AL JAWHARY

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 Joma Mohammad Al Jawhary (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 suspension from duty without pay for one month for breaching the Agency’s neutrality principles.

Facts

2. After having worked with the Agency for various periods of time between February 2011 and December 2012, on 18 February 2013, the Applicant was appointed on a fixed-term appointment with the Agency as Teacher, Grade 9, Step 1, at Nazzal Elementary Boys School.

3. On 16 December 2015, the Director of UNRWA Operations, Jordan (“DUO/J”) authorised an investigation into allegations of misconduct by the Applicant for breaching the Agency’s principles on neutrality. As part of the investigation, screenshots were taken of the Applicant’s Facebook account which contained, inter alia, a picture of a former faction leader, images and texts glorifying violence.

4. On 1 March 2016, the Agency sent a due process letter to the Applicant containing a summary of the findings of the investigation.

5. On 14 April 2016, the Applicant responded to the due process letter.

6. By letter dated 21 May 2017, the DUO/J informed the Applicant that he was suspending him for one month without pay 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.
7. On 18 July 2017, the Applicant requested decision review.

8. On 12 November 2017, the application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). It was transmitted to the Respondent on 19 November 2017.

9. On 19 December 2017, the Respondent filed his reply. The reply was transmitted to the Applicant on 20 December 2017.

10. On 2 January 2018, the Respondent filed the Arabic translation of his reply. The translation was transmitted to the Applicant on the same day.

11. By Order No. 188 (UNRWA/DT/2018) dated 24 October 2018, the Tribunal ordered the Respondent to provide the investigation report and other documents.

12. On 30 October 2018, the Respondent filed the requested documents. The Respondent’s submission was transmitted to the Applicant on 1 November 2018.

**Applicant’s contentions**

13. The Applicant contends:

   i) He was not permitted to have an employee of his choice observe his interview in the investigation;

   ii) He was not informed of his right to have legal counsel assist him in the proceedings;

   iii) He had not obtained the complete investigation file;

   iv) He was misled as the Agency referred him to the wrong official for his request for decision review; and

   v) He had not received any training on neutrality.
14. The Applicant requests:

i) The complete investigation file;

ii) A hearing before the Tribunal;

iii) Cancellation of the disciplinary measure; and

iv) Compensation for “violation of his rights” and the moral damage he sustained due to the Agency’s decision.

Respondent’s contentions

15. The Respondent contends:

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

ii) The Applicant was provided with full details of the findings of the investigation and given the opportunity to respond to them; and

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

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

Considerations

Preliminary issue

17. With respect to the Applicant’s request for a hearing, the Tribunal reviewed all the documents submitted by the parties and considers that there is sufficient material submitted to dispose of the application. Therefore, no oral hearing will be held.
Merits

18. The Applicant challenges the decision to impose on him the disciplinary measure of one month’s suspension without pay. 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.

19. 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.

20. 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.

21. 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.

22. 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).
23. 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.

24. 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.

25. 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.

26. 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

27. On 16 December 2015, the DUO/J authorised an investigation into allegations of misconduct by the Applicant. On 16 February 2016, the Applicant was interviewed, and he admitted that the screenshots shown to him by the investigator are from his Facebook account. He denied posting the images and stated that he did not know who did so. He also stated that when he used to navigate his account by using the school computer, he was unable to log out due to technical failures. He promised to remove the offensive material and added that he was not aware of the Agency’s Rules regarding neutrality. The Applicant requested to receive a copy of the investigation report, which the Tribunal sent to him. Therefore, the request for the investigation file has been satisfied.

28. The Applicant’s contention that he was not informed of his right to have legal counsel assist him in the interview is misguided, as subjects of an interview have no right to the presence of a lawyer. The UNAT stated in Powell 2013-UNAT-295 in paragraph 24:

24. During the preliminary investigation stage, only limited due process rights apply. […]

Accordingly, there is no rule in the Agency’s regulatory framework providing a right to a legal counsel during an investigation. This is in accordance with
generally accepted investigation standards applicable to administrative investigations.

29. The Agency sent a due process letter on 1 March 2016. The Applicant responded on 14 April 2016. He denied posting the images and stated that he did not know about them, his account was used by others, therefore that what had happened had been “out of his control”. Assuming that the Applicant is truthful, the Tribunal considers that, regardless of his allegations, it is still the Applicant’s responsibility to ensure that his Facebook account is used in accordance with the UNRWA regulatory framework.

30. 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 v:

   . . . [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.

Based on the above, the Tribunal concludes that the facts on which the contested decision was based are established. The Applicant is responsible to ensure that his Facebook account is used in accordance with the UNRWA regulatory framework. In the case at hand, the Applicant failed to do so. The Applicant cannot reasonably claim that he was not aware of the concept of neutrality. The Respondent has shown that the Agency’s issuances on neutrality are very clear and do not necessarily require additional training.

Misconduct

31. 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 posted on his Facebook account were in violation of the Agency’s neutrality principles.

32. 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. Moreover, neutrality is indispensable for the safety and security of UNRWA personnel and property, as well as for the ability of its staff to deliver services to the refugees effectively. As long as the Applicant is employed by the Agency, he must adhere to those principles.

Proportionality

33. 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.

34. 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 *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 [...].

35. 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 one month's suspension without pay is not the most severe measure that the Agency can impose on a staff member.

36. Having determined that (1) the facts on which the disciplinary measure, i.e., one month's suspension without pay 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

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

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Judge Jean-François Cousin
Dated this 29th day of November 2018

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

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Laurie McNabb, Registrar, UNRWA DT, Amman