ABU SAMEN

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:
Michael Schoiswohl (A/DLA)
Introduction

1. This is an application submitted by Abdalla Ali Soud Abu Samen ("Applicant") against the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA ("Respondent"), to impose on him the disciplinary measures of a written censure and a fine equivalent to one week’s salary.

Facts

2. Effective 6 November 1994, the Applicant was employed by the Agency as Teacher “B”, Grade 8, Step 1, at Talbiyeh Preparatory Boys School. Effective 23 August 2011, the Applicant was selected for the post of Head Teacher at Irbid Camp Preparatory Boys School No. 1. Effective 1 September 2015, following Agency wide reclassification, the Applicant was promoted to the reclassified post of School Principal, Grade 15, Step 3. At the time material to the events in the present application, the Applicant held this position.

3. On 4 June 2017, the Director of UNRWA Operations, Jordan ("DUO/J") received and transmitted to the Field Legal Office a copy of a Facebook post published by the Applicant earlier that day, under a Facebook profile maintained under the Applicant’s name on a Facebook page called “JFO and Headquarters Employees”. The Applicant posted the following texts:

   It is important to retract from the neutrality framework that targets our Palestinian identity and uses UNRWA as a biased sword.
   
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   It is important to keep working through the civil organizations on the parliamentary and societal level to regain our colleagues' rights, suspend the punishments and withdraw the neutrality frame.
   
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DUO has become a persona non grata in his position in Jordan because of the arbitrary and biased procedures against the employees as a response to the external instructions.

4. On 7 June 2017, the DUO/J issued the Applicant an “opportunity to respond – letter”. The letter was based on the findings after a thorough analysis of the above-mentioned Facebook post.

5. By letter dated 28 June 2017, the Applicant responded to the letter and contended, *inter alia*, that no investigation had been conducted prior to the issuance of the letter.

6. By letter dated 13 March 2018, the DUO/J imposed on the Applicant the disciplinary measures of a written censure and a fine equivalent to one-week’s salary. The DUO/J determined that the Applicant had engaged in misconduct by breaching two obligations: (1) the obligation to avoid public pronouncements that may adversely reflect on the integrity, independence and impartiality, which are required by the status of staff members and (2) the prohibition of engaging in any political activity. The DUO/J also determined that the Applicant had “made posts/expressions that are offensive, incompatible with [his] neutrality obligations … and not befitting the status of a United Nations staff member”. The letter referred to Area Staff Regulations 1.1, 1.4 and 1.7 and to Jordan Field Staff Circulars on Neutrality and the Use of Social Media (most recently prior to the matter at hand, Circular No. J/14/2017, dated 21 May 2017), and the “UNRWA Website and Social Media Policy Regarding Personal Use” of November 2014.

7. On 3 April 2018, the Applicant requested review of the impugned decision.

8. On 30 May 2018, the application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). It was transmitted to the Respondent on 31 May 2018.

9. On 29 June 2018, the Respondent filed his reply. It was transmitted to the Applicant on 1 July 2018.

10. On 12 July 2018, the Respondent filed a motion for extension of time to translate the reply. The motion was transmitted to the Applicant on 15 July 2018.
11. On 18 July 2018, the Applicant filed a motion requesting the Tribunal to shorten the extension granted and to request the Respondent to file the translation of his reply before 16 October 2018. The motion was transmitted to the Respondent on the same day.


13. On 10 October 2018, the Respondent filed the Arabic translation of his reply. This was transmitted to the Applicant on the same day.

14. On 16 October 2018, the Applicant filed a motion to submit observations on the Respondent’s reply. The Applicant’s motion was transmitted to the Respondent on the same day.

15. By Order No. 197 (UNRWA/DT/2018) dated 29 October 2018, the Tribunal granted the Applicant’s motion. The Applicant did not submit any observations.

16. By Order No. 199 (UNRWA/DT/2019) dated 8 October 2019 (“Order No. 199”), the Tribunal ordered the Applicant to clarify what his exact status and position is within the Staff Union. On 20 October 2019, the Applicant submitted his response to Order No. 199. The response was transmitted to the Respondent on the same day.

**Applicant’s contentions**

17. The Applicant contends:

   i) There was no investigation conducted, which constituted a violation of his legal rights and an abuse of authority;

   ii) The post was published on the Facebook website of Jordan Field Office and Headquarters. This is a closed group limited to UNRWA staff members Therefore, it was not a public pronouncement;
iii) When he posted the statements, he did not mean to violate the Agency’s Rules and Regulations. He did not receive any training on the personal use of social media; and

iv) The imposition of the sanctions on him as a unionist, for his freedom of speech and defending the rights of those he represents, is a blatant aggression against his legal, human and national rights.

18. The Applicant requests:

i) Rescission of the contested decision imposing on him the disciplinary measure of a written censure and a fine; and

ii) Compensation for the psychological and moral damages he sustained.

Respondent’s contentions

19. The Respondent contends:

i) The disciplinary measures were properly effected in accordance with the Agency’s regulatory framework;

ii) Area Staff Regulation 1.1 provides that staff members are to discharge their functions with the interest of the Agency only in view;

iii) Area Staff Regulation 1.4 provides that staff members are to conduct themselves at all times in a manner befitting their status as employees of the Agency and shall not engage in any activity that is incompatible with the proper discharge of their duties;

iv) Neutrality is “a core obligation and value of UN staff”, and the Agency has issued several administrative issuances with respect to this principle;

v) The facts upon which the disciplinary measures were based are established, as the Applicant acknowledged the postings on the Facebook page;
vi) The Applicant’s postings demonstrate that he engaged in conduct which is unbefitting of his status as an employee of the Agency, and the statements adversely reflect on the integrity and independence that is required of all staff members, they are defamatory and they are political in nature and call for political activity;

vii) Statements made on Facebook are public pronouncements, and statements made on social media in breach of staff members’ obligations under the regulatory framework may have serious, negative consequences for the Agency’s operations, reputation and/or funding;

viii) The Applicant’s reference to lack of training on the personal use of social media has no merit. It is well-established jurisprudence that “ignorance of the law is no excuse and every staff member is deemed to be aware of the provisions of the Staff Regulations and Rules”;

ix) The Applicant’s reference to the Jordanian Constitution and freedom of expression is misplaced;

x) The sanction was proportionate to the severity of the offence; and

xi) 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. By letter dated 13 March 2018, the Applicant was served with a written censure and a fine equivalent to one-week’s salary for engaging in misconduct by posting statements on a Facebook page in violation of Area Staff Regulations. The United Nations Appeals Tribunal (“UNAT”) held in Portillo Moya 2015-UNAT-523, paragraph 17, as follows:

[W]hen handling disciplinary cases the role of the judicial review is to ascertain whether the facts on which the sanction is based have been established, whether the established facts
qualify as misconduct, and whether the sanction is proportionate to the offence.

Establishment of facts

22. It is clear from the case file that the Applicant does not contest that he posted on a Facebook page entitled “JFO and Headquarters employees” the following texts:

It is important to retract from the neutrality framework that targets our Palestinian identity and uses UNRWA as a biased sword.

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It is important to keep working through the civil organizations on the parliamentary and societal level to regain our colleagues’ rights, suspend the punishments and withdraw the neutrality frame.

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DUO has become a persona non grata in his position in Jordan because of the arbitrary and biased procedures against the employees as a response to the external instructions.

23. It is clear to the Tribunal that the Applicant concedes the facts and acknowledges that he posted the texts. Considering that the Applicant acknowledged the facts, there was no need for a fact-finding investigation. Furthermore, there is no Regulation or Rule that requires the Agency to conduct an investigation before imposing a written censure and a fine.

24. Consequently, the Tribunal concludes that the facts on which the contested decision was based are established.

Misconduct

25. The Tribunal now needs to consider whether the established facts qualify as misconduct. The following provides the Agency’s regulatory framework applicable in this case.
26. **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.

27. **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.

28. **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.

29. **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 […]

30. **The Tribunal refers to parts of the Jordan Field Staff Circular on Neutrality No. J/13/2017 ("2017 Circular"), dated 22 April 2017, which is 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.

31. Furthermore, the Respondent submitted to the Tribunal a “Neutrality Factsheet” dated March 2011. Also, in February 2017, UNRWA issued a Neutrality Framework which contains a special section on social media usage with the aim to ensure an Agency-wide consistent and coherent approach to neutrality.

32. The applicable regulatory and administrative framework was in effect at the time of the Applicant’s posting on Facebook. Therefore, the Applicant cannot claim that he was unaware of the fact that publishing such material was prohibited. By posting the texts it is clear to the Tribunal that the Applicant breached the Agency’s principles as enunciated in the above-mentioned Regulations, Rules, and other relevant administrative issuances, and, consequently, engaged in misconduct. The texts are inflammatory, offensive and political in nature. Urging staff members to “retract from the neutrality framework” can have serious and harmful impact on the Agency’s reputation and/or future funding. Furthermore, personally attacking and threatening the DUO/J, adversely reflects on the Applicant’s integrity and independence that is required of all staff members. 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 School Principal, should have known that the texts he posted on Facebook were in violation of the Agency’s Regulations.

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

34. Consequently, the Tribunal holds that the Applicant did not conduct himself in a manner befitting his status as an employee of the Agency and that his actions must be considered as misconduct.

Proportionality

35. Having qualified the Applicant’s conduct as misconduct, the Tribunal, as a third step, has to review whether the disciplinary measures imposed on him were proportionate to the offence.

36. In that regard, it has to be recalled that, pursuant to Area Staff Rule 110.1, paragraph 4, the decision to impose a disciplinary measure is within “the discretionary authority of the Commissioner-General”. In addition, as it has been held by the UNAT in Mousa 2014-UNAT-431, paragraph 30, the Tribunal’s review of the proportionality of a disciplinary sanction is limited to cases in which such sanction appears to be “absurd, arbitrary or tainted by extraneous reasons or bias”.

37. In the case at bar, the Applicant is a School Principal, and as such, his conduct was all the more serious as he has 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 measures are not the most severe measures that the Agency can impose on a staff member. Furthermore, the disciplinary measures imposed on the
Applicant appear neither to be absurd nor arbitrary; nor is there any evidence that the measures taken were tainted by extraneous reasons or bias. Therefore, the Tribunal holds that the disciplinary measures imposed on the Applicant were proportionate to the nature and gravity of the misconduct.

Remedies

38. Having determined that (1) the facts on which the disciplinary measures, i.e. a letter of censure and a fine of one-week salary, were based have been reasonably established; (2) the facts legally support the conclusion of misconduct; (3) the disciplinary measures were 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

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

The application is dismissed.

__________________________________________
Judge Jean-François Cousin

Dated this 13th day of November 2019

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

__________________________________________
Laurie McNabb, Registrar, UNRWA DT, Amman