Before: Judge Bana Barazi

Registry: Amman

Registrar: Laurie McNabb

EL FELOU

v.

COMMISSIONER GENERAL OF THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Lance Bartholomeusz
Introduction

1. This is an application by Thana’ Asad El Felou (the “Applicant”) against the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (the “Respondent”), to demote her from the post of Head Teacher to the post of Teacher and to suspend her without pay for three months.

Facts

2. On 16 September 1995, the Applicant entered the service of the Agency as a daily paid Teacher, Grade 3, at Mathar School, in the Damascus Area, Syria.

3. Effective 15 September 1999, after several daily paid appointments in different locations, the Applicant was employed under a fixed-term appointment as Teacher at Nahaf School, Syria, a post retroactively converted to Grade 9 as of 1 August 2004.

4. After several extensions, transfers and promotions, effective 26 August 2007, the Applicant was appointed Head Teacher at Salama School, in the Damascus region. At the material time, the Applicant was Head Teacher, Grade 10.

5. On 28 November 2010, the Director of UNRWA Affairs, Syria (“DUA/SAR”) established a “Board of Investigators” (hereinafter referred to as either “Board of Investigators” or “Investigators”) to look into allegations that the Applicant on 2 November 2010 and another teacher on 25 November 2010 had exercised corporal punishment against a student. These allegations were brought forward by the father of the student on 28 November 2010.

6. The Board of Investigators comprised two persons: the Field Administration Officer (“FAO”) and the Public Information Officer. The Investigators interviewed the student, the Applicant and several witnesses with regard to the allegations. It set out its findings in an undated report: the Applicant was found by the Investigators to have exercised corporal punishment and to have violated her
duty to report corporal punishment by another teacher against the same student. The Investigators recommended that appropriate action be taken against the Applicant (i) for exercising corporal punishment, and (ii) for not reporting a case of corporal punishment which the Applicant alleges to have been exercised by a teacher against the same student.

7. By a letter dated 24 January 2011, the FAO informed the Applicant that:

Following the receipt on 28 November 2010 of a verbal complaint that you perpetrated corporal punishment on a student, the Agency conducted an investigation on 29 November 2010. The conclusion has been presented to the Director for his decision.

In accordance with UNRWA’s rules and procedures, and in the interest of due process, you are hereby provided with the opportunity to respond to the conclusion of the investigation, which is as follows:

_The investigation Board found that the evidence shows that on 2 November 2010 Ms. Thanaa Felou practiced corporal punishment by scratching a student at [sic] the eighth grade on her chest._

Please present your comments regarding the above conclusion within one week from the date of receipt of this letter. Your response will be taken into careful consideration in the final decision.

8. By an undated letter to the FAO, the Applicant stated, _inter alia:_

I hereby reiterate my statement and confirm to you that the allegation of pupil [name], her father and her classmate [name] are unfounded.[.]

and that the student had been motivated by others to make those allegations against her.

9. On 2 March 2011, an UNRWA consultant investigator undertook a detailed review of the evidence collected by the Investigators. In his review report submitted on 15 March 2011, the consultant investigator found _inter alia_ that:

_**Ms Thanaa Felou** slapped [name of student] on the face and pulled her hair and therefore she appears to have committed an act of corporal punishment as defined in_
violation paragraphs [sic] 1.3g – 1.3.i inclusive of the ETI/1/08. However the only other witness to this event was [name of student] who was reluctant to give her evidence as she states that she loves Ms Felou and did not want to get her into trouble. It is therefore decided that on the balance of probabilities it cannot be proven that this event occurred.

That Ms Thanaa Felou did not administer corporal punishment as defined by the provisions of paragraphs 1.3g – 1.3.i inclusive of ETI/1/08 when grasping her to pull her into the office.

That Ms Thanaa Felou did cause the scratch injuries to [name of student] on the chest when she reached out to grasp her to pull her into the office, and that on the balance of probabilities this action was one of recklessness.

That the reckless action of Ms Thanaa Felou in grasping [name of student] on the chest and pulling her into the office and causing pain and injury to her is considered to be an act of violence and was therefore in contravention of the provisions of Paragraph 4.1 of the ETI/1/08.

That as a result of all her actions in this incident, Ms Felou is proven to have treated a student in a way which undermined that student’s dignity and degraded or humiliated her in that she used intimidating or threatening gestures (the act of reaching out and grasping the student) that denigrated or frightened or ridiculed that student, contrary to the provisions paragraph [sic] 1.3.j of the ETI/1/08.

That Ms Thanaa Felou took an active part in the attempt to cover the incident up contrary to Area Staff Regulations 1.4.

That Ms Felou was aware of an incident of corporal punishment against [name of student] by [name of teacher] but she failed to report this incident contrary to the provisions of Paragraph 4.2.a, of the ETI/1/08. (emphasis in the original)

10. The consultant investigator recommended the following:

The recommendations of both the original board of investigation and the Consultant Investigator are that an appropriate action [be taken] against those staff members listed above who have been found to have contravened
the ETI/1/08, Organisation Directive 14, the “Charter of the Department of Internal Oversight Services”, Regulations 1.1 and 1.4 of the Area Staff Regulations and General Staff Circular 5/2007.

11. By a letter dated 17 March 2011, the DUA/SAR informed the Applicant of the result of the investigation’s review and provided her with an opportunity to respond to its conclusions.

12. By a letter dated 14 August 2011, the DUA/SAR served the Applicant with the following disciplinary sanctions:

…

In determining the appropriate disciplinary measures in this case, I found a number of factors support the imposition of severe disciplinary measures. Such factors include your position of responsibility and supervision as a Head Teacher, the gravity of the offense, the potential risk to other students, and the Agency’s clearly communicated policy of zero tolerance for corporal punishment.

Based on the foregoing, and pursuant to Area Staff Regulation 10.2, Area Staff Rule 110.1, Area Staff Personnel Directive A/10 and ETI 1/2008, the following disciplinary measures will be imposed against you:

(A) You will be removed from the Post of Head Teacher at Salama School;

(B) You will be demoted to a Teacher Post, including a downgrade of 2 steps at Grade 10 and loss of the Head Teacher’s allowance;

(C) This letter will serve as a written censure for misconduct and will be placed in your Official Status File;

(D) You will be suspended without pay as a disciplinary measure for a period of 3 months effective 28 July 2011;

(E) You will be given training in classroom management and communication in coordination with Staff Development Office and Education Programme.
The Agency expects that your future conduct will fully meet the requirements of an UNRWA staff member. You have the right to seek review of this decision under the provisions of Area Staff Rule 111.2.

13. By an undated letter, the Applicant requested review of the decision, asking for a second chance and stating *inter alia*:

… I mean nobody [sic] is perfect right, I’m aware of fault, mistake, foolishness, and failure, I’m full of shame at my behavior towards the situation but which one of us is perfect, so I admit I made a mistake that I should report for [name of teacher] but it is not easy to report every single situation in school we face a lot of obstacles along our day [sic] we have more than 500 girls at school, …

14. By a letter dated 9 October 2011 to the Applicant, the DUA/SAR wrote *inter alia*:

I have reviewed your case and I still find that the evidences [sic] support the decision that has been made.

15. On 27 November 2011, the UNRWA Dispute Tribunal (the “Tribunal”) received the application. On 11 March 2012, the application was transmitted to the Respondent.

16. On 10 May 2013, the Respondent filed his reply.

**Applicant’s contentions**

17. The Applicant contends the following:

(i) she has not signed any document stating that the act of unintentionally scratching someone, if it ever happened, would be sanctioned by such heavy disciplinary measures as a three-month suspension, a salary cut and a demotion;

(ii) she has been a victim of an extortion attempt by the student’s parents and they complained against her after their attempt had failed;

---

1 According to the Applicant, she requested review of the decision on 19 August 2011. In his reply, the Respondent stated that “[b]y an undated letter received by the Agency shortly after the time of the decision, the Applicant requested review of the decision”.
(iii) the nine-month investigation into a scratch took far too long.

18. The Applicant requests:

(i) reinstatement in her post as Head Teacher at the level and steps in effect at the date of the impugned decision;

(ii) distribution of a circular to everyone clearing her name;

(iii) reimbursement of her salary for the three months she was suspended without pay.

Respondent’s contentions

19. The Respondent submits that the decision to demote and suspend the Applicant without pay was properly effected.

20. The Respondent requests that the Tribunal dismiss the application.

Considerations

Preliminary Issue

21. As stated above, the Respondent filed his reply on 10 May 2013. In his reply to the application, the Respondent requested leave from the Tribunal to take part in the proceedings and to file a late reply.

22. Article 6 of the Tribunal Rules of Procedure (“Rules”) provides that the Respondent shall submit his reply within 30 calendar days from the date of the receipt of the application by the Respondent.

23. Pursuant to Article 30 of the Rules, the Tribunal has the authority to shorten or extend a time limit fixed by the Rules or waive any rule when the interests of justice so require, and under Article 14 of the Rules, the Judge may make any order or give any direction which appears to be appropriate for a fair and expeditious disposal of the case and to do justice to the parties.
24. Although not condoning the Respondent’s lack of due diligence in failing to request an extension of time to file the reply before the expiration of the 30-day time limit, the Tribunal fails to see how justice would be served if the Tribunal were to render its Judgment on the merits of the case without having the submissions of both parties, or if it were to decide the case on a mere procedural or technical issue.

25. Indeed, the United Nations Appeals Tribunal in *Bertucci* 2011-UNAT-121 noted that the principle of respect for the right to a defence and the right to an effective remedy before a judge is recognized by Article 8 of the Universal Declaration of Human Rights. Implicit in this recognition is the point that a Tribunal should exercise its discretion with caution when it comes to excluding a party from participating in the proceedings, even when the Tribunal may have the authority to do so. The Tribunal finds that it would be in the interests of justice and appropriate for a fair and expeditious disposal of the case for the Tribunal to receive the full chronicle of the case from both parties in order to render a fair and comprehensive Judgment that would do justice to the parties and to the system of administration of justice in general rather than exclude a party on a procedural basis.

26. The Tribunal notes that, since its inception, it has been working through a large backlog of cases and reviewing and deciding cases, one case at a time, generally with few exceptions, in chronological order of the date of the filing. In other words, the Applicant’s case was sitting in a queue for several months, and therefore, the late filing of the reply did not prejudice the due process rights of the Applicant.

*Main Issue*

27. At the outset, the Tribunal notes that three disciplinary measures were imposed on the Applicant by letter dated 14 August 2011, i.e. written censure, suspension without pay and demotion. However, in her application the Applicant only contested the decision to demote her and to suspend her without pay for three months. The Tribunal will thus only review these decisions.
Was the Respondent’s decision to demote and suspend the Applicant without pay for three months properly made?

28. It is important to look at the legal and administrative framework applicable in the case at bar and to the existing jurisprudence.

29. Area Staff Regulation 1.4 provides in relevant part that:

   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.

30. Area Staff Regulation 10.2 provides that:

   The Commissioner-General may impose disciplinary measures on staff members who engage in misconduct.

31. Area Staff Rule 110.1 states that:

   Disciplinary measures under staff regulation 10.2 shall consist of written censure, suspension without pay, demotion, or termination for misconduct…

32. Pursuant to Area Staff Personnel Directive A/10/Rev.1 on Disciplinary Measures, the Commissioner-General has delegated to Field Office Directors the authority to impose disciplinary measures on area staff serving in the Field.

33. With regard to demotion, Area Staff Personnel Directive No. A/10/Rev.1 provides:

   9.1 Demotion is the transfer of a staff member from his/her post to another post at a lower grade. This can arise either because of inadequate performance on the part of the staff member or as a disciplinary measure. Demotion should involve a loss of salary, but the loss may be minimised at discretion.

   9.2 A staff member may also be downgraded as a disciplinary measure while continuing to occupy the same post.

---

2 The Tribunal notes that the Respondent erroneously refers to former Area Staff Regulation 10.2. However, the applicable regulation to the present case is current Area Staff Regulation 10.2 which is in force since 1 June 2010.
34. Concerning suspension without pay, Area Staff Personnel Directive No. A/10/Rev.1 provides at paragraph 8.1:

Staff members suspended without pay as a disciplinary measure shall be relieved of their duties for the total period of suspension. During this period, no salary or allowances will be paid. Suspension without pay will not exceed 30 calendar days without the prior written approval of the Director of Personnel.

35. The Education Technical Instruction No. 1/08 ("ETI No. 1/08") on establishing discipline in a violence-free educational environment in UNRWA schools, dated July 2008, provides the following at paragraph 1.3:

g. Corporal punishment, other cruel and degrading forms of punishment and all violence against children or students are strictly forbidden in all UNRWA schools and Training Centres, at all times, and under all conditions and circumstances. This prohibition must be observed without exception by UNRWA Education Department staff.

* * *

i. Corporal punishment may take a number of forms and includes, but is not limited to, hitting, slapping, smacking, spanking, punching, kicking, pinching and causing physical discomfort to the student, …

j. Also prohibited are any forms of punishment or treatment of students that undermine their dignity, or which are degrading or humiliating. These include verbal abuse, threats of future use of physical force, the use of obscene or disrespectful language, the use of intimidating or threatening gestures and any punishment that denigrates, scapegoats, frightens or ridicules children or students.

36. Paragraph 4.1.a of ETI No. 1/08 provides that corporal punishment and other forms of violence against children or students are strictly forbidden in all UNRWA schools and Training Centres, at all times and under all conditions and circumstances.

---

3 The Tribunal notes that by an interoffice memorandum dated 4 August 2011 to the DUA/SAR, the Director of Human Resources approved inter alia the Applicant’s suspension without pay for a period of three months.
37. Paragraph 4.1.b of ETI No. 1/08 provides that, in accordance with the Agency’s Staff Regulations and Rules, corporal punishment constitutes “misconduct” and is sanctioned by disciplinary measures:

…UNRWA staff proven to have been involved in administering, aiding, or concealing corporal punishment will be liable to severe disciplinary measures as stipulated in UNRWA Staff Regulations Cod/A/59/Rev. 25 and Personnel Directive No. A/10/Rev.1. These measures include written censure, suspension without pay, demotion, termination and dismissal.

38. Paragraph 4.2.a of ETI No. 1/08 provides that:

*The duty to report incidents or allegations related to corporal punishment* lies with all Education Department staff, who have a duty to report any allegations or known incidents of corporal punishment within 48 hours of becoming aware of the alleged incident.

39. With regard to the channels for transmitting allegations of corporal punishment to the Field Office Director, paragraph 4.3.b of ETI No. 1/08 provides that:

Any staff member (Teacher Counsellor, Head Teacher, Area Education Officer, Area Officer, or any other staff member) who receives or becomes aware of allegations of corporal punishment shall forward those allegations in writing to the Field Director within 48 hours of such receipt.

40. Guided by the jurisprudence of the United National Appeals Tribunal in *Haniya* 2010-UNAT-024 and *Maslamani* 2010-UNAT-028, when reviewing a disciplinary measure the Tribunal will consider (i) whether the facts on which the sanction is based have been established, (ii) whether the established facts qualify as misconduct, and (iii) whether the sanction imposed is proportionate to the offence. However, the Tribunal notes, as held by the United Nations Appeals Tribunal in *Abu Hamda* 2010-UNAT-022, that:

As a normal rule Courts/Tribunals do not interfere in the exercise of a discretionary authority unless there is evidence of illegality, irrationality and procedural impropriety.
Have the facts on which the sanction was based been established?

41. Looking at the record in the file, the Tribunal finds that the facts on which the disciplinary measures were based have been established.

42. As discussed at length above, a Board of Investigators was duly established with terms of reference in early November 2010 by the DUA/SAR to investigate allegations of corporal punishment brought up by a student’s parents against the Applicant in early November 2010. The Board of Investigators was comprised of the Field Administration Officer and the Public Information Officer. With regard to the allegations, the Investigators interviewed the student victim (the “student”), the Applicant, several witnesses (another student, numerous teachers, a dentist, a nurse, the Head Teacher of another school, the Area Education Officer) and the teacher who allegedly also exercised corporal punishment against the student.

43. The Investigators set out their findings and conclusions establishing that corporal punishment had been exercised by the Applicant against the student based on *inter alia*:

- the testimony of a student who had witnessed the punishment,
- the marks on the chest of the student seen by several witnesses,
- the admission of the Applicant when she talked to the student’s mother and said that she might have scratched the student by mistake,
- the marks of slaps on the face of the student observed by a witness and
- the fact that the Applicant did not report the alleged corporal punishment exercised by another teacher against the student when she became aware of such allegations.

The Investigators recommended appropriate action be taken with regard to the Applicant.

44. On 2 March 2011, an Agency consultant investigator was requested to review the evidence collected by the Investigators. The statements of all witnesses
were translated into English, and a detailed examination by the consultant investigator was undertaken of everything that had been said with regards to the allegations of corporal punishment. On 15 March 2011, the consultant investigator submitted a review of the report of investigation. The findings of the review report confirmed that the Applicant had exercised physical violence against the student, causing scratch injuries to her chest, and that the Applicant had attempted to cover up the incident by putting pressure on the student to have her lie to her parents about it. The report also confirmed that the Applicant was aware, by her own admission, of an incident of corporal punishment against the student by a teacher and had failed to report it. It was only when the parents of the student complained, that the Applicant blurted out indignantly that they should also complain against a teacher who exercised corporal punishment against the student.

45. As summarised below, the record evidences that the Applicant has contravened the provisions of ETI No. 1/08 and Area Staff Regulation 1.4 in the following manner:

- the injuries caused by the Applicant on the student’s chest when she reached out to grasp her and pull her into the office, causing her pain and injury, led to the conclusion that they were inflicted in an act of violence;

- the Applicant’s treatment of the student was degrading and humiliating;

- the Applicant, by attempting to cover up the incident, requesting the student not to say anything to her family about how she got her injuries and to lie to them about the causes of injuries to her chest (and the student did lie to her family), violated the Applicant’s duty of integrity;

- the Applicant admitted (during the investigation and in her request for decision review) to have known about a case of corporal punishment by a teacher in her school and not to have promptly reported it to the Field Director, as was her duty.

**Do the facts amount to misconduct?**

46. The establishment of the facts regarding (i) the Applicant exercising physical violence against a student, (ii) the Applicant treating the student in a threatening and degrading manner, (iii) the Applicant’s attempt to cover up the incident, and (iv) the Applicant failing to report corporal punishment exercised by a teacher as required under ETI No. 1/08 to the Field Director, supports the
characterisation of misconduct on the part of the Applicant, and merits disciplinary measures. The Applicant is reminded that ETI No. 1/08 states *inter alia* that staff proven to have been involved in administering, aiding, or concealing corporal punishment will be liable to severe disciplinary measures as stipulated in UNRWA Staff Regulations Cod/A/59/Rev.25 and Personnel Directive No. A/10/Rev.1.

47. Noting that the “Administration is not required to prove its case beyond reasonable doubt”, as affirmed by the former United Nations Administrative Tribunal in Judgment No. 1022, *Araim* (2001), paragraph V, the Tribunal finds that:

- the Respondent duly exercised his broad discretionary authority with regard to disciplinary matters,

- the facts established the Applicant’s exercise of physical violence against a student, the Applicant’s lack of integrity in putting pressure on the student to lie to her parents about her injuries, her attempt to cover up the incident and her failure to report the allegations of corporal punishment committed by another teacher, and

- that these facts legally support the determination of misconduct on the part of the Applicant.

48. As evidenced in the record, the DUA/SAR had before him sufficient evidence to support the conclusion that the Applicant’s actions as described above clearly amounted to misconduct. The Tribunal also finds that in applying disciplinary measures against the Applicant (demotion from Head Teacher to Teacher with downgrading of two steps at Grade 10 and suspension without pay for three months), the Agency complied with the requirements of Area Staff Regulation 10.2, Area Staff Rule 110.1, Area Staff Personnel Directive No. A/10/Rev.1 and ETI No.1/08.

Was the Respondent’s decision exercised arbitrarily, motivated by prejudice or flawed by procedural irregularity or error of law?

49. The question to ask now is whether the Respondent’s decision to demote and suspend the Applicant without pay for three months was exercised arbitrarily
or capriciously, was motivated by prejudice or other extraneous factors, or was flawed by procedural irregularity or error of law, as held in Assad 2010-UNAT-021.

50. The record in the file indicates that the Agency upon hearing about allegations of corporal punishment, duly established a Board of Investigators and took into account all the relevant facts of the case and accorded the Applicant the opportunity to rebut the allegations against her during her interview with the Investigators as well as upon the conclusion of the investigation. The Agency also had a consultant investigator review thoroughly the evidence collected by the Investigators and gave due consideration to his 36-page review report; and in addition, the Agency afforded the Applicant the opportunity to respond to the findings and conclusions of this report. The evidence demonstrates that the DUA/SAR took into account the Applicant’s comments before the decision was made to demote and suspend her without pay. The Tribunal thus considers that the Applicant was given due process and that there was no procedural irregularity in this respect.

51. The Tribunal thus fails to see any improper motivation or procedural error in the sequence of steps which led to the disciplinary measures against the Applicant. The Tribunal refers to the jurisprudence of the former United Nations Administrative Tribunal Judgment No. 834, Kumar (1997) which clearly states that the Applicant bears the burden of proof and must produce convincing evidence that the contested decision was tainted by improper motivation or other extraneous factors. The Applicant has failed to produce such evidence about the investigation and the disciplinary measures imposed on her.

52. The Applicant contends that the investigation took nine months, which she claims was too long. The Tribunal notes that the Board of Investigators was established in November 2010, the same month the allegations of corporal punishment were received by the Agency. Although it is unfortunate that the investigation report of the Investigators was undated, a review of the investigation report was filed three and a half months later, in March 2011. Contrary to what the Applicant claims, the Tribunal finds that there was no delay on the part of the
Agency to conduct an investigation and to have the evidence and the investigation report thoroughly reviewed by a consultant investigator.

53. The Applicant also contends that she has been a victim of an extortion attempt by the student’s parents and that they complained against her only after their attempt had failed. As evidenced in the record, the delay in reporting the incident initially stemmed from the action of the Applicant in pressuring the student to lie to her family about the circumstances of the injury and to tell them that the injuries were caused by other girls at school. Also, the student requested that her parents not go to the school to ask about her injuries until after the exams and the celebration of a major religious holiday. The Tribunal equally notes that the Applicant has failed to provide evidence of an attempted blackmail. As unsubstantiated allegations are easy to make but difficult to defend, the burden of proving such prejudice rests with an applicant, as held by the former United Nations Administrative Tribunal in Judgment No. 93, *Cooperman* (1965).

**Was the sanction proportionate to the offence?**

54. As held by the United Nations Appeals Tribunal in *Sanwidi* 2010-UNAT-084, the principle of proportionality means that an administrative action should not be more excessive than is necessary for obtaining the desired result. The requirement of proportionality is satisfied if a course of action is reasonable, but not if the course of action is excessive. The United Nations Appeals Tribunal also held in *Aqel* 2010-UNAT-040 that the level of sanction falls within the ambit of the Administration and can only be reviewed in cases of “obvious absurdity or flagrant arbitrariness”.

55. When considering proportionality, the Tribunal takes special note of the nature of an applicant’s post, as held by the United Nations Appeals Tribunal in *Haniya* 2010-UNAT-024. As Head Teacher, the Applicant was entrusted with the duty to promote an environment in the school that supports effective teaching and learning and that is free of violence. The Applicant should not have set a bad example and should not have turned a blind eye when she knew, according to her own admission, that a teacher at the school had practiced corporal punishment. As
held by the United Nations Appeals Tribunal in *Abu Jarbou* 2013-UNAT-292 at paragraph 42:

The position of trust and responsibility [the Appellant] held as Principal of the Center is of primary importance to our consideration of proportionality. …, a manager and supervisor is in a position of leadership and is supposed to be a role model for the staff members he supervises.

56. The Tribunal finds that the DUA/SAR was justified in stating in his letter dated 14 August 2011 to the Applicant that:

In determining the appropriate disciplinary measures in this case, I found a number of factors support the imposition of severe disciplinary measures. Such factors include your position of responsibility and supervision as Head Teacher, the gravity of the offense, the potential risk to other students, and the Agency’s clearly communicated policy of zero tolerance for corporal punishment.

57. As the facts on which the sanction was based have been established, as the Applicant has been properly found to have engaged in misconduct and as the decision to demote her and to suspend her without pay for three months was not flawed by arbitrariness or error of law, the Tribunal is of the opinion that the disciplinary measures imposed on the Applicant were not so disproportionate or unwarranted as to amount to an injustice.

*Is there any legal basis to the relief sought by the Applicant?*

58. Considering that:

(i) the facts on which the disciplinary measures were based have been established;

(ii) the facts legally amount to misconduct;

(iii) the disciplinary measures were proportionate to the offence;

(iv) the discretionary authority of the Respondent was not exercised arbitrarily, nor tainted by evidence of improper motivation nor flawed by procedural irregularities or error of law,
the Tribunal finds that the relief sought by the Applicant has no basis in fact or in law.

**Conclusion**

59. For the reasons provided above, the application is dismissed.

(Signed)

Judge Bana Barazi

Dated this 23rd day of September 2013

Entered in the Register on this 23rd day of September 2013

(Signed)

Laurie McNabb, Registrar, UNRWA DT, Amman