Before: Judge John Murphy

Registry: Amman

Registrar: Michelle Grima, Acting Registrar

SHARIF

v.

COMMISSIONER-GENERAL OF THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST

JUDGMENT

Representative for the Applicants:
Mohammad Salameh

Counsel for the Respondent:
Stephen Margetts (DLA)

Introduction

1. Mr. Ahmad Sharif and Mr. Ibrahim Sharif, ("the Applicants") are the heirs and beneficiaries of the late Mr. Fateh Amin Sharif ("the deceased"), a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East ("UNRWA", "the Agency" or "the Respondent"). The Applicants have filed an application ("the Application") with the UNRWA Dispute Tribunal ("the Tribunal")[1] contesting the decision of the Agency to: (i) refuse to pay them a death benefit in terms of the UNRWA Area Staff Rule 109.8; and (ii) to pay out a reduced Agency Provident Fund benefit in terms of Area Staff Rule 109.10(3B) - ("the contested decision").

2. For the reasons set out below, the Tribunal grants the Application and orders the Respondent to pay the Applicants the benefit due to them in terms of Area Staff Rule 109.8(1) and the full Provident Fund benefit payable under Area Staff Rule 109.10(2).

Facts

3. The deceased commenced employed with the Agency on 28 October 1995 as a school teacher. At the time of his death he was employed as the School Principal, Deir Yassin Elem. Boys School in the Lebanon Field Office ("the LFO").

4. The deceased was reportedly killed during an Israeli air strike in southern Lebanon on 30 September 2024.

5. The contested decision was taken in the context and aftermath of the events in Gaza on 7 October 2023 when armed attacks were carried out in Israel by insurgent groups including the political formation Hamas. As a result of these attacks, some 1,200 people were killed and another 250 were taken to Gaza as hostages. In the immediate aftermath of the attacks, allegations were made that several UNRWA area staff members were involved in the attacks or otherwise acted

[1] Article 3 of the Statute of the Tribunal ("the Statute") permits persons making a claim in the name of a deceased staff member to file an application in terms of Article 2 of the Statute.

in violation of their neutrality obligations. In addition, there was substantial media coverage connecting the Agency to the attacks and Hamas. Sixteen Member State donors to the Agency responded by suspending or pausing funding to UNRWA, and others indicated conditionality on such funding, thus jeopardising the continuity of the Agency's operations.

6. On 28 January 2024, the Secretary-General of the United Nations announced publicly that the United Nations would take "swift action following the extremely serious allegations" against several UNRWA staff members. On the same date, the New York Times reported that Israel had submitted to the United States a dossier that detailed Israel's claims against a dozen employees of UNRWA who allegedly had played a role in the Hamas attacks or in their aftermath, which US officials found credible enough to warrant suspending aid. From January 2024 and throughout the ensuing months, the allegations were publicised widely through news media, impacting UNRWA's reputation and further jeopardising its support.

7. Between 16 and 18 February 2024, the Israeli Government presented information to the Munich Security Conference ("MSC") in support of the allegation that UNRWA employees were involved and stated "there is no place for UNRWA in Gaza. The organization serves as an arm of the Hamas terrorist organization". The MSC featured numerous high-ranking international decision-makers, including Heads of Member States, Ministers of Defence and Foreign Affairs, the Secretary-General of the United Nations, as well as leading figures from academia, business, civil society, and media.

8. Hence, in the aftermath of the attacks of 7 October 2023, repeated allegations and media campaigns against the Agency have severely impacted on the operations of the Agency and have created existential risks to it. Overall, the suspension of funding by donors amounted to approximately USD450 million.

9. In response to this difficult situation, the Agency has adopted a strict approach and has initiated investigations and disciplinary action against several staff members where there is credible evidence of breaches of neutrality.

10. In early 2024, the UNRWA Department of Internal Oversight Services ("DIOS") received allegations that the deceased had repeatedly breached his neutrality obligations by making public statements without authorisation that the Agency considered "tantamount to taking sides in hostilities, could call into question UNRWA's or the UN's adherence to the universal humanitarian principle of neutrality, and/or constituted engaging in public controversies of a political nature".

11. On 4 March 2024, DIOS initiated an investigation into the initial allegations against the deceased, during which it received substantial photographic and documentary evidence as well as video footage of the deceased attending Hamas events and of some of his public statements.

12. On 21 March 2024, the deceased was placed on Administrative Leave Without Pay ("ALWOP").

13. DIOS issued its Investigation Report ("the IR") under Case Number INV-24-0042 on 30 September 2024. As set out selectively below, the IR revealed much information about the deceased's political activities and association with Hamas.

14. The IR reported that on 8 November 2023, the deceased attended a townhall meeting at the LFO, where he spoke to the personnel, stating, *inter alia*:

> I swear to God, [if I had to choose] between this job my loyalty to my people, then we will throw this job out the door. I'm the son of the Palestinian people, and I will remain the son of the Palestinian people[…]We are with the resistance, and we support the resistance […] Between the Palestinian people and the funding of these countries, then the funding can go to the deepest depths of hell … we will never bargain with the parties that killed our children. What neutrality are you taking about? What neutrality? Is the UN, America, or Europe abiding by neutrality? Or do they think that we don't have any sentiments and emotions? This is never going to happen, who thinks that they can take us out of our people?

15. On or about 2 March 2024, after being requested to resign from UNRWA, the deceased gave a public speech in an outdoor setting, in which he stated, *inter alia*:

> The job has never meant to humiliate us, the job has never meant to blindly lead us and let us give up our rights, our dignity, and our pride. I have said it before, I will say it again, and I will repeat it, our belonging with Palestine, our people, Gaza, the West Bank, and all of Palestine is an ideological belonging that we will not back down from. And I'm speaking from a reassured heart, let the job go to hell, I don't care I have made my decision I will not resign from this institution, this institution is for us, and I will not take unpaid leave.

16. On or about 9 April 2024, the deceased gave a public speech to a crowd outside of the LFO premises, in which he stated, *inter alia*:

> If [the Director, UNRWA Affairs, LFO] and [the Commissioner-General] get their power from American and western embassies, as this decision that they issued is American-coded and they succumbed to this pressure.

17. On or about 1 May 2024 at an unknown location, the deceased gave a speech to a large crowd where he stated, *inter alia*:

> The word 'neutrality' needs to be abolished from our dictionary […] And they want us to be neutral?! […] We are with Gaza, with the resistance until the last breath […] We will not be neutral […] the occupation, and the Zionist enemy on our land.

18. The IR also indicates that in June 2024, images were published on Facebook and multiple media outlets of the deceased attending events with Hamas flags, attending funerals of Hamas members, and carrying the casket of an alleged Hamas member. Images were also published of Hamas representatives attending the deceased's son's wedding.

19. On 27 June 2024, the deceased was interviewed by DIOS and shown videos of his 8 November 2023, 2 March 2024, 9 April 2024, and 1 May 2024 public statements. The deceased identified himself in each video and admitted making the statements. While he provided various explanations for the statements and denied taking sides in the conflict, he did not deny making any of the statements. The deceased claimed that he did not know that he needed permission to make the public statements.

20. The deceased also verified the photograph of Hamas representatives at his son's wedding, and admitted to inviting one of the representatives but not the other. However, he further stated that he had "a big social role in Lebanon" and was thus obliged to invite them.

21. The deceased further verified numerous photographs of him attending meetings and funerals with Hamas flags and carrying the casket of a Hamas member.

22. On the basis of this and other information, DIOS recommended in the IR that action be taken against the deceased but noted that the deceased had been killed in an airstrike on the same day the IR was finalised, 30 September 2024.

23. Following his death, it was widely reported in the media that the deceased was a Hamas commander. The Israeli Defense Forces also released a statement explaining that the deceased had been targeted due to his alleged leadership role with Hamas. Media covering the story consistently referred to the deceased's status as an UNRWA staff member and his alleged connections with Hamas.

24. On 12 October 2024, the Commissioner-General ("the CG") determined that there was sufficient clear and convincing evidence to substantiate the allegations against the deceased and determined that the acts constituted serious misconduct for which the disciplinary measure of summary dismissal would have been appropriate. The CG accordingly took the contested decision in which he decided to not pay a death benefit to the deceased's designated beneficiaries under Area Staff Rule 109.8 and determined that under Area Staff Rule 109.10(3B) he was ineligible to receive the Agency's credits to the Provident Fund (the Agency's contributions paid on behalf of the deceased to the Provident Fund), but only a return of the deceased's own contributions to the Provident Fund plus interest.

25. It is not clear when the contested decision was communicated to the Applicants. However, on 8 May 2025, the Director of Human Resources ("the DHR") addressed a letter to the Applicants which reads in relevant part as follows:

> We wish to inform you of the decisions taken by the Commissioner-General regarding the entitlements due following Mr. Sharif's passing.

In accordance with the approval granted by the Commissioner-General:

- You are entitled to receive the amount of the Provident Fund benefit (staff contribution credits only).

- You are also approved to receive the payment in lieu of Mr. Sharif's accrued leave.

- Outstanding amounts owed by Mr. Sharif to the Agency will be deducted from his final entitlements, in accordance with the applicable policy. These deductions will cover all verified liabilities, including but not limited to salary overpayments, insurance or any other financial obligations.

- The above-mentioned entitlements shall be distributed equally between both of you as per the provided Deed of Inheritance.

The Agency will proceed with the necessary arrangements to ensure the timely disbursement of these approved payments. Our HR team will be in contact shortly to coordinate the administrative steps required to finalize this process.

26. On 7 July 2025, the Applicants submitted a Request for Decision Review ("RDR") of the contested decision.

27. The Applicants filed the Application on 3 November 2025.

28. The Respondent filed its Reply on 5 August 2026.

29. By Order No. 121 (UNRWA/DT/2026) dated 12 August 2026, the Tribunal granted the Applicants leave to file observations on the Reply on or before 2 September 2026.

30. On 23 August 2026, the Applicants' filed a motion requesting *inter alia* documentary evidence: (i) of the decision to place the deceased on ALWOP on 21 March 2024; (ii) proving that the deceased was requested to resign on 2 March 2024; and (iii) of the contested decision.

31. On 27 August 2026, the Tribunal issued Order No. 136 (UNRWA/DT/2026) in which it *inter alia* directed the Respondent to produce the requested documents

or if unable to do so to explain why or to state the basis for any objection to the Applicants' request.

32. The Respondent replied to Order No. 136 on 7 September 2026. In its response the Respondent: (i) attached most of the requested documents; (ii) noted that the Agency's request to the deceased to resign (take early retirement) was not contested and thus required no further proof; and (iii) asserted legal privilege in relation to the documentary evidence of the contested decision.

33. The Respondent asserted privilege on the following basis:

> The Commissioner-General was provided legal advice by the Agency's Legal Counsel, upon which he recorded his decision. The advice was produced by the Agency's Legal Counsel as contemporaneous legal advice during the decision-making process and in anticipation of potential litigation. It constitutes privileged legal work product, and the Respondent has not waived this privilege. Accordingly, the Respondent objects to the request for production and asserts legal professional privilege over the record of the decision. In this regard, it is noted that the UNAT has recognized the existence and applicability of legal professional privilege, subject to waiver by the client.

Submissions

The Applicants' submissions

34. The Applicants essentially argue that they are entitled to receive a death benefit in terms of Area Staff Rule 109.8(1) and payment of the full Provident Fund benefit in terms of Area Staff Rule 109.10(2) which includes the balance of the staff member credits, the Agency credits and interest.

35. The Applicants request the Tribunal to rescind the contested decision and to order the payment of the benefits due together with interest.

36. The Applicants also seek compensation for "violation of their rights under the requirements of natural and administrative justice" and for "the abuse of procedures committed until the submission of the Application."

The Respondent's submissions

37. The Respondent argues that this matter is an exceptional case. The deceased was identified publicly by Hamas as one of its leaders in Lebanon. His connection with Hamas was damaging to the Agency which is required to demonstrate the strict application of its neutrality policies in response to the deceased's proven wrongdoing.

38. The Respondent accordingly submits that, given the extraordinary circumstances of this case, the contested decision was a lawful exercise of the Agency's discretion under Area Staff Regulation 10.3, Area Staff Rule 109.10, and Staff Rule 110.1. It maintains that the contested decision was essential to ensure that the deceased did not benefit from his misconduct at the expense of the Agency and, more importantly, to prevent or mitigate further and ongoing damage to the Agency caused by his conduct.

39. The Respondent concedes that the Agency's regulatory framework does not foresee a situation in which a staff member who has engaged in serious misconduct and exposed the Agency to extraordinary reputational and operational harm dies before the disciplinary process can be completed. The deceased's death, it maintains, rendered the ordinary disciplinary process impossible through no act or omission of the Agency. For that reason, it submits the CG should be granted a discretion not to pay a death benefit under Area Staff Rule 109.8(1) and to pay a reduced Provident Fund benefit in terms of Area Staff Rule 109.10(3B).

40. Any contrary interpretation, the Respondent contends, would operate against the purpose and rationale for the rule. The fact that the Applicant died before the completion of disciplinary proceedings should not deprive the Agency to take such action as is necessary to protect its institutional interests. To hold otherwise would elevate procedure over purpose in circumstances where the rule was designed to operate in ordinary circumstances and not the exceptional circumstances attendant on this case.

41. The Respondent accordingly requests the Tribunal to dismiss the Application.

Considerations

42. Before turning to the merits it is necessary to comment briefly on the Respondent's claim of legal privilege in relation to the documentary evidence containing the contested decision. As far as the Tribunal is able to understand the objection to disclosure, it appears that the CG may have recorded the contested decision of 12 October 2024 in manuscript on a privileged memorandum of legal advice and that no further document was issued by the CG to the Applicants conveying the contested decision to them. This is not entirely satisfactory as one would expect the CG in taking a decision of this magnitude to issue a written memorial of it to those affected by it. However, the letter of the DHR to the Applicants dated 8 May 2025 belatedly conveyed the gist of the contested decision, albeit without specifying the reasons for it.

43. This notwithstanding, and for reasons that will appear in due course, the Tribunal finds no need to rule on the matter of privilege because the nature of the contested decision and the reasons for it are set out in the Reply clearly enough to allow the Tribunal to make its final judgment.

44. By the same token, although the Applicants have been granted leave to file observations, on reflection and in light of there being sufficient evidence on record, the Tribunal does not require observations and considers it in the interests of justice to proceed directly to judgment without receiving additional information from the Applicants, who in the light of the fact that this judgment is in their favour will not be prejudiced.[2]

45. It is indisputable that the deceased was in violation of his neutrality obligations. The evidence in this regard is clear and convincing and demonstrates

[2] In terms of paras. 10 and 11 of the Tribunal's Practice Direction No. 02 of 18 November 2021, observations in response to the Respondent's Reply *may only be filed with leave of the Tribunal.* The purpose of observations is to respond to specific points raised by the Respondent in the Reply and is not intended to be an opportunity for an applicant to merely repeat what has been stated in the application. The Applicants thus have no right to file observations, unless leave is granted. In this instance it is permissible for the Tribunal to proceed without receiving the observations (and in effect rescind the leave granted) because any observations will not alter the outcome favourable to the Applicants.

as highly probable the alleged conduct of the deceased. The deceased's conduct also irrefutably constituted misconduct under the Agency's legal framework.

46. Regulation 1.4 of the UNRWA Area Staff Regulations provides as follows:

> Staff members shall conduct themselves at all times in a manner befitting their status as employees of the Agency. They shall not engage in any activity that is incompatible with the proper discharge of their duties with the Agency. They shall avoid any action and in particular any kind of public pronouncement which may adversely reflect on their status, or on the integrity, independence and impartiality which are required by that status. While they are not expected to give up their national sentiments or their political and religious convictions, they shall at all times bear in mind the reserve and tact incumbent upon them by reason of their employment with the Agency.

47. Paragraph 1 of Area Staff Personnel Directive A/1/Part V of 1 July 2007[3] provides:

> In accordance with the established principles and practice of the United Nations, staff members are required to maintain at all times, in both their official and their private conduct, the independence and impartiality which is implicit in their status as Agency staff (see in particular Staff Regulations 1.4 and 1.7). This independence and impartiality is particularly important in regard to political issues and activities.

48. Paragraphs 20-23 of Executive Office Instructions (Headquarters Instruction) No. 1 (*UNRWA Neutrality Framework*), effective from 1 February 2017 provides in relevant part:

> The principle of neutrality requires that staff, as humanitarian actors, and *irrespective of their personal beliefs or opinions*, must not take sides in hostilities or engage in public controversies of a political, racial, religious or ideological nature […]

[3] See also Paras 29-40 of PD A/1 Part IV/Rev of 10 June 2024 which has superseded this Personnel Directive.

> Neutrality therefore entails obligations for all staff to follow at all times – whether they are on the job or during their private, personal time outside of work for the Agency.
>
> [...]
>
> Staff must not engage in any action or make any public statement that may negatively reflect on UNRWA or the UN or call into question their adherence to the universal humanitarian principles of humanity, neutrality, independence and impartiality. A staff member may take no action, nor make any statement which could have the effect of publicly associating the staff member (in any capacity) with particular political aims or opinions.[4]
>
> […]

49. The Agency's legal framework in relation to public pronouncements, as relevant to this case, thus can be summarised as follows: (i) staff members must act tactfully in a manner befitting their status as employees of the Agency and avoid any kind of public pronouncement which may adversely reflect on their independence and impartiality; (ii) independence and impartiality are particularly important in regard to political issues and activities; (iii) staff members must observe neutrality at all times – whether they are on the job or during their private, personal time outside of work for the Agency; (iv) the principle of neutrality requires staff members, irrespective of their personal beliefs or opinions, *inter alia*, not to engage in public controversies of a political, racial, religious or ideological nature; and (v) staff members may not make any statement which could have the effect of publicly associating the staff member (in any capacity) with particular political aims or opinions.

50. As the Tribunal stated recently in *Al Ali*,[5] UNRWA staff members work in a politically sensitive environment. The Agency's neutrality policy and legal framework thus have a clear institutional foundation. The underlying rationale is not that Agency staff must be personally apolitical or surrender their political, religious or cultural identities. Rather it is that the personal conduct of staff

[4] Emphasis is in original.
[5] UNRWA/DT/2026/050.

members must not undermine the independence, impartiality, and credibility of the Agency as part of the United Nations. Staff members' personal, political and religious convictions remain inviolable. However, they are required to ensure that those convictions do not adversely affect their official duties or the interests of the Agency. The Agency's legitimacy depends upon its actual and perceived impartiality. If a staff member publicly associates himself/herself with a political or ideological dispute this will undermine confidence and may impact negatively on required cooperation with governments and other stakeholders - making it more difficult for Agency colleagues to obtain access, negotiate with stakeholders, deliver humanitarian assistance, monitor agreements or perform other mandated functions on the basis of their status as independent and impartial international civil servants.

51. Hence, the neutrality framework aims to protect the critical distinction between a staff member's private identity and the institutional position of the Agency. To repeat, the issue is not what a staff member believes, but whether their conduct creates an appearance that those beliefs will influence their Agency responsibilities. It goes without saying that the policy requires strict enforcement.

52. As said, the deceased's conduct was in flagrant breach of his neutrality obligations. He publicly announced repeatedly that he felt no compunction to observe neutrality. There is accordingly little doubt that had the disciplinary process been completed he likely would have been summarily dismissed.

53. However, it does not follow that the contested decision is for that reason lawful or reasonable. The entitlements of area staff members and their beneficiaries must be determined in accordance with the Area Staff Rules.

54. Chapter IX of the Area Staff Rules governs the separation of staff members from service with the Agency. It contemplates six possible forms of separation:[6] (i) termination at the initiative of the Agency (dismissal for misconduct, ill health or

[6] Area Staff Rules 109.1 - 109.6.

in the interest of the Agency); (ii) retirement; (iii) death; (iv) abandonment of post; (v) expiry of fixed-term appointments; and (vi) resignation.

55. Each form of separation carries with it different entitlements under the Area Staff Rules. Thus, for example, under certain conditions, separation by retirement entitles the staff member to a retirement benefit under Area Staff Rule 109.2(5) and similarly separation by death entitles the beneficiaries of the staff member to a death benefit under Area Staff Rule 109.8.

56. As discussed, it is not disputed that the deceased separated from service through death. At the time he was killed he remained in the employ of the Agency but was on ALWOP while the misconduct allegations against him were under investigation. His separation is thus governed by Area Staff Rule 109.3 which reads:

> A staff member who dies while in Agency employment shall be separated from Agency service by reason of his/her death on the date thereof.

57. Area Staff Rule 109.8(1) provides for a death benefit for staff members who die while still in the employ of the Agency. It reads as follows:

> In the event of separation through death of a staff member the Agency shall pay a death benefit to the staff member's nominated beneficiary or beneficiaries. The death benefit shall be computed either:
>
> > (A) As 11 percent of the deceased staff member's ending annual base salary for each year of qualifying service through 2014 and as 12 percent of ending annual base salary for each year of qualifying service from 2015 on, plus a supplemental benefit representing 50 percent of ending annual base salary. In cases where a staff member has periods of qualifying service of less than one full month both before and after2015, and the total number of days of such service are greater than or equal to 30 days, then the staff member will be credited with one additional month of qualifying service at 12 percent of the ending monthly base salary; or
> >
> > (B) As 200 percent of ending annual base salary, whichever is greater.

58. Area Staff Rule 109.8(5) importantly adds:

> The payment of a benefit under this rule shall automatically extinguish any and all entitlements which might otherwise have existed to separation benefits under these rules, except under staff rules 109.10 and 109.12.[7]

59. Area Staff Rule 109.10 provides for the payment of benefits from the Agency Provident Fund[8] on separation from service. In relevant part Area Staff Rule 109.10 reads:

> 2. A staff member who is a participant in the Provident Fund shall, upon separation from the Agency's service and subject to the provisions of paragraphs 3 and 5 of this rule, be paid Provident Fund benefits as follows:
>
> (A) A staff Provident Fund benefit equal to the balance of staff credits in his/her account current to the date of separation; and
>
> (B) An Agency Provident Fund benefit equal to the balance of Agency credits in his/her account current to the date of separation.
>
> (C) Interest at rates as provided for in rule 106.1 paragraph 16.
>
> 3. A participant shall, however, receive only the staff Provident Fund benefit under paragraph 2(A) of this rule, and shall not be eligible to receive the Agency Provident Fund benefit under paragraph 2(B) of this rule, if he/she:
>
> (A) Has fewer than six full months' staff credits in his/her account; or
>
> (B) Is summarily dismissed under area staff regulation 10.3; or
>
> (C) Is separated through abandonment of post under rule 109.4; or
>
> (D) Holds a letter of appointment which entitles him/her to receive a cash payment on separation in accordance with the laws of the country in which he/she is employed.

[7] Area Staff Rule 109.10 deals with Provident Fund Benefits and Area Staff Rule 109.12 deals with payments of accrued leave. The Applicants appear to have been paid a payment in lieu of the deceased's accrued leave in terms of Area Staff Rule 109.12. At issue in this case are the payments of a death benefit under Area Staff Rule 109.8 and the amount payable as a Provident Fund benefit under Area Staff Rule 109.10.
[8] Established in terms of Area Staff Rule 106.1.

> 4. Under no circumstances shall a participant lose his/her right to the staff Provident Fund benefit under paragraph 2(A) of this rule, except as provided in paragraph 5 of this rule.
>
> 5. The Agency shall have the right to reduce a participant's Provident Fund benefits by the amount of any indebtedness of the participant to the Agency.

60. On a literal reading of these provisions, the heirs and beneficiaries of an area staff member who dies in service (in addition to any other remuneration or benefits due) are entitled to a death benefit under Area Staff Rule 109.8 and a Provident Fund benefit equal to the balance of staff credits (the deceased's own contributions) plus the balance of the Agency credits (the amount contributed by the Agency) at the date of separation (death) together with interest.

61. The Respondent, however, argues that the Applicants are entitled to neither a death benefit nor the full Provident Fund benefit but only the amount payable under Area Staff Rule 109.10(3), that is the deceased's own contributions to the Provident Fund plus interest, because the deceased should be regarded as having been separated from service by summary dismissal (as contemplated in Area Staff Rule 109.10(3B)) rather that by death, even though he died while still in service. It submits that the Tribunal should construe the relevant provisions of the Area Staff Rules purposively as to confer a discretion on the CG to deny the Applicants a death benefit and to deem the deceased as having been summarily dismissed though in fact he never was, because the deceased was likely to have been summarily dismissed had he survived a few weeks longer.

62. The question for decision then is whether the Area Staff Rules should be interpreted purposively in this fashion.

63. It is always permissible for the Tribunal to apply purposive interpretation. Interpretation is a process of attributing meaning to the words used in a statutory instrument or contract having regard to the context provided by reading the particular provision or provisions in the light of the instrument as a whole and the circumstances attendant upon its coming to existence. Primary consideration must be given to: (i) the language used in the light of the ordinary rules of grammar and

syntax; (ii) the context in which the provision appears; (iii) the apparent purpose to which it is directed; and (iv) the information known to those responsible for the production of the instrument. Where more than one meaning is possible, each possibility must be weighed in the light of all these factors.

64. All the same, in the process of interpretation, the Tribunal should be alert to, and guard against, the temptation to substitute what it regards as a reasonable, sensible or businesslike interpretation for the words actually used. To do so in regard to a statute is to legislate rather than interpret; and to do so in the contractual context is to make a contract for the parties other than the one they in fact made. The inevitable point of departure is the language of the provision itself, read in context, while having regard to the purpose of the provision and the background to the preparation and production of the instrument.

65. The Respondent acknowledges that its dilemma arises from the extraordinary circumstances of this case, being that the deceased died before it had the chance to summarily dismiss him. It argues nonetheless that the contested decision was a lawful exercise of "the Agency's discretion" under Area Staff Regulation 10.3, Area Staff Rule 109.10, and Area Staff Rule 110.1 and was essential to ensure that the deceased did not benefit from his misconduct at the expense of the Agency and, more importantly, to prevent or mitigate further and ongoing damage to the Agency caused by his conduct.

66. The Respondent's reliance on Area Staff Regulation 10.3 and Area Staff Rule 110.1 as conferring a discretion on the CG to deny the beneficiaries of a deceased staff member a death benefit under Area Staff Rule 109.8(1) is misplaced.

67. Area Staff Regulation 10.3 merely provides that the CG "may summarily dismiss a staff member for serious misconduct". It confers no power to refuse to pay a death benefit to a staff member who dies while still in the employment of the Agency. Area Staff Rule 110.1 is equally of no assistance to the Respondent. It deals with disciplinary processes and measures and makes no provision for the denial of a death benefit. Indeed, to the contrary, Area Staff Rule 110.1(5) specifies a *numerus clausus* of disciplinary measures restricted to one or more of the following only: (i) written censure; (ii) loss of one or more steps in grade; (iii)

deferment, for a specified period, of eligibility for salary increment; (iv) suspension without pay for a specified period; (v) fine; (vi) deferment, for a specified period, of eligibility for consideration for promotion; (vii) demotion with deferment, for a specified period, of eligibility for consideration for promotion; (viii) separation from service, with notice or compensation in lieu of notice, notwithstanding Area Staff Regulation 9.3, with termination indemnity; (ix) separation from service, also known as termination for misconduct, with notice or compensation in lieu of notice, notwithstanding Area Staff Regulation 9.3, and with half or no termination indemnity pursuant to Area Staff Rule 109.9; and (x) summary dismissal. The forfeiture of a death benefit is thus clearly not a permissible disciplinary measure under Area Staff Rule 110.1.

68. Hence, neither Area Staff Regulation 10.3 nor Area Staff Rule 110.1 confer a discretion on the CG to deny the beneficiaries of a deceased staff member their entitlement to a death benefit payable under Area Staff Rule 109.8(1) when he is of the opinion that the deceased may have committed serious misconduct that might have justified summary dismissal.

69. Moreover, the language of Area Staff Rule 109.8(1) is plain and unambiguous. It obliges the Agency to pay a death benefit to the heirs of staff members who die in service. Its purpose is to provide additional support to the relatives of staff members who die in service - nothing more, nothing less. There is nothing in its language, terms or immediate or extra-statutory context which supports the proposition that a death benefit should not be paid to the heirs of a staff member who died in service while subject to disciplinary investigation. To confer such a discretion on the Agency by interpretation would amount to re-writing the contract of the parties and could open a can of worms difficult to manage in practice.

70. What is more, the language of Area Staff Rule 109.8 is mandatory in nature. It states unequivocally that in the event of separation through the death of a staff member the Agency *shall pay* a death benefit to the staff member's nominated beneficiary or beneficiaries. It thereby confers a right on the beneficiaries and provides no exception along the lines that the death benefit will not be payable when

the deceased staff member is subject to incomplete or pending disciplinary proceedings.

71. With regard to the Provident Fund benefit, the purpose of Area Staff Rule 109.10(3B) is to pay a reduced benefit to staff members who have been summarily dismissed on completion of a disciplinary investigation and process. The rationale for such a provision is that a breach of contract leading to summary dismissal will invariably justify the additional penalty of non-payment of the employer contributions to the Provident Fund. Being a penal provision, the canons of interpretation require Area Staff Rule 109.10(3B) to be construed restrictively and not extensively as the Respondent submits.

72. Like Area Staff Rule 109.8(1), the language of Area Staff Rule 109.10, is mandatory in its requirement that the different benefits payable under the rule *shall be* paid in accordance with its stipulated terms, which make no express provision for differential treatment of staff members subject to incomplete disciplinary proceedings who die while in service. There is nothing in the language or context which justifies an interpretation that a staff member should lose the employer's contributions to the Provident Fund as a separation benefit if in the opinion of a functionary of the Agency there are reasonable (even good) grounds for summary dismissal but which has not occurred. The language of the rule restricts the condition precedent for forfeiture to the actual occurrence of summary dismissal, not to the possibility of such, no matter how likely the prospect might have been. For the Tribunal to expand the scope of forfeiture in the manner proposed by the Respondent, by conferring a discretion on the CG to deem *post mortem* a staff member who died in service as having been summarily dismissed, would be to cross the line between interpretation and legislation. In its present guise, the rule permits forfeiture only once summary dismissal has occurred at the end of a completed disciplinary process, not before.

73. In the final analysis the Respondent's proposition that the deceased should be deemed to have been summarily dismissed under Area Staff Rule 109.1 read with Area Staff Regulation 10.3 is not sustainable. The argument essentially invites the Tribunal to ignore the evidence (the deceased was not summarily dismissed; he died

in service) and to amend the rules in probable contravention of the principle of legality. There is accordingly no basis in this case to limit the Provident Fund benefit to the lesser benefit payable under Area Staff Rule 109.10(3B).

74. In sum, although there is a certain logic to the Respondent's arguments, they nonetheless drift into problematic territory. They invite the Tribunal to grant an authority to the CG, which the Area Staff Rules do not expressly confer, to re-write or amend the Area Staff Rules when he believes that their strict legal application does not suit the interests of the Agency. No provision of either the Area Staff Regulations or the Area Staff Rules permits such an expedient departure from their express provisions conferring legal rights and benefits upon staff members and their heirs.

75. It may be noted in passing that the Area Staff Rules may be amended generally by the CG and exceptions may be made in the application of them in delineated instances in terms of Area Staff Rule 112.4 which provides:

> 1. These rules may be amended by the Commissioner-General in a manner consistent with the staff regulations.
>
> 2. Exceptions to these rules may be made by the Commissioner-General provided that such exception is not inconsistent with any staff regulation or pertinent resolution of the General Assembly of the United Nations concerning the Agency, and provided further that it is agreed to by the staff member directly affected and is, in the opinion of the Commissioner-General, not prejudicial to the interests of any other staff member.

76. The CG has not amended the Area Staff Rules to cater generally for this "exceptional case" and cannot make an individual exception under Area Staff Rule 112.4(2) because there is no agreement to any such exception by the deceased or the Applicants.

77. In the premises, there is no legal, proper or doctrinal basis upon which the Tribunal can sustain the Respondent's arguments and deprive the Applicants of the benefits to which they are legally entitled in terms of the Area Staff Rules.

78. The Applicants' claim for compensation for procedural violations is not supported by sufficient relevant evidence.

JUDGMENT

79. The Application is granted, the contested decision is rescinded and the Respondent is ordered to pay to the Applicants the benefit due to them in terms of Area Staff Rule 109.8(1) and the full Provident Fund benefit payable under Area Staff Rule 109.10(2).

80. Amounts payable in terms of this Judgment shall accrue interest at the USA prime rate until the date of execution contemplated in Article 11(3) of Statute of the Tribunal and thereafter at the USA prime rate plus 5%.

(Signed)

Judge John Murphy

Dated this 9th day of September 2026

Entered in the Register on this 9th day of September 2026

(Signed)

Michelle Grima, Acting Registrar, UNRWA DT, Amman