BEIDAS

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 Ali Muhammad Beidas (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 place him on administrative leave with pay pending an investigation.

Facts

2. Effective 1 March 2010, the Applicant was employed by the Agency on a one-year Limited Duration Contract, as Supply Control Officer at the Procurement and Logistics Department (“PLD”), Gaza Field Office (“GFO”).

3. Effective 1 March 2014, the Applicant was employed by the Agency on a fixed-term appointment as Supply Control Officer at the PLD, at Grade 14, Step 4, in the GFO. Effective 1 November 2016, the Applicant was promoted to the post of Logistics Officer, Grade 15, Step 5.

4. By email dated 28 November 2017, the Chief, Investigations Division (“C/ID”), Department of Internal Oversight Services (“DIOS”) reported to the Director of UNRWA Operations, Gaza (“DUO/G”) that the DIOS had accumulated *prima facie* evidence that the Applicant had engaged in misconduct for improper use of the GFO Compound located in the West Bank Field Office (“WBFO”). In the same email, the C/ID also noted that the DIOS had recommended that the Applicant be placed immediately on administrative leave pending an investigation.

5. By letter dated 7 December 2017, the DUO/G informed the Applicant of the allegations against him and that he was placed on administrative leave, effective 8 December 2017, pending the investigation.

6. On 2 February 2018, the Applicant submitted a request for decision review. By letter dated 3 February 2018, the Deputy Commissioner-General rejected the Applicant’s request noting that his request was time-barred.
7. On 11 March 2018, the present application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on 14 March 2018.

8. On 12 April 2018, the Respondent filed his reply. The reply was transmitted to the Applicant on 15 April 2018.

Applicant’s contentions

9. The Applicant contends:
   
   i) He was not properly informed about the allegations against him since he has been placed on administrative leave;
   
   ii) The impugned decision has had a negative impact on his career and his family; and
   
   iii) He is innocent.

10. The Applicant requests to be reinstated.

Respondent’s contentions

11. The Respondent contends:

   i) The decision to place the Applicant on administrative leave with pay was properly effected in accordance with the Agency’s regulatory framework;

   ii) At the time the Applicant was placed on administrative leave, the DIOS had found prima facie evidence in support of the allegations against him;

   iii) The Applicant’s continuance in his post would have been contrary to the interests of the Agency; and

   iv) The relief sought by the Applicant has no legal basis.
12. The Respondent requests the Tribunal to dismiss the application in its entirety.

Considerations

13. The Applicant contests the decision to place him on administrative leave with pay pending an investigation with respect to the allegations of misconduct against him.

14. In this respect, Area Staff Regulation 10.4 provides:

If a charge of serious misconduct is made against a staff member and the Commissioner-General considers that the charge is 'prima facie' well founded or that the staff member's continuance in office pending an investigation of the charge would prejudice the interests of the Agency, the staff member may be suspended, with or without pay, from his/her functions pending investigation, such suspension being without prejudice to the rights of the staff member.

15. Area Staff Rule 110.2 on administrative leave pending investigation provides in relevant parts:

1. A staff member may be suspended pending investigation by being placed on administrative leave, subject to conditions specified by the Commissioner-General, at any time pending an investigation until the completion of the disciplinary process.

2. In determining whether to place a staff member on administrative leave pending an investigation, the Commissioner-General shall consider whether there is prima facie evidence in support of the allegation of misconduct and whether the staff member’s continuance in the post and/or the duty station would be contrary to the interests of the Agency.

[...]

4. The decision to place a staff member on administrative leave pending an investigation shall be communicated to the staff member in writing.

5. Such administrative leave shall be without prejudice to the rights of the staff member and shall not constitute a disciplinary measure.

[...]
7. The decision to place a staff member on administrative leave pending investigation shall be within the discretionary authority of the Commissioner-General. Such authority is delegated to the Director of Human Resources for Headquarters staff, and Field Office Directors for Field staff.

16. Area Personnel Directive No. A/10/Rev.3 on Disciplinary Measures and Procedures provides in relevant parts:

13. Where there is prima facie evidence in support of an allegation of misconduct, and where the staff member’s continuance in their post or duty station would be contrary to the interests of the Agency, the staff member may be placed on administrative leave at any time pending an investigation until the completion of the disciplinary process. Circumstances that may be considered when making such a determination include, but are not limited to: the risk of repeated wrongdoing; the potential danger posed to other staff members or the Agency; and/or the risk of evidence being destroyed or concealed. A staff member placed on administrative leave is notified in writing of this determination.

14. Administrative leave is normally with pay unless the Commissioner-General decides that exceptional circumstances warrant administrative leave without pay, in both cases without prejudice to the staff member’s rights. A staff member’s placement on administrative leave is not a disciplinary measure.

17. The Applicant claims that he was not informed of the charges against him. In this regard, the Tribunal notes that, given the above-mentioned provisions, there is no obligation on the part of the Agency to inform the Applicant about the charges against him before placing him on administrative leave pending an investigation.

18. Furthermore, the Applicant cannot maintain that he was entirely left in the dark about the purpose of the investigation, as the impugned decision specified as follows:

Credible allegations have been made that you engaged in fraudulent conduct relating to the improper use of the Gaza Field Office compound located in the West Bank Field Office. It is further alleged that you have tampered with evidence and attempted to interfere with the investigation into the allegations against you.
19. Moreover, the Applicant contended that from the time he was placed on administrative leave to the time of the filing of his application, he had not been contacted by the Agency as part of the investigation into the allegations against him. The Tribunal recalls that, at that stage, with respect to the decision to place him on administrative leave, the Applicant was only entitled to be informed about the outcome of the investigation within a reasonable time-frame.

20. Lastly, the Applicant complains about the negative impact of the impugned decision on his career and his family. In this respect, the Tribunal reminds the Applicant that he was placed on administrative leave because the DIOS had found *prima facie* evidence in support of the allegations against him and that the DUO/G determined that, given the serious allegations of evidence tampering, his continuance in his post would have been contrary to the interests of the Agency. In addition, the Tribunal notes that the Applicant has not seriously contested these determinations apart from stating that he is innocent.

**Conclusion**

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

   The application is dismissed.

   SIGNED
   
   Judge Jean-François Cousin

   Dated this 13th day of February 2019

Entered in the Register on this 13th day of February 2019

   SIGNED

   Laurie McNabb, Registrar, UNRWA DT, Amman