ATAYA

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 Hisham Hosni Ahmad Ataya (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 and a fine equivalent to two weeks’ salary.

Facts

2. Effective 12 December 2010, the Applicant was employed by the Agency on a fixed-term appointment, Grade 9, Step 1, as Trade Instructor at Wadi Seer Training Centre (“WSTC”), Jordan Field Office (“JFO”).

3. On 29 March 2017, it was reported to the Field Legal Office, JFO that the Applicant and another staff member had engaged in physical altercation with each other.

4. On 30 March 2017, the Director of UNRWA Operations, Jordan (“DUO/J”) placed the Applicant and the other staff member on administrative leave with pay pending investigation.

5. In its meeting dated 2 April 2017, the Intake Committee, JFO, (“IC/JFO”) recommended that the incident be investigated. This recommendation was approved by the DUO/J on 6 April 2017.

6. On 17 April 2017, the DUO/J authorised an investigation into the allegations of misconduct by the Applicant.

7. The Report of Investigation (“RoI”) dated 15 June 2017, concluded that both the Applicant and the other staff member had verbally insulted each other and had used unbecoming words.

8. By letter dated 20 July 2017, the Head, Field Legal Office, Jordan (“H/FLO/J”) sent the Applicant a due process letter containing a summary of the findings of the investigation and provided him with an opportunity to respond.

10. By letter dated 15 October 2017, the DUO/J imposed on the Applicant the disciplinary measure of a letter of censure and a fine equivalent to two weeks’ salary.

11. On 20 November 2017, the Applicant submitted a request for decision review.

12. On 28 January 2018, the present application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on the same day.

13. On 27 February 2018, the Respondent filed his reply. It was transmitted to the Applicant on 28 February 2018.

14. On 15 March 2018, the Respondent filed a “Motion for Extension of Time to Translate the Reply”. The motion was transmitted to the Applicant on the same day.

15. By Order No. 049 (UNRWA/DT/2018) dated 21 March 2018, the Tribunal granted the Respondent’s request.

16. On 21 March 2018, the Respondent submitted the Arabic translation of his reply. The Arabic translation of the reply was transmitted to the Applicant on the same day.

Applicant’s contention

17. The Applicant contends that he was the subject of a conspiracy.

18. The Applicant requests:

   i) To be compensated for the material and moral damages he sustained;

   ii) The expunction of the adverse material from his official status file; and

   iii) A written apology.
Respondent’s contentions

19. The Respondent contends:

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

   ii) The facts upon which the disciplinary measure was based were reasonably established through eye-witness statements and the Applicant’s admission;

   iii) The Applicant has failed to provide convincing evidence that the impugned decision was exercised arbitrarily or capriciously, was motivated by prejudice or extraneous factors or was flawed by procedural irregularity or error of law;

   iv) The sanctions imposed were proportionate to the severity of the offence; and

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

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

Considerations

21. The Applicant contests the decision to impose on him the disciplinary measure of a letter of censure and a fine equivalent to two weeks’ salary. The Tribunal notes that, even though the Applicant has clearly identified the contested decision in his application, he does not raise any factual or legal contention against the contested decision.

22. With respect to the impugned decision, the Applicant does not contest that, on 29 March 2017, he had engaged in a physical altercation with another Technical Instructor at WSTC, in the presence of several witnesses. Through a pile of documents and submissions in his application, the Applicant seems to claim that he was a victim of conspiracy. Nevertheless, none of the Applicant’s allegations are
supported by evidence. In addition, the Applicant does not contest the establishment of the misconduct and the proportionality of the sanctions imposed on him.

23. The Tribunal recalls that it is generally very indulgent with respect to the way an application is submitted. Even though the application is not fully clear, the Tribunal always attempts to understand the Applicant’s contentions. However, these efforts are limited by the duty of the Tribunal to only respond to an applicant’s factual or legal contentions. Furthermore, except for the issues related to the receivability of an application, the Tribunal is not entitled to raise, on its own initiative, issues that were not raised by an applicant.

24. Consequently, in the present case, as the Applicant has failed to raise any tangible contention in his application, the Tribunal must dismiss his application.

Conclusion

25. In view of all the foregoing, the Tribunal DECIDES:

The application is dismissed.

Signed

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Judge Jean-François Cousin

Dated this 7th day of May 2019

Entered in the Register on this 7th day of May 2019

Signed

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Laurie McNabb, Registrar, UNRWA DT, Amman