Before: Judge Bana Barazi
Registry: Amman
Registrar: Laurie McNabb

EL WUHAIDI

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 Muyyad Tawfiq El Wuhaidi (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 terminate his appointment in the interest of the Agency.

Facts

2. On 10 April 2011, the Applicant entered the service of the Agency as a Translator in the Field Legal Office, Gaza (“FLO/G”).

3. On 2 September 2014, the Applicant was placed on an informal Opportunity to Improve (“OTI”) process for a period of 45 days by his immediate supervisor, the Legal Officer (“LO”) in the FLO/G. As confirmed by email on the same day, this involved a meeting between the Applicant and the LO for the purpose of identifying and agreeing on areas of the Applicant’s performance that needed improvement, namely: the Applicant’s relationship with his colleagues; his productivity; and his timeliness. The Applicant also agreed on the submission of work sheets in order to track his work, and on regular follow-up meetings.

4. On 29 September 2014, the Head of FLO/G (“H/FLO/G”) sent an email to the Applicant with regard to an incident involving the Applicant and a staff member at the FLO/G. The H/FLO/G stated, inter alia, that he found the Applicant’s language and manner in which it was used to be unacceptable and inflammatory and that the Applicant’s behaviour was “significantly more to blame for the incident” than the other staff member involved.

5. On 9 October 2014, another staff member in the FLO/G, who worked as a translator under the supervision of the Applicant, sent an email to the H/FLO/G alleging that the Applicant had asked him to translate documents over the past months and would then pretend that he had translated the documents himself. The staff member also stated that the Applicant had asked him to translate documents that were not related to the Agency and complained about the Applicant’s attitude towards him.
6. On 10 October 2014, the H/FLO/G wrote to the Applicant about his failure to request leave in advance, as well as about an incident between the Applicant and a colleague where he had made inappropriate comments, the translation of documents unrelated to Agency work and his possible involvement in unauthorised external activities.

7. Based on information he had received, the H/FLO/G, by letter dated 13 October 2014, requested the Applicant to confirm by or before 20 October 2014, whether he has been involved in unauthorised activities, i.e. translation work unrelated to the Agency.

8. As the Applicant failed to show improvement in the three areas identified in paragraph 3 above, the informal OTI period was extended for another 45 days.

9. By email dated 26 October 2014, the LO reminded the Applicant in writing that he had not submitted work sheets as previously agreed in order to track the Applicant’s productivity. Also on 26 October 2014, there was an exchange of emails between the LO and the Applicant in which the main subject was the tracking sheet.

10. On 30 October 2014, the LO issued a Letter of Reprimand to the Applicant based on the following: his insubordinate behaviour, unsatisfactory performance involving his conduct, failure to report absences and late arrival to work. The Applicant refused to sign an acknowledgement of receipt of the letter given to him by the LO in the presence of the Human Resources Officer, and it was also reported by the LO to the H/FLO/G that the Applicant displayed inappropriate behaviour at that time.

11. As the Applicant’s overall performance failed to reach a satisfactory standard during the informal OTI process, the H/FLO/G informed the Applicant by email dated 30 November 2014 that a formal OTI process would be initiated by the LO and Human Resources.

12. On 14 December 2014, the LO and the Applicant had a discussion during which the LO expressed, inter alia, concern that the Applicant was not taking the
OTI process seriously. The details of the LO’s contentions were contained in a lengthy email to the Applicant dated 16 December 2014.

13. Also, in the 16 December 2014 email, the LO followed up with the Applicant and reminded him that he had to complete his work sheets even if he considered them “pointless” and to check with her upon his arrival to work as his tardiness was one of the areas identified for improvement. It was noted that the Applicant’s relationship with his colleagues had improved but not his relationship with her. The LO also reminded the Applicant to provide a response on his alleged involvement in unauthorised outside activities that had been requested from him on 13 October 2014.

14. As reported by a staff member to the H/FLO/G in an email dated 18 December 2014, an incident had occurred on 15 December 2014, where the Applicant had made inappropriate comments allegedly directed at the staff member. On 18 December 2014, another incident occurred between the Applicant and another staff member, as well as with the LO, which the LO characterised as the Applicant “behaving disrespectfully” and insubordinately.

15. By email dated 6 January 2015, the H/FLO/G wrote to the Applicant about his post facto leave applications and his unauthorised absence on 7 and 11 December 2014. The H/FLO/G reminded the Applicant at length of the Agency’s policy on timely requests for leave.

16. On 27 January 2015, the H/FLO/G sent a Letter of Reprimand to the Applicant for his persistent failure to comply with the H/FLO/G’s requests to provide an answer by 20 October 2014, about his alleged involvement in unauthorised outside activities. The H/FLO/G found the Applicant’s behaviour to be “deliberately insubordinate”, “contrary to the standards required of [a] normal employee/supervisor relationship and undermining of the trust that such a relationship requires” and “incompatible with the requirement to contribute to building a harmonious workplace environment that is based upon mutual respect, understanding and accountability for your actions”.

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17. On 4 February 2015, the Applicant replied to the H/FLO/G’s 13 October 2014 letter about his alleged involvement in unauthorised outside activities. The Applicant explained that he had translated “some papers for some friends” and stated that he would no longer undertake such activities.

18. In an internal memorandum dated 14 June 2015, it is reported that on 23 February 2015, the Applicant, the LO and the Deputy Director of UNRWA Operations, Gaza (“D/DUO/G”) met to discuss the formal OTI process. The memorandum also mentions that, on 28 April 2015, a follow-up meeting was held between the Applicant, the LO and the D/DUO/G. Improvement was noted in the Applicant’s relationship with his colleagues, however, his punctuality and productivity remained inconsistent.

19. By email dated 6 June 2015, the Applicant informed the Field Human Resources Office that he was going to apply for Special Leave Without Pay (“SLWOP”) in order to follow a PhD programme in the United Kingdom.

20. By email dated 7 June 2015, the Applicant requested the LO to approve his application for SLWOP.

21. On 8 June 2015, the Applicant left Gaza without waiting for a decision on his SLWOP request.

22. By email dated 22 July 2015, the new H/FLO/G informed the Applicant that his request for SLWOP would be considered after the finalization of the OTI process.

23. By email dated 29 July 2015, the D/DUO/G wrote to the Applicant informing him that, due to his abrupt departure from Gaza, the Agency had been unable to meet with him for the final OTI discussion. The D/DUO/G added that she had requested the LO to prepare a written assessment of the Applicant’s performance, as a way to complete the formal OTI process. The assessment was attached to the email, and the Applicant was requested to provide a response.

24. By letter dated 10 August 2015, the Applicant provided a response to the LO’s written assessment of his performance.
25. By email dated 25 August 2015, the D/DUO/G, having considered all documents related to the OTI process, concluded that the Applicant’s “performance did not return to an acceptable level having not made the necessary improvements set out within the OTI”. The D/DUO/G recommended that the Applicant be removed from his functions.

26. On 26 August 2015, the Head, Field Human Resources Office (“H/FHRO”) addressed a report to the Director of UNRWA Operations, Gaza (“DUO/G”), in which he related that the D/DUO/G recommended the termination of the Applicant’s appointment for unsatisfactory performance.

27. On 27 August 2015, the Acting DUO/G approved the report.

28. Having reviewed the events relating to the Applicant’s unsatisfactory performance, the DUO/G informed the Applicant by letter dated 28 September 2015, that his services would be terminated in the interest of the Agency effective 2 September 2015.

29. On 25 October 2015, the Applicant filed his request for decision review.

30. On 23 November 2015, the Deputy Commissioner-General confirmed the decision of the DUO/G.

31. On 29 December 2015, the Applicant filed his application with the UNRWA Dispute Tribunal (the “Tribunal”).

32. On 7 January 2016, the application was transmitted to the Respondent.

33. On 3 February 2016, the Respondent filed a motion for an extension of time to file a reply (“motion”). On the same day, the motion was transmitted to the Applicant who did not provide any comment in this respect.

34. By Order No. 012 (UNRWA/DT/2016) dated 14 February 2016, the Tribunal granted the Respondent’s motion and ordered the Respondent to file his reply on or before 19 February 2016.

35. On 19 February 2016, the Respondent filed his reply.
36. On 21 February 2016, the Respondent’s reply was transmitted to the Applicant.

37. By Order No. 096 (UNRWA/DT/2016) dated 15 November 2016, the Tribunal ordered the Respondent to provide ex parte the unredacted versions of Annexes 19 and 20 on or before 30 November 2016.

38. On 30 November 2016, the Respondent filed ex parte the unredacted versions of Annexes 19 and 20.

39. The Tribunal has reviewed both the redacted and the unredacted versions of Annexes 19 and 20 and finds that there is nothing redacted that has any bearing on the Tribunal’s deliberations. Therefore, the unredacted versions of Annexes 19 and 20 were not transmitted to the Applicant and were expunged from the case file.

**Applicant’s contentions**

40. The Applicant contends:

   i) The OTI process was illegal and based on personal disputes and had nothing to do with the Applicant’s work;

   ii) The LO used false evidence against the Applicant;

   iii) The LO and the H/FLO/G were biased against the Applicant;

   iv) The LO kept postponing the OTI meeting until the Applicant left Gaza even though the Applicant had informed the LO in January 2015 that he would be leaving at the end of May 2015;

   v) During the meetings the Applicant had with the LO, nothing was ever mentioned about the quality of his work;

   vi) The Applicant’s productivity was satisfactory and he submitted a weekly report of the translations he had done;
vii) The Applicant was punctual in arriving to work, and when he was late, he had informed the LO in advance;

viii) The Applicant put in free overtime to compensate for his tardiness; and

ix) The Applicant was awarded a scholarship because he is diligent.

41. The Applicant requests:

i) The opportunity to be heard verbally by the Tribunal;

ii) Acceptance of his application for SLWOP;

iii) Apologies from the LO;

iv) A meeting with the Deputy Commissioner-General to explain what had happened to him so that it does not happen to other staff members; and

v) His reinstatement as a translator-interpreter in the FLO/G.

Respondent’s contentions

42. The Respondent contends:

i) The decision to terminate the Applicant’s appointment was properly made; and

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

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

Was the Respondent’s decision to terminate the Applicant’s appointment properly made?

44. Area Personnel Directive No. PD/A/23 ("PD/A/23"), under the chapter of “Managing Underperformance”, provides in detail how the OTI process is to be conducted. As it would be too long to quote in full, the Tribunal will quote the relevant parts:

Informal OTI process

29. Having identified the underperformance in one or more of the objectives the immediate supervisor needs to discuss the matter with the staff member. Specific examples need to be presented to the staff member that highlight how performance is considered to have deteriorated, and how this varies from the agreed objectives and indicators in the ePer. The staff member must be given an opportunity to provide an explanation in order to understand the underlying reasons for the decline in performance.

30. Notwithstanding this is an “informal” process, agreement is required on the reasons behind the performance problem and on the standards required to be met. As a minimum the process must include:

   a. a documented [footnote omitted] performance improvement session with the objective being that the staff member understands and agrees [sic] the areas in which his/her work is below standard and the goals for improvement over an agreed period; and

   b. the provision of appropriate assistance (e.g. training, closer supervision) to enable the staff member to meet the required standards.

31. Subsequent to this initial process the following may take place:

   a. Schedule regular performance improvement discussions to track the progress of the performance improvement plan.

   b. Provide closer supervision and feedback to positively reinforce good performance on a regular basis.

   c. If a skills shortage is identified, set up on-the-job training to assist the staff member.
d. Team/partner assignment: the staff member can be assigned to work alongside a competent member of the team (e.g. classes with joint instruction in schools).

32. Supervisors must use their judgement to determine the period of time allowed for improvement, but this should not be less than 30 days and not exceed 90 days.

**Formal OTI Process**

33. If, no more than 90 days after the date of the performance improvement discussion, the staff member’s performance has not reached a satisfactory standard, supervisors must liaise with HR and the second supervisor to commence the formal OTI process. The formal OTI process cannot take place without a preceding informal OTI process. The formal OTI process will create a formal OTI plan [footnote omitted] for the staff member. […]

b. […]

i. The timeline by which the plan’s requirements should be completed. The maximum amount of time allowed to complete the requirements under this track is 90 days.

[…]

34. Once the formal OTI period has commenced the staff member is required to demonstrate achievement of the deliverables specified in the OTI plan, and the supervisor is to monitor progress and have regular sessions with the staff member to provide feedback on the achievement of the deliverables.

[…]

35. Upon completion of the OTI period identified (Section V) the second supervisor, in consultation with the Department Head [footnote omitted], has the following two options regarding the staff member:

a. Certify the staff member has completed all required remedial training and that his/her performance has returned to an acceptable level.

[…]

**OR**

b. Decide that the performance of the staff member has not returned to an acceptable level. If this is the case the Department Head can, in consultation with HR, either:
i. Extend the OTI period by another 90 days. The maximum performance improvement process period should be nine months (90 days informal + 90 days formal + 90 days further formal OTI).

**OR**

ii. Recommend removal from functions, in accordance with the applicable regulations, rules and related issuances (emphasis in original).

36. If the Department Head has recommended removal from functions, the file of the staff member should be forwarded to the Field Office Director/Headquarters Director for review and appropriate action.

37. All discussions and follow up reviews taking place between the staff member and the supervisor/Department Heads during and at the end of the OTI period are to be carefully documented and signed by the parties involved. To be fair to both the staff member and the Agency the documentation needs to show that supervisors have explained and the staff member has understood the plan, work assignments and the level of performance expected. Decisions taken at the end of the OTI process are to be documented and staff member is to be informed in writing. […]

45. Examining the record, the Tribunal notes that the Respondent acted in compliance with the informal and formal OTI processes and deadlines as outlined above in PD/A/23, one exception being that, when the formal OTI process was initiated, no formal OTI plan was created. The Respondent acknowledges this fact, and the Applicant did not raise any objection to this irregularity. The Tribunal notes, however, that the formal OTI process continued on the basis of the same criteria and the same understanding as the informal OTI, and it was extended for three months because the formal OTI plan had not been drafted previously. Therefore, the Tribunal finds that the Applicant was not prejudiced by the failure of the Agency to create a formal OTI plan at the outset.

46. The Tribunal must consider whether or not the Applicant’s performance justified the decision to terminate his appointment for poor performance. Even if the Commissioner-General has broad discretionary authority in evaluating a staff member’s performance, the Administration must act in good faith and
respect procedural rules. Its decision must not be arbitrary or motivated by factors inconsistent with proper administration.

47. The Tribunal recalls that, as held by the United Nations Appeals Tribunal ("UNAT"), there is a presumption of regularity of an administrative decision. The Applicant has the burden of proving that the supervisors failed to adhere to the Staff Regulations, Rules and other relevant administrative issuances or that the decision was exercised arbitrarily, motivated by prejudice or bad faith or flawed by procedural irregularities or error of law.

48. As the Tribunal has found above, the Respondent applied the proper procedures for managing underperformance. Moreover, not only does the record reflect that the Agency followed proper procedures for managing the Applicant’s underperformance, but also the record is brimming with instances of unsatisfactory performance by him.

49. Looking at the record, the Tribunal notes that the Applicant was regularly late, did not always respect official working hours, requested leave on short notice, took leave sometimes without giving notice, had a disruptive behaviour within his team and provided late translations without an explanation. These shortcomings had been discussed with the Applicant before the initiation of the informal OTI process. In order to help the Applicant improve on his shortcomings, the OTI process was discussed with him and later initiated.

50. The Tribunal recalls that the informal OTI process was initiated on 2 September 2014, for a period of 45 days, in order to improve the Applicant’s performance in three areas, which the Applicant and the Agency agreed upon: his relationship with his colleagues in the FLO/G, his productivity and his timeliness. The Tribunal would like to add that, with regard to the quality of the Applicant’s work, i.e., the quality of his translations, the Respondent’s arguments are somewhat contradictory. On the one hand, the Respondent submits that “[t]he Applicant’s work often contained minor and sometimes major inaccuracies, which were pointed out to him by the LO”. On the other hand, the Respondent acknowledges that the quality of the Applicant’s work was “generally good”.

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51. The Tribunal notes, however, that the Applicant has claimed that his supervisor, the LO, is not proficient enough in written Arabic to have properly evaluated the quality of his translations. Because the Applicant’s performance in the quality of his translations is not an issue in the case, the Tribunal need not address the Applicant’s contention. However, the Tribunal is troubled at the thought that the quality of translations in a legal office could be or was evaluated by a supervisor, who is a Legal Officer at that, who is not proficient in the reading and writing of the language she evaluated.

52. As evidenced in the record, during the informal OTI process, the Applicant met regularly with his immediate supervisor, the LO, on scheduled dates for the purpose of discussing his performance in the three identified areas. Yet, despite these meetings and discussions, the Applicant continued being late, did not always respect official working hours, requested leave on short notice or post facto, and did not produce the required work sheets in order for his supervisor to track his progress. In fact, the Applicant considered the tracking sheets to be “pointless”, as well as the requirement that he check in with the LO upon his arrival to work, even though productivity and tardiness were two of the three areas identified for improvement. The Tribunal finds that the performance improvement sessions and provision of appropriate assistance and closer supervision in order to enable the Applicant to improve are well documented, and the Tribunal finds that the Applicant was given every opportunity to improve his performance.

53. The Applicant claims that he was absent from work because he had to visit his sick mother at the hospital or take care of a sick child. However, this is no excuse for not giving a call to his supervisor to tell her he was going to be absent or late.

54. As the Applicant failed to show improvement in the three identified areas, the informal OTI period was extended for another 45 days. Following incidents in the office on 29 September 2014 and 9 October 2014, during which the Applicant displayed inappropriate behaviour and attitude towards his colleagues and insubordinate behaviour towards the LO, the Agency issued a Letter of
Reprimand to the Applicant on 30 October 2014. The Applicant, however, failed to acknowledge receipt of the letter and again displayed inappropriate behaviour.

55. On 30 November 2014, as the Applicant still failed to show improvement in the three identified areas, a formal OTI process was initiated but no formal OTI plan was established. The formal OTI process continued on the basis of the same criteria and the same understanding as the informal OTI. It was only in February that a formal OTI plan was agreed upon. The formal OTI process was extended for three months for the reason that a formal OTI plan had not been drafted earlier, and as noted above, this delay caused no prejudice to the Applicant. Indeed, the extension of the formal OTI process was advantageous to the Applicant as he was given additional time to improve his performance.

56. A request addressed to the Applicant by the H/FLO/G on 13 October 2014, to confirm whether the Applicant had been involved in unauthorised outside activities, went unheeded despite several reminders to the Applicant. Hence, a second Letter of Reprimand was issued to the Applicant on 27 January 2015, because of his failure to reply to a supervisor’s request that he provide information about his involvement in unauthorised outside activities.

57. As evidenced in the record, the Applicant’s productivity did not improve and his unauthorised absences were on the rise. He continued to be occasionally late or absent during office hours, he failed to provide adequate notice for leave and showed little willingness to improve, even showing at times disdain for the OTI process. Although the Applicant stayed sometimes after hours or would occasionally work on Saturdays to make up for his absences, he produced no additional work to account for his time.

58. At the end of the formal OTI process after a follow-up meeting on 28 April 2015, the LO noted improvement in one of the three identified areas, namely, the Applicant’s relationship with his colleagues. In the other two areas, i.e., his productivity and timeliness, there was no improvement, as reflected in the final OTI assessment. On 8 June 2015, before the final OTI meeting could be held, the Applicant left Gaza abruptly without waiting for his request for SLWOP to be authorised.
59. The Applicant’s response throughout has been to deny everything and to deflect responsibility for his shortcomings onto his colleagues and supervisors. The Applicant is reminded that it does not suffice to deny, i.e., mere statements do not constitute evidence to prove his contentions. Indeed, repeating *ad nauseam* that the LO was biased and fabricated false evidence against him does not constitute evidence.

60. With his application, the Applicant provided tracking sheets, which he had been required to submit to his supervisor, for only two weeks of work out of the entire informal and formal OTI process that lasted several months. Moreover, the Applicant repeatedly stating that he had arrived to work on time and asking the Tribunal to check the CCTV or to ask his colleagues about his team spirit is shifting the onus of proof. It is up to the Applicant to provide evidence in support of his claims or statements.

61. Given all the above, the Tribunal finds that the OTI process was well documented and supports the decision to terminate the Applicant’s services.

*Was the Respondent’s decision exercised arbitrarily, motivated by prejudice or flawed by procedural irregularities or error of law?*

62. As noted above, the majority of the Applicant’s claims is that his immediate supervisor, the LO, and the H/FLO/G were not objective and that the OTI process was illegal and based on false evidence. The Applicant also claims that the LO intentionally kept postponing the last OTI meeting until he left Gaza even though she knew he would be leaving at the end of May.

63. The Tribunal would like to remind the Applicant that the OTI process is a legal and legitimate procedure and is consistent with the Agency’s PD/A/23. Therefore, the Applicant’s claim that the OTI process is illegal or based on false evidence is baseless and wholly unsubstantiated. On the contrary, the Agency painstakingly made sustained and documented efforts to improve the Applicant’s shortcomings, in the Applicant’s own interest.
64. As for the Applicant’s claim regarding the LO’s procrastination about their last OTI meeting, the record shows that the Applicant exited Gaza abruptly in June – a fact the Applicant does not contest – leaving his team in disarray, his request for SLWOP unauthorised and providing no update on his work. One is left to wonder on what basis the Applicant is accusing the LO of procrastination when he, himself, did not know the date on which he was leaving Gaza. The aborted final meeting was replaced, however, by an “email meeting” of sorts. Indeed, the report drafted by the LO upon the conclusion of the OTI process was provided to the Applicant by the D/DUO/G on 29 July 2015. The Applicant was given the opportunity to respond, and he responded by email addressed to the D/DUO/G on 10 August 2015. Therefore, the Tribunal finds the Applicant’s claim that the LO was deliberately procrastinating the final OTI meeting in order to somehow prejudice the Applicant to be without merit.

65. The Tribunal notes that when the Applicant first raised the possibility of requesting a SLWOP to get a PhD, the LO told him that a two-week minimum notice would be required for the DUO/G to consider his request. The LO advised the Applicant, as early as January 2015, to submit a formal SLWOP application in anticipation of his travel approval by the authorities and to leave the date blank and add a note on his SLWOP request explaining why the date could not yet be specified. The LO told the Applicant that, in this manner, by the time he received a visa from the authorities, the DUO/G would have already considered his SLWOP request. The Applicant refused to follow the LO’s advice, filed his SLWOP request on the eve of his abrupt departure from Gaza on 8 June 2015, and left without his SLWOP being authorised. The facts show that the LO extended her assistance to the Applicant in order to facilitate his SLWOP request and do not indicate that she was biased against him.

66. The Tribunal finds that the Applicant was given ample feedback and opportunities to improve during the informal and formal OTI processes. As his performance in two of the three identified areas did not improve, the Agency could not rely on him as a translator and terminated his services. The Tribunal finds that the documented OTI process was conducted in an objective and transparent manner. The supervision of the OTI process was transferred from the
H/FLO/G to the LO and back because of the relocation of the H/FLO/G for security reasons, a circumstance beyond the Agency’s control and the reason why the Human Resources Department and the D/DUO/G had to be involved. However, this did not affect the OTI process as the Applicant was given the opportunity at every step of the process to express his concerns and discuss them with his managers. Rather than discuss his concerns about the alleged bias on the part of his supervisors, the Applicant simply denied that he was not punctual or made excuses for his chronic lateness, and he claimed that he was being productive albeit without producing tracking sheets.

67. The Tribunal fails to see any arbitrariness or bias in the manner in which the Respondent conducted the OTI process or in the Respondent’s attempts to improve the Applicant’s performance. The Applicant, for his part, filed his request for SLWOP on the eve of his sudden departure from Gaza and did not update his colleagues or his supervisor on his work, thus showing no empathy for his team or the Agency’s needs and leaving the FLO/G understaffed on very short notice. The Tribunal finds that there is no bias in the decision to terminate the Applicant’s appointment as it was a decision taken in the interest of the Agency, notably to have a productive translator who could meet the demands of the work and be a team player.

68. As held by the UNAT in Masri, 2016-UNAT-626, affirming the UNRWA Dispute Tribunal’s Judgment (UNRWA/DT/2015/030) at paragraphs 29 and 30:

The UNRWA DT found that there was no bias in the decision to abolish Mr. Masri’s post as it was a decision taken in the interest of the UNRWA DT, notably to meet that Tribunal’s need to recruit a translator with more seniority, responsibilities and competencies than Mr. Masri.

We also wish to note that it is within the remit of management to organize its processes to lend to a more efficient and effective operation of its departments.
Other claims

69. The Applicant claims that he was awarded a scholarship to undertake a PhD in the United Kingdom because he is diligent, adding that it is in the Agency’s interest to keep him. If the Applicant’s claim about his diligence is to challenge the outcome of the OTI process, he is reminded that the Tribunal has no evidence in the record of the basis on which the Applicant was granted a scholarship. Furthermore, the Tribunal fails to see the relevance of his being granted a scholarship for a PhD programme to his underperformance as a translator for the Agency.

70. The Applicant also claims that upon his return from the United Kingdom, he will have no job and will be unable to earn a living. Surely, if the Applicant was able to find a job prior to having a PhD, he should be able to find a job – if not a better one – as a PhD graduate. Nevertheless, when making a determination on the lawfulness of an administrative decision, it is not for the consideration of the Tribunal that the Applicant will be without a job.

71. The Applicant requests a meeting with the Deputy Commissioner-General and for an oral hearing to be held by the Tribunal. The Tribunal finds that the evidence in the record is clear and abundant and there is no need for a hearing to be held. The Tribunal also finds that ordering the Deputy Commissioner-General to meet with a staff member has no basis in the Agency’s regulatory framework. In addition, the Tribunal finds no relevance nor justification for such a meeting. The Applicant filed a request for decision review and received the response of the Deputy Commissioner-General. The Applicant has also had the opportunity to air his grievances abundantly in his application to the Tribunal.

72. The Applicant also requests that his application for SLWOP be accepted. The Tribunal finds that the termination of the Applicant’s appointment with the Agency renders his request moot. Moreover, even if not moot, the decision to deny his request for SLWOP is not the subject of the present application and cannot be considered by the Tribunal.
73. The Applicant is requesting apologies from the LO. The Tribunal finds no error of procedure and no bias which would cause the LO to make an apology to the Applicant. Furthermore, an apology *per se* and by definition should be a spontaneous and voluntary act. The Applicant also requests reinstatement to his post as translator-interpreter at the FLO/G. However, as the Tribunal is of the opinion that there was no error of procedure, no error of law and no bias on the part of the Respondent, the Tribunal finds that the Applicant’s request cannot be granted.

*Is there any legal basis for the remedies sought by the Applicant?*

74. Having determined that the Respondent acted pursuant to the Agency’s regulatory framework and established a solid basis upon which to base his decision, and that the Respondent’s discretionary authority was not tainted by evidence of procedural irregularity, prejudice, other extraneous factors or error of law, the Tribunal finds that the Applicant’s request for remedies has no basis in fact or in law and must be denied.

**Conclusion**

75. In view of the foregoing, the application is dismissed.

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(Signed)  
Judge Bana Barazi  
Dated this 10th day of January 2017

Entered in the Register on this 10th day of January 2017

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