RAFEI

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 Mohammad Rafei (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 place him on administrative leave for nine months during the investigation of alleged misconduct.

Facts

2. Effective 15 September 2003, the Applicant was employed by the Agency as a Teacher in the Northern Area, Syria Field Office (“SFO”). At the material time relevant to this application, the Applicant was a School Principal, Acre Preparatory School, Nairab Camp, Aleppo, SFO.

3. On 28 September 2015, an email containing a complaint was filed with the Department of Internal Oversight Services (the “DIOS”). The email alleged that the Applicant had “exercised corporal punishment” against students in the school by using derogatory terms and encouraging harassment and bullying by other students.

4. On 17 January 2016, the Director of UNRWA Affairs, Syria (“DUA/S”) decided to launch an investigation into the allegations against the Applicant.

5. On 21 February 2016, the DUA/S placed the Applicant on administrative leave with pay pending completion of the investigation.

6. The interview phase of the investigation lasted from 23 February 2016 until 28 February 2016. The investigation panel interviewed approximately 27 witnesses who were at the school on the day of the alleged incidents.

7. On 8 August 2016, the investigation report was submitted to the DUA/S. The investigation panel concluded that there was no credible evidence to substantiate the reported allegations and that the investigation was closed by the DIOS.

8. On 25 August 2016, one of the members of the investigation panel sent the English translation of the witness statements to the DUA/S.
9. On 9 November 2016, the DUA/S approved the closure of the investigation. By letter from the Field Administration Officer, dated 12 November 2016, the Applicant was informed that the investigation report concluded that there was no credible evidence to substantiate the reported allegations of misconduct. Furthermore, the letter stated that the Applicant’s administrative leave with pay was revoked and that he was authorised to return to duty effective 13 November 2016.

10. On 24 November 2016, the Applicant submitted a request for review of the decision regarding his suspension for a period of nine months. On 19 December 2016, the DUA/S affirmed the decision.

11. On 14 January 2017, the application was filed with the UNRWA Dispute Tribunal (“Tribunal”). The application was transmitted to the Respondent on 18 January 2017.

12. On 17 February 2017, the Respondent filed his reply. On 19 February 2017, the reply was transmitted to the Applicant.

13. On 3 March 2017, the Respondent filed the Arabic translation of the reply. The translation was transmitted to the Applicant on 5 March 2017.

14. By Order No. 130 (UNRWA/DT/2017) dated 18 September 2017 (“Order No. 130”), the Tribunal requested the Respondent to provide, on an ex parte basis, both the investigation report of the allegations made against the Applicant and the closure report.

15. The Respondent submitted his response to Order No. 130 on 9 October 2017, providing one document being the closure report and investigation report at the same time.

16. The Tribunal has reviewed the investigation and closure report and finds that there is nothing contained in the report that has any bearing on the Tribunal’s deliberations. Therefore, the report was not transmitted to the Applicant and was expunged from the case file.
Applicant’s contentions

17. The Applicant contends:

   i) He was subjected to great injustice as he was suspended for nine months without any reason;

   ii) He was informed by letter that the investigation would not exceed nine days and yet it took nine months for the Agency to authorise his return to duty;

   iii) He was devastated by the events and it caused grief to his parents. His professional reputation was affected in a harmful way;

   iv) He was deprived of completing a high standard professional training because of the suspension. He also lost a chance to be a candidate for the post of Deputy North Area Officer in Aleppo;

   v) He was defamed by his colleagues at work;

   vi) He has been subjected to continuous threats from Mr. M. A., the Area Education Officer in Aleppo; and

   vii) The Agency did not take any disciplinary measures against the instigators after his innocence had been proven.

18. The Applicant requests:

   i) A letter from the DUA/S thanking the Applicant for his patience and adherence to the rules and regulations despite the injustice he has been subjected to;

   ii) To take action against those who submitted the false allegations against him;
iii) To be granted compensation in the amount of USD20,000 for the harm inflicted on his position in the community, and for his psychological suffering; and

iv) To compensate his parents in the amount of USD20,000 for their psychological stress caused by the impugned decision.

**Respondent’s contentions**

19. The Respondent contends:

i) The investigation into the Applicant’s alleged misconduct was properly effected;

ii) In line with Area Staff Rule 110.2, the Applicant was suspended from duty pending the investigation of the alleged misconduct. The gravity of the allegations, the “zero tolerance” policy of the Agency on violence towards children, and the position of the Applicant as School Principal were taken into account;

iii) The Applicant misunderstood the wording of the notification of the investigation, in particular “that the investigation is scheduled to be completed no later than 29 February 2016”. Per Area Staff Rule 110.2, administrative leave is imposed until the completion of the disciplinary process;

iv) The investigation was conducted from 22 February 2016 until 8 August 2016. Twenty-seven witnesses were interviewed. During the five months in which the investigation took place, the city of Aleppo was an active conflict zone and the two investigators had to attend to other humanitarian emergencies while carrying out the investigation;

v) The closure of the case could not be effected immediately after the closure report due to a combination of operational factors. The DUA/S left his position on 9 September 2016, and the Deputy Director of Operations Support was not in a position to consider the case as Officer-in-Charge before
she went on medical leave. The subsequent Officer-in-Charge had an immense workload, and when the new DUA/S was appointed, he started carrying out his tasks remotely while waiting for his visa;

vi) The Applicant did not provide any evidence for his claim that the basis for the investigation had been malicious allegations of his colleagues;

vii) The Applicant did not provide any evidence in support of his allegations that the suspension prevented him from attending a training; and

viii) The Applicant did not provide any evidence that he lost the opportunity to apply for the position of Deputy Director of Aleppo Area.

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

Considerations

Merits

21. Area Staff Rule 110.2 on administrative leave pending investigation provides:

1. A staff member may be suspended pending investigation by being placed on administrative leave, subject to conditions specified by the Commissioner-General, at any time pending an investigation until the completion of the disciplinary process.

2. In determining whether to place a staff member on administrative leave pending an investigation, the Commissioner-General shall consider whether there is prima facie evidence in support of the allegation of misconduct and whether the staff member’s continuance in the post and/or the duty station would be contrary to the interests of the Agency.

22. General Staff Circular No.1/2013 provides in paragraphs 1 and 2:

1. The Agency is committed to ensuring all UNRWA staff and other personnel work in and promote an environment free from violence. The Agency is committed to a ‘zero tolerance’ approach to behaviour that is contrary to this General Staff Circular, which means that any allegations or complaints will be dealt with promptly
in accordance with the Agency’s regulatory framework, including its Staff Regulations, Rules, Personnel Directives and associated administrative issuances.

2. All forms of violence, including against children, by UNRWA staff and other personnel in the course of their duties and/or in UNRWA installations are strictly prohibited at all times and under all conditions and circumstances, and as such are considered misconduct. […]

23. Following a complaint filed against the Applicant on 28 September 2015, the DUA/S, on 17 January 2016, decided to launch an investigation into the allegations that had been made against the Applicant. On 21 February 2016, the Applicant was placed on administrative leave with pay. In the notification of the investigation, the Applicant was informed that “the investigation is scheduled to be completed no later than 29 February 2016”.

24. The Respondent submits that the Applicant had misunderstood that his suspension would be no longer than nine days. However, a plain reading of the notification of the investigation shows that the investigation was scheduled to be completed no later than 29 February 2016. Consequently, the Applicant could reasonably have assumed that he would return to duty not long after that date. Therefore, the Tribunal finds that the Agency provided the Applicant with incorrect information, especially since the investigation report was submitted to the DUA/S as late as 8 August 2016. The Applicant claims, and the Respondent does not contest, that he was not informed about the investigation or its progress during a period of more than nine months.

25. It is clear from the case file that the investigation started at the end of February 2016. From 23 February 2016 to 28 February 2016, 27 witnesses were interviewed by the investigators. The investigation report was submitted to the DUA/S on 8 August 2016, and on 9 November 2016, the DUA/S finally closed the investigation. The Applicant was informed of that DUA/S decision on 12 November 2016. The Applicant’s administrative leave with pay was revoked, and the Applicant returned to duty effective 13 November 2016.

26. The Tribunal considers that a period of five months between the end of the interviews and the submission of the investigation and closure report to the DUA/S
was unreasonably long, even considering that the statements needed to be translated into English and particularly considering the minimal complexity of the case. Furthermore, another three months passed between the submission of the report which recommended closing the case and the actual closure of the investigation. The Respondent submits that this delay was due to the critical situation in Aleppo and a combination of operational factors. However, the Tribunal finds that, as there was no evidence of misconduct on the part of the Applicant and the case was otherwise rather simple, the delays were extraordinary.

27. Consequently, the Tribunal holds that the Applicant was not treated fairly for the following reasons. The Agency had given him incorrect information about the length of the investigation, and subsequently, he was not informed about the investigation for more than nine months. Furthermore, the Tribunal concludes that, as the case concerned a straightforward and rather simple issue, there was an unusual delay in closing the investigation.

Compensation

28. The Applicant cannot be compensated for moral damages caused by the decision to suspend him with pay, as this decision was lawful. However, the Agency must pay the Applicant the sum of USD1,000 in compensation for moral damages caused by the unusual delay in closing the investigation. There is no doubt that the Applicant suffered stress as a result of an investigation hanging over his head for nine months, especially since the allegations turned out to be not credible. The Applicant’s other claims are rejected.
Conclusion

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

i) The Agency shall pay the Applicant the sum of USD1,000; and

ii) The above sum is to 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.

(Signed)

Judge Jean-François Cousin

Dated this 27th day of December 2017

Entered in the Register on this 27th day of December 2017

(Signed)

Laurie McNabb, Registrar, UNRWA DT, Amman