681: of the UN45A ST Rules of Procedure provides that the Tribunal shall determine the admission of an evidence. This

The UN45A \$T found that the aggravating factors not specified in the 1T4 letter were vague and unsubstantiated.^B

8B. The UN45A \$T found that among the various allegations against Ms. Kaddoura only three of them had been established clearly and convincingly. However, none of them constituted misconduct in a Jordanian – it is the Agency's regulator framework. The UN45A \$T therefore resoundingly affirmed the contested administrative decision to separate Ms. Kaddoura from service.

00. This conduct – would “a9e 2ontra9ened t”e Agen2 ;s regulator frame– or!)ro9isions 2ited in t”e letter – “i2” in2luded eig”t full)ages of legislation’ in2luding #eneral . taff Cir2ulars on t”e 4e9ised . tandards of Condu2t for t”e Cnternational Ci9il . er9i2e’ on Pro”i3ition of \$is2rimination’ , arassment-in2luding .e>ual , arassment and A3use of Po–er’ and on Allegations and Com)laints Pro2edures and Prote2tions Against 4etaliation for 4e)orting +is2ondu2t and Coo)erating –it” Audits or Cn9estigations’ to some Cnternational Personnel \$ire2ti9e’ t”e Cnternational . taff 4ules’ \$C1 . Te2”ni2al Cnstru2tion and , and3oo! on 7t”i2s and t”e . tandards of Condu2t A))li2a3le to UN45A Personnel.

01. This is – “ +s. Kaddoura –as gi9en an o))ortunit to res)ond to t”e allegations of mis2ondu2t and)rodu2e e9iden2e of “er arguments. T”e minutes of t”e meeting +s. Kaddoura “eld –it” t”e former Commissioner–#eneral on 25 A)ril 2010’ in order for “er to “a9e an o))ortunit to sea! –it” “im on t”e matter of t”e 1T4’ s”o– a 2om)lete dis)arit of a))roa2” –it” regard to t”e tensions in t”e –or! en9ironment. 5”ile t”e former Commissioner–#eneral e>)ressed a))re”ensions a3out t”e im)ortan2e of res)e2tful and 2ondu2i9e team en9ironment and –it” de-es2alation of t”e tensions’)arti2ularl in lig”t of t”e 2on2erns e>)ressed 3 staff mem3ers a3out +s. Kaddoura;s intera2tion –it” ot”ers’ – “i2” –as leading to 2ontinued issues in t”e team d nami2s’ +s. Kaddoura felt retaliated against’ frustrated’ 3a2! sta33ed’ “a9ing a sense of 3eing t”e target of non-2ondu2i9e 2ondu2t. <or “er’ t”e)ro3lem –as –it” t”e \$C# and t”e \$, 4’ and t”us s”e felt disorientated and in need of)rote2tion. +s. Kaddoura 2ould not understand – “ s”e 2ould 3e 2onsidered to “a9e engaged in mis2ondu2t – “en s”e re)orted issues t”at s”e deemed to 3e in2onsistent –it” t”e Agen2 ;s regulator frame– or! . . “e also denoun2ed 3rea2”es of Agen2 rules’ – “i2” s”e 3elie9ed –as in line –it” “er)rofessional integrit .

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conducting audits and investigations. Staff members shall not be retaliated against for performing their duties.

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8f: An act of discrimination or harassment including sexual or gender harassment as well as abuse in any form at work or in connection with work is prohibited.

05. The applicable legal framework stipulates that it is the duty of a staff member to report any breach of the Regulations and Rules and that staff members shall not be retaliated against for reporting reported breaches. The evidence on the record shows that Contreras to the Agent's contentions. Ms. Kaddoura might well have been the first source of information of the irregularities and played a primary role in the drafting of the 10 August 2017 letters.⁸ Nevertheless, she did not sign any written formal correspondence for the staff members who were asked to present explanations on the discrepancies or alleged misrepresentations in their personal files or even complete their university degree required for the post they were enrolling in. Nor did Ms. Kaddoura participate in any meeting with those staff members as she reused herself in being seen previously summoned by the staff member concerned.⁹ She complained that the directions of the former SAC that the matters should be addressed internally through discussion for clarification and correction since they were routine.¹⁰

05. Moreover, Contreras to the Commissioner's contentions, as early as 26 July 2017, the head of the Department of HR, 4 sent an e-mail to Ms. Kaddoura according to which, in addition to the two cases discussed last week, there is also one that she did not have the required university degree at the time of joining the Agency (C.K. and C.K.) - will initiate the

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106. After "a9ing)arti2i)ated in meetings and re2ei9ed -ritten 2orres)onden2es for e>)lanation or 2orre2tion of t"e irregularit ' 3ot" staff mem3ers under s2rutin resigned' - "ile +s. Kaddoura - as found to "a9e engaged in mis2ondu2

motives in her attitude under examination. Nor is there evidence of a use of her position to target the staff members concerned.

10B. The Appeals Tribunal recalls the delicate and complicated environment – “it” seemed to have spread in the Agency at the time of the events. The incidents portrayed in the present case reveal some of the struggles and challenges – “it” the Agency “has seen through” – particularly – it” regard to the transition – it” requirements related to the staff selection process – “it” being as a background the significant financial and funding crisis of the Agency in recent years. This would have been at the origin of the separation of “it” officials’ including the former Commissioner-General.

10/. The UN45A ST’s order to refer the former Commissioner-General for accountability seems to have been based on some notes of a meeting held by +s. Kaddoura – it” her staff.²⁵ Notwithstanding the fact that this document – as signed by +s. Kaddoura and (Legal Officer on 11 Jul 2010) its content portrayed an account of – “it” +s. Kaddoura said to her staff in a meeting in – “it” she briefed them about a meeting that she had had – it” the former Commissioner-General – “it” she offered her a deal in exchange for her silence. The source of this account is a staff member – who attended the meeting – it” +s. Kaddoura and her staff and – whose identity – as – it” confidential in light of this or her concerns about retaliation.

108. In light of the above it is clear that this evidence constitutes mere hearsay of something – “it” +s. Kaddoura said in a meeting – it” her staff. Given in such a complicated environment of the Agency at the time of the events – “it” would have made it difficult to provide evidence of suspicious behaviour amongst the factual context – it” it is not adequate to rely on hearsay to refer a former staff member – it” the former Commissioner-General or another to accountability.

100. Moreover in light of our jurisprudence there is no possibility of imposing a disciplinary measure on a former staff member^{2B} and such a referral would be ineffectual. This is the only aspect of the UN45A ST Judgment – “it” needs to be re-evaluated in order to restate the order of referral of the former Commissioner-General for accountability.

²⁵ There is no precise indication of the evidence in the UN45A ST’s Judgment (see para. 1B of the impugned Judgment).

^{2B} * *Amman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East* Judgment No. 2018-UNAT-860 (para. 1).

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question.⁶¹ Cf. these other two elements of the notion of responsibility are not 'justified' the illegality can be declared but compensation cannot be awarded.⁶²

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120. The appeal is upheld in part and the cross-appeal is dismissed. Judgment No. UN45A?ST?2020?0BB is modified only to restate the order to refer the former Commissioner-General for Accountability .

Original and Authoritative Version: English

Dated this 20th day of October 2021.

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Judge, Alfred Presiding
Judge de Gora Rajil

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Judge Colgan
Judge Land Ne- Nealand

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Judge and
Judge Manouher Canada

Entered in the Register on this 12th day of January 2022 in New York United States.

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Secretary (in Registrar