TITI

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 Majd Daoud Ismail Titi (“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 Letter of Censure and a fine equivalent to one week’s salary.

Facts

2. Effective 2 December 2000, the Applicant was employed by the Agency as Teacher, Level 6B, Step 1, at Rusaifeh Preparatory Boys School No. 1. Effective 20 March 2013, the Applicant was selected for the post of Assistant Head Teacher at Irbid Camp Preparatory Boys School, Grade 11. Effective 1 April 2015, following Agency wide reclassification, the Applicant was promoted to the reclassified post of Deputy School Principal at Irbid Camp Preparatory Boys School, Grade 13, Step 4. At the time material to the events in the present application, the Applicant held this position.

3. On 21 June 2017, the Agency received a copy of a WhatsApp message under the Applicant’s name. The post was placed within a WhatsApp Group with members including (Deputy) School Principals in Irbid Area.

4. On 22 June 2017, the Director of UNRWA Operations, Jordan (“DUO/J”) issued the Applicant an “opportunity to respond - letter”. The letter was based on his findings after a review of the WhatsApp post. The letter identified the objectionable statements to be:

[ ]there has been communication with the parliamentarian Palestine committee “Mahmoud Titti” “Yehya Saoud”… and they are waiting for the affected brothers to meet them tomorrow at 1pm in the parliament to listen to them. I encourage all brothers who are affected to attend this meeting not only to lift the injustice as much as to defend a homeland and a cause.
In his letter, the DUO/J declared that this statement “adversely reflects on the integrity and independence that is required of all staff members” and “is also political, and calls for political activity”. The DUO/J also noted that the statement was in violation of Area Staff Regulations 1.1, 1.4 and 1.7.

5. By letter dated 9 July 2017, the Applicant responded to the letter, protesting, \textit{inter alia}, that no investigation had been conducted prior to the issuance of the letter and the letter had been delivered to him on an official holiday.

6. By letter dated 5 April 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. By letter dated 23 April 2018, the Applicant requested review of the impugned decision.

8. On 8 June 2018, the application was filed with the UNRWA Dispute Tribunal (“Tribunal”). The application was transmitted to the Respondent on 11 June 2018.

9. On 11 July 2018, the Respondent filed his reply. The reply was transmitted to the Applicant on 12 July 2018.

10. On 25 July 2018, the Respondent filed a motion for extension of time to translate his reply. The motion was transmitted to the Applicant on 26 July 2018.
11. By Order No. 145 (UNRWA/DT/2018) dated 5 August 2018, the Tribunal granted the Respondent’s motion.

12. On 25 October 2018, the Respondent filed the Arabic translation of the reply. This was transmitted to the Applicant on the same day.

13. On 5 November 2018, the Applicant filed a motion for leave to file observations. The Applicant’s motion was transmitted to the Respondent on the same day.

14. By Order No. 207 (UNRWA/DT/2018) dated 18 November 2018, the Tribunal granted the Applicant’s motion.

15. On 27 November 2018, the Applicant filed his observations. The observations were transmitted to the Respondent on 28 November 2018.

16. By Order No. 198 (UNRWA/DT/2019) dated 8 October 2019 (“Order No. 198“), the Tribunal ordered the Applicant to clarify what his exact status and position is within the Staff Union.

17. The Applicant filed a response to Order No. 198 on 7 November 2019. The response was transmitted to the Respondent on the same day.

**Applicant’s contentions**

18. The Applicant contends:

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

   ii) His right to leisure time was violated by the Agency serving him his due process letter on an official holiday;

   iii) There is a discrepancy between the Arabic text and the English translation;

   iv) The post was published in a closed WhatsApp group and therefore it was not a public pronouncement;
v) 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;

vi) The JFO administration urges School Principals and managers to communicate with the local community and its different institutions, as this serves the interests of the Agency, helps solve many of the problems with the parents who are not aware of the rules of education, helps put an end to the attacks launched on schools and provides financial and in-kind support to the needy students;

vii) He posted the material within a closed WhatsApp group in order to communicate with the Parliament as a national and local community institution;

viii) In the past, many Parliament members were invited by the Chairperson of the JFO Staff Union to express their points of view during various sit-ins, and they also mediated the end of a hunger strike after meeting with the Chief of Staff in May 2018; and

ix) The DUO/J has participated in many meetings with local community institutions, Parliamentarians, Camp Improvement Committees and Sheikhs of the tribes, within the framework of the cooperation between the Agency and the local community institutions, in order to overcome some of the problems and pending issues faced by the Agency institutions or to settle disputes between the Agency and Staff Representatives.

19. The Applicant requests:

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

ii) Compensation for the psychological and moral damages he sustained.
Respondent’s contentions

20. 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 WhatsApp group;

vi) The Applicant’s post and comments 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, and they are political in nature and call for political activity;

vii) Statements made on the WhatsApp forum 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 the Jordanian Constitution and freedom of expression is misplaced; and

ix) The sanctions were proportionate to the severity of the offence.
21. The Respondent requests the Tribunal to dismiss the application in its entirety.

Considerations

22. By letter dated 5 April 2018, the Applicant was served with a written censure and a fine equivalent to one-week’s salary for engaging in misconduct by posting a statement in a WhatsApp group in violation of Area Staff Regulations. As for the Tribunal’s review of a disciplinary measure imposed, 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

23. Considering that the Applicant concedes the facts and acknowledges that he posted the statement in the WhatsApp group, 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 issuing a written censure and a fine. Consequently, the Tribunal concludes that the facts on which the contested decision was based are established.

Misconduct

24. 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.

25. 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.
26. 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.

27. 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.

28. In referencing Area Staff Regulations 1.4 and 1.7, 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 […]

29. The Tribunal also refers to parts of the Jordan Field Staff Circular on Neutrality No. J/13/2017 (“2017 Circular”), dated 22 April 2017:

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.

30. Furthermore, in March 2011, the Agency issued a “Neutrality Factsheet”, and in 2012, the Commissioner-General issued a letter reminding staff of their obligations and noting that neutrality means that “humanitarian actors, irrespective of their personal beliefs or opinions, must not take sides in hostilities or engage in public controversies of a political, racial, religious or ideological natures”. In 2014, the Agency issued a Website and Social Media Policy Regarding Personal Use, stressing, inter alia, the principles of humanity, neutrality, impartiality, and operational independence.

31. The applicable regulatory and administrative framework was in effect at the time of the Applicant’s WhatsApp message, and the Applicant does not claim that he was unaware of the Agency’s framework.

32. It is, however, unclear to the Tribunal in what way the Applicant, by posting the said text, breached the Agency’s neutrality principles and other obligations as enunciated in the above-mentioned regulations, rules, and other relevant administrative issuances.

33. The reproached text can hardly be called inflammatory, offensive or political in nature. The Applicant was not calling for a political demonstration to be held in order to protest the treatment of Palestinians by any governmental body or to engage in activity detrimental to any nation, group or agency. The words were informing other persons of a meeting with members of Parliament in order to
discuss the issue of neutrality itself. Staff members have a right to discuss amongst themselves and with their governmental representatives issues that are important to them.

34. Indeed, as the Applicant has pointed out in his contentions, which are not contested by the Respondent, the JFO administration urges School Principals and managers to communicate with the local community and its different institutions in order to solve problems, settle disputes between the Agency and Staff Representatives and serve the interests of the Agency. Moreover, Parliament members have been invited by the Chairperson of the JFO Staff Union to express their points of view during various sit-ins, and they mediated the end of a hunger strike after a meeting with the then Chief of Staff. The Agency cannot, on the one hand, condone the practice of engaging members of Parliament to intervene in sit-ins and hunger strikes, while on the other hand describe the Applicant’s conduct as engaging in prohibited political activity. Moreover, this practice of engaging members of Parliament casts doubt on the DUO/J’s allegation in his letter to the Applicant that sharing information about an UNRWA policy to members of the Parliament of the host country resulted in reputational harm to the Agency.

35. It is also unclear how the words, which are characterized as a “public pronouncement”, could have “adversely reflect[ed] on the integrity, independence and impartiality” of the Applicant or other staff members, in violation of the regulations. The phrase “not only to lift the injustice as much as to defend a homeland and a cause”, could under some circumstances be considered a “public pronouncement” contravening the principle of impartiality. However, in this short message within a closed WhatsApp group consisting of mainly other School Principals and Deputy School Principals in the Irbid area, the statement is innocuous. Furthermore, nothing in the said text is aimed to attack or defame a particular manager within the Agency.

36. The Tribunal agrees with the Respondent that the Jordanian Constitution and freedom of expression are not pertinent to the determination of what conduct is or is not acceptable of a staff member of UNRWA and of the United Nations in general. The Tribunal also agrees with the Respondent and reminds the Applicant
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 this end, it is important for the Agency’s employees to adhere to core humanitarian principles, and in particular neutrality, and that this is important for the safety and security of UNRWA personnel and impacts on the staff’s ability to deliver services to refugees effectively.

37. However, in the present case, the Tribunal does not find that the text in question violated the Agency’s principles of neutrality or constituted conduct adversely reflecting on the Applicant’s integrity, independence and impartiality or on the Agency’s reputation. Nor was the Applicant’s conduct incompatible with the proper discharge of his duties with the Agency. Therefore, the decision to impose on the Applicant disciplinary measures was unlawful and is rescinded.

38. Having decided that the Applicant’s conduct did not constitute misconduct, the Tribunal need not address the issue of proportionality.

39. With respect to the Applicant’s request for an official apology from the Agency, the Tribunal states that it is not appropriate to order the Agency to apologise. It is in the very nature of an apology that it has to be voluntary. To order someone to apologise is in the Tribunal’s view a pointless exercise.

Remedies

Compensation for harm – Moral damages

40. Article 10(5) of the Tribunal’s Statute provides:

5. As part of its judgement, the Dispute Tribunal may order one or both of the following:

[...]

(b) Compensation for harm supported by evidence, which shall normally not exceed the equivalent of two years’ net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation and shall provide the reasons for that decision [emphasis added].
41. As it has been consistently held by this Tribunal in light of the UNAT’s jurisprudence, an award of moral damages must be supported by evidence in accordance with the recent amendment of the Tribunal’s Statute. While it was unfortunate that the Agency chose to serve the “opportunity to respond - letter” on a holiday, such does not give rise to an award of moral damages. In the present case the Applicant has not presented any evidence of harm and the Tribunal considers that rescission of the contested decision is sufficient.

Conclusion

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

   The decision to impose on the Applicant disciplinary measures is hereby rescinded.

________________________________________
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