Before: Judge Jean-François Cousin
Registry: Amman
Registrar: Laurie McNabb

ABU SIYAM

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 Anwar Juma Mohammad Abu Siyam (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 with a Letter of Censure.

Facts

2. Effective 9 March 2010, the Applicant was employed by the Agency on a fixed-term appointment as Teacher, Grade 9, Step 1, at Baqa’a Preparatory Boys School No. 1, Jordan. At the time material to the events set forth in this application, the Applicant occupied the post of Teacher at Baqa’a Elementary Boys School No. 1, Jordan.

3. On 14 January 2016, an allegation about an inappropriate post on Facebook was brought to the attention of the Director of UNRWA Operations, Jordan (“DUO/J”). The post was an essay regarding the death of a staff member and alleged delays in her medical treatment due to problems with the Health Insurance Policy applicable in Jordan Field Office. On the same day, the DUO/J authorised an investigation into the allegation.

4. On 7 February 2016, the scope of the investigation was expanded to include a comment which was added by the Applicant to the alleged inappropriate Facebook post.

5. On 14 February 2016, the Applicant was interviewed, and he admitted that he had posted the comment “they kill the deceased and then attend the funeral” on that Facebook post.

6. The investigation report dated 1 March 2016, concluded that the Applicant had engaged in misconduct by posting that comment.

7. On 19 May 2016, a due process letter was sent to the Applicant. The Applicant replied on 30 May 2016.

9. On 2 November 2016, the Applicant submitted a request for decision review. By letter dated 30 November 2016 to the Applicant, the DUO/J affirmed the decision.

10. On 27 January 2017, the Applicant filed his application with the UNRWA Dispute Tribunal (the “Tribunal”). On 29 January 2017, the application was transmitted to the Respondent.

11. On 28 February 2017, the Respondent filed his reply, which was transmitted to the Applicant on 1 March 2017.

12. On 9 March 2017, the Respondent filed a “Motion for Extension of Time to Translate the Reply”. The motion was transmitted to the Applicant on the same day.

13. By Order No. 042 (UNRWA/DT/2017) dated 20 March 2017, the Respondent’s motion for extension of time to translate the reply was granted.

14. On 23 March 2017, the Respondent submitted the Arabic translation of his reply, which was transmitted to the Applicant on the same day.

15. On 24 March 2017, the Applicant filed a “Motion for leave to file observations on the Respondent’s reply”. The motion was transmitted to the Respondent on 26 March 2017.

16. By Order No. 054 (UNRWA/DT/2017) dated 5 April 2017, the Applicant’s motion was granted.

17. On 10 April 2017, the Applicant filed his observations. The observations were transmitted to the Respondent on the same day.

18. By Order No. 165 (UNRWA/DT/2017) dated 21 November 2017, the Respondent was requested to provide to the Tribunal, ex parte, the investigation report into the allegations made against the Applicant.
19. On 6 December 2017, the Respondent submitted the requested documents.

20. After having reviewed the investigation report, the Tribunal finds that there is nothing extra contained in the report that is otherwise not clear from the case file. As there is nothing in the report that has any bearing on the Tribunal’s deliberations, the report was not transmitted to the Applicant and was expunged from the case file.

**Applicant’s contentions**

21. The Applicant contends:

   i) In his comment on Facebook, he had not mentioned UNRWA’s name or that of any UNRWA installation;

   ii) The allegations against him are based on pure speculations. There is no evidence against him;

   iii) The LoC violates his freedom of opinion and expression which is guaranteed by Article 19 of the Universal Declaration of Human Rights; and

   iv) His comment that “they kill the deceased and then attend the funeral” merely is a common proverb in Jordan.

22. The Applicant requests:

   i) The LoC to be expunged from his personnel file; and

   ii) Compensation for the psychological and moral damages caused by the LoC.

**Respondent contentions**

23. The Respondent contends:

   i) The decision to issue the LoC was properly effected, and the investigation was performed in a proper fashion;
ii) The Agency dealt with the complaints related to the initial post and the Applicant’s comment on Facebook in accordance with the Agency’s regulatory framework;

iii) The Applicant admitted that he posted the comment on Facebook;

iv) A posting on social media can be considered a breach of the Agency’s regulatory framework, even if it does not mention UNRWA’s name. It is clear that the proverb used in the comment “they kill the deceased and then attend the funeral” was directed towards the Agency and the local Staff Union; and

v) The Applicant’s request for remedies has no legal basis.

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

Considerations

25. The regulatory and administrative framework applicable in the case at bar and the relevant jurisprudence are the following;

   Area Staff Regulation 1.4 provides, in relevant part:

   Staff members shall conduct themselves at all times in a manner befitting their status as employees of the Agency. They shall not engage in any activity that is incompatible with the proper discharge of their duties with the Agency.

26. Area Staff Personnel Directive A/10/Rev.1 (“PD A/10”), at sub-paragraph 4.1, provides:

   Disciplinary measures will normally be imposed for wilful misconduct, irresponsible conduct, or wilful failure to perform assigned duties or to carry out specific instructions.

27. Area Staff Regulation 10.2 provides:

   The Commissioner-General may impose disciplinary measures on staff members who engage in misconduct.
28. Area Staff Rule 110.1 states:

1. Disciplinary measures under staff regulation 10.2 shall consist of written censure, suspension without pay, demotion, or termination for misconduct […]

29. With regard to written censure, PD A/10 provides:

7.1 A written censure is a letter addressed to a staff member in which he/she is advised of serious shortcomings in behavior. The necessity for a written censure may arise from a single incident or from repeated verbal or written reprimands to a staff member. A written censure may or may not be combined with suspension without pay or demotion, as circumstances warrant.

7.2 A written censure contains a warning that, if no improvement is forthcoming (if necessary within a period of time), other disciplinary or administrative action (e.g. transfer to another post) may be taken.

30. As held by the former United Nations Administrative Tribunal in Judgment No. 1321 (2007), paragraph IX:

The Tribunal wishes to affirm, once again, that it is within the discretionary authority of the Secretary-General to decide whether a staff member has met the standards of conduct laid down in the Charter and the Staff Regulations & Rules.

31. Guided by the jurisprudence of the United Nations Appeals Tribunal (the “UNAT”) in Haniya 2010-UNAT-024 and Maslamani 2010-UNAT-028, when reviewing a disciplinary measure, the Tribunal will consider (i) whether the facts on which the sanction is based have been established, (ii) whether the established facts qualify as misconduct, and (iii) whether the sanction imposed is proportionate to the offence. However, the Tribunal notes, as held by the UNAT in Abu Hamda 2010-UNAT-022, that:

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.
32. Also relevant to the present case is General Staff Circular No. 07/2014 on the Revised Standards of Conduct for International Civil Service (“GSC 07/2014”). GSC No. 07/2014 provides in paragraph 9:

 [...] While their personal views remain inviolate, international civil servants do not have the freedom of private persons to take sides or to express their convictions publicly on controversial matters, either individually or as members of a group, irrespective of the medium used. This can mean that, in certain situations, personal views should be expressed only with tact and discretion.

33. The Tribunal recalls that the DUO/J authorised an investigation immediately after the allegation about an inappropriate Facebook post was brought to his attention. The scope of the investigation was expanded to include a comment on the above-mentioned Facebook post, allegedly posted by the Applicant.

Facts

34. Looking at the case file, the Tribunal finds that the facts on which the disciplinary measure was based have been established. When the Applicant was interviewed, he admitted that he posted the comment in question. He argues, however, that the post does not mention UNRWA’s name, that the Agency is speculating about what his intentions were when he posted the comment, that the comment is a common proverb in Jordan, and furthermore, that he has the freedom to express his opinion. However, the Tribunal agrees with the Respondent that, indeed, the comment constituted a breach of the Agency’s regulatory framework. It is clear that the proverb “they kill the deceased and then attend the funeral” was, in fact, directed towards the Agency.

Misconduct

35. It is clear to the Tribunal that, with the comment, the Applicant did not express his personal views with tact or discretion regarding the role of the Agency in the tragic death of a staff member. Such conduct is not befitting the Applicant’s status as an employee of the Agency. The Agency provided the Applicant with the
opportunity to explain his conduct. However, the Applicant’s submitted arguments are not credible and are not accepted by the Tribunal.

**Proportionality**

36. As determined by the UNAT in *Aqel* 2010-UNAT-040, paragraph 35, the level of sanction falls within the ambit of the Administration and can only be reviewed in cases of “obvious absurdity or flagrant arbitrariness”. By issuing the LoC, the Agency imposed on the Applicant a sanction at the lower end of the scale of disciplinary measures. The Applicant has failed to provide any evidence of the Respondent’s alleged improper motivation to impose on him the disciplinary measure of the LoC. The Tribunal concludes that serving the Applicant with a LoC was proportionate to the offence.

**Conclusion**

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

   The application is dismissed.

(Signed)

Judge Jean-François Cousin

Dated this 6th day of March 2018

Entered in the Register on this 6th day of March 2018

(Signed)

Laurie McNabb, Registrar, UNRWA DT, Amman