EL SHAER

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 Tamer Yaser El Shaer (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 separate him from service for abandonment of post.

Facts

2. Effective 21 February 2009, the Applicant was employed by the Agency on a fixed-term appointment, Grade 4, Step 1, as Distribution Supervisor at the Emergency Programme, Gaza Field Office (“GFO”).

3. Following an investigation of misconduct allegations raised against the Applicant, by letter dated 22 August 2017, the Director of UNRWA Operations, GFO (“DUO/G”) informed the Applicant that the investigation was closed without any substantive findings. During the investigation, the Applicant had been reassigned to another post.

4. During a meeting on 25 September 2017, and as confirmed by email dated 26 September 2017, the Applicant was informed by the Deputy Field Human Resources Services Officer (“D/FHRSO”) that, following the conclusion of the investigation, his reassignment would come to an end and he was requested to resume his duties as Distribution Supervisor at Rafah Distribution Centre on 1 October 2017.

5. By email dated 27 September 2017, the Deputy, Head Field Logistics Office (“D/HFLO”) informed the Applicant that, in the event he did not present himself at Rafah Distribution Centre on 1 October 2017, his absence would be treated in line with UNRWA Rules and Regulations.

6. By letter dated 2 October 2017, the DUO/G informed the Applicant that he was exonerated of any wrongdoing, that his reassignment pending the investigation had come to an end and that he was now expected to return to his post at Rafah Distribution Centre as per standard procedure.
7. By letter dated 9 October 2017, the DUO/G informed the Applicant that the letter dated 21 December 2015, by which he had been temporarily transferred to the post at Rafah Fuel Section during the investigation, had been removed from his Official Status File.

8. On 30 January, 13 and 28 February 2018, the Applicant met with the Head, Field Human Resources Office (“H/FHRO”) to discuss certain issues with respect to his case. In these meetings, the Applicant expressed his request to be transferred to another post other than the post of Distribution Supervisor at Rafah Distribution Centre.

9. By letter dated 1 March 2018, the H/FHRO informed the Applicant that his request for transfer would be considered and that, in the meantime, he was requested to present himself to the Logistics Office for assignment of distribution duties.

10. By email dated 6 March 2018, the Applicant’s second supervisor requested the Applicant to contact his immediate supervisor to discuss the details with respect to the resumption of his duties as Distribution Supervisor.

11. By email dated 12 March 2018, the Applicant’s second supervisor once more instructed the Applicant to resume his duties as Distribution Supervisor with immediate effect. By other emails, telephone calls and personal visits, the Applicant was repeatedly informed of the same between 6 and 13 March 2018.

12. By letter dated 14 March 2018, the DUO/G advised the Applicant that, if he did not report to the Logistics Office by 08:00 hours on Monday 19 March 2018, he might be separated from the Agency for reason of abandonment of post and this separation would take effect at 24:00 hours on 19 March 2018.

13. By letter dated 19 March 2018, the Applicant was given notice of the Agency’s decision to separate him from service for abandonment of post.

14. On 17 May 2018, the Applicant submitted his request for decision review.

15. On 14 July 2018, the application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). It was transmitted to the Respondent on 22 July 2018.
16. On 23 August 2018, the Respondent filed a “Motion for Extension of Time” to file his reply outside the 30-calendar day time limit set out in Article 6(1) of the Rules of Procedure of the Tribunal. The motion was transmitted to the Applicant on the same day.

17. On 26 August 2018, the Applicant filed an objection to the motion stating that the 30-calendar day time limit for the Respondent to file his reply was sufficient. The Applicant requested the Tribunal to deny the Respondent’s motion. The Applicant’s objection was transmitted to the Respondent on the same day.

18. By Order No. 156 (UNRWA/DT/2018) dated 4 September 2018, the Tribunal granted the Respondent’s motion.

19. On 19 October 2018, the Respondent filed his reply. The reply was transmitted to the Applicant on 21 October 2018.

20. On 31 October 2018, the Applicant filed a motion to submit observations. This was transmitted to the Respondent on 1 November 2018.

21. On 2 November 2018, the Respondent filed a motion for extension of time to translate his reply. This was transmitted to the Applicant on 4 November 2018.

22. On 4 November 2018, the Applicant filed an Arabic translation of his motion to submit observations. This was transmitted to the Respondent on 8 November 2018.

23. By Order No. 206 (UNRWA/DT/2018) dated 13 November 2018, the Tribunal granted both the Applicant’s motion to submit observations and the Respondent’s motion for extension of time to translate his reply.

24. On 21 November 2018, the Applicant submitted his observations. These were transmitted to the Applicant on 22 November 2018.

25. On 25 November 2018, the Applicant filed a motion entitled “summary judgment”. The Applicant’s motion was transmitted to the Respondent on 27 November 2018.
26. The Tribunal considered that, with his motion, the Applicant requested expedited consideration of his case.

27. By Order No. 226 (UNRWA/DT/2018) dated 6 December 2018, the Tribunal denied the Applicant’s motion.

28. On 17 December 2018, the Applicant filed another motion entitled “summary judgment 2”. The Applicant’s motion was transmitted to the Respondent on 18 December 2018.

29. By Order No. 239 (UNRWA/DT/2018) dated 30 December 2018, the Tribunal denied the Applicant’s motion.

30. On 9 January 2019, the Respondent filed the Arabic translation of his reply. This was transmitted to the Applicant on the same day.

**Applicant’s contentions**

31. The Applicant contends:

   i) The impugned decision is illegal and arbitrary; and

   ii) Area Staff Rule 109.4, paragraph 2, was not correctly applied to his case because he was absent from duty on two consecutive working days from 12 March to 14 March 2018.

32. The Applicant requests:

   i) The rescission of the impugned decision; and

   ii) To be compensated for material and moral damages he sustained.

**Respondent’s contentions**

33. The Respondent contends:

   i) The Applicant’s separation for abandonment of post was properly effected;
ii) The Applicant does not contest that he voluntarily absented himself from resuming his duties as Distribution Supervisor as early as 1 October 2017;

iii) Contrary to the Applicant’s allegations, the period of unauthorised voluntary absence of the Applicant was not miscalculated; and

iv) The Applicant’s unsubstantiated allegation that the contested decision was “arbitrary” should be dismissed.

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

Considerations

35. Area Staff Rule 109.4 provides:

1. Where a staff member voluntarily absents himself/herself from duty and such absence neither has been authorised nor is subsequently authorised in accordance with these rules, then such staff member may be separated from Agency service by reason of abandonment of post as provided hereunder.

2. Where a staff member has absented himself/herself in the manner described in paragraph 1 above for three or more consecutive working days, the Commissioner-General may send to such staff member a letter informing him/her that unless, by a specified date (determined at the Commissioner-General’s discretion), he/she reports for duty or submits a written explanation of his/her absence which is acceptable to the Commissioner-General, he/she shall be deemed to have been separated from Agency service by reason of abandonment of post under the provisions of this rule.

3. In accordance with the provisions of paragraph 2 above, a staff member who fails to report for duty or to submit an acceptable written explanation by the date specified in the letter, shall, unless for exceptional reasons the Commissioner-General decides otherwise, be separated from Agency service under this rule, with effect from 2400 hours (local time) on the day immediately preceding the first day of his/her unauthorised absence.
36. In the present case, the only contention raised by the Applicant is that the above-mentioned Area Staff Rule was not correctly applied to his case. The Applicant argues that, despite the fact that he was requested to resume his duties as Distribution Supervisor with effect 12 March 2018, he was served with a letter of abandonment of post on 14 March 2018, in accordance with paragraph 2 of the above-mentioned Area Staff Rule. However, the Applicant adds that he was not absent from duty on three or more consecutive working days as required by the same rule. The Applicant specifies that there are only two working days he could have absented himself during the period from 12 March to 14 March 2018.

37. It is not contested that, on 27 September 2017, the Applicant was clearly informed that he was requested to resume his duties as Distribution Supervisor at Rafah Distribution Centre on 1 October 2017. Furthermore, despite many reminders, the Applicant never resumed his duties as Distribution Supervisor after 1 October 2017.

38. Among other relevant correspondence, by letter dated 1 March 2018, the H/FHRO informed the Applicant that he was requested to present himself to the Logistics Office for assignment of distribution duties. By email dated 6 March 2018, the Applicant’s second supervisor requested the Applicant to contact his immediate supervisor to discuss the details with respect to the resumption of his duties as Distribution Supervisor. By email dated 12 March 2018, the Applicant’s second supervisor once more instructed the Applicant to resume his duties as Distribution Supervisor with immediate effect. By other emails, telephone calls and personal visits, the Applicant was repeatedly informed of the same between 6 and 13 March 2018.

39. Therefore, it is clearly established that the Applicant was absent from duty on three or more consecutive working days. Accordingly, on 14 March 2018, the DUO/G was entitled, in accordance with paragraph 2 of Area Staff Rule 109.4, to advise the Applicant that, if he did not report to the Logistics Office by 08:00 hours on Monday 19 March 2018, he might be separated from the Agency for reason of abandonment of post and this separation would take effect at 24:00 hours on 19 March 2018.
40. It is also established that the Applicant failed to report to the Logistic Office on 19 March 2018. Instead, on the same day, the Applicant sent an email to the DUO/G and provided some written justification for his absence. By letter dated 19 March 2018 to the Applicant, the DUO/G explained that he had failed to provide the required convincing written justification for his absence from his duties. In this regard, the Tribunal has no doubt that the Applicant’s numerous refusals from 1 October 2017 to 19 March 2018 to resume his duties as Distribution Supervisor were not acceptable to the DUO/G.

41. Furthermore, the Applicant’s behaviour was clearly in contradiction with the following Area Staff Regulation:

**REGULATION 1.2**

Staff members are subject to the authority of the Commissioner-General and to assignment by him to any of the activities or offices of the Agency in or outside the area of its operations. The Commissioner-General may establish special conditions of service for staff members assigned to any of the activities or offices of the Agency outside its area of operations. Staff members are responsible to the Commissioner-General in the exercise of their functions. The whole time of staff members shall be at the disposal of the Commissioner-General, who will establish a normal working week (emphasis in original).

42. Consequently, the Tribunal concludes that the Applicant has failed to sustain the burden of proof required to establish by convincing evidence that the decision to separate him from service for abandonment of post was exercised arbitrarily or capriciously, was motivated by prejudice or other extraneous factors or was flawed by procedural irregularity or error of law.
Conclusion

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

The application is dismissed.

(SIGNED)

Judge Jean-François Cousin

Dated this 21st day of January 2019

Entered in the Register on this 21st day of January 2019

(SIGNED)

Laurie McNabb, Registrar, UNRWA DT, Amman