AL SAYYAD

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 Yousef Mohammad Y Al Sayyad (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” or the “Agency”), to return him to work without any compensation following the conclusion of an investigation into suspected fraud in the Cash Office (“CO”).

Facts

2. Effective 13 December 2004, the Applicant entered the service of the Agency. Effective 1 July 2011, the Applicant was appointed as Paymaster in the CO of the West Bank Field Office (“WBFO”), Finance Department at Grade 10, Step 1.

3. In October 2012, the Department of Internal Oversight Services (“DIOS”) received information about suspected fraud in the CO. The first reported case was partially investigated by WBFO in July 2012. When further frauds were discovered a few months later amounting to USD1,600, senior management of WBFO contacted DIOS to conduct an investigation.

4. By letter dated 18 October 2012, the Director of UNRWA Operations, West Bank (the “DUO/WB”) informed the Applicant that he was suspended from duty with pay pending the investigation into fraud in the CO.

5. On 24 July 2013, the Applicant was interviewed by DIOS about the suspected fraud.

6. In a report dated 6 January 2014, the DIOS investigation concluded that a total of USD5,679 was misappropriated from the CO but it could not determine who was responsible for the creation of false documents and the misappropriation.

7. By letter dated 31 March 2014, the DUO/WB informed the Applicant that the investigation was complete and that while fraud had taken place, fault could not be attributed to anyone. The Applicant returned to work on 23 April 2014.

8. On 27 May 2014, the Applicant submitted a request for review of the 31 March 2014 decision to close the investigation and return him to work without compensation.
9. On 20 August 2014, the present application was filed with the UNRWA Dispute Tribunal (the “Tribunal”).

10. On 16 September 2014, the Respondent filed his reply.

11. On 22 March 2015, the Tribunal issued Order No. 030 (UNRWA/DT/2015)Corr.01 (“Order No. 030”) ordering the Respondent to translate the reply into Arabic.

12. On 14 April 2015, pursuant to Order No. 030 the Respondent produced an Arabic translation of the reply.

13. On 15 April 2015, the Tribunal issued Order No. 041 (UNRWA/DT/2015) (“Order No. 041”) ordering the Respondent to produce explanations surrounding the delay in closing the investigation.

14. On 24 April 2015, the Respondent submitted a motion for extension of time to file his response to Order No. 041. The Tribunal granted this request by Order No. 046 (UNRWA/DT/2015)Corr.01 (“Order No. 046”) setting 5 May 2015 as the new deadline for submission.

15. On 5 May 2015, the Respondent produced a reply to Order No. 41, explaining the delay in closing the investigation as well as an ex parte filing of the Investigation Report.

16. By Order No. 056 (UNRWA/DT/2015) dated 17 May 2015, the Tribunal accepted the Respondent’s reply to Order No. 41 into evidence and ordered that the Investigation Report be removed from evidence. The Respondent’s reply to Order No. 41 was transmitted to the Applicant on that same day.

**Applicant’s contentions**

17. The Applicant contends:

   i) The decision to suspend him with pay is an implicit charge of serious misconduct and the decision must be considered a disciplinary action;

   ii) That there were no charges established against him;

   iii) The suspension period violated his rights and caused him moral and psychological damage;
iv) His reputation was defamed and future professional damages are expected;

v) Area Staff Rule 103.2 and 103.3 provide that he should have received an annual increment and a promotion;

vi) Suspending him for 18 months was not reasonable and is an abuse of authority;

vii) During his suspension the Administration denied him access to his email which prevented him from applying to vacancy announcements;

viii) The Administration prevented him from entering the Agency during his suspension; and

ix) The decision to close the investigation did not include a statement of his innocence.

18. The Applicant requests:

   i) That the Tribunal declare his innocence and that the Agency apologise to him;

   ii) Compensate him for the moral damages that he suffered in the amount of two years’ pay;

   iii) Compensate him in the amount equal to the difference of his current pay and his pay upon being promoted; and

   iv) Compensation for the lost opportunity to apply for an UNRWA vacancy that was advertised during his suspension.

Respondent’s contentions

19. The Respondent contends that:

   i) The application is not receivable with regard to the decision to suspend the Applicant as he was suspended on 18 October 2012 and that he did not request decision review within the time limits;

   ii) When the Agency became aware of the suspected fraud in the CO, all four staff members were suspended with pay, pending the outcome of the investigation;

   iii) The suspension is not a disciplinary measure;

   iv) The Agency was under obligation to investigate suspected misconduct and it enjoys a broad discretionary power;

   v) The Agency has acted in good faith;
vi) Contrary to the Applicant’s allegation, he was granted his annual salary increment during his suspension. The Applicant has no entitlement to any promotion;

vii) He was not prevented from applying to vacancies as all UNRWA vacancies are published on the UNRWA website;

viii) The duration of the suspension was not unreasonable. Each investigation is unique. This investigation was particularly labourious due to the high volume of transactions in the CO. External investigators as well as other staff from the Finance Department had to be engaged to complete the investigation;

ix) Due to the deficient performance of the external investigators, the Agency had to re-interview the alleged victims as the external investigators could not verify the records of interview;

x) The investigation was closed on 6 January 2014, but due to an industrial strike in the WBFO and handover procedures, the Agency only informed the Applicant of the decision on 31 March 2014;

xi) The decision to return the Applicant to work without any compensation was properly effected;

xii) The relief sought by the Applicant has no legal basis;

xiii) A declaration of his innocence could not be issued as the investigation did not determine who was responsible. The Tribunal has declined to order an apology as it would not be a proper exercise of the Tribunal’s power to do so; and

xiv) The Applicant cannot be compensated for material damages as he received his full salary. In order to be awarded moral damages the Applicant must produce evidence and establish that he suffered harm as a result of the decision.

20. The Respondent requests that the Tribunal dismiss the application in its entirety.

Considerations

Scope of the case and receivability

21. In the instant case, the formal decision that is being contested is the decision to return the Applicant to work without compensation following the closure of an investigation into suspected fraud. This decision to end the Applicant’s suspension by itself cannot be considered as an administrative decision to be contested, as it is a positive decision for him. In reality the Applicant is complaining about being suspended for over a year and a half...
without any charge of serious misconduct being proved against him. Therefore, in the interest of justice the Tribunal will consider that the contested decision is the administrative decision to suspend the Applicant for an 18-month period.

22. From this it follows that the Respondent’s contention that the Applicant is time-barred is without any merit as the decision to return the Applicant to work is dated 31 March 2014. The request for decision review is dated 27 May 2014, and the application was filed on 20 August 2014.

**Merits**

**Decision to suspend the Applicant for 18 months**

23. In order to review whether the duration to open and close the investigation was unreasonable, the Tribunal must first review the chronology of events.

24. On 8 October 2012, the WBFO informed DIOS of suspected fraud in the CO. Upon receipt of the allegations, the Chief of the Investigations Division (“Chief”) and a Senior Auditor from DIOS travelled to the WBFO to interview staff in the Finance Department and staff members who claimed to be victims of the fraud.

25. On 17 October 2012, the Chief wrote to the DUO/WB to ask for additional investigation sources. The Chief explained that the Senior Auditor had to return to his functions in Headquarters and listed several reasons why additional support was necessary. The Chief noted, *inter alia*, that: (i) the investigation concerned a complex financial fraud; (ii) voluminous records and transactions that required review; (iii) a number of structural control weaknesses, including poor filing, unrestricted access to financial files and the inability to determine if a payment was actually made; and (iv) DIOS’s limited capacity and the conflict of interest of some WBFO staff members participating in the investigation. On 18 October 2012, the Applicant was suspended with pay pending the outcome of the investigation.

26. The Tribunal has no doubt that, at this stage, the decision to suspend the Applicant was fully justified as there were serious reasons to believe that the Applicant could be involved into the fraud.
27. In November of 2012, DIOS concluded its preliminary investigation and drafted a preliminary report, concluding that a financial expert was needed to review payment vouchers and relevant documentation before the full investigation could proceed. The Senior Accounts and Payments Officer (“SAPO”) was tasked with reviewing the relevant documentation. On 10 January 2013, the SAPO issued a report. At the end of January 2013, DIOS prepared a summary of the alleged fraud based on the SAPO’s report.

28. In February 2013, DIOS and WBFO decided to outsource the interviews of the alleged fraud victims to Pricewaterhouse Coppers (“PwC”). In May 2013, PwC interviewed the alleged fraud victims. In July 2013, PwC sent DIOS the records of the interviews. DIOS found the work substandard and in September 2013, DIOS re-interviewed specific staff members who had previously been interviewed by PwC. Moreover, in mid-October 2013, due to the incomplete work of PwC, DIOS had to contact every interviewee and have them review their record of interview to ensure that the records were correct. DIOS also had difficulty locating some staff members who had left the Agency as well as some interviewees who refused to sign the records.

29. In December of 2013, DIOS finalised the investigation report. On 6 January 2014, DIOS sent the final report to the Human Resources Department in Headquarters, Amman. However, at that time, the WBFO was closed due to an industrial strike headed by the Staff Union. Communications with WBFO were limited until it re-opened on 10 February 2014. On 31 March 2014, the Applicant was notified of the outcome of the investigation and on 23 April 2014, he resumed his duties in the CO.

30. Given the complex financial issues and voluminous documentation involved in this investigation the Tribunal does not find that the duration of the investigation is unreasonable. The record is clear that the Agency continuously worked to complete the investigation, despite the variables of an ineffectual external investigation company and re-interviewing witnesses. It is true, that the investigation was lengthy, but in the interest of the involved staff members, the Agency absolutely need to know who, if any, of the four suspected staff members were involved in the fraud. Notwithstanding the fact that the investigation was inconclusive, the 18-month delay in closing the investigation was not due to the Agency’s negligence. Based on the above, the Tribunal finds that the Applicant’s due process rights were not violated.
31. The Applicant is requesting compensation for both moral and material damages for the delay in closing the investigation. As already stated above the decision to investigate was lawful and the length of the investigation was justified. As there was no breach in his rights, the Applicant cannot be compensated.

32. In any case, with regard to material damages, the Tribunal notes that throughout the investigation period, the Applicant was paid his salary, including receiving his annual increment during his suspension period, both in 2013 and 2014. Therefore, the Tribunal does not see any material damages suffered by the Applicant and his plea is rejected. The Tribunal also dismisses the Applicant’s contention that he should have received a promotion. The Tribunal finds no merit in this argument as it is clear that Areas Staff Rule 103.3 is not applicable to the present case.

33. The Applicant also requests compensation for the moral harm that he suffered as a result of the suspension. The Tribunal agrees that, as a fraud was discovered in the CO, the Applicant was placed in a tenuous position. But the cause of this situation was not the Agency’s decision to investigate or to suspend him, but the fact that fraud had occurred in the office where he worked and he therefore became a potential suspect. The Agency had a duty to investigate the fraud and within its broad discretion, place all the employees in the CO on suspension with pay pending the outcome of the investigation. DIOS’ final report concluded that while fraud had occurred, the evidence was inconclusive to substantiate a finding of misconduct. Therefore, the Tribunal cannot compensate the Applicant for moral damages that he may have suffered as a result of the Agency performing its duty in investigating.

Other remedies

34. The Applicant also seeks an apology. The Tribunal has said this on several occasions, and will say it again, it is not appropriate for the Tribunal to order the Agency to apologise to him. It is the very nature of an apology that it has to be voluntary. To order someone to apologise is, in the Tribunal’s eyes, a pointless exercise. Whilst the Tribunal may encourage a party to apologise in appropriate circumstances, it would not be a proper exercise of the Tribunal’s power to order them to do so.

35. The Applicant also requests that a declaration of his innocence be made by the Agency. Tribunal notes that, upon closure of the investigation, DIOS established that fraud
had occurred but could not attribute fault to any specific staff member. If the Applicant is asking the Tribunal to declare his innocence in the court of public opinion, this Tribunal is not a criminal court and therefore does not have the power to declare a staff member guilty or innocent. The Tribunal rejects this plea.

**Conclusion**

36. In view of the foregoing, the Tribunal hereby DECIDES:

   The application is dismissed in its entirety.

__(Signed)____________________
Judge Jean-François Cousin  
Dated this 2nd day of June 2015

Entered in the Register on this 2nd day of June 2015

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