JABER

v.

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

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Rachel Evers (DLA)
Introduction

1. This is an application by Jamal Theeb Ahmad Jaber (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 close the investigation of his complaint.

Facts

2. Effective 23 December 2007, the Applicant was employed by the Agency on a fixed-term appointment as an Information Systems Help Desk Assistant, Grade 12, Step 1.

3. By email dated 4 May 2016 to the Field, Information Systems & Communication Technology Officer (“FISCTO”), the System Analyst/Programmer (“SA/P”) complained about a “very unacceptable violation of privacy” by the Applicant, as he had been logging into her computer. The Applicant was copied on the email.

4. By email to the Field Legal Officer (“FLO”) dated 4 May 2016, the Applicant requested an investigation into the SA/P’s accusation against him. On the same day and by email to the FISCTO and the FLO, the Applicant provided an explanation for what had transpired and reiterated his request for an official investigation into the matter.

5. By email to the FLO dated 4 May 2016, the FISCTO requested the FLO to hold back on the investigation because he himself had to investigate first.

6. By email to the Chief, Information Systems Division (“CISD”) dated 4 May 2016, the FISCTO sought technical assistance with regard to the complaint of the SA/P. The CISD stated:

   Both of the staff members escalate this issue to the legal office and without involving me. I requested the [Legal Officer] to wait until we examine our logs and evaluate the technical justifications. Your urgent
assistant [sic] by sending an experienced staff from HQA to check is appreciated.

7. The CISD referred the issue to the Head, Systems Services (“HSS”). The HSS had the Server and Storage Administrator (“SSA”) look into the matter.

8. The SSA reported his findings to the HSS by email dated 4 May 2016 and concluded that no further investigation was necessary. In his email, the SSA listed the following:

1 - As per attached pic 1, all accounts reside on her PC are default accounts in addition to her domain account.

2 - As per pic 2 and pic 3 attached, all account are system accounts and logged on from her PC.

3 - All other mentioned account by e-mail sent from her normal and logged in to all PCs as a system accounts.

9. By email to the FLO dated 4 May 2016, the FISCTO transmitted the technical findings that the Applicant had not done anything wrong noting as follows:

Please note that I requested Chief ISD assistant [sic] in sending a neutral expert from the enterprise section to check and investigate the logs and evaluate the justification. Attached is the HQA-ISD reply. In summary the complaint is based less [sic] and the servers regularly open sessions in all computers joined the domain to push updates, check licenses,...etc. Please consider that there are no technical issue and Jamal do not do any wrong actions, you may take further admin actions.

10. Following the technical findings by the SSA, the Jordan Field Office (“JFO”) Intake Committee, at its meeting of 15 May 2016, recommended a preliminary assessment of the SA/P’s complaint as it was not clear to the members of the Committee what the assessment of the SSA meant, and whether the Applicant had legitimately used the “system accounts”.

11. By memorandum to the Head Field Legal Office (“HFLO”) dated 6 September 2016, the Director of UNRWA Operations, Jordan (“DUO/J”) set out the Terms of Reference (“ToR”) for a Preliminary Assessment. The DUO/J mentioned in the first paragraph of the ToR the alleged misconduct by the Applicant, namely, logging into
a staff member’s work computer account and files from different computers and accounts without any prior authorisation.

12. In the Preliminary Assessment Report dated 29 September 2016, the HFLO concluded that the Applicant had not accessed the SA/P’s account. The HFLO found that there was no *prima facie* evidence of the alleged facts and no *prima facie* evidence of maliciousness on the part of the SA/P when she claimed that her account had been violated. The HFLO indicated that the SA/P is not an expert in “system accounts”, which was why she believed that her account had been violated.

13. By letter to the Applicant dated 18 October 2016, the HFLO informed the Applicant that no further investigation into the matter would be justified as the Preliminary Assessment had shown that there was no *prima facie* evidence of misconduct on the Applicant’s or the SA/P’s part.

14. By email to the DUO/J dated 20 October 2016, the Applicant requested an investigation regarding the SA/P’s malicious complaint against him and regarding “the harassment through screaming at [his] office in front of colleagues”.

15. In an email to the Applicant dated 20 October 2016, the HFLO clarified that the Applicant’s claim that the SA/P had maliciously raised allegations against him was considered in an investigation and that no evidence of such maliciousness was found, and that accordingly, upon recommendation of the JFO Intake Committee, no further investigation into the matter was justifiable.

16. On 24 October 2016, the Applicant filed a request for review of the decision dated 18 October 2016.

17. On 7 December 2016, the application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on the same day.

18. On 23 December 2016, the Respondent filed a “Motion for Extension of Time” to file his reply outside the 30-calendar day time limit set out in Article 6(1) of the Rules of Procedure of the Tribunal. The motion was transmitted to the Applicant on 27 December 2016.
19. By email dated 28 December 2016, the Applicant informed the Tribunal that he had “no objection to extend the time to reply”. The Applicant’s email was transmitted to the Respondent on the same day.

20. By Order No. 014 (UNRWA/DT/2017) dated 5 January 2017, the motion was granted.

21. On 10 January 2017, the Applicant was interviewed by the HFLO with respect to his complaint of 20 October 2016. By email dated 11 January 2017, the HFLO concluded that his conclusions from the Preliminary Assessment Report dated 29 September 2016 had not changed after the interview with the Applicant.

22. On 20 January 2017, the Respondent filed his reply. The reply was transmitted to the Applicant on 22 January 2017.

23. On 3 February 2017, the Respondent filed a “Motion for Extension of Time to Translate the Reply”. The motion was transmitted to the Applicant on 5 February 2017.

24. The Respondent filed the Arabic translation of the reply on 7 February 2017, before the Tribunal had issued an Order in this respect. The late filing of the Arabic translation of the reply was accepted in the case record and was transmitted to the Applicant on 7 February 2017.

**Applicant’s contentions**

25. The Applicant contends:

   i) The HFLO did not follow the correct investigation procedures;

   ii) The HFLO did not interview any witnesses; and

   iii) The HFLO “responded by sending an email that ends all possibilities of restitution”.

26. The Applicant requests:

   i) “[T]o take strict administrative measure against” the SA/P; and
ii) Compensation which the Tribunal deems fit.

**Respondent’s contentions**

27. The Respondent contends:

i) The Agency has discretionary authority in responding to complaints of staff members. The decision to close the investigation constituted a proper exercise of the Agency’s discretionary authority;

ii) The decision to close the investigation of the Applicant’s complaint was properly effected, fair and reasonable;

iii) The Applicant has not provided any convincing evidence that the impugned decision was arbitrary or capricious, was motivated by prejudice or other extraneous factors, or was flawed by procedural irregularity or error of law; and

iv) The relief sought by the Applicant has no legal basis.

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

**Considerations**

**Scope of the case**

29. In his request for decision review, as in his application, the Applicant indicates that he is contesting the letter of 18 October 2016, by which he was notified by the HFLO of the DUO/J’s decision of 12 October 2016, to close the investigation into allegations that he had engaged in misconduct by allegedly logging into the account of another staff member. The same letter also states that there was no *prima facie* evidence of maliciousness on the part of the SA/P in reporting the allegation.

30. Following the letter from the HFLO to the Applicant dated 18 October 2016, the Applicant sent an email to the DUO/J on 20 October 2016, in which he requested an investigation regarding the SA/P’s malicious complaint against him and regarding “the harassment through screaming at [his] office in front of colleagues”.

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31. In an email to the Applicant dated 20 October 2016, the HFLO clarified that his claim had been considered and that no evidence of maliciousness on the part of the SA/P had been found and that, accordingly, upon recommendation of the JFO Intake Committee, no further investigation into the matter was justified.

32. Nonetheless, on 10 January 2017, the Applicant was interviewed by the HFLO with respect to his 20 October 2016 request for an investigation. An email from the HFLO dated 11 January 2017 clarifies that he had determined that his conclusions from the Preliminary Assessment Report dated 29 September 2016 did not change by the information the Applicant had provided in the interview.

33. From the above-mentioned facts it is clear that, by his application, the Applicant intends to contest the Agency’s decision to close the case following his complaint against the SA/P without taking any action against her.

Merits

34. The Tribunal recalls that the Commissioner-General has broad discretionary authority in matters relating to the investigation of misconduct; however, this authority is not unfettered, and the Tribunal has to determine whether or not the rationale of the Agency’s decision to close the case without further investigation and action was unreasonable.

35. Firstly, the Tribunal notes that, contrary to what has been alleged by the Applicant, an investigation was conducted. The CISD referred the issue to the HSS. The HSS had the SSA look into the matter, and the SSA reported his findings to the HSS by email dated 4 May 2016, concluding that no further investigation was necessary. In the Preliminary Assessment Report dated 29 September 2016, the HFLO concluded that the Applicant had not violated the SA/P’s account. Additionally, the HFLO found that there was no prima facie evidence of maliciousness on the part of the SA/P when she claimed that her account had been violated. The HFLO indicated that the SA/P is not an expert in “system accounts”, which explains why she believed that her account had been violated.

36. Secondly, in his statement of 10 January 2017, the Applicant stated that it was plausible that the SA/P genuinely believed that he had accessed her account.
Moreover, after reviewing the Preliminary Assessment Report, it is clear to the Tribunal, that there had not been any malicious intent on the part of the SA/P. Accordingly, the Tribunal holds that the Agency’s decision not to further investigate the matter was justified.

37. By his request for decision review, and by his application, the Applicant complains that no investigation or action had been taken against the SA/P for the way she had reacted in front of other colleagues when she believed that the Applicant had accessed her account without authorisation. However, the Tribunal notes that, by the emails which the Applicant filed with respect to his complaint against the SA/P, he never raised this issue. Therefore, he cannot maintain that the Agency should have investigated facts which he did not raise.

Conclusion

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

The application is dismissed.

(Signed)

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Judge Jean-François Cousin
Dated this 22nd day of November 2017

Entered in the Register on this 22nd day of November 2017

(Signed)

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Laurie McNabb, Registrar, UNRWA DT, Amman