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... A Letter of Appointment (“LoA”) states that the duration of the fixed-term appointment was 1 June 2009 to 31 May 2012, for the post title Messenger Porter at Grade 2, Step 1. The LoA was signed by the HRO on 1 June 2009 and by [Mr. Abu Malluh] on 2 June 2009.

... On 20 May 2012, [Mr. Abu Malluh] was sent a letter by the HRO informing him that his fixed-term appointment was extended for another three years ending on

... A LoA shows that, effective 1 August 2004, [Mr. Hussein] was offered a fixed-term appointment as Messenger Porter, Grade 2, until 31 January 2005. The LoA, which [Mr. Hussein] signed on 2 August 2004, further informed [Mr. Hussein] that his appointment was changing from category Z to X.

... By letter dated 13 February 2005, a Personnel Officer informed [Mr. Hussein] of the following:

With reference to Travel & Transport Officer, [Headquarters (HQ)] (A) letter TTO/128/2005 dated 9 January 2005, I am pleased to inform you that it has been decided to extend your fixed[-]term appointment with the Agency for three years ending on 31.01.2008.

indicates the post title Messenger Porter, Level 1A, Step 2. In addition, on 7 May 2000, [Mr. Zamzam] signed an Area Staff PD for Messenger, Grade 2.

... By letter dated 17 March 2002, a Personnel Officer informed [Mr. Zamzam] that his appointment was extended for two years ending on 30 April 2004. This letter refers to the 13 April 2000 letter, and at the bottom of the letter appear the typed name of [Mr. Zamzam] and post title Messenger Porter underneath his name.

... By letter dated 11 May 2004, a Personnel Officer informed [Mr. Zamzam]:

With reference to Travel & Transport Officer, HQ (A) letter TTO/128/2004 dated 11 May 2004, I am pleased to inform you that it has been decided to extend your fixed[-]term appointment with the Agency for two years ending on 30 April 2006.

Please note that this extension will be with no change to the terms and conditions stipulated in the letter of appointment, which was signed by you on 07.05.2000.

[...].

[Mr. Zamzam] signed this letter on 12 May 2004, and at the bottom of the letter appear the typed name of th[Mr. Zamzam] and post title Messenger Porter underneath his name.

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... By letter dated 2 April 2008 from an Acting Personnel Officer, Applicant

stress for lack of evidence, it awarded moral damages in the amount of USD 1,000 each for the “mishandling, including confusion in the post titles, contracts and renewal letters of [Abu Malluh ¶ .], and conflicting information from the Agency”.⁹

Submissions

The Commissioner-General’s Appeal

5. The Commissioner-General submits that the UNRWA DT erred on a question of law and fact resulting in a manifestly unreasonable decision when it awarded the allowances for extra duties and moral damages. Notwithstanding its unequivocal assertion that there was no legal

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11. Finally, Abu Malluh **è** . submit that the Commissioner-General “once again failed to meet time limitations” and that there was not sufficient reason for submitting the motion for extension of the time limit to file an appeal, considering, in particular, the strict approach to the observance of time limits by the Commissioner-General promulgated by the Appeals Tribunal in D**è** .¹²

12. Based on the foregoing, Mr. Abu Malluh **è** . request that the Appeals Tribunal dismiss the appeal.

Considerations

13. The issue under appeal is whether the UNRWA DT erred in law or fact resulting in a manifestly unreasonable decision when it awarded special allowances to Abu Malluh **è** . for extra duties performed during the period of 14 April to 30 September 2014 and compensation for moral damages.

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14. The UNRWA DT found that certain duties performed in this period were outside the scope of Abu Malluh **è** .’s contracts. The UNRWA DT relied on paragraph 4.1 of

17. The applicable law on this matter is as follows:

PD No. A/3/Rev.1/Part XI/Amend.5:

1. PURPOSE

19. This Tribunal will therefore first address the issue of whether the UNRWA DT exceeded its competence by substituting its own decision for that of the Commissioner-General in awarding the special allowance.

20. It is settled in our jurisprudence that the aforementioned provisions bestow discretionary powers on the Agency to pay the special allowances set forth in this instrument and that this discretion must be exercised reas

27. Second, as mentioned above, the UNRWA DT declined to award compensation for alleged psychological pressure or stress due to lack of evidence. However, it found that there was a fundamental breach of Abu Malluh ¶¶ .’s contracts resulting from mishandling, including confusion in titles of posts, contracts and renewal letters, and conflicting information from the Agency. The UNRWA DT awarded compensation for moral damages therefor.

28. In his appeal, the Commissioner-General does not challenge the proposition that a fundamental breach could in itself lead to an award of compensation for damages, as settled in our jurisprudence in A¶ 19—partially superseded in K¶ 20 following the amendment of Article 10(5) of the UNDT Statute cited above. The jurisprudence applied in K¶ , however, is not pertinent in the present case, since no such amendment has been

irregularities”²³, “reckless abuse of power”²⁴, “deliberate manipulation of the Organization’s processes”,²⁵ or significant violations of pertinent provisions with regard to highly consequential decisions such as termination and transfer to other posts. The ultimately inconsequential “anomalies” found in the case at hand do not reach this level of severity. Considering that Article 10(7) of the UNRWA DT Statute prohibits awards of punitive damages, the focus should not be placed on th

Judgment

31. The appeal is granted and Judgment No. UNRWA/DT/2017/041 is vacated.

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Dated this 29th day of June 2018 in New York, United States.

(S)

Judge Halfeld, Presiding

(S)

Judge Raikos

(S)

Judge Thomas-Felix

Entered in the Register on this 10th day of August 2018 in New York, United States.

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Weicheng Lin, Registrar