Before: Judge Bana Barazi

Registry: Amman

Registrar: Laurie McNabb

LATIF

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 (DLA)
Introduction

1. This is an application by Lina Latif (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 impose on her the disciplinary measure of a Letter of Censure.

Facts

2. On 10 December 2002, the Applicant commenced her service with the Agency as a Credit Extension Assistant, Grade 9, Step 1, in the “Microfin. & Microent. Prog - Branch Office Wihdat”, in the Jordan Field Office (“JFO”).

3. At the time of the application, the Applicant was employed as a Project Development Officer, Grade 12, Step 13, in the Relief and Social Services Programme in JFO.

4. On 14 August 2013, a theft at the Sukhneh Women’s Programme Centre (“WPC”) was reported to the Deputy, Relief and Social Services Programme in the JFO.

5. On 25 August 2013, the Agency informed the Applicant that the Director of UNRWA Operations, Jordan (“DUO/J”) had appointed a Board of Inquiry (“BoI”) to investigate allegations against her, namely that she had neglected her supervisory duties at the WPC. A social worker and a second Project Development Officer were also investigated.

6. On 24 December 2013, the Applicant was interviewed by the BoI.

7. On 3 April 2014, the Associate Legal Officer, JFO wrote to the Applicant stating in relevant part that:

   The findings of the investigation reflect that there is corroborated evidence that you have neglected your supervisory role.

   […]

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However, the investigation found no evidence supporting the allegation that you were complicit in committing the fraud at Sukhneh Women’s Programme Centre.

The findings can be construed as misconduct in violation of the Agency Rules and Regulations.

In accordance with UNRWA’s rules and procedures, responding to the Agency’s intentions and responsibility to ensure due process and achieve a fully informed and fair decision, you are hereby, provided with an opportunity to respond to the findings of the mentioned investigation.

8. On 13 April 2014, the Applicant replied to the Agency, stating *inter alia:*

In regard to the fact that I did not check the “First Beneficiary Only” stamp, this procedure is not checked by any employee in the Credit Program[me] whether in the administration or in all cent[res] although this is a requirement in the internal policies and procedures. It has not been practically followed since the creation of the Program[me] […] Accordingly, any action that will be taken against me must be imposed on all staff in the Program[me] […] The fact that the Loan Officer in Al-Sukhna took advantage of this gap does not mean that I am the person who neglected their duties. Everybody made the same mistake but negligence occurred in one of my cen[tres].

9. On 24 September 2014, the Applicant received a Letter of Censure stating in relevant part:

Having carefully reviewed the report of this investigation, your Personnel File and your response to the “Due Process Letter”, it has been concluded that you are guilty of misconduct [for] your Failure to Comply with Professional Standards. In particular, it was found that you neglected your supervisory duties.

10. On 2 October 2014, the Applicant filed a request for decision review.

11. On 2 November 2014, the DUO/J replied to the Applicant informing her that upon investigation she had been found “guilty of misconduct for failure to comply with professional standards” and stating in relevant part:

[…] In light of the above, I find the decision to serve you with a letter of censure in line with the Agency’s Rules and Regulations and should stand.
12. On 30 December 2014, the Applicant filed an application with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on that same day.

13. On 20 January 2015, the Respondent filed a motion for extension of time to file his reply. There was no objection by the Applicant.


15. On 13 February 2015, the Respondent filed his reply.

16. By Order No. 050 (UNRWA/DT/2015) dated 10 May 2015, the Tribunal ordered the Respondent to translate his reply from English into Arabic on or before the close of business on 10 June 2015.

17. On 8 June 2015, the Respondent submitted the translation, which was forthwith transmitted to the Applicant.

18. By Order No. 111 (UNRWA/DT/2015) dated 13 October 2015, the Tribunal ordered the Respondent to produce a copy of the signed version of Annex 17 (the Report of Investigation), or alternatively, to provide the Tribunal with an explanation as to why there was no signature page on Annex 17.

19. On 15 October 2015, the Respondent produced a legible cover page of the Report of Investigation as Annex 19, which clearly identified the signatures of the investigators.

20. By Order No. 120 (UNRWA/DT/2015) dated 19 November 2015, the Tribunal ordered the Respondent to produce a copy of the “Internal Control Policies and Procedures for the Community Managed Fund Scheme” as it was referenced in his reply, but not annexed in accordance with General Staff Circular No. 01/2014. The Respondent was ordered to produce the document within 24 hours of receipt of the Order. The Respondent complied with the Order, submitting Annex 18.
Applicant’s contentions

21. The Applicant contends:

   (i) The principle of gradual disciplinary measures was not observed because she received a Letter of Censure that was not preceded by a written or oral notice;

   (ii) The fact that she was investigated is proof that the Administration wanted to convict her before learning the details of the situation;

   (iii) None of the loan programme centres observed the requirement to affix the “For First Beneficiary Only” stamp;

   (iv) She was “fully ignored” in all meetings and correspondence about the WPC fraud inquiry;

   (v) Similar incidents occurred in other centres but they were not referred to the Department of Legal Affairs;

   (vi) The Agency did not respect her maternity leave when it sent her the findings of the investigation and required her to respond within 14 days; and

   (vii) The details of the case were not given due consideration.

22. The Applicant requests that the Tribunal order the Agency to withdraw the Letter of Censure and that she be accorded equal treatment with her colleagues who committed a similar mistake but were not sanctioned.

Respondent’s contentions

23. The Respondent contends:

   (i) The decision to censure the Applicant was properly effected; and

   (ii) The remedies sought by the Applicant have no legal basis.
24. The Respondent requests that the Tribunal dismiss the application in its entirety.

Considerations

Was the Respondent’s decision to impose on the Applicant the disciplinary measure of a Letter of Censure made pursuant to the relevant Regulations and Rules?

25. It is important to review the regulatory and administrative framework applicable in the case at bar and the relevant jurisprudence.

26. 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.

27. Area Staff Regulation 10.2 states:

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

28. Area Staff Rule 110.1 states that:

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

29. Pursuant to Personnel Directive No. A/10/Rev.1 ("PD A/10") on Disciplinary Measures, which was in effect at the relevant time, the Commissioner-General had delegated to Field Office Directors the authority to impose disciplinary measures on Area Staff serving in the Field.

30. With regard to written censure, PD A/10 provided:

   7.1 A written censure is a letter addressed to a staff member in which he/she is advised of serious shortcomings in behavior. The necessity for a written censure may arise from a single incident or from repeated verbal or written reprimands to a staff member. A written censure may or
may not be combined with suspension without pay or
demotion, as circumstances warrant.

7.2 A written censure contains a warning that, if no improvement is forthcoming (if necessary within a period of time), other disciplinary or administrative action (e.g. transfer to another post) may be taken.

31. PD A/10 also provided that:

4.1 Disciplinary measures will normally be imposed for wilful misconduct, irresponsible conduct, or wilful failure to perform assigned duties or to carry out specific instructions.

[…] Disciplinary measures should normally be imposed in a progressive fashion as outlined in Paragraph Six below. However, the specific disciplinary action need not follow the programme sequence as outlined but will depend on the particular circumstances of the case.

32. Also relevant to the present case are the Internal Control Policies and Procedures for the Community Managed Fund Scheme at section 2.3 stating in relevant part:

 […] The file should contain the following information: […] a] copy of the cheque (with the original to be prepared by the Cashier in favour of the borrower, with “First Beneficiary Only” stamp, with the signature of an authorized signatory).

[…] 4.7 It is recommended for all disbursed loans to be issued through cheques stamped with “First Beneficiary Only”, in favour of the beneficiary.

4.8 All cheques should be stamped “First Beneficiary Only”, except in limited cases. In such cases, cheques could be endorsed if the client has a disability, an illness or is aged. Specific cases can only be approved upon the review of management.

33. As held by the former United Nations Administrative Tribunal in Judgement No. 1321 (2007), paragraph IX:
The Tribunal wishes to affirm, once again, that it is within the discretionary authority of the Secretary-General to decide whether a staff member has met the standards of conduct laid down in the Charter and the Staff Regulations & Rules.

34. Guided by the jurisprudence of the United Nations Appeals Tribunal (the “UNAT”) 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 legally amount to misconduct; and (iii) whether the sanction imposed is proportionate to the offence. However, as held by the UNAT in *Abu Hamda* 2010-UNAT-022, the Tribunal notes 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.

**Whether the facts on which the sanction was based have been reasonably established**

35. The Tribunal recalls that a preliminary investigation was conducted following the Area Relief and Social Services Officer’s written report that documents had been stolen from the WPC. The preliminary investigation revealed that a WPC Volunteer Loan Officer (the “Fraudster”) had committed fraud by taking approximately 11,000 Jordanian Dinars[^1] in falsified loans. A BoI was established to investigate, among other things, the Fraudster’s allegations that the Applicant had neglected her supervisory duties.

36. The BoI consisted of two persons who were authorized to gather evidence and interview witnesses, while scrupulously observing the general principles of fairness, due process and relevant UNRWA rules and procedures and maintaining strict confidentiality. Their Terms of Reference were as follows:

1. Review thoroughly the preliminary information received regarding the allegations;
2. Provide a description of all relevant facts and circumstances surrounding the allegation[s] made against

[^1]: Approximately USD15,502.
the Subjects, and establish whether there is reason to believe or evidence exists as to whether the Subject[s] committed the alleged misconduct; [and]

(iii) Establish whether there are other instances of non-[-]compliance with UNRWA’s Staff Regulations, Rules and any other relevant provision within the Agency’s regulatory framework[.]

Four witnesses, including the Applicant, were interviewed. A concise, thorough and well drafted report of the witness statements, including recommendations, was provided to the Agency.

37. As evidenced in the record, the Fraudster signed a confession stating that she had been committing fraud since 2011. The record also indicates that the manager (the Applicant) allowed the fraud to happen by failing to require her staff to stamp “For the First Beneficiary Only” on loan cheques issued to beneficiaries. The absence of such a stamp – due to the Applicant’s failure to supervise her staff – enabled the Fraudster to embezzle approximately USD15,500 from the WPC over the course of several years.

38. It is important to note that the Applicant has not denied, at any time, that she failed to exercise her supervisory role, i.e. to ensure that the proper procedure for the issuance of loan cheques to beneficiaries was followed. Also important to note is that the Applicant signed a paper stating that she had received a copy of the Internal Policies and Procedures for the Community Managed Fund Scheme, produced by the Respondent in Annex 18, and that she had participated in training sessions and workshops on these policies.

39. The Tribunal recalls that when it comes to reasonably establishing the facts on which disciplinary measures are based, the former United Nations Administrative Tribunal held in Judgement No. 1022, Araim (2001), at paragraph V stated:

[T]he Administration is not required to prove its case beyond reasonable doubt. It has only to present adequate evidence in support of its conclusions and recommendations. Adequate means “reasonably sufficient for legal action” […] in other words sufficient
facts to permit a reasonable inference that a violation of law had occurred.

See also Molari 2011-UNAT-164 at paragraph 29.

40. Based on the above, the Tribunal finds that the Agency exercised due diligence when it launched an investigation and concluded that the facts upon which the sanction was based had been reasonably established.

**Whether the established facts qualify as misconduct**

41. By letter dated 3 April 2014, the Applicant was informed that the investigation found no evidence to support the allegation that she was complicit in the commission of the fraud at the WPC. However, the evidence established that the Applicant had neglected her supervisory role by not checking the “First Beneficiary Only” stamp on the cheques issued by the WPC, despite the Applicant being aware of the Internal Control Procedures.

42. As noted earlier, the Applicant confirmed that she was aware of relevant policies that were in place in order to avoid fraud. In fact, the Applicant stated that she had read the Guidelines and Internal Control Procedures, although not in detail, “because there are a lot of written procedures but they are not applied and […] no one reads them”. Moreover, her response that other such frauds have been committed in all other centres does not relieve her of her responsibilities. Her explanation confirms that she does not appreciate her supervisory role, and that she takes her professional responsibilities lightly and has yet to grasp the gravity of her unprofessional conduct.

43. The Applicant contends that she has reported problems in other centres. However, she has not submitted any evidence to support this contention. Rather, the Applicant has annexed a considerable amount of cheques from other centres not bearing the required stamp in order to prove that the proper procedure was not followed in other centres as well. The Tribunal is wondering whether the Applicant thinks that many wrongs make a right. It does not seem that the Applicant – who had received a Letter of Reprimand in July 2009 for neglect of her supervisory duties much prior to the incident at issue in this case – has learned
from her past experience. Based on the above, the Tribunal finds that the established facts qualify as misconduct.

*Whether the Respondent’s decision to impose on the Applicant the disciplinary measure of a Letter of Censure was so disproportionate or unwarranted as to amount to an injustice*

44. When considering proportionality, and while recognizing the Commissioner-General’s broad discretionary power in relation to disciplinary matters, the Tribunal takes special note of the nature of the Applicant’s post. Referring to the conduct of a staff member, the UNAT in *Haniya 2010-UNAT-024* held at paragraph 34:

> His misconduct is particularly grave in light of the position he held, and the responsibilities he was entrusted with.

45. At the time of the impugned decision, the Applicant was a Project Development Officer. Her conduct – neglecting her supervisory duties – was all the more serious as she had supervisory duties. Her conduct caused a substantial financial loss to the Agency when the money could have helped needy refugees.

46. The Tribunal would like to recall that the imposed disciplinary measure of a written censure is the least severe measure that the Agency can impose on a staff member. Such a sanction, as set out in Article 7.1 of PD A/10, may arise from a single incident. Furthermore, there exists no obligation to give notice or a warning to the staff member before imposing a Letter of Censure, as the Applicant claims.

47. Having determined that the facts on which the sanction was based have been properly established, that they legally support the characterisation of misconduct on the part of the Applicant, and bearing in mind the jurisprudence on proportionality, the Tribunal finds that the sanction of imposing on the Applicant the disciplinary measure of a Letter of Censure was not so disproportionate as to amount to an injustice.
Whether the Respondent’s decision was exercised arbitrarily, motivated by prejudice or flawed by procedural irregularity or error of law

48. As held in Asaad 2010-UNAT-021, the question to ask now is whether the Respondent’s decision to impose on the Applicant a Letter of Censure was exercised arbitrarily or capriciously, was motivated by prejudice or other extraneous factors, or was flawed by procedural irregularity or error of law.

49. The Applicant contends that the details of the case were not given consideration. The UNAT has held that the party who alleges a fact bears the burden of proving its veracity.² The Applicant is also reminded that she bears the burden of proof and must produce convincing evidence that the Respondent’s decision was tainted by improper motivation or other extraneous factors, as she has claimed in her application.

50. Looking at the record, the Tribunal finds that the Applicant’s allegation is unsubstantiated. The record confirms that the Agency acted diligently upon receiving a written report by a Social Worker that documents had been stolen from the WPC. As evidenced in the record, the theft was reported to the Deputy, Relief and Social Services Programme. Next, a preliminary investigation into these allegations of fraud and departures from UNRWA standards of conduct was undertaken, which led to the establishment of a BoI.

51. When the Applicant was given the opportunity via a “Due Process” letter to rebut the allegations and findings of the BoI, she simply reiterated that all centers fail to check the “First Beneficiary Only” stamp and that everyone should be held responsible. As for her contention that she should not have been singled out for disciplinary sanction and her case should not have been referred to the Department of Legal Affairs, the Applicant is reminded that this application is about her and not about the other staff members or supervisors who have allegedly failed to comply with professional standards. The Applicant is reminded that it is very important that she take responsibility for her conduct and the consequences thereof.

² See also Azzouni 2010-UNAT-081 and Hepworth 2011-UNAT-178.
52. Lastly, the Applicant contends that because she was the subject of an investigation, this is proof of the Administration’s intent to convict her before knowing any details. The Tribunal would like to remind the Applicant that an investigation is precisely the objective way to establish facts that would either confirm or rebut the allegations made against a staff member. The Tribunal finds the Applicant’s conclusion quite irrational. As for her claim that she was ignored in all meetings and correspondence, the record indicates that the Applicant was informed of the allegations against her and of the investigation, and she was given a “Due Process” Letter, which allowed her to rebut the findings of the BoI.

53. The UNAT’s holding in Liyanarachchige 2010-UNAT-087 sought to ensure that an Applicant’s due process rights are respected in the process i.e. that the Applicant was afforded the proper procedures and access to information to mount a defence. Upon reviewing the record, the Tribunal is satisfied that by providing the Applicant with the unredacted BoI report, she had all the relevant information before her to mount a defence and to challenge the findings of the BoI report. Based on the above, the Tribunal finds that the Agency afforded due process to the Applicant.

54. After careful review of the file, the Tribunal holds that the Applicant has failed to provide any evidence – convincing or otherwise – of the Respondent’s allegedly improper motivation or prejudice in imposing on her the disciplinary measure of a Letter of Censure.3 The Tribunal does not find in the record any evidence of procedural irregularities, bias, arbitrariness or error of law.

*Is there any legal basis for the Applicant’s request for relief?*

55. The Applicant has requested withdrawal of the Letter of Censure. Having determined that:

- The facts on which the disciplinary measure, i.e. the Letter of Censure, was based have been reasonably established;

- The facts legally support the characterisation of misconduct;

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3 As held by the former United Nations Administrative Tribunal in Judgement No. 834, *Kumar* (1997).
- The disciplinary measure was proportionate to the offence; and

- The Respondent’s discretionary authority was not tainted by any evidence of procedural irregularity, prejudice or other extraneous factors, or error of law;

the Tribunal finds that the Applicant’s request for relief has no basis in fact or in law.

Conclusion

56. Given all the above, the application is dismissed in its entirety.

(Signed)
Judge Bana Barazi
Dated this 29th day of November 2015

Entered in the Register on this 29th day of November 2015

(Signed)
Laurie McNabb, Registrar, UNRWA DT, Amman