QAWASMI

v.

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

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Rachel Evers (DLA)
Introduction

1. This is an application by Jihad Mahd Mohd Qawasmi (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”), not to investigate his complaint of harassment and humiliation and against the Agency’s failure to provide the Applicant with a secure work environment.

Facts

2. Effective 1 May 2000, the Applicant was appointed on a fixed-term appointment as a Sanitation Labourer in Irbid Camp, Level 1A, Step 1. Following a series of transfers and a promotion, at the material time of the application, the Applicant had a temporary indefinite appointment as a Sanitation Foreman A in Husn Camp, Grade 4, Step 11.

3. On 9 April 2014, the Applicant submitted a complaint to the Chief Area Office, Irbid (“CAO/I”) through the Sanitation Inspector, Irbid Area (“SI/I”), requesting an official investigation into “the bad conditions witnessed by the Department of Environment Health in Husn Camp between [him] and the Sanitation Labourers”.

4. By email dated 15 April 2014, the CAO/I forwarded to the Acting Head, Field Legal Office, an email from the SI/I to the CAO/I. This email reported allegations from several Sanitation Labourers claiming that the Applicant had abused his power by requesting them to give him sums of money.

5. The Agency received four separate written complaints from Sanitation Labourers, two dated 19 April 2014, the other two dated 21 April 2014 and 17 May 2014, respectively, alleging that the Applicant had engaged in misconduct.

6. On 31 May 2014, the Applicant submitted a request for review of the implied decision not to investigate his complaint.

7. On 5 June 2014, the Applicant submitted a written complaint to the CAO/I, alleging that Sanitation Labourer A.A. had threatened and blamed the Applicant for his suspension. On the same day, the Applicant submitted to the Director of UNRWA Operations, Jordan (“DUO/J”) a written complaint alleging that he had been threatened and humiliated by Sanitation Labourers because of confidential information which had been disclosed by the
Chairperson of the Labourers Committee. As a result, and in compliance with the recommendations of the Area Health Officer, Irbid (“AHO/I”) and further instructions of the SI/I, the Applicant worked in Irbid Camp for a period of five days.

8. On 26 June 2014, the Applicant received the response to his request for decision review. The DUO/J informed the Applicant that an investigation would be conducted.

9. On 7 July 2014, the DUO/J authorised a preliminary assessment of the allegations against the Applicant that he had abused his power by demanding sums of money from certain Sanitation Labourers.

10. The final preliminary assessment report, submitted to the DUO/J on 3 August 2014, concluded that the allegations of abuse of power by the Applicant were credible and recommended the initiation of an investigation.

11. By letter dated 12 November 2014, the Applicant reported to the SI/I that Sanitation Labourer M.E. was disregarding instructions. The Applicant recommended that M.E. be suspended from duty.

12. By letter dated 11 January 2015, the Applicant reported to the CAO/I that he had been threatened and attacked by Sanitation Labourer J.A.

13. On 5 April 2015, the Applicant submitted a complaint to the CAO/I about threats made against him by three daily-paid Sanitation Labourers. The Applicant requested the CAO/I to take “appropriate measures”.

14. By a written complaint to the DUO/J, dated 10 April 2015, the Applicant reported that, while on duty on 9 April 2015, he was physically assaulted by two daily-paid Sanitation Labourers because they had learned that the Applicant had complained about them. Due to the assault, the Applicant had been admitted to the hospital.

15. By email dated 17 April 2015, the Applicant wrote to the CAO/I, the SI/I and the AHO/I, seeking advice regarding his resumption of duty upon the expiry of his sick leave on 18 April 2015. The Applicant indicated that he was under threat in Husn Camp. The CAO/I replied to the Applicant’s email on the same day, suggesting that he take annual leave for the upcoming three days.
16. On 19 April 2015, the DUO/J authorised an investigation into the allegations that the Applicant had abused his power by asking Sanitation Labourers under his supervision to pay him sums of money.

17. Following the Applicant’s rejection of the CAO/I’s proposal to temporarily transfer him to a post in Suf Camp, the Applicant was granted, by letter dated 29 April 2015 from the Head, Field Human Resources Office, Jordan, Special Leave with Pay (“SLWP”) for the period of 3 May 2015 until 15 May 2015.

18. On 15 May 2015, the final investigation report was submitted to the DUO/J, concluding that there was no evidence to support the allegations against the Applicant.

19. After a series of exchanges between the Applicant and the Agency, by letter dated 26 May 2015 from the DUO/J, the Applicant was granted SLWP retroactively, from 18 April 2015 to 16 May 2015. He was also offered a transfer to one of three suggested posts in the Irbid Area.

20. On 28 May 2015, the Applicant filed his application with the UNRWA Dispute Tribunal (the “Tribunal”), against the decision not to investigate his complaint for harassment and humiliation and against the Agency’s failure to provide him with a secure work environment. The application was transmitted to the Respondent on 1 June 2015.

21. By letter dated 31 May 2015, to the DUO/J, the Applicant rejected the three transfer options and expressed that his preference was to be transferred to the post of Sanitation Foreman B in Irbid Camp. The Applicant remained on SLWP until this transfer was effective on 29 October 2015.

22. On 1 July 2015, the Respondent filed his reply to the application, contending that the application was not receivable as it was filed past the time limit following the DUO/J’s decision review response of 25 June 2014. The reply was transmitted to the Applicant on 2 July 2015.

23. By Order No. 080 (UNRWA/DT/2015) dated 21 July 2015, the Tribunal ordered the Respondent to submit an Arabic translation of the reply.
24. On 6 August 2015, the Respondent complied with Order No. 080 (UNRWA/DT/2015) and submitted the requested Arabic translation of the reply. The Tribunal transmitted the translation to the Applicant on the same day.

25. On 12 August 2015, the Applicant filed a motion to submit observations on the Respondent’s reply. The motion was transmitted to the Respondent on the same day.

26. By Order No. 095 (UNRWA/DT/2015) dated 24 August 2015, the Applicant’s motion to submit observations was granted.

27. On 25 August 2015, the Applicant filed another application with the Tribunal contesting the decision “not to consider an incident involving other staff members, which occurred during official working hours and on the work premises, as an incident attributable to service”. The case number assigned to the application is: UNRWA/DT/JFO/2015/062.

28. In accordance with Order No. 095 (UNRWA/DT/2015) dated 24 August 2015, the Applicant’s observations were submitted on 22 September 2015 and transmitted to the Respondent on 28 September 2015.

29. On 3 September 2015, a preliminary assessment report was submitted by a Field Investigation Officer with respect to the Applicant’s complaints of threats, harassment and physical attacks. The recommendations were: 1) to close the case regarding the complaint against A.A.; 2) to submit the issue to be managerially reviewed regarding the complaint against J.A.; and 3) to close the case regarding the physical attack incident that Y.A. and M.E. were involved in.

30. On 6 September 2015, the Applicant filed a motion to submit new evidence. The motion was transmitted to the Respondent on 7 September 2015.


32. By letter dated 28 October 2015, the Applicant was informed that:

[...] the allegations that were brought against [him] are not credible and not substantiated by evidence. Accordingly the investigation has been closed.
33. By letter dated 29 October 2015, from the Head, Field Legal Office, Jordan, the Applicant was informed about the Agency’s “remedial actions” based on the results and recommendations of the preliminary assessment report of 3 September 2015.

34. By Order No. 118 (UNRWA/DT/2015) dated 10 November 2015, the Applicant’s motion to submit new evidence was granted. The Applicant filed his new evidence on 16 November 2015. The evidence was transmitted to the Respondent on 17 November 2015.

35. By Order No. 020 (UNRWA/DT/2016) dated 15 March 2016, the Tribunal requested the Respondent to: 1) submit a reply on the merits; and 2) inform the Tribunal if an investigation was ever initiated and if so to provide a copy of the report of investigation.

36. On 14 April 2016, the Respondent filed a motion for an extension of time to file a supplementary reply. The motion was transmitted to the Applicant on 18 April 2016.

37. By Order No. 035 (UNRWA/DT/2016) dated 25 April 2016, the Respondent’s motion for an extension of time was granted.

38. On 31 May 2016, the Respondent filed his reply on the merits and submitted a copy of the report of investigation of the complaints which the Sanitation Labourers had raised against the Applicant.

39. By Order No. 060 (UNRWA/DT/2016) dated 23 August 2016, the Respondent was requested to inform the Tribunal whether or not an investigation was initiated following the Applicant’s complaint, and if so, to provide a copy of the report of that investigation.

40. On 25 August 2016, the Respondent’s reply on merits was transmitted to the Applicant.

41. By Order No. 066 (UNRWA/DT/2016) dated 31 August 2016, the Tribunal ordered the Respondent to submit a Arabic translation of the reply on the merits.

42. On 5 September 2016, the Respondent submitted his response to Order No. 060 (UNRWA/DT/2016). On 7 September 2016, the Respondent’s response was transmitted to the Applicant.

43. On 8 September 2016, the Applicant submitted a motion for an extension of time to file observations and a motion requesting the Arabic translation of the Respondent’s response.
to Order No. 060 (UNRWA/DT/2016). The two motions were transmitted to the Respondent on 14 September 2016.

44. On 14 September 2016, the Respondent filed a motion for an extension of time to translate his reply on the merits. The Respondent’s motion was transmitted to the Applicant on the same day.

45. By Order No. 072 (UNRWA/DT/2016) dated 19 September 2016, the Respondent’s motion for an extension of time to translate his reply on the merits was granted.

46. On 23 September 2016, the Respondent submitted the Arabic translation to the reply on the merits. The Tribunal transmitted the translation to the Applicant on 25 September 2016.

47. By Order No. 073 (UNRWA/DT/2016) dated 25 September 2016, the Applicant’s motion for an extension of time to file observations was granted and his motion to receive the Arabic translation of the Respondent’s response to Order No. 060 (UNRWA/DT/2016) was denied.

48. On 9 October 2016, the Applicant filed a motion requesting the Tribunal to allow him to file a rejoinder with additional pages. By Order No. 081 (UNRWA/DT/2016) dated 11 October 2016, the Applicant’s motion was denied.

49. On 18 October 2016, the Applicant submitted his observations on the Respondent’s reply on the merits. The observations were transmitted to the Respondent on the same day.

50. On 31 October 2016, the Tribunal issued Order No. 090 (UNRWA/DT/2016), advising the parties that a hearing would be held on Monday 14 November 2016.

51. On 14 November 2016, an oral hearing was conducted in the presence of the Applicant and the Counsel for the Respondent.

52. During the hearing, the Applicant was requested by the Judge to submit to the Tribunal a copy of his last pay slip.

53. On 14 November 2016, after the hearing, the Applicant submitted the requested pay slip to the Tribunal. His submission was transmitted to the Respondent on 16 November 2016.
54. On 6 December 2016, the Applicant filed a motion for leave to submit updates related to the measures taken by the Agency against the offenders who assaulted him. The motion was transmitted to the Respondent on the same day. This motion will be addressed in this Judgment.

**Applicant’s contentions**

55. The Applicant contends:

   i) The Agency has to ensure that all UNRWA staff members can work in an environment free from discrimination, harassment, abuse of power and retaliation;

   ii) His complaint should have been dealt with promptly, in accordance with the Agency’s rules, and an investigation should have been conducted; and

   iii) No serious action had been taken by the Agency for one calendar year. Consequently, he had been subjected to humiliating physical attacks by Sanitation Labourers.

56. The Applicant requests:

   i) The Tribunal to hold a hearing;

   ii) To be compensated for his “physical, emotional and moral pains” resulting from having to work in a fearsome and humiliating environment; and

   iii) To refer the case to the Commissioner-General for possible action to enforce accountability.

**Respondent’s contentions**

57. The Respondent contends:

   i) The elements of the application relating to the Applicant’s complaints beginning on 5 June 2014 are not receivable, as the Applicant failed to request decision review in respect of these complaints;

   ii) The elements of the application relating to the complaints raised against the Applicant were superseded by subsequent administrative actions taken, thereby rendering this element of the application moot; and
iii) The relief sought by the Applicant has no basis.

58. The Respondent requests the Tribunal to dismiss the application in its entirety.

Considerations

Scope of the case

59. On 9 April 2014, the Applicant submitted a complaint, requesting an official investigation. On 31 May 2014, the Applicant submitted a request for review of the implied decision not to investigate his complaint. On 26 June 2014, the Applicant received the DUO/J’s response to his request for decision review, informing him that an investigation would be conducted with respect to his complaint and to allegations raised against him. On 28 May 2015, the Applicant filed his application with the Tribunal against the decision not to investigate his complaint for harassment and humiliation and against the Agency’s failure to provide him with a secure work environment.

60. The Tribunal recalls that the scope of an application is determined by examining the Applicant’s statements about the contested decision and the content of both the request for decision review and the application. In the present case, the Applicant asserted that the contested decision is the Agency’s decision not to investigate the complaints he filed with respect to “the bad conditions witnessed by the Department of Environment Health in Husn Camp between [him] and the Sanitation Labourers”. In his request for decision review he specified that the contested decision is “the implied administrative decision to ignore [his] request for investigation into the harassment and humiliation [he was] subjected to in the work environment”. In his application the Applicant complains about:

The implied administrative decision involving a continuous disregard to my complaint about the conditions of harassment and humiliation which I was subjected to in the work environment. The Agency’s negligence of my request to investigate about that complaint. And the Agency’s failure to take urgent and serious measures for protecting me from retaliation, and for providing me with a secure work environment, in addition to what has resulted in increasing the threat and frightening in my work environment, to the limit that I was subjected to a physical violation of a humiliating nature required a medical intervention.

61. During the hearing, the Respondent argued that the only issue before the Tribunal was the implied decision not to investigate his complaint related to the allegations against him
raised by Sanitation Labourers, and that the Applicant’s complaints dated 5 June 2014, 12 November 2014, 11 January 2015, 2 April 2015 and 10 April 2015 could not be considered by the Tribunal, as the Applicant had not submitted other requests for decision review after 5 June 2014.

62. The Tribunal does not agree at all with this contention. The first complaint about the Applicant’s work environment dates from 9 April 2014. By this complaint, the Applicant requested a formal investigation. As there was no response from the Agency’s side, the Applicant, on 1 June 2014, filed his request for decision review. By this request, the Applicant contests the implied decision not to investigate his complaint. On 5 June 2014, he submitted a new complaint about threats which he received at the work place. On 26 June 2014, by the response to his request for review, he was informed that an investigation would be conducted, and he was advised to wait for the outcome of the investigation. In the absence of any information about the investigation, the Applicant filed new complaints on 12 November 2014, 11 January 2015, 2 April 2015 and 10 April 2015. All of the complaints revolved around the same issue: harassment and threats which the Applicant received in the work place. The Applicant had been informed that an investigation would be conducted, and he did not receive any information related to the outcome of an investigation. Therefore, it is rather understandable that he would have reported to the Agency the incidents which occurred at work at those points in time because all of his complaints related to the same issue that he started complaining about on 9 April 2014.

63. Therefore, the Tribunal finds that the refusal to investigate, or more accurately, the delay in investigating the Applicant’s complaints, is the issue of this application. To decide otherwise, as suggested by the Respondent, would unduly limit the scope of the application, and the right to justice for the Applicant.

Receivability

64. On 31 May 2014, the Applicant submitted a request for review of the implied decision not to investigate his complaint filed on 9 April 2014. This request was filed inside the time limits, as Area Staff Rule 111.2 provides in paragraph 3:

3. A staff member shall submit a request for a decision review within 60 calendars days from the date on which the staff member received notification of the administrative decision to be contested.
65. The DUO/J’s response to the request for decision review was received by the Applicant on 26 June 2014, which is in accordance with paragraph 5 of Area Staff Rule 111.2, which provides that:

5. The outcome of the decision review shall be communicated in writing to the staff member within 30 calendar days of receipt of the request for decision review. Unless the outcome is a reversal of the contested administration decision, the staff member should be informed of the provisions under the Staff Regulations and Rules for appealing a contested administrative decision to the UNRWA Dispute Tribunal.

66. Even if the DUO/J’s response mixed together the complaints against the Applicant and the Applicant’s complaint, the response is clear: the Agency was to conduct an investigation, and the Applicant was advised to wait for the outcome of the investigation.

67. The DUO/J’s letter of 26 June 2014 detailed:

I refer to your decision review request dated 1 June 2014 in which you contested ignoring your request to investigate the allegations of abuse of power and retaliation raised against you by a number of the Sanitation Laborers at Husn Camp and the harassment and humiliation you suffer from as a result of these allegations.

I have thoroughly reviewed your request with all concerned and found that the Agency did not ignore the aforementioned allegations and a Board of Inquiry will be formed to investigate these allegations. However, due to the confidential nature of the review, no further information can be provided to you through this response. Notwithstanding, please be assured that the Agency will endeavor to ascertain the facts of what transpired, engage a thorough review of the evidence and address the matter appropriately.

Accordingly, you are advised to wait for the outcome of the investigation.

68. The Applicant was finally interviewed by the Investigators on 6 August 2015. The Tribunal finds that, before that date, the Applicant had been oblivious with respect to what the Agency was undertaking, and in fact he could have thought that in reality no investigation had been conducted. Therefore, when the Applicant filed his application on 28 May 2015, he could reasonably have thought that, at that point in time, no investigation had been
conducted. Moreover, in the response to his request for decision review, the Applicant was informed to wait until the outcome of the investigation. The Tribunal notes that it was only on 29 October 2015 that the Agency formally informed the Applicant of the results of the investigation of the complaints raised against him. Therefore, the Tribunal finds that the Respondent cannot sincerely claim that the application is time-barred.

**Respondent’s request to produce a witness**

69. At the hearing, the Respondent requested the Tribunal to produce a witness. The Respondent is contesting the Applicant’s allegations with respect to a meeting which had been conducted on 14 October 2015. The Applicant claimed that in this meeting with the Head, Field Legal Office and the Head, Field Human Resources Office, he was strongly urged to withdraw another application which he had filed with the Tribunal. The Tribunal considers that hearing a witness with respect to this meeting is not essential, as the Tribunal considers that, at the hearing, the Applicant indicated that he had willingly withdrawn the other application.

**Merits**

**Decision not to investigate**

70. The Applicant has contested the implied decision not to investigate his complaints. When he submitted his application to the Tribunal, his complaints had not yet been investigated. Therefore, this application was as such receivable.

71. However, at the present date of this Judgment, the Applicant’s complaints were investigated, and a report to that effect was submitted on 3 September 2015. Therefore, this part of the application is now rendered moot.

**Agency’s duty to assure a safe working environment**

72. It is clear from the case file that the Applicant’s main concern is the delay in investigating his complaints and, above all, the delay in taking actions to stop the harassment, ill treatments and threats he was subjected to in Husn Camp. The Agency has to provide a secure work environment for its staff members, and consequently, the failure to do so constitutes negligence on the part of the Agency. Furthermore, as held by the United Nations Appeals Tribunal (“UNAT”) in Rahimi 2012-UNAT-217:
The Organization is liable for the consequences of its unlawful decision, omissions or negligence.

73. The Applicant filed his first official complaint and request for an investigation on 9 April 2014. Some days later, several Sanitation Labourers reported that the Applicant had abused his power by requesting them to pay him money. Between 19 April and 17 May 2014, the Agency received four separate written complaints from Sanitation Labourers alleging that the Applicant had engaged in misconduct. On 31 May 2014, the Applicant submitted a request for review of the implied decision not to investigate his complaint. On 26 June 2014, the Applicant received the response to his request for decision review and the DUO/J informed the Applicant that an investigation would be conducted.

74. On 7 July 2014, the DUO/J authorised a preliminary assessment of the allegations that the Applicant had abused his power by demanding sums of money from Sanitation Labourers. The final preliminary assessment report was submitted on 3 August 2014, and concluded that the allegations of abuse of power by the Applicant were credible and recommended the initiation of an investigation. On 15 May 2015, the final investigation report was submitted to the DUO/J, concluding that there was no evidence to support the allegations against the Applicant. By letter dated 28 October 2015, the Applicant was informed that this investigation was closed.

75. The Tribunal accepts the fact that the Agency first started to investigate the complaints filed against the Applicant; however, it was obvious that the complaints filed by the Applicant had very close links with the complaints filed against him. Consequently, the Tribunal finds that the Agency should have investigated all of the complaints within the same time frame. Furthermore, considering the multitude of complaints of threats the Applicant had been submitting, it should have been evident to the Applicant’s supervisors that the Applicant’s working environment was not safe. Even if his supervisors at some point in time may have been under the impression that the Applicant was guilty of abusing his power, he should have been transferred to another post outside of Husn Camp. According to article 12 of General Staff Circular No. 6/2010 regarding the prohibition of discrimination, harassment - including sexual harassment - and abuse of power, managers and supervisors have an obligation to ensure that complaints are addressed promptly and fairly, in a confidential manner, in accordance with the Agency’s relevant procedures.
76. As no prompt action had been taken by the Agency, the Applicant while on duty on 9 July 2015, was physically assaulted by some Sanitation Labourers. Due to the assault, the Applicant was admitted to the hospital.

77. After this incident, in mid-April 2015, the Applicant was granted SLWP for the period from 18 April 2015 until 16 May 2015. By letter of 26 May 2015, the Applicant was offered to be transferred to one of three suggested posts. After this proposal was rejected by the Applicant, the Agency offered him a transfer to a post of his preference: Sanitation Foreman B in Irbid Camp, after it had become vacant.

78. For a period of more than a year, the Applicant had been a victim of threats by workers he managed in Husn Camp, and eventually he was even physically assaulted. The Tribunal considers that this could have been prevented if the Agency had taken the necessary prompt actions, and particularly if the Applicant had been transferred to another Camp for the period of time needed to conduct the investigations. The Tribunal considers that the Agency was too late when, only on 26 May 2015, the Applicant was first offered a transfer outside of Husn Camp. Moreover, the investigations relevant to this case were conducted with unreasonable delay, and the Applicant was formally informed of the preliminary assessment with respect to his complaints only on 7 September 2016, after the Agency was ordered to inform the Tribunal about whether the Applicant’s complaint had been investigated. This delay constitutes negligence on the Agency’s part.

79. The Tribunal does not accuse the Agency of completely disregarding the conflicts between the Applicant and the Sanitation Labourers, also the Tribunal acknowledges that the Agency has limited means for protecting staff members against criminal acts. During the hearing, the Respondent informed the Tribunal that at least one of the perpetrators was dismissed by the Agency, and that another one was prosecuted by the local authorities. By motion submitted on 6 November 2016, the Applicant requested leave to update the Tribunal regarding measures taken by the Agency against the offenders who had assaulted him. The Tribunal considers that, for this Judgment, it is not relevant to be informed of these measures. In the present case, the Tribunal considers that the Agency was very tardy in dealing with the multitude of serious complaints submitted by the Applicant, and consequently the Agency did not fulfill its obligation to ensure the Applicant a safe working environment.
Prejudice

80. While examining the case file, it is clear to the Tribunal that the Applicant was a dedicated foreman and that, due to his aim to perform his job properly, he was threatened and assaulted by Sanitation Labourers under his supervision. As stated above, the Tribunal finds that these unfortunate events could have been avoided, at least in part, if the Agency had taken prompt action.

81. During the hearing the Applicant did not request material damages, even while he stated that he had to resign from his position with the Agency. Hence, the Tribunal cannot grant him compensation for material damages.

82. The Applicant did claim compensation for his “physical, emotional and moral pains”. The Tribunal considers that the Applicant would not have experienced these pains if he had been transferred earlier and if had been informed sooner of the result of his complaint.

83. The Applicant has not submitted material evidence of his moral damages; however, the explanations given during the oral hearing, and the conclusion that he, in fact, had been physically assaulted at work, justify the Tribunal ordering the Agency to pay the Applicant moral compensation in the amount of USD5000.

Conclusion

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

i) The Agency shall pay compensation to the Applicant for moral damages in the amount of USD5,000; and

ii) The above sum is o be paid within 60 days of the date this Judgment becomes executable during which period the US Prime Rate, applicable as of 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 the payment.
Entered in the Register on this 15th day of December 2016

(Signed)

Laurie McNabb, Registrar, UNRWA DT, Amman