JUDGE GRAEME COLGAN, PRESIDING.

1. The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (Commissioner-General and UNRWA or Agency, respectively) appeals the lengthy and complex Judgment No. UNRWA/DT/2023/028 of the UNRWA Dispute Tribunal (UNRWA DT or UNRWA Dispute Tribunal) granting two of three applications by Erdinch Lutfiev, a former UNRWA staff member.[1] The first of these two applications challenged UNRWA's decision not to investigate Mr. Lutfiev's complaints of prohibited conduct by others towards him, what we will call "the non-investigation decision". The second of the two applications granted by the UNRWA DT was against

9. On 26 November 2018, Mr. Lutfiev submitted his comments on the concerns included in the letter of 22 November 2018. That same day, Mr. Lutfiev also filed with the acting D/DIOS a complaint of retaliation against the former CoS and a request to the C/EO for protection against retaliation.[7]

10. On 2 December 2018, the Intake Committee of DIOS decided to refer Mr. Lutfiev's case to the EO for a preliminary assessment. This case included both the retaliation complaint against the former CoS, as well as Mr. Lutfiev's complaint of workplace discrimination against several of his colleagues.[8]

11. On 17 December 2018, the C/EO informed Mr. Lutfiev that the EO had concluded its preliminary assessment of the request for protection against retaliation with a determination that his allegations constituted a *prima facie* case of retaliation.[9]

12. On 2 January 2019, the complaints against Mr. Lutfiev were referred to DIOS on the explicit instruction of the former Commissioner-General. The letter was handed to Mr. Lutfiev the same day in a meeting with the C/CSSD and the former CoS.[10]

13. On 12 February 2019, the EO issued its report concluding that Mr. Lutfiev's retaliation complaint against the former CoS revealed a *prima facie* case of retaliation under the provisions of General Staff Circular GSC 5/2007 (Allegations and complaints procedures and protection against retaliation for reporting misconduct and cooperating with audits or investigations). Furthermore, the EO advised suspending any ongoing activities related to the termination of Mr. Lutfiev's assignment and to extend his contract until the Agency had taken appropriate decisions on the investigative findings. Accordingly, his contract was extended several times, ultimately until 30 November 2020. His ALWP was also likewise extended.[11]

14. On 21 November 2019, DIOS issued Investigation Report IR 35/2019 into Mr. Lutfiev's allegations of retaliation and abuse of power, determining that the actions of the former CoS constituted retaliation. DIOS concluded that the former CoS had abused his power by attempting to interfere in Mr. Lutfiev's performance management and had actively sought his dismissal. DIOS also found that the former CoS had sought to encourage complaints by others against

[7] Impugned Judgment, paras. 18-20.
[8] *Ibid.*, para. 21.
[9] *Ibid.*, para. 22.
[10] *Ibid.*, para. 16.
[11] *Ibid.*, para. 65.

Considerations

43. We begin by noting that the Commissioner-General takes no issue with the

reasons it did. The Commissioner-General's appeal

"prong" having been engaged in by the UNRWA DT, it is simply not possible for the subsequent three decisions to be arrived at, certainly not

Judgment

52. The Commissioner-General's appeal is granted and Judgment No. UNRWA/DT/2023/028 is reversed, in part, as follows: the UNRWA DT's rescission of the decision not to investigate the former CoS and the related award of costs are reversed. The UNRWA DT's rescission of the decision to separate Mr. Lutfiev from service is reversed, and the issue is remanded to the UNRWA DT for re-hearing and re-decision. The related awards of in-lieu compensation and costs are reversed.

Original and Authoritative Version: English

Decision dated this 28th day of June 2024 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Colgan Presiding	Judge Savage	Judge Sandhu

Judgment published and entered into the Register on this 14th