AL SHATARAT

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 Muhannad Sadi Mohammad Al Shatarat (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 impose on him the disciplinary measure of a Letter of Censure for breaching the Agency’s neutrality principles.

Facts

2. On 10 November 2012, the Applicant entered the service of the Agency as Teacher, Grade 8, Step 1, at Baqa’a Preparatory Boys School No. 1.

3. On 9 September 2015, the Director of UNRWA Operations, Jordan (“DUO/J”) authorised an investigation into allegations of misconduct in the form of breaches of neutrality by the Applicant. As part of the investigation, screenshots of the Applicant’s Facebook posts were taken which included a picture of a Palestinian militant of the “Islamic Jihad” with an AK47 and a picture of Palestinian militants of “Islamic Jihad” carrying a mortar projectile.

4. On 28 September 2015, the Agency sent a due process letter to the Applicant containing a summary of the findings of the investigation.

5. On 21 October 2015, the Applicant responded to the due process letter.

6. By letter dated 14 May 2017, the DUO/J informed the Applicant that he had decided to issue him a Letter of Censure as a disciplinary measure for misconduct, i.e. breaching the Agency’s neutrality principles. The letter recalled that it had been established that his Facebook account contained posts and/or expressions that were offensive, incompatible with his neutrality obligations, and not befitting the status of a United Nations staff member as follows:

   A photographic depiction of a Palestinian militant of the Islamic Jihad, carrying a rifle.
7. On 1 June 2017, the Applicant requested decision review. The Agency did not respond.

8. On 14 August 2017, the Applicant filed an application with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on 22 August 2017.

9. On 21 September 2017, the Respondent filed a motion for extension of time to file his reply outside the 30-day limit set out in Article 6(1) of the Rules of Procedure of the Tribunal. The motion was transmitted to the Applicant on 24 September 2017.

10. By Order No. 136 (UNRWA/DT/2017) dated 5 October 2017, the Respondent’s motion for extension of time was granted.

11. On 20 October 2017, the Respondent filed his reply. It was transmitted to the Applicant on 22 October 2017.

12. On 3 November 2017, the Respondent filed a motion for extension of time to translate the reply. The motion was transmitted to the Applicant on 5 November 2017.

13. By Order No. 163 (UNRWA/DT/2017) dated 16 November 2017, the Respondent’s motion for extension of time to translate the reply was granted.

14. On 23 November 2017, the Respondent filed the Arabic translation of his reply. The translation was transmitted to the Applicant on 23 November 2017.

15. On 10 December 2017, the Applicant filed a motion to submit observations on the Respondent’s reply. The motion was transmitted to the Respondent on the same date.

16. By Order No. 187 (UNRWA/DT/2017) dated 24 December 2017, the Tribunal granted the Applicant’s motion to submit observations.
17. On 26 December 2017, the Applicant filed his observations on the Respondent’s reply. The observations were transmitted to the Respondent on 27 December 2017.

18. By Order No. 132 (UNRWA/DT/2018) dated 19 July 2018, the Tribunal ordered the Respondent to provide the investigation report and other documents.

19. On 2 August 2018, the Respondent filed the requested documents. The Respondent’s submission was transmitted to the Applicant on 5 August 2018.

**Applicant’s contentions**

20. The Applicant contends:

i) The materials he shared on Facebook had been circulating all over the international media and fall under freedom of expression and freedom of opinion;

ii) The post in question was published on social media before UNRWA social media regulations and training were effected;

iii) The Universal Declaration of Human Rights and the Jordanian Constitution guarantee to everyone the right to freedom of opinion and expression; any attempt to repress resistance against the occupation is in contravention of the UN Charter and the principles of international relations and cooperation among states in addition to the Universal Declaration of Human Rights;

iv) The disciplinary measure imposed on him is a blatant violation of freedom of expression;

v) He is ignorant of the concept of neutrality and of the Staff Regulations and Rules concerning neutrality, and he has not received any instructions or training on neutrality.
21. The Applicant requests:

i) Cancellation of the disciplinary measure and its removal from all his files; and

ii) Compensation for the psychological and moral consequences he sustained due to the Agency’s decision.

**Respondent’s contentions**

22. The Respondent contends:

i) The disciplinary measure was properly effected in accordance with the Agency’s relevant regulatory framework;

ii) Ignorance of the regulatory framework is no excuse for misconduct;

iii) The Applicant has failed to identify any relevant legal provision justifying his misconduct;

iv) The Applicant’s misconduct is not justified by a right to resistance; and

v) The compensation sought by the Applicant has no legal basis.

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

**Considerations**

24. The Applicant challenges the decision to impose on him the disciplinary measure of a Letter of Censure. The Respondent submits that the Applicant breached the Agency’s neutrality principles and therefore the disciplinary measure was properly effected. The following provides the Agency’s regulatory framework applicable in this case.
25. Area Staff Regulation 1.1:

Staff members, by accepting appointment, pledge themselves to discharge their functions with the interests of the Agency only in view.

26. Area Staff Regulation 1.4:

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. They shall avoid any action and in particular any kind of public pronouncement which may adversely reflect on their status, or on the integrity, independence and impartiality which are required by that status. While they are not expected to give up their national sentiments or their political and religious convictions, they shall at all times bear in mind the reserve and tact incumbent upon them by reason of their employment with the Agency.

27. Area Staff Regulation 1.7:

Staff members may exercise the right to vote but shall not engage in any political activity which is inconsistent with or might reflect upon the independence and impartiality required by their status.

28. Area Staff Personnel Directive A/1/Part V (1) (“PD A/1”), effective 1 July 2007:

In accordance with the established principles and practice of the United Nations, staff members are required to maintain at all times, in both their official and their private conduct, the independence and impartiality which is implicit in their status as Agency staff (emphasis added).

29. The Tribunal refers to parts of the Jordan Field Staff Circular on Neutrality No. J/13/2014 (“2014 Circular”), dated 22 April 2014, which are of particular relevance:

You must refrain at all times from words or actions that are political in nature or could be perceived as such.

[...]
The Agency appreciates that social media platforms create dynamic new opportunities for communications, and recognizes the benefits of these tools while acknowledging associated risks and challenges that may have serious and harmful impact on the Agency’s reputation and/or future funding.

Being public platforms, UNRWA personnel’s use of websites and social media may be subject to UNRWA’s rules and regulations. In this context, UNRWA personnel, including staff unions, are reminded to conform at all times to UNRWA’s rules and regulations pertaining to neutrality and impartiality, and that their engagement in social media remain subject to the Agency’s regulatory framework regarding staff conduct including UNRWA staff Relations [sic], Rules, Personnel Directives, other administrative issuances and the Standards of Conduct for the International Civil Service. Therefore, any staff participation on websites or social media that can be perceived in breach of the regulatory framework may constitute misconduct and consequently may warrant the imposition of disciplinary measure(s).

Where staff are in doubt of their obligations or require further clarification or interpretation of the rules, they should contact the Human Resource Department […] who will be happy to provide advice.

30. Furthermore, the Respondent submitted to the Tribunal a “Neutrality Factsheet” dated March 2011. The Respondent also refers to the “Agency-wide online Ethics e-learning course” launched in January 2013, which addressed the principle of neutrality.

31. As held by the former United Nations Administrative Tribunal in Judgement No. 1321, Derecha (2007), in 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.

32. 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, as held by the UNAT in *Abu Hamda* 2010-UNAT-022, in paragraph 37, the Tribunal notes that:

[...] [a]s 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 [...] 

*The facts*

33. On 9 September 2015, the DUO/J authorised an investigation into allegations of misconduct by the Applicant. The investigation was conducted in accordance with the provisions of the Regulations and Rules and along specific terms of reference. On 17 September 2015, the Applicant was interviewed, and he admitted that the Facebook account was controlled by him and that it was still active. He denied posting the pictures in question and stated that he did not know who did. He said that some of his relatives may have used his username and password and could have posted them. He promised to remove the offensive material and added that he was not aware of the Agency’s Rules regarding neutrality.

34. The Agency sent a due process letter on 28 September 2015. The Applicant responded on 12 October 2015. He stated that he had “shared” the postings with others on Facebook and that he had done so as an emotional response to what has been happening to the Palestinians in Gaza.

35. The Tribunal recalls that, when it comes to reasonably establishing the facts on which disciplinary measures are based, the former United Nations Administrative Tribunal held in Judgment No. 1022, *Araim* (2001), in paragraph 37:

... [T]he Administration is not required to prove its case beyond reasonable doubt. It has only to present adequate evidence in support of its conclusions and recommendations. Adequate means “reasonably sufficient for legal action” [...] in other words sufficient facts to permit a reasonable inference that a violation of law had occurred.

36. Based on the above, the Tribunal concludes that the facts on which the contested decision was based are established as the Applicant, by his response to
the due process letter, admitted having posted the photographic depiction of a Palestinian militant of the “Islamic Jihad” carrying a rifle.

**Misconduct**

37. The applicable regulatory and administrative framework was in effect at the time the Applicant’s posting was still on Facebook. Therefore, the Applicant cannot claim that he was unaware of the Agency’s neutrality principles and the fact that publishing non-neutral material was prohibited. It is clear that the Applicant breached the Agency’s neutrality principles as enunciated in the aforementioned Regulations and other relevant administrative issuances, and consequently engaged in misconduct. Indeed, PD A/1, dating back to July 2007, requires staff to maintain at all times in both *their official and their private conduct* the impartiality implicit in their status as staff of a UN Agency. The Applicant, as a teacher, should have known that the images he posted on Facebook were in violation of the Agency’s neutrality principles.

38. The Respondent rightly submits that it is critical for UNRWA, as a UN Agency seeking to assist and protect refugees, to vigorously safeguard the trust it has gained from beneficiaries, donors, host nations, parties to the conflict and other stakeholders. To maintain this trust and secure donor funding, the Agency must adhere to core humanitarian principles, neutrality being one of them, because it is indispensable for the safety and security of UNRWA personnel and property as well as the ability of its staff to deliver services to the refugees effectively.

39. With respect to the Applicant’s other contentions, the Tribunal finds that they are without merit. The Tribunal emphasises that it is important for the Applicant to distinguish between his right to have an opinion and his conduct as an Agency staff member. His conduct must reflect *at all times* the “impartiality”, “reserve” and “tact” referred to in the regulatory and administrative framework of the Agency. Indeed, General Staff Circular No. 07/2014 on the Revised Standards of Conduct for International Civil Service states 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.

40. As long as he is employed by the Agency, the Applicant must adhere to those principles.

Proportionality

41. As determined by the UNAT in \textit{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.

42. When considering proportionality, and while recognizing the Commissioner-General’s broad discretionary power in relation to disciplinary matters including the proper sanction for misconduct, the Tribunal takes special note of the nature of an applicant’s post. Referring to the conduct of a staff member, the UNAT in \textit{Haniya} 2010-UNAT-024 held in paragraph 34:

[...] His misconduct is particularly grave in light of the position he held [i.e., a position of trust that he failed to respect], and the responsibilities he was entrusted with [...].

43. In the case at bar, the Applicant is a teacher, and as such his conduct was all the more serious as he had the duty to be a role model to his students, to show regard for UN values and to act in line with the standards of conduct expected of a UN civil servant. The Tribunal would like to recall that the imposed disciplinary measure of a Letter of Censure is not the most severe measure that the Agency can impose on a staff member.

44. Having determined that (1) the facts on which the disciplinary measure, i.e. a Letter of Censure, was based have been reasonably established; (2) the facts legally support the conclusion of misconduct; (3) the disciplinary measure was proportionate to the offence; and (4) the Respondent’s discretionary authority was not tainted by evidence of procedural irregularity, prejudice or other extraneous factors, or error of law, the Tribunal finds that the Applicant’s request for relief has no basis in fact or in law.
Conclusion

45. Given all of the above, the application is dismissed.

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Judge Jean-François Cousin
Dated this 4th day of October 2018

Entered in the Register on this 4th day of October 2018

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Laurie McNabb, Registrar, UNRWA DT, Amman