Before: Judge Jean-François Cousin
Registry: Amman
Registrar: Laurie McNabb

SULEIMAN

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 Nisreen Suleiman ("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 her the disciplinary measures of a written censure and a suspension without pay for six weeks.

Facts

2. Effective 6 August 2000, the Applicant was employed by the Agency on a fixed-term appointment, Grade 2B, Step 1, as Secretary at North Amman Area, Jordan Field Office ("JFO").

3. At the time material to the events of the present application, the Applicant was employed on a temporary indefinite appointment, Grade 11, as Administrative Support Assistant.

4. On 1 May 2017, the Head, Contractual Procurement Section ("H/CPS") reported allegations to the Department of Internal Oversight Services ("DIOS") that the Applicant had engaged in a fraudulent practice.

5. On 14 June 2017, an investigation into the reported allegations was commenced.

6. On 26 October 2017, the investigation was concluded, followed by the Report of Investigation. It was determined that the Applicant had breached the Administrative Services Instruction No. 02/2016: Technical Instruction on Accommodation, Meetings, Conferences and Events in Hotels in Jordan ("ASI No. 02/2016"), UNRWA’s Anti-Fraud and Anti-Corruption Policy and other pertinent Rules and Regulations and that she had engaged in a fraudulent practice by intentionally modifying the terms of an Agency’s contract with a hotel ("Hotel") for a Diabetes Mellitus Conference ("Conference") at the Dead Sea in April 2017 for her personal benefit. The investigation showed that she had personally negotiated the terms of the revised contract with the Hotel through
meetings, phone calls and emails, all without prior consultation with and approval from the Administrative Support Department (“ASD”), and that she had signed the revised contract with the Hotel without authorisation. Due to her actions, the Agency suffered a loss of 674.15 Jordanian Dinars (“JOD”). DIOS recommended a disciplinary action.

7. On 8 May 2018, the Director of Human Resources (“DHR”) provided the Applicant with a due process letter.

8. By letter dated 5 June 2018, the Applicant provided her response to the due process letter and rejected the allegations.

9. On 14 April 2019, the DHR imposed on the Applicant the disciplinary measures of a written censure and a suspension without pay for six weeks.

10. On 13 June 2019, the Applicant submitted a request for decision review.

11. On 9 September 2019, the present application was filed with the UNRWA Dispute Tribunal (“Tribunal”). The application was transmitted to the Respondent on 10 September 2019.

12. On 1 October 2019, the Respondent filed his reply. The reply was transmitted to the Applicant on 2 October 2019.

13. On 18 October 2019, the Applicant filed a motion for leave to submit observations on the Respondent’s reply. The Applicant’s motion was transmitted to the Respondent on 20 October 2019.

14. By Order No. 211 (UNRWA/DT/2019) dated 30 October 2019, the Tribunal granted the Applicant’s request to submit observations on the Respondent’s reply.

15. On 27 November 2019, the Applicant submitted her observations. The Applicant’s observations were transmitted to the Respondent on the same day.

**Applicant’s contentions**

16. The Applicant contends:
i) The Communication Officer was in charge of administrative issues related to the Conference, but since he did not perform his assigned duties, the Applicant became responsible for his tasks;

ii) All families of administrative staff members were staying together in their rooms;

iii) She had to take an extra room for her family, because all of them are adults, and due to the illness of her brother; the Hotel management decided that it would be complimentary; however, the cost was added in the invoice without any justification;

iv) There was a delay in the disciplinary process, as the disciplinary measures were imposed nearly two years after the investigation was commenced; and

v) She was assigned by the former Director of Health to be responsible for the preparation of all events of the Health Department (“HD”) since 2007.

17. The Applicant requests:

i) To cancel the disciplinary measures imposed on her and remove the related information from her Official Status File; and

ii) To be compensated for the salary loss.

**Respondent’s contentions**

18. The Respondent contends:

i) The facts on which the disciplinary measures were based were established through documents, correspondence, contracts, agreements, invoices, bills, and interviews of witnesses;

ii) The investigation was conducted with objectivity and thoroughness, and the Applicant’s due process rights were observed;
iii) The Applicant’s actions breached the ASI No.02/2016, UNRWA’s Anti-Fraud and Anti-Corruption Policy and other pertinent rules and regulations;

iv) By engaging in fraudulent practices, the Applicant committed misconduct;

v) The sanctions were proportionate to the misconduct;

vi) The Applicant has failed to provide any evidence that the impugned decision was arbitrary or capricious, was motivated by prejudice or other extraneous factors, or was flawed by procedural irregularity or error of law; and

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

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

Considerations

20. The Applicant contests the decision to impose on her the disciplinary measures of a written censure and a suspension without pay for six weeks.

21. With respect to the standard of review in disciplinary cases, 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.

22. Therefore, the Tribunal must first ascertain whether the facts on which the sanction is based have been established before determining whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offence.
Establishment of facts

23. The Applicant was disciplined for (1) having engaged in a fraudulent practice by intentionally modifying the terms of an Agency’s contract with a Hotel for her personal benefit; (2) negotiating the terms of the revised contract with the Hotel through meetings, phone calls and emails, without prior consultation with and approval from the ASD; (3) and signing the revised contract with the Hotel without authorisation.

24. The Applicant was employed as an Administrative Support Assistant, Grade 11, and she has been responsible for handling preparations for meetings and workshops of the HD since 2007. In December 2016, the Applicant was requested to start preparations for the Conference and to contact several hotels at the Dead Sea in order to obtain quotations for accommodating the event.

25. The H/CPS signed a service contract with the Hotel on 14 February 2017. That contract included five annexes, together with the proposal, which were not signed by the H/CPS, but constituted a part of the contract.

26. Further exchanges took place between the Applicant and the Hotel resulting in the Applicant negotiating the final terms of a revised contract without prior consultation with the ASD. The Applicant forwarded the revised contract to the Procurement and Logistics Division (“PLD”) for their “further action” and signed it. On 5 April 2017, prior to the Conference, the Applicant requested further modifications to the contract, including changing her room to double occupancy to be paid by UNRWA, and booking a second room for her brother, to include meals, on a complimentary basis. She signed the revised contract without authorisation. She also signed a subsequent one, dated 6 April 2017, of materially similar content, without any authorisation or approval.

27. The Applicant asserts that, since 2007, she has been authorised by the Director of Health to handle all arrangements relating to meetings and workshops of the HD, which included signing the offers with hotels. She further claims that every single detail of the Conference was discussed with a committee constituted by the Director of Health.
28. It is not contested by the Applicant that she negotiated with the Hotel for the children of three Administrative Assistants to accompany them in their rooms, including accommodation and meals. Nor does the Applicant contest that she modified the terms of the contract with the Hotel and obtained an extra room for her brother, including meals, and that she signed the revised contract.

29. The above facts are established through the investigation process and supported by documents and correspondence. There is no evidence in the case file that the Applicant has ever been authorised to sign any offer or contract. Yet, the Respondent does not contest that the Applicant had a wide discretion in organizing such events.

30. In view of the foregoing, given the fact that the present case is not a criminal case and the Applicant’s liberty is not at stake (Molari 2011-UNAT-164, paragraph 30), and in light of the above considerations, the Tribunal holds that it is established that the Applicant had engaged in a fraudulent practice by intentionally modifying the terms of an Agency’s contract with the Hotel for her personal benefit, negotiating the terms of the revised contract with the Hotel through meetings, phone calls and emails, without prior consultation with and approval from the ASD and signing the revised contract with the Hotel without authorisation.

**Misconduct**

31. The Tribunal now needs to consider whether the established facts constitute misconduct. The following provides the Agency’s regulatory framework applicable in this case.

32. Area Staff Regulation 1.1, in relevant part, provides:

   Staff members, by accepting appointment, pledge themselves to discharge their functions with the interests of the Agency only in view.

33. Area Staff Regulation 1.4 stipulates:

   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.

34. Organization Directive No. 10: Procurement establishes:

12. Contract Amendments

Material amendments proposed to any approved contract shall require the approval of the Awarding Authority authorizing the original contract, provided that, if the amendment proposed would bring the value of the amended contract above the limit of the Awarding Authority which approved it, the amendment must be authorized by the Awarding Authority having power to approve the contract as so amended.

35. UNRWA Procurement Manual V.3 of 11 November 2015, in pertinent parts, stipulates:

13. Contract Management

13.1 Overview. Contract management is a shared responsibility between the Requesting Department and the respective PLD. The Requesting Department is responsible for executing and managing all contracts, including monitoring and control of all technical aspects, and Contractor performance and delivery. The Sponsoring Officer is responsible for all administrative aspects of contract management, such as contract amendment, contract interpretation, payments, closure and record retention and handling of security instruments are in compliance with the provisions of this Manual. The names, title of the officers and the office location, including at Headquarters and in the Field for both the Requesting Department and PLD, shall be considered a necessary component of all Contract documentation. Close cooperation between the Requesting Department as the technical owner of the Contract and PLD is paramount to the successful completion of any UNRWA contract. Effective contract management reduces risk and helps ensure that the Organisation receives best value for money.

13.6.1 Contract Amendments. Contractual instruments may require amendment after approval and issuance. An amendment is any change to a contractual instrument, including an extension. Amendments may only be made to contractual instruments which are not yet terminated or expired. Amendments to contractual instruments will be made in accordance with the terms of the contractual instrument and are usually in writing and must be accepted by the parties.
13.6.3 Amendments to Contracts. It may be necessary to modify commercial or other aspects of an existing contract or extend the expiration date to allow for completion of works or services or otherwise extend the Contract term where not otherwise provided for as a renewal (see Section 13.6.5 below). Generally, an amendment will be initiated by the Requesting Department, but may also be initiated by the Sponsoring Officer or the Vendor. The Sponsoring Officer, in consultation with the Requesting Department, must in each case evaluate whether the requested modification would be best accommodated by an amendment or through a new solicitation.

36. ASI No.02/2016 enshrines:

D. Issuance of Service Contract to the Hotel

1. AGSS will issue the Service Contract to the awarded Hotel in the event that the total award is less than US$20,000.

2. PLD will issue the Service Contract to the awarded Hotel in the event that the total award is above US$20,000.

3. A copy of the signed Service Contract and information on the focal point from the Hotel shall be forwarded to the End-User.

E. Contract Administration

1. The End-User shall administer the details of the Service Contract including specific venue arrangement, time/schedule for coffee breaks and lunch and audiovisual requirements of the day.

2. The End-User shall meet the focal point from the Hotel before the event to review any changes in the programme and/or meal counts.

3. The End-User shall meet the focal point from the Hotel at the end of the day to review the accounts for the day to verify that the Hotel’s records and charges are correct.

4. The End-User shall maintain a daily record of names of staff and total number of attendees for UNRWA’s Service Entry Sheet (SES) and payment purposes.

37. The Tribunal has no doubt that the Applicant breached the aforementioned provisions of the Agency’s regulatory framework by negotiating and modifying the terms of the contract with the Hotel for her personal benefit and signing the
contract’s amendments without prior authorisation, particularly, because these amendments increased the total cost of the Conference.

38. The Applicant acknowledges that she was familiar with the pertinent Rules and Regulations of the Agency. However, the Tribunal considers that the Applicant, bearing in mind her post, was given widespread responsibilities and there was a lack of guidance and supervision from the Director of Health regarding the preparations for the Conference. This failure from the management would have exonerated the Applicant from any misconduct had it not been established that she took advantage of this lack of supervision for her personal benefit. Therefore, it is established that the Applicant did not conduct herself in a manner befitting her status as an employee of the Agency, and thus her actions constituted misconduct.

Proportionality

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

40. In this 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 determining whether such sanction appears to be “absurd, arbitrary or tainted by extraneous reasons or bias”.

41. In the case at bar, the Applicant is an Administrative Support Assistant, Grade 11, with an unblemished record of service, which was taken into consideration by the DHR as a mitigating factor. The Tribunal would also like to recall that the imposed disciplinary measures of a written censure and a suspension without pay for six weeks are not the most severe measures that the Agency can impose on a staff member. 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.

42. The Applicant has raised the irregularity of the disciplinary process, as there was a delay in the disciplinary process. The DHR acknowledged that there had been a delay in the disciplinary process, as the allegations of misconduct were reported on 1 May 2017, and the Applicant was not notified of the disciplinary measures until 14 April 2019. The DHR considered this delay as another mitigating factor in determining the disciplinary sanction to be imposed. In any event, given the Tribunal’s determination with respect to the lawfulness of the imposed disciplinary measures, the delay was without any consequence to the Applicant’s due process rights, and such delay did not result in any harm to the Applicant (Jaber et al. 2016-UNAT-634, paragraphs 28-32; Gnassou 2018-UNAT-865, paragraphs 23-27). Therefore, the Tribunal holds that the disciplinary measures imposed on the Applicant were proportionate to the nature and gravity of the misconduct.

43. Consequently, having determined that (1) the facts on which the disciplinary measures, i.e., a written censure and a suspension without pay for six weeks, were based have been sufficiently 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 present application must be dismissed.
Conclusion

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

   The application is dismissed.

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Judge Jean-François Cousin

Dated this 9th day of July 2020

Entered in the Register on this 9th day of July 2020

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Laurie McNabb, Registrar, UNRWA DT, Amman