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

DASOUQI

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 Mazen Dasouqi (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 serve him a Letter of Reprimand.

Facts

2. On 22 September 2002, the Applicant entered the service of UNRWA as a Teacher at Baqa’a Preparatory Boys School, in Jordan.

3. On 6 October 2016, the Applicant took one day of unauthorised sick leave, having exhausted the authorised seven days of uncertified sick leave for the year 2016. The Agency deducted the Applicant’s one day absence from his October 2016 salary.

4. On 10 November 2016, the Applicant took another day of unauthorised sick leave. The Agency deducted it from his November 2016 salary.

5. On 19 December 2016, the Applicant again took one day of unauthorised sick leave. The Agency deducted it from his December 2016 salary.

6. By April 2017, the Applicant had exhausted the limit of seven days of uncertified sick leave for the year 2017.

7. When the Applicant took one day of unauthorised sick leave on 1 May 2017, the School Principal reported the matter to the North Amman Area Office on 2 May 2017. The North Amman Area Office, in turn, reported it to the Human Resources Office.

8. On 21 May 2017, the Agency deducted the Applicant’s 1 May 2017 absence from his May 2017 salary.

9. On 28 May 2017, the Area Office requested that the Applicant submit a justification for his absence on 1 May 2017.
10. On 29 May 2017, the Applicant replied as follows:

1. Thank you for your concern in this subject.

2. On 1/5/2017, I notified by all official means that it was an emergency leave for special circumstances.¹

3. I did not know that my balance of emergency leave was over. (I mistakenly calculated my remaining balance of emergency leaves).


12. On 12 June 2017, the Applicant wrote to the Director of UNRWA Operations, Jordan (“DUO/J”) challenging the Letter of Reprimand. The Respondent considered the Applicant’s letter to be a request for decision review.

13. On 4 October 2017, the Applicant delivered his application by hand to the UNRWA Dispute Tribunal (the “Tribunal”). It was transmitted to the Respondent on the same day.

14. On 3 November 2017, the Respondent filed his reply. It was transmitted to the Applicant on 5 November 2017.

15. On 17 November 2017, the Respondent filed a motion for extension of time to translate the reply. The motion was transmitted to the Applicant on 19 November 2017.

16. By Order No. 172 (UNRWA/DT/2017) dated 3 December 2017, the Tribunal granted the motion and ordered the Respondent to file the Arabic translation of his reply no later than 15 December 2017.

17. On 14 December 2017, the Respondent filed the Arabic translation of his reply. It was transmitted to the Applicant on the same day.

¹ The Tribunal notes that there is no category of leave called “emergency leave” in the Agency’s regulatory framework. In this case, the leave in question is categorised as “uncertified sick leave”.
18. On 31 December 2017, the Applicant delivered by hand to the Tribunal a motion to file observations on the Respondent’s reply. It was transmitted to the Respondent on 2 January 2018. The Respondent did not file any objection to the motion.

19. By Order No. 005 (UNRWA/DT/2018) dated 14 January 2018, the Tribunal granted the Applicant’s motion and ordered the Applicant to submit his observations no later than 24 January 2018.

20. On 23 January 2018, the Applicant delivered his observations by hand to the Tribunal. They were transmitted to the Respondent on the same day.

**Applicant’s contentions**

21. The Applicant contends:

   i) The allegation that he does not observe working hours is not supported by any evidence; and

   ii) The Area Staff Regulations and Rules do not provide that a Letter of Reprimand can be issued to a staff member who has exceeded the number of uncertified sick leave days in a service year.

22. The Applicant requests:

   i) Rescission of the Letter of Reprimand and cancellation of its consequences;

   ii) Adoption of appropriate measures against the officer(s) involved in the issuance of the Letter of Reprimand; and

   iii) Material and moral compensation for the psychological impact at the personal and professional levels.
Respondent’s contentions

23. The Respondent contends:

   i) The decision to reprimand the Applicant for his unauthorised absence was properly effected; and

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

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

Considerations

25. The Applicant is contesting the decision of the Agency to serve him a Letter of Reprimand for his unauthorised absence on 1 May 2017.

Legal and administrative framework

26. Area Staff Rule 106.2 on Sick Leave provides:

   8. After a staff member has taken periods of uncertified sick leave totalling 7 working days within a service year, any further absence on sick leave beyond 7 days in any calendar year must be supported by a medical certificate, or will otherwise be charged to annual leave for non-teaching staff, and special leave without pay for teaching staff.

   9. A staff member may be required at any time to submit a medical certificate as to his/her condition or to undergo an examination by a medical practitioner nominated by the Director of Health.

27. The Tribunal recalls that, under Area Staff Rule 110.1 on Disciplinary Measures and Procedures, a Letter of Reprimand is not listed as a disciplinary measure.
ADMINISTRATIVE DECISIONS THAT ARE NOT DISCIPLINARY MEASURES

42. Administrative decisions that are not disciplinary measures include: reprimands, recovery of monies owed to UNRWA, allowing an appointment to expire, termination in the interests of the Agency, and administrative leave with or without pay pending an investigation.

43. Reprimands are oral or written communications by the immediate supervisor or higher authority to a staff member, drawing his/her attention to minor breaches of the UNRWA Staff Regulations, Rules, or other administrative issuances or to relatively unsatisfactory work performance. Documentation of an oral reprimand or a written reprimand is included in the staff member's official status file. The reprimand may include a provision prescribing a time period after which it is removed from the official status file. As a reprimand is not a disciplinary measure, it should not normally be used to address established misconduct at the conclusion of a disciplinary process (emphasis in original).

29. The Former United Nations Administrative Tribunal, commenting on the nature of an official reprimand, stated in Judgement No. 1404, Coggon (2008) at paragraph III:

Although a written reprimand is not considered a disciplinary measure within the meaning of staff rule 110.3, a reprimand can have legal consequences to the detriment of the staff member, particularly when it is placed and kept on his file (see Judgements No. 941, Kiwanuka (1999) and No. 1176, Parra (2004)). The Tribunal has stated in its Judgement No. 1167, Olenja (2004), that the issuance of reprimands is subject to the same principles of fairness and due process as apply to disciplinary decisions.

30. In Abu Hamda 2010-UNAT-022, the United Nations Appeals Tribunal (“UNAT”) held at paragraph 37:

As a normal rule Courts/Tribunals do not interfere in the exercise of a discretionary authority unless there is evidence of illegality, irrationality and procedural impropriety.
31. And in *Sanwidi* 2010-UNAT-084 at paragraph 40:

[…] it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.

*Was the issuance of a Letter of Reprimand lawful?*

32. The Tribunal has consistently held that it does not interfere in the normal day-to-day supervision of staff members, which involves the proper and lawful exercise of authority to secure appropriate standards of conduct and performance on the part of staff members. However, as a written Letter of Reprimand is not considered a disciplinary measure, it nevertheless can have adverse consequences for a staff member, particularly if it is placed in the staff member’s personnel file. Therefore, the Tribunal will examine whether the facts warranted the issuance of a Letter of Reprimand.

33. The facts in the present instance are clear: the Applicant exceeded the limit of seven days of uncertified sick leave within a service year in 2017 when absenting himself on 1 May 2017. Specifically, the record indicates that the Applicant took uncertified sick leave days on the following dates: 2, 3 and 8 January, 20 and 26 February, 30 March and 16 April 2017. The Applicant does not contest these absences or his absence on 1 May 2017. The Applicant’s justification is that it is not his responsibility to be aware of whether he has exceeded his uncertified sick leave days, and that he had miscalculated the total number of uncertified sick leave days he had taken.

34. The Applicant was served the following Letter of Reprimand by the North Amman Area Education Officer:

> Although reprimand is not a disciplinary measure, I am sending you this official letter because of your lack of commitment to working hours at your school. In particular, you have taken leave on 01/05/2017, thus violating the rules of uncertified leave.

> This behavior is not befitting an Agency staff member and cannot be accepted from an Agency staff member. The applicable rules in this regard cannot be violated.
This time it will suffice to issue a reprimand in the hope that this behavior will not be repeated in the future, otherwise I will have to take more severe administrative measures against you.

35. The Applicant is reminded that ignorance is no justification – as it is the obligation and responsibility of each and every staff member to be aware of the status of his/her uncertified sick leave days. Blaming the School Principal for his (the Applicant’s) miscalculation shows lack of responsibility and is of no help to the Applicant. As for the Applicant’s miscalculation, the Tribunal does not find it credible because this was not the first time the Applicant had exceeded the seven days of uncertified sick leave per service year, and he should have been aware and careful. Indeed, as evidenced in the record, the Applicant took three days of unauthorised leave in 2016 and these days were deducted from his salary accordingly. One would reasonably think that salary deductions are not a trifle thing to be forgotten and that the Applicant would have remembered the consequences of his mistake or negligence in 2016 and thus cautiously calculated his uncertified sick leave days in 2017. Repeating the same mistake for two consecutive years is either a display of negligence or a show of indifference on the part of the Applicant, and he has only himself to blame for his predicament.

36. When the Applicant claims that the reprimand was unlawful as it is not provided for in the Area Staff Regulations and Rules, he is reminded that there is no rule that requires the Agency to inform a staff member in advance of a Letter of Reprimand.

37. Given the above, the Tribunal finds that the Applicant was justifiably served a Letter of Reprimand when he exceeded the limit of seven uncertified sick leave days in 2017, and that the decision to reprimand the Applicant was made by the Agency in accordance with Area Staff Rule 106.2 and PD A/10.

38. As for the North Amman Area Education Officer’s statement in the Letter of Reprimand that the Applicant did not observe working hours, the Applicant contends that it is not supported by evidence. Upon reading the Letter of Reprimand, quoted in paragraph 34 above, the Tribunal is rather of the opinion that what the Applicant’s superior meant was that the Applicant had “taken leave on 01/05/2017, thus violating the rules of uncertified leave”. The Tribunal would
like to assure the Applicant that, although the Letter of Reprimand referred to “lack of commitment to [your] working hours”, the Applicant’s working hours at school are not at issue in the instant case, only his uncertified sick leave absence is. The Tribunal notes that, in his reply, the Respondent submitted that the “Reprimand addresses [the Applicant’s] abusive absence and nothing else.” Moreover, the Applicant is reminded that he should refrain from making allegations against the School Principal as the latter was not involved in the issuance of the Letter of Reprimand which is at issue here, and the allegations against the School Principal are unrelated to the situation at hand.

**Proportionality**

39. As reprimands must be subject to the same principles of fairness and due process as applied to disciplinary decisions, the Tribunal recalls the threefold inquiry of *Haniya 2010-UNAT-024*. The facts in the instant case are established, i.e. the Applicant has exceeded the uncertified sick leave days in 2017, and the facts support the issuance of a Letter of Reprimand in conformity with the regulatory framework. The Tribunal must now address the question of proportionality.

40. In *Sanwidi 2010-UNAT-084*, at paragraphs 39 and 42, respectively, the UNAT held:

> In the context of administrative law, the principle of proportionality means that an administrative action should not be more excessive than is necessary for obtaining the desired result. The requirement of proportionality is satisfied if a course of action is reasonable, but not if the course of action is excessive. This involves considering whether the objective of the administrative action is sufficiently important, the action is rationally connected to the objective, and the action goes beyond what is necessary to achieve the objective.

> [...] 

> In exercising judicial review, the role of the Dispute Tribunal is to determine if the administrative decision under challenge is reasonable and fair, legally and procedurally correct, and proportionate.
41. With respect to proportionality, the Tribunal recalls that a reprimand is not a disciplinary measure, but it is used to draw the staff member’s attention to minor breaches of rules and instructions, or to relatively unsatisfactory conduct. The Letter of Reprimand’s intent was to draw the Applicant’s attention to the fact that he had exceeded his limit of uncertified sick leave in 2017 and that his behaviour in breaching the Agency’s Rules was not befitting an Agency staff member. The Letter of Reprimand is also cautioning the Applicant to refrain from such behaviour in the future or more severe administrative measures could be taken against him. The Applicant cannot pretend that he has not been warned.

42. In the present case, the Tribunal considers the reprimand proportionate to the Applicant’s action. Consequently, the Tribunal rejects the Applicant’s request that the Letter of Reprimand be rescinded.

Was the decision to serve the Applicant a Letter of Reprimand arbitrary?

43. The Applicant contends that the decision to serve him a Letter of Reprimand was arbitrary because, in 2016, he had exceeded the total number of uncertified sick leave days by three days and did not receive any reprimand, whereas in 2017 he had exceeded the total number of uncertified sick leave days by one day and was served a Letter of Reprimand. The Applicant should consider himself fortunate to have been spared a Letter of Reprimand in 2016 for the three sick leave days he had taken without authorisation. The Applicant is reminded that the superior has discretion in deciding when to issue a Letter of Reprimand. In other words, the fact that his superior did not serve the Applicant a Letter of Reprimand in 2016 does not bar him from serving the Applicant a Letter of Reprimand in 2017, since the issuance of a Letter of Reprimand is provided for in the Area Staff Rules and other administrative issuances. The Tribunal fails to see any arbitrariness on the part of the Agency.

44. The burden of proving bias or arbitrariness or extraneous factors tainting the impugned decision rests with the Applicant. As held by the former United Nations Administrative Tribunal Judgement No. 93, Cooperman, at paragraph XII:
The burden of proving prejudice or improper motivation rests with the Applicant […].

Accordingly, an Applicant alleging that a discretionary administrative decision is tainted by prejudice or improper motivation must adduce convincing evidence.

45. The Applicant has not produced a shred of evidence of arbitrariness or prejudice on the part of the Respondent when deciding to serve him a Letter of Reprimand.

Does the relief sought by the Applicant have a legal basis?

46. The Applicant requests rescission of the Letter of Reprimand, measures to be taken against the officer(s) who issued the reprimand and material and moral compensation for the psychological impact the reprimand had on his life. The Applicant goes as far as stating that the reprimand “has led to the public assassination of [his] professional character”.

47. As the Tribunal has determined that the decision to serve the Applicant a Letter of Reprimand was valid and lawful, that the Letter of Reprimand was proportionate to the Applicant’s action and untainted by arbitrariness or bias, the Tribunal finds no reason to award any compensation to the Applicant. The Applicant’s request that “appropriate measures be taken against the officer(s) who had a direct or indirect role in the issuance of the reprimand” is also denied.

48. As the Applicant has provided no evidence of the alleged psychological impact of the Letter of Reprimand, or how the Letter of Reprimand constitutes a “character assassination”, no material or moral compensation will be awarded. The Tribunal refers to the UNAT’s Judgment Antaki 2010-UNAT-095 at paragraph 20:

[…] Compensation may only be awarded if it has been established that the staff member actually suffered damages.
Conclusion

49. For the reasons stated above, the application is dismissed.

(Signed)

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Judge Bana Barazi
Dated this 29th day of January 2018

Entered in the Register on this 29th day of January 2018

(Signed)

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Laurie McNabb, Registrar, UNRWA DT, Amman