ATTALLAH

v.

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

JUDGMENT

Counsel for Applicant:
Amer Abu-Khalaf (LOSA)

Counsel for Respondent:
Lance Bartholomeusz (DLA)
Introduction

1. This is an application by Kawkab Attallah (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 transfer her from the Community Development Social Worker position to the Relief Social Worker position in Wehdat Camp.

Facts

2. Effective 1 March 2005, the Applicant entered service with the Agency as a Social Worker at Grade 9, Step 1, on a fixed-term appointment expiring on 28 February 2008. The Applicant’s fixed-term appointment was renewed for three more years on 24 December 2007, and for another three years on 11 January 2011.

3. In September 2011, the Applicant started supervising the Community Based Rehabilitation Centre and the Women Programmes Centre, the so-called Community Based Organisations (“CBOs”). These CBOs were managed by a Local Administrative Committee (“LAC”).

4. In January 2012, the Applicant started communicating to her supervisors that she was excluded from meetings and that she had suspicions of fraud. On 24 January 2012, she submitted to her supervisors examples of non-matching deposit slips and cash receipts.

5. On 26 February 2012, the Applicant informed the UNRWA Women Programme Officer that the LAC had decided not to renew the contract of the Director of the Women Programmes Centre and that all financial affairs would now be handled by the LAC. The Applicant indicated that she did not support this decision.

6. On 17 April 2012, the Applicant informed her overall supervisor, the Field Social Services Officer (“FSSO”), that she again had been excluded from a meeting and that certain decisions had been taken which should not have been taken in the absence of the Applicant as a representative of the Agency.

7. On 17 June 2012, the Applicant submitted to her technical and administrative supervisor, the Area Registration and Social Services Officer (“ARSSO”), several complaints she had
received from people claiming that they never received receipts upon payment of services delivered at the CBOs.

8. By email of 6 August 2012, the Chief Area Office, South Amman (“CAO/SA”) requested the Chief Relief and Social Services Programme, Jordan (“CRSSP/J”) to address four complaints of beneficiaries, brought to his attention by the Applicant. The FSSO responded on 5 September 2012, clarifying three of the four complaints. Subsequently the CAO/SA, by email of 9 September 2012, declared that the matter had been thoroughly investigated and that there was no evidence of corruption. In response to this email, on the same day, the ARSSO noted that the fourth complaint, which had not been properly clarified by the FSSO, was a “clear example of corruption within the LAC and its functions”.

9. In November 2012, a meeting took place with the CAO/SA, the ARSSO, the FSSO and the Applicant. In this meeting it was agreed that the Applicant would interfere less and cooperate more with the CBOs and the LAC.

10. On 22 April 2013, the ARSSO contacted the CRSSP/J via email as she had been notified that the Applicant was no longer welcome at the CBOs and the LAC. The ARSSO expressed her concern about the situation to the CRSSP/J.

11. On 8 May 2013, a meeting was held with the CAO/SA, the ARSSO and the FSSO to discuss the Applicant’s situation. A possible transfer of the Applicant was discussed; however, the ARSSO had objected to a transfer of the Applicant.

12. On 9 May 2013, the ARSSO followed up on this meeting with the CRSSP/J via email, stating her firm disapproval of the way the Agency was managing the situation.

13. On 2 June 2013, the Applicant filed a complaint with the Director of UNRWA Operations, Jordan (“DUO/J”). The complaint was directed against the FSSO for not supporting her and not taking any action following her hostile dismissal from the CBOs and LAC.

14. On 12 August 2013, the Acting Director of UNRWA Operations, Jordan (“A/DUO/J”) replied to the Applicant’s complaint explaining that her complaint had been discussed with the FSSO and that aspects of the Applicant’s complaint highlighted the challenge of the legal
relationship between the CBOs and the Agency. Furthermore, the Applicant was encouraged to work in a positive manner with all parties involved.

15. On 29 September 2013, the Applicant was informed of the decision of the CRSSP/J to transfer her to the position of Relief Social Worker in Wehdat Camp.

16. On 2 October 2013, the Applicant wrote to the CRSSP/J stating that she objected to the decision, claiming that the transfer was punitive. The CRSSP/J responded on 9 October 2013, indicating that the transfer decision was not punitive but made to prevent further escalation of the situation between the Applicant, the LAC and the CBOs.

17. On 2 October 2013, the Applicant wrote to the Ethics Office, complaining that the decision to transfer her was “prejudiced”. The Ethics Office replied on 9 October 2013 that the transfer procedure could not be considered as retaliatory since it happened after the response of the A/DUO/J to the Applicant’s complaint, and after investigations had been conducted by the Jordan Field Office.

18. On 10 October 2013, the Applicant submitted a request for decision review to the A/ DUO/J. On 29 October 2013, the Applicant received a response stating that there were no new facts justifying a change of the contested decision.

19. On 18 December 2013, the Applicant filed an application with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on 22 December 2013. The Respondent submitted his reply on 20 January 2014.

20. On 8 March 2015, by Order No. 023 (UNRWA/DT/2015), the Tribunal ordered the Respondent to produce ex parte any unredacted reports, studies or preliminary assessment that were performed in relation to the Applicant’s complaint. The Respondent submitted his response on 19 March 2015.

21. On 19 April 2015, the Applicant filed a motion to submit new evidence. On 29 April 2015, by Order No. 047 (UNRWA/DT/2015), the Tribunal granted the motion. The Applicant submitted new evidence on 4 May 2015; this new evidence was transmitted to the Respondent on the same day.
Applicant’s contentions

22. The Applicant contends that:

(i) The decision to transfer her was arbitrary;
(ii) The transfer was retaliatory as she had submitted a complaint against the FSSO;
(iii) The transfer was a disciplinary measure as she did not approve or desire to be transferred;
(iv) She was not protected, but humiliated and intimidated, when she had notified the Agency of the breaches committed by the CBOs and LAC; and
(v) When her replacement was appointed, the Agency did not follow the proper procedure.

23. The Applicant requests:

(i) An official apology by the Relief and Social Services Department;
(ii) Rescission of the decision to transfer her; and
(iii) Financial compensation for humiliation, shock and distress.

Respondent’s contentions

24. The Respondent contends that:

(i) The decision to transfer the Applicant was properly effected, in accordance with the legal framework;
(ii) The Agency has broad discretionary authority in assigning its employees;
(iii) The Applicant has not submitted evidence that the decision to transfer her was arbitrary, capricious or retaliatory;
(iv) There is no requirement for the Agency to obtain consent from the staff member before the decision to transfer him/her is made;
(v) The transfer decision was taken because of the bad relationship between the Applicant and the LAC;
(vi) The transfer was not detrimental to the Applicant as she was transferred within the same compound and there was no change of salary, grade or step;
(vii) The transfer was not a disciplinary measure as transfer is not listed in the framework as a disciplinary measure, and the transfer did not involve any injury to the Applicant such as loss of salary;

(viii) There is no legal basis for a request for an apology; and

(ix) The Applicant failed to submit evidence that there was a direct link between the stress and anxiety she suffered, as indicated in the medical report, and the decision to transfer her.

25. The Respondent requests the Tribunal to reject each and all of the Applicant’s pleas and dismiss the application in its entirety.

Considerations

Transfer decision

26. The contested decision is the decision to transfer the Applicant from the Community Development Social Worker position to the Relief Social Worker position in Wehdat Camp.

27. Area Staff Regulation 1.2 provides:

   Staff members are subject to the authority of the Commissioner-General and to assignment by him to any of the activities or offices of the Agency in or outside the area of its operations. The Commissioner-General may establish special conditions of service for staff members assigned to any of the activities or offices of the Agency outside its area of operations. Staff members are responsible to the Commissioner-General in the exercise of their functions. The whole time of [sic] staff members shall be at the disposal of the Commissioner-General, who will establish a normal working week.

28. With regard to transfer decisions, Area Staff Regulation 4.3 stipulates:

   Due regard shall be paid in the appointment, transfer and promotion of staff to the necessity for securing the highest standards of efficiency, competence and integrity.

29. The Applicant claims that she considered her transfer to be a disguised disciplinary measure. The Respondent submits that the transfer decision was taken in the interest of the Agency.
30. Although mindful of the Commissioner-General’s broad discretionary authority in his application of the Agency’s Staff Regulations and Rules, the Tribunal nevertheless also considers that this discretionary authority is not unfettered and the Tribunal will not interfere with it unless the contested decision was arbitrary or capricious, motivated by prejudice or extraneous factors, or was flawed by procedural irregularity or error of law.

31. The evidence in the case file shows that, the Applicant started supervising the CBOs in September 2011. In January 2012 she started communicating to her supervisors that she was excluded from meetings and that she had suspicions of fraud at the CBOs and the LAC. Furthermore, the Applicant sent to her supervisors several emails in February, April, June and August 2012, incorporating complaints of beneficiaries and expressing her concern about fraud and corruption. It is clear to the Tribunal that the Applicant was trying to do her job when she informed the Agency about the facts she had discovered.

32. It is not contested that the Agency investigated the facts and that, in November 2012, a meeting took place with the CAO/SA, the ARSSO, the FSSO and the Applicant. In this meeting it was agreed that the Applicant would “interfere less and cooperate more” with the CBOs and the LAC.

33. However, on 22 April 2013, the ARSSO contacted the CRSSP/J via email as she had been notified that the Applicant was no longer welcome at the CBOs. ARSSO expressed her concern about the situation. In the meeting that was held on 8 May 2013 with the CAO/SA, the ARSSO and the FSSO discussed the situation. A possible transfer of the Applicant was discussed; however, the ARSSO had objected to a transfer of the Applicant. On 9 May 2013, the ARSSO had followed up on this meeting with the CRSSP/J via email, stating her firm disapproval of the way the Agency was managing the situation.

34. On 29 September 2013, the Agency chose to transfer the Applicant. The Tribunal considers that, in doing so, the Commissioner-General exercised his discretionary authority properly. The Agency had the choice between keeping the Applicant in the position which obviously created a lot of problems with the CBOs and the LAC, or to transfer her. In this sort of difficult management decision the control of the Tribunal must be minimal and it cannot substitute its
own appreciation for the Agency’s appreciation of the situation. The Tribunal considers that the transfer was in the interest of the Agency and, contrary to the Applicant’s allegation, the Tribunal holds that the transfer decision cannot be considered as a disguised disciplinary measure.

35. The record indicates that the transfer did not affect the Applicant’s contractual rights, conditions of employment or salary. Furthermore, in order to avoid any undue hardship to the Applicant, the transfer was made to a position in the same compound.

36. When the Applicant claims that the transfer decision was retaliatory because she filed a complaint against the FSSO, the Tribunal recalls that the evidence in the case file shows that the option of a transfer was discussed already before the Applicant had submitted her complaint against the FSSO. For this reason the Tribunal finds the decision was not retaliatory. Therefore, the Tribunal considers that the Applicant has not established that the contested decision was unlawful and as such no compensation can be allowed.

Work environment

37. The Applicant also claims that, faced with the problems she encountered at work, she did not receive help or support from the Agency, which created an intimidating and hostile work environment and caused her humiliation. When looking at the evidence in the case file, the Tribunal finds that the Applicant indeed had to work under unclear parameters; moreover, she did not receive adequate support from the Agency.

38. Examining the evidence in the case file, the Tribunal notes that the Applicant brought to the attention of the Agency various examples of questionable practices and unprofessional conduct on the part of the CBOs and the LAC. The Applicant attached 24 annexes to her application and most related to alleged corruption and fraud.

39. The evidence also shows that the Applicant had to sign certain financial transactions of the CBOs, however, in her post description there is no mention of these functions and responsibilities. Furthermore, the Agency itself had indicated in several exchanges that the legal
relationship between the CBOs, the LAC and UNRWA was challenging, stating that her role was ambiguous and that the Agency was looking for a viable solution to improve that relationship.

40. It is correct that the Agency investigated the alleged facts of corruption and fraud by the Applicant. However, when ordered to provide to the Tribunal any reports, studies or preliminary assessments, the Respondent submitted a short document of the Jordan Field Office intake committee meeting and a scan of a small paragraph with respect to the Applicant’s complaint in the internal case management system, only marginally touching upon the subject matter.

41. The Tribunal considers that the Agency’s poor management ultimately led to an untenable situation, which resulted in the Applicant no longer being welcome at the CBOs and the LAC. While the Agency had stated that it recognized that the legal relationship between the CBOs, the LAC and UNRWA was challenging and that the Applicant’s role was ambiguous as a result, the Applicant was left without support in her role. Moreover, when the Applicant was no longer welcome at her job, the Agency neglected to react at all to what had transpired. While waiting for some kind of reaction from the Agency the Applicant decided, on 2 June 2013, to file a complaint against the FSSO and the LAC.

42. In its Judgments No. 1125, Mwangi (2003), and No. 1204, Durand (2005), the former UN Administrative Tribunal stated that:

   The United Nations, as an exemplary employer, should be held to higher standards and the Respondent is therefore expected to treat staff members with the respect they deserve, including the respect for their well being.

43. Moreover, in Judgment No. 1194, Haile (2004), the former UN Administrative Tribunal recognized that the Organization had a duty to “maintain a healthy working environment” which extended to protection of staff members’ physical and psychological integrity.

44. The Tribunal finds that the Agency had a duty to guarantee a harmonious working environment, conducive to the physical and psychological integrity of its staff members. When examining the evidence in the case file, the Agency failed in this respect and neglected to create a proper work-place atmosphere.
Moral damages

45. The Tribunal finds that the Applicant was completely left to her own devices in an ambiguous situation without the support of the Agency. The Tribunal finds that this constitutes grounds to award the Applicant moral damages for the anxiety and stress, to which extent she submitted a medical report, this obviously had caused her. The Applicant is awarded USD1,500 for moral damages.

46. As for the request for an apology, the Tribunal notes that it is not appropriate to order an apology as a remedy. It is in the very nature of an apology that it has to be voluntary. Whilst the Tribunal may encourage a party to apologise in appropriate circumstances, it would not be a proper exercise of the Tribunal’s powers to order them to do so.

Conclusion

47. The Respondent is ordered to pay the Applicant USD1,500 within 60 days of the date this Judgment becomes executable during which period the US Prime Rate applicable as at that date shall apply. If the sum is not paid within the 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of payment.

48. All other requests are rejected.

(Signed)__________________
Judge Jean-François Cousin
Dated this 18th day of May 2015

Entered in the Register on this 18th day of May 2015

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