Before: Judge Jean-François Cousin

Registry: Amman

Registrar: Laurie McNabb

AL-ASHI

v.

COMMISSIONER-GENERAL OF THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST

JUDGMENT

Counsel for Applicant:
Amer Abu-Khalaf (LOSA)

Counsel for Respondent:
Rachel Evers (DLA)
Introduction

1. These are two applications by Ali Al-Ashi (the “Applicant”) against the decisions of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (the “Respondent”), 1) not to confirm his appointment as a Teacher Development and School Empowerment Advisor, Grade 16, and to transfer him to his previous post of Education Specialist, Grade 13; and 2) to close his complaint of prohibited conduct.

2. As the two above applications have been filed by the same Applicant and are related, in the interest of judicial economy, the UNRWA Dispute Tribunal (the “Tribunal”) has decided to consolidate the applications and adjudicate them in a single Judgment.

Facts

3. Effective 27 September 1994, the Applicant was employed by the Agency as a Teacher “B”, Grade 8, Step 1, at the Russaifeh Preparatory Boys School No. 1.

4. From 1 April 2014 to 30 June 2014, the Applicant was appointed as Acting Teacher Development and School Empowerment Advisor, Grade 16.

5. Effective 1 January 2015, the Applicant was transferred with promotion from Jordan Field Office (“JFO”) to Headquarters, Amman (“HQA”) to work as a Teacher Development School and Empowerment Advisor (“TDSE Advisor”), Grade 16, category “A”, subject to a probationary service of 12 months.

6. By email dated 20 January 2015, the Applicant sent to his immediate supervisor, the Head, Teacher Development and School Empowerment Unit (“H/TDSE”) a summary of tasks he had completed.

7. On 16 February 2015, the Applicant and the H/TDSE discussed the Applicant’s work plan.
8. On 18 March 2015, the Applicant and two other staff members (the “Evaluation Committee”) carried out site visits to three printing companies. By an email dated 18 March 2015, the H/TDSE expressed her dissatisfaction with the conclusions of the Evaluation Committee.

9. On 24 March 2015, by an email generated by the system of the electronic Performance Evaluation Report (“e-PER”), the Applicant was informed that his work plan had been rejected by the H/TDSE.

10. On 24 May 2015, the Applicant and his colleagues had a meeting with the H/TDSE. An incident between the Applicant and the H/TDSE occurred during this meeting.

11. A mid-term review meeting was held with the Applicant on 6 July 2015, regarding his performance during his probationary period. The H/TDSE informed him that he needed to improve his performance.

12. By email dated 13 July 2015, the H/TDSE indicated to the Applicant that “he wasted a lot of time in his translations”. By another email dated 28 July 2015, the H/TDSE “accused him for delaying translation.”

13. By email dated 20 August 2015 to the Applicant, the H/TDSE noted certain points discussed in the mid-term review meeting. She reminded him that he needed to improve his performance to meet expectations for the post of TDSE Advisor. By email dated 1 September 2015, the Applicant objected to some of the points raised by the H/TDSE.

14. On 21 September 2015, by an email generated by the e-PER system, the Applicant was informed that his work plan had been approved.

15. On 4 October 2015, another meeting took place between the Applicant and the H/TDSE to discuss a performance improvement plan. As a result, an informal performance improvement plan was established for the Applicant for the period October to mid-December 2015.
16. On 5 October 2015, by an email generated by the e-PER system, the Applicant was informed that his mid-term review had been completed.

17. Later, by email dated 7 October 2015, the H/TDSE informed the Applicant that he needed to improve his presentation skills and to develop his own action plan for the upcoming three months.

18. On 15 November 2015, the performance improvement plan for the period October to mid-December 2015 was signed by the Applicant and the H/TDSE. The next day, the Applicant submitted his self-assessment and the H/TDSE submitted her assessment of the Applicant. The H/TDSE noted that the Applicant needed to further improve his performance. She also added that he needed to focus on his facilitator and presentation skills.

19. On 14 December 2015, the H/TDSE concluded in the report “Progress on Performance Improvement Plan” that the Applicant’s performance was not satisfactory.

20. On 17 December 2015, the Applicant sent an email to the Area Staff Union (“ASU”) complaining about how the H/TDSE had managed his Opportunity to Improve (“OTI”) process.

21. Subsequently, on 22 December 2015, Human Resources Services Officer (Entitlements) (“HRSO”) sent an email to the Applicant containing a copy of the above-mentioned report.

22. On 23 December 2015, the Applicant was informed of the extension of his probationary period from 1 January to 31 March 2016.

23. By email dated 10 January 2016, the Applicant objected to the report “Progress on Performance Improvement Plan”.

24. By email dated 14 January 2016, the HRSO reminded the Applicant and the H/TDSE of the points that had been discussed during a meeting held on 12 January 2016, especially the objectives of the new improvement plan.
25. By email dated 11 February 2016 to the H/TDSE, the Applicant sought her feedback with regard to the implementation of his improvement plan.

26. On the morning of 14 February 2016, the Applicant submitted to the Director of Human Resources (“DHR”) a complaint of prohibited conduct against the H/TDSE for verbal abuse, abuse of power and harassment.

27. On the afternoon of 14 February 2016, the Applicant, the H/TDSE, and the HRSO held a meeting to discuss the second phase of the Applicant’s improvement plan for his extended probationary period.

28. By email dated 18 February 2016 to the H/TDSE, HRSO, and ASU, the Applicant complained about the insufficient feedback and lack of commitment of the H/TDSE with respect to his improvement plan.

29. By email dated 18 February 2016, the H/TDSE objected to the Applicant’s comments and explained how much she had invested in his improvement plan.

30. By email dated 21 February 2016 to the H/TDSE, the Applicant noted his comments on the minutes of the meeting held on 14 February 2016.

31. By email dated 24 February 2016, the HRSO suggested to the Applicant that he raise the matter of his performance management with his second supervisor.

32. By email dated 6 March 2016, the Applicant requested a second opinion with regard to his performance evaluation. The Applicant’s email was addressed to the HRSO, and his second supervisor was copied on the email.

33. On 7 March 2016, the Applicant objected to the mid-term review of the second phase of the performance improvement plan.

34. On 17 March 2016, the Applicant shared with the H/TDSE his personal action plan noting that she had not provided feedback to him with respect to three activities.

35. On 23 March 2016, the Applicant submitted his self-assessment for the improvement plan.
36. By email dated 27 March 2016, the H/TDSE sent to the second supervisor and the HRSO the results of the second phase of the Applicant’s improvement plan and his performance summary report. She concluded that the Applicant was not able to contribute to the TDSE work, and that it would be appropriate not to confirm his appointment as TDSE Advisor.

37. By letter dated 30 March 2016, the Applicant was informed that his promotion was cancelled and he was given the option of either transferring to his previous post of Education Specialist, Grade 13 or being terminated.

38. By email dated 4 April 2016, the Applicant objected to the final assessment of the second phase of his improvement plan.

39. On 26 April 2016, the Applicant requested the review of the decision not to confirm his appointment as TDSE Advisor, Grade 16, and to transfer him to his previous post of Education Specialist, Grade 13.

40. Following the Applicant’s inquiry regarding his complaint of prohibited conduct, on 7 June 2016, the DHR explained to him that they had not been able to finalise the matter of his complaint.

41. On 23 August 2016, the Applicant submitted his application to the Tribunal concerning the decision to cancel his promotion. This first application of the Applicant was registered under Case No. UNRWA/DT/JFO/2016/027 (“JFO/2016/027”). The application was transmitted to the Respondent on 25 August 2016.

42. On 16 September 2016, the Respondent filed a “Motion for Extension of Time” to file his reply. The motion was transmitted to the Applicant on 19 September 2016.

43. By Order No. 075 (UNRWA/DT/2016) dated 29 September 2016, the Tribunal granted the Respondent’s request for an extension of time.
44. On 9 October 2016, the Applicant was informed by the DHR that his complaint of prohibited conduct would be addressed with the H/TDSE by a management intervention. As a result, the Applicant’s complaint was closed.

45. On 17 October 2016, the Applicant submitted a request for review of the decision to close his complaint.

46. On 17 October 2016, the Respondent filed his reply in JFO/2016/027. The reply was transmitted to the Applicant on 18 October 2016.

47. On 25 October 2016, the Applicant filed a “Motion for Leave to Submit Observations on the Respondent’s Reply” and a “Motion for Leave to Submit Supplementary Evidence” in JFO/2016/027. Both motions were transmitted to the Respondent on the same date.

48. By Order No. 094 (UNRWA/DT/2016) dated 6 November 2016 in JFO/2016/027, the Tribunal granted the Applicant’s two motions.

49. On 16 November 2016, the Applicant submitted his observations and the supplementary evidence in JFO/2016/027. These were transmitted to the Respondent on the same date.

50. On 17 November 2016, the Respondent filed a “Motion for Leave to Submit Further Evidence” in JFO/2016/027. The motion was transmitted to the Applicant on 20 November 2016.

51. By Order No. 101 (UNRWA/DT/2016) dated 1 December 2016 in JFO/2016/027, the Tribunal granted the Respondent’s motion to submit further evidence.

52. On 14 December 2016, the Respondent submitted his additional evidence in JFO/2016/027. This was transmitted to the Applicant on the same date.

53. On 15 December 2016, the Applicant raised another complaint of prohibited conduct against the H/TDSE.
54. On 10 January 2017, the Applicant filed another application with the Tribunal contesting the decision to close his first complaint of prohibited conduct. This second application of the Applicant was registered under Case No. UNRWA/DT/JFO/2017/005 (“JFO/2017/005”), and was transmitted to the Respondent on 16 January 2017.

55. On 15 February 2017, the Respondent filed his reply in JFO/2017/005. The reply was transmitted to the Applicant on 16 February 2017.

56. On 16 March 2017, the Applicant filed a “Motion for Leave to Submit Supplementary Evidence” in JFO/2017/005. This motion was transmitted to the Respondent on 19 March 2017.

57. By Order No. 048 (UNRWA/DT/2017) dated 30 March 2017 in JFO/2017/005, the Tribunal granted the Applicant’s motion.

58. On 3 April 2017, the Applicant submitted his supplementary evidence in JFO/2017/005. This was transmitted to the Respondent on the same date.

59. By Order No. 075 (UNRWA/DT/2017) dated 14 June 2017 in JFO/2016/027 (“Order No. 075”), the Tribunal ordered the Respondent to submit all documents about the Applicant’s performance containing comments or carrying the signature of Ms. C. P., the Applicant’s second supervisor.

60. On 6 July 2017, the Respondent filed a “Motion for Extension of Time” to file his response to Order No. 075 in JFO/2016/027.


62. On 17 July 2017, the Respondent submitted his response to Order No. 075. This was transmitted to the Applicant on the same date.

63. By Order No. 122 (UNRWA/DT/2017) dated 11 September 2017 in JFO/2017/005 (“Order No. 122”), the Tribunal ordered the Respondent to submit
to the Tribunal a copy of the record of the management intervention held on 9 February 2017.

64. On 21 September 2017, the Respondent submitted his response to Order No. 122, and provided the minutes of the management intervention. This was transmitted to the Applicant on the same day.

**Applicant’s contentions**

**Case No. UNRWA/DT/JFO/2016/027**

65. The Applicant contends:

i) During the performance meeting held on 4 October 2015, the H/MDSE created her own informal improvement plan for his case without establishing measurable objectives;

ii) Regarding the extension of his probationary period from 1 January to 31 March 2017, the improvement plan was not signed by the H/MDSE until 17 January 2017;

iii) His relationship with the H/MDSE deteriorated after he had informed the ASU about his concerns;

iv) The decision to fail him during his probationary period was tainted by improper motives and flawed by procedural irregularities violating the principle of good faith;

v) the H/MDSE “leaked his case” to the official UNRWA Staff and Management Facebook page on 19 April 2016, causing further abuse of power, defamation and harassment; and

vi) The second supervisor never discussed with the Applicant his performance before 30 March 2016, on which date she informed him about his unsuccessful probationary period.
66. The Applicant requests:

i) The recession of the first impugned decision to cancel his promotion, and to resume his post of TDSE Advisor, Grade 16;

ii) The Agency to reassess his case as required by the Rules and Regulations of the Agency;

iii) To be compensated for psychological damage he suffered; and

iv) To be compensated for moral damages and financial loss.

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67. The Applicant contends:

i) His immediate supervisor, the H/TDSE, shouted at him in front of colleagues at a meeting held on 24 May 2015;

ii) The Agency failed to assess his complaint through a proper investigation even though the “role play meeting” incident was found to give rise to a *prima facie* case of harassment against the Applicant. The Agency did not take this issue seriously, and it did not investigate properly;

iii) The harassment and abuse of power led to the non-approval of his promotion and a transfer to his previous post;

iv) The Department of Internal Oversight Services (“DIOS”) constantly closes cases in which staff members complain about the actions of the Agency or Senior Management, without conducting the required investigation; and

v) He was targeted by the H/TDSE from the second quarter of his probationary period.

68. The Applicant requests:

i) The Agency to reassess his case as required by the Rules and Regulations of the Agency;
ii) The Tribunal to reassess his case for a proper resolution of his situation;

iii) To be compensated for psychological damages he suffered; and

iv) To be compensated for moral damages and financial loss.

Respondent’s contentions

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69. The Respondent contends:

i) The Applicant has not provided any evidence that abuse of power by the H/TDSE has taken place;

ii) The decision to cancel the Applicant’s promotion to the post of TDSE Advisor was properly effected. The Agency conducted several performance reviews throughout the Applicant’s probationary period. In addition, a three-month extension after the initial probationary period gave the Applicant a further chance to improve his performance and meet the requirements for the post;

iii) The Applicant’s probationary period was extended when his performance was not satisfactory; in particular, his technical knowledge, the quality of his output, his communication skills and his leadership skills needed improvement;

iv) The work assigned to the Applicant was within the description of duties as set out in the post description as follows: “[p]erform other such duties as assigned”; and

v) The remedies sought by the Applicant have no legal basis.

70. The Respondent requests the Tribunal to dismiss the application in JFO/2016/027 in its entirety.
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i) The decision to address the Applicant’s complaint with a management intervention was properly affected;

ii) The Applicant has failed to sustain the burden of proof required to establish by convincing evidence that the decision to close his complaint of prohibited conduct was exercised arbitrarily or capriciously, was motivated by prejudice or other extraneous factors or was flawed by procedural irregularity or error of law;

iii) The Applicant filed his complaint claiming misconduct and harassment by the H/TDSE only after an improvement plan meeting was held on 14 February 2016;

iv) The Applicant’s allegations of information about “his case being leaked” to a social media platform are outside of the scope of the Applicant’s second application, and the claims are unsubstantiated and without merit; and

v) The remedies sought by the Applicant have no legal basis.

71. The Respondent requests the Tribunal to dismiss the application in JFO/2017/005 in its entirety.

Considerations

Case No. UNRWA/DT/JFO/2016/027

72. In his application filed before this Tribunal on 23 August 2016, registered as Case No. UNRWA/DT/JFO/2016/027, the Applicant contests the decision not to confirm his appointment as TDSE Advisor, Grade 16, after a probationary period, and to transfer him to his previous post of Education Specialist, Grade 13.

73. The reasons for the decision not to confirm the Applicant’s appointment as TDSE Advisor are specified in paragraph four of the letter dated 31 March 2016, as follows:
The Human Resources Department has now received the final Summary, Performance Report covering your performance during the extended probationary period, confirming that your performance in the post to which you have been promoted as still unsatisfactory. Your supervisor through email dated 27 March 2016, confirmed that you were not able to contribute to the Teacher Development and School Empowerment's work, continuously submitted poor quality work and were not able to achieve the Improvement Plan objectives (emphasis in original).

Applicable provisions

74. Area Staff Regulation 4.2 provides:

Appointments shall be subject to the satisfactory completion of not less than one month’s probationary service.

75. Area Personnel Directive No. A/4/Part VII/Rev.7 provides, in relevant part, as follows:

3. PURPOSE OF PROBATION

The purpose of probation is to fathom the overall performance and potential of a staff member in the job to which he/she is appointed, or reassigned with a view to determining the adequacy of his/her attitude in relation to certain normative standards of performance. Staff members are subject to probation on the occasions of:

(i) Appointment;
(ii) Reassignment or transfer with or without promotion.

* * *

5. PROBATION ON TRANSFER BETWEEN POSTS WITH OR WITHOUT PROMOTION

5.1. Transfer with promotion

[...]

5.1.2. A fully qualified staff member may be promoted to the level of the post to which reassigned (see part three of PD A/3), but will not be confirmed in the promotion level unless he/she has satisfactorily served a period of probation necessary to demonstrate ability to discharge all the responsibilities and duties attached to the post at the promotion level. Such probation may be formally extended.
10. REVIEW OF PROBATIONARY SERVICE – PROCEDURES AND AUTHORITIES

[...]

10.2. Probationary service, whether it is in connection with a new appointment, a transfer or a promotion, shall normally be made a subject of assessment and record in the periodic report form applicable to the employee category concerned. Officials to whom authority is delegated to confirm probation or otherwise must ensure that the procedures relating to the recording and assessment of service by periodic report form have been properly complied with, and that their decisions are clearly annotated, signed and dated in the appropriate personnel records.

* * *

11. In all circumstances satisfactory probationary service is a condition for confirmation of appointment, transfer and promotion.

76. The Applicant mainly contends that the decision to cancel his promotion to the post of TDSE Advisor was tainted by improper motives and flawed by procedural irregularities and abuse of power. Therefore, the Tribunal has to consider, first, whether the Applicant’s work was regularly assessed by his supervisor’s periodic reports, and whether he was informed of his shortcomings.

Immediate supervisor’s assessment and first improvement plan

77. By email dated 20 January 2015 to the H/TDSE, the Applicant sent a summary of tasks he had completed. On 16 February 2015, the Applicant and the H/TDSE discussed the Applicant’s work plan. On 24 March 2015, the Applicant was informed that his work plan had been rejected. A mid-term review meeting was held with the Applicant on 6 July 2015, regarding his performance during his probationary period. The H/TDSE informed him that he needed to improve his performance.

78. By email dated 20 August 2015 to the Applicant, the H/TDSE noted certain points discussed in the mid-term review meeting. She reminded him that he needed
to improve his performance to meet expectations for the post of TDSE Advisor. By email dated 1 September 2015, the Applicant objected to some of the points raised by the H/TDSE. On 21 September 2015, the Applicant was informed that his work plan had been approved.

79. On 4 October 2015, another meeting took place between the Applicant and the H/TDSE to discuss a performance improvement plan. As a result, an informal performance improvement plan was established for the period October to mid-December 2015. On 15 November 2015, the performance improvement plan was signed by the Applicant and the H/TDSE. The next day, the Applicant submitted his self-assessment and the H/TDSE submitted her assessment of the Applicant. The H/TDSE noted that the Applicant needed to further improve his performance. She also added that he needed to focus on his facilitator and presentation skills.

80. On 14 December 2015, the H/TDSE concluded in the report of informal improvement plan that the Applicant’s performance was not satisfactory. Subsequently, on 22 December 2015, the HRSO sent an email to the Applicant containing a copy of the above-mentioned report. On 23 December 2015, the Applicant was informed of the extension of his probationary period from 1 January to 31 March 2016.

81. The Applicant complains that his first informal improvement plan did not include measurable objectives, his comments had not been taken into account, and that the H/TDSE misled him with reports on his improvement and progression. The Tribunal notes that the H/TDSE indicated in interim reports of the performance improvement plan dated 16 November 2015, and 14 December 2015, that the Applicant was showing progress in his improvement plans, but “[his] performance still need[ed] further improvement to demonstrate the needed professional technical knowledge and competencies needed for the post.” Similarly, in the report on “Progress on Performance Improvement Plan” which the Applicant received on 22 December 2015, the H/TDSE concluded that “[his] performance [was] below expectations and he couldn’t demonstrate the needed professional technical knowledge and competencies needed for the post.” Although the Applicant claims
that he was not aware of this report, he acknowledged that it was actually sent to him by the HRSO on 22 December 2015.

82. After having thoroughly reviewed all the documents in the case file, especially the reports on the performance improvement plan, the Tribunal finds that the Applicant’s first informal improvement plan did include measurable objectives. In addition, it is clear from the interim reports that the Applicant’s performance was not satisfactory despite the fact that he did make some improvements. Therefore, the Tribunal holds that the Applicant’s claim that he was misled by the H/TDSE regarding his first improvement plan is without merit.

Second improvement plan

83. By email dated 14 January 2016, the HRSO reminded the Applicant and the H/TDSE of the points that had been discussed during a meeting held on 12 January 2016. During that meeting, the objectives of the new improvement plan had been discussed and reviewed. Both the Applicant and the H/TDSE had agreed on the new objectives with minor amendments made to the deadlines of some activities.

84. By email dated 21 February 2016, the H/TDSE sent to the Applicant her feedback on the first “Leading for the Future” workshop that had been conducted on 18 February 2016, and her feedback on the second script that the Applicant had submitted for the second workshop. By email dated 24 February 2016, the H/TDSE sent to the Applicant her feedback for the “first article summary” and second “Leading for the Future” workshop. By another email dated 3 March 2016, the H/TDSE sent to the Applicant her feedback for the “second article summary” and for the “action plan”.

85. On 17 March 2016, the Applicant shared with the H/TDSE his personal action plan for the second phase of the improvement plan. By email dated 21 March 2016 and 22 March 2016, the H/TDSE sent to the Applicant her feedback, respectively, for the third “Leading for the Future” workshop, and for the third summary, as well as for the “Leading for the Future” report. The Applicant objected to the feedback of the H/TDSE each time, and he complained about the insufficient feedback and
lack of commitment on the part of the H/TDSE and her failure to comply with the deadlines of the improvement plan.

86. By letter dated 30 March 2016, the Applicant was informed that his appointment as TDSE Advisor was not confirmed, and he was given the option of either transferring to his previous post of Education Specialist, Grade 13 or being terminated.

87. The result of the above is that there was a constant communication between the Applicant and the H/TDSE. The Applicant constantly objected to his immediate supervisor’s feedback and complained about the insufficient feedback and lack of commitment on her part. The Tribunal also takes note that the H/TDSE did not provide her feedback for three activities of the Applicant. Nevertheless, the H/TDSE constantly evaluated the work of the Applicant and advised him on the ways to improve his performance. Even though the Applicant might be justified in some of his objections, this does not change the fact that his performance did not significantly improve and it was still unsatisfactory. Therefore, after having thoroughly reviewed all of the documents in the case file relevant to the extended period of the Applicant’s probationary period, the Tribunal holds that the Applicant was properly and regularly assessed by the H/TDSE, and that he was consistently informed of his shortcomings and the ways to improve.

Second supervisor’s assessment

88. The Applicant also claims that, in contradiction with the Rules and Regulations of the Agency, his second supervisor never discussed his performance with him and never reviewed the performance evaluation of the H/TDSE.

89. By email dated 6 March 2016, the Applicant requested a second opinion with regard to his performance evaluation. The Applicant’s email was addressed to the HRSO, and his second supervisor was copied on the email. Nevertheless, as quoted above, there is no obligation in paragraph 10.2 of Area Personnel Directive No. A/4/Part VII/Rev.7, for a second supervisor to intervene in the case of a disagreement between the staff member under probation and his/her immediate supervisor.
90. In addition, by email dated 27 March 2016, the H/TDSE sent to the second supervisor and the HRSO, the results of the second phase of the Applicant’s improvement plan and his performance summary report. She concluded that the Applicant was not able to contribute to the TDSE work, and his performance was not satisfactory. Later, based on these conclusions, the Applicant’s second supervisor transmitted the final assessment of the second phase of the improvement plan to the Applicant. This was acknowledged by the Applicant in his application. By email dated 4 April 2016, the Applicant objected to the final assessment.

91. By her statement dated 6 July 2017, the Applicant’s second supervisor acknowledged that she did not meet the Applicant before 30 March 2016. At that point in time, the decision not to confirm the Applicant’s appointment as TDSE Advisor had already been made. However, since there is no provision in Area Personnel Directive No. A/4/Part VII/Rev.7 requiring the intervention of the second supervisor, the Tribunal holds that the Applicant’s claims regarding his second supervisor are without merit.

92. It follows from all of the foregoing that the Applicant has failed to establish that the decision not to confirm his appointment as TDSE Advisor and to transfer him to his previous post was unlawful.

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**Scope of the case**

93. On 14 February 2016, the Applicant submitted his first complaint of prohibited conduct against the H/TDSE for verbal abuse, abuse of power, and harassment. On 9 October 2016, the Applicant was informed by the DHR that his complaint of prohibited conduct would be addressed by a management intervention. On 17 October 2016, the Applicant submitted a request for review of the decision to close his first complaint.

94. On 15 December 2016, the Applicant submitted another complaint of prohibited conduct against the H/TDSE. As the only request for decision review
concerns the Applicant’s first complaint submitted on 14 February 2016, the Tribunal will only adjudicate on the Applicant’s first complaint.

Merits

95. With this second application registered under Case No. UNRWA/DT/JFO/2017/005, the Applicant contests the decision to close his complaint of prohibited conduct. The letter sent to the Applicant dated 9 October 2016, on behalf of the DHR, reads in relevant parts as follows:

Following a preliminary assessment of your complaint, and the issues that it raised, DHR:

1. accepted that, if true, the information you provided in relation to the “role play meeting” incident, did give rise to a prima facie case of harassment against you; and

2. did not find that there was sufficient evidence to conclude that there had been a prima facie case of abuse of power or harassment in relation to other allegations you had made.

DHR determined that the most effective and appropriate response option for him to use that would allow him to address the issues you raised, including the “role play meeting” harassment issues, would be management intervention…

96. The Applicant claims that he was subjected to harassment by the H/TDSE, and he was also a victim of abuse of power.

97. The Applicant complains that he was subjected to harassment starting in March 2015. As examples of alleged harassment, the Applicant first notes that the H/TDSE had expressed her dissatisfaction with the conclusions of the Evaluation Committee regarding the printing companies. Even though the Applicant was one of the three members of the Evaluation Committee, it does not necessarily mean that the H/TDSE’s dissatisfaction with the Evaluation Committee’s conclusion is an incident of harassment towards the Applicant. Therefore, the Tribunal opines that the claim regarding this incident is without merit.

98. Another point raised by the Applicant in his complaint of prohibited conduct is that the H/TDSE mentioned in her email dated 20 August 2015 that they had two
mid-term review meetings. The Applicant mentions that he pointed out to the H/TDSE by email dated 1 September 2015, that, actually, they had only one unfinished mid-term review meeting. The Tribunal holds that this insignificant issue does not amount to an incident of harassment.

99. The Tribunal has stated above that the Applicant was fully and regularly assessed and his shortcomings were clearly indicated to him by the H/TDSE. In the Tribunal’s view, all of the comments and the appraisal of the H/TDSE did not exceed the level of an ordinary relation between a supervisor and his/her supervisee. As a consequence, the Applicant’s complaint for harassment in his performance appraisals cannot be established. Therefore, based on the preliminary assessment of the Applicant’s complaint, the DHR correctly concluded not to consider the Applicant’s performance evaluation as harassment, abuse of power or retaliation.

100. With regard to the tasks assigned to the Applicant by the H/TDSE, such as translation work or removal of materials from a warehouse, the Applicant claims that these tasks and duties were unrelated to his job description. In this respect, the Respondent submits that this claim is without merit as the assigned tasks were within the Applicant’s post description which is specified in its paragraph (I): The incumbent of the post “[p]erforms such other duties as may be assigned”. The Tribunal is satisfied with the Respondent’s submission and holds that these are ordinary issues which may occur in every usual relationship between a manager and his/her staffs. Consequently, the Tribunal agrees with the DHR’s conclusion that there was not sufficient evidence to conclude that there had been a prima facie case of abuse of power or harassment in relation to these tasks assigned to the Applicant.

101. Another reason why the Applicant contests the decision to close his complaint of prohibited conduct is because the preliminary assessment report concluded that, if true, the “role play meeting” incident did give rise to a prima facie case of harassment. The Applicant contests the decision to close his complaint without further investigation despite this conclusion of the preliminary assessment report. The Applicant reported the event in his complaint as follow:

On 24/5/2015 we had a role play meeting … and when my turn came and I began to talk[,] she interrupted me several times by
asking a serial of questions. She told me[: ‘Your answer seems that you never heard about SBTD I.’ When I tried to clarify my position[,] she shouted in an inappropriate way[,] ‘don’t interrupted me while I am talking[,] Shame[,] shame[,] shame[!]’ in front of my colleagues[.] After the meeting[,] she asked me to stay and told me that I always wanted her to look wrong. When I wondered how and when I called her by her name she told me to call her ‘[Ms. Raghda]’ and when I heard that[,] I told her that I am ‘[Mr. Ali]’ she immediately told me: ‘[Y]ou’re in the probation period[,] no need to insert the maze of fixing you[,]’

102. General Staff Circular No. 06/2010 on PROHIBITION OF DISCRIMINATION, HARASSMENT – INCLUDING SEXUAL HARASSMENT – AND ABUSE OF POWER provides:

**Actions that may be taken**

29. One of the following actions may be taken by the Field Director or DHR, as applicable:

(a) If it is considered that the allegations are unfounded, provided the complaint was made in the reasonable belief that what is being reported is true, no action will be taken if the complaint turns out to be misguided or false. The case will be closed and the alleged offender and aggrieved individual provided with a summary of the investigation’s findings and conclusions. Complainants may be called upon to support their complaints, and where complaints are found not to have been made in good faith or on reasonable grounds, complainants may be subject to disciplinary action.

(b) If it is considered there was a factual basis for the allegations that does not justify disciplinary proceedings but warrants some other action, a decision will be made on managerial action to be taken which may include, but is not limited to, mandatory training, reprimand, a change of functions or responsibilities, counselling or other appropriate corrective measures. The staff member and complainant shall be informed of the outcome of the investigation and the action being taken.

(c) If it is considered that the allegations were well-founded and misconduct has occurred, appropriate disciplinary proceedings will be initiated under Chapter X of the International Staff Rules or Chapter X of the Area Staff Rules, as applicable.

(d) Other action as deemed appropriate. (Emphasis in original)
103. By letter dated 9 October 2016, the DHR decided to close the Applicant’s complaint. The letter informed him that all the issues he had raised, including the “role play meeting” incident, would be addressed by a management intervention. The DHR also confirmed in the letter that management intervention had already taken place.

104. In his reply in JFO/2017/005, the Respondent submits that an additional management intervention took place on 9 February 2017 between the H/TDSE and the Chief Human Resources Strategic Services Division in order to have a record of the management intervention.

105. By Order No. 122 dated 11 September 2017, the Tribunal ordered the Respondent to submit to the Tribunal a copy of the minutes of the management intervention. On 21 September 2017, the Respondent submitted his response to Order No. 122, and provided the minutes of the management intervention. This was transmitted to the Applicant on the same day.

106. As a result, the Tribunal holds the decision to close the Applicant’s complaint by a management intervention was effective and not manifestly unreasonable regarding the “role play meeting” incident.

107. Lastly, the Applicant contends that the DIOS constantly closes cases in which staff members complain about the actions of the Agency or Senior Management, without conducting the required investigation. In this regard, the Applicant is reminded that the DIOS only makes recommendations. The decision to investigate or not, the decision to close an investigation with or without action are taken by the Commissioner-General, and these decisions can be contested before the Tribunal. Therefore, the Applicant cannot sustain that he was not able to assert his rights.

108. It follows from all of the foregoing that the Applicant has failed to establish that the decision to close his complaint of prohibited conduct was unlawful.
Conclusion

109. In view of the foregoing, the Tribunal DECIDES:

The applications are dismissed.

(Signed)

Judge Jean-François Cousin

Dated this 16th day of October 2017

Entered in the Register on this 16th day of October 2017

(Signed)

Laurie McNabb, Registrar, UNRWA DT, Amman