SHAHWAN

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 Abdel Rahman Shahwan ("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 place him on administrative leave without pay pending investigation.

Facts

2. Effective 1 July 2008, the Applicant was employed by the Agency on a fixed-term appointment, Grade 14, Step 1, as Medical Officer “B” at the Health Department, Gaza Field Office ("GFO").

3. Effective 2 April 2018, the Applicant’s appointment was converted from “X” category fixed-term to “A” category temporary indefinite appointment. At the time material to the present application, the Applicant was occupying the post of Medical Officer, HL 06, Buraij Health Centre, GFO.

4. On 31 July 2019, the Head, Health Centre A, GFO reported to the Chief, Field Health Programme, Gaza about a claim of an incident of sexual exploitation and abuse committed by the Applicant against a female beneficiary.

5. On 1 August 2019, the Director of UNRWA Operations, Gaza ("DUO/G") placed the Applicant on Administrative Leave Without Pay ("ALWOP") pending the outcome of the investigation into the reported allegation against him. The Applicant was notified about the decision on the same day.

6. On 14 August 2019, the Director of Department of Internal Oversight Services initiated an investigation into the reported allegation.

7. On 4 September 2019, the Applicant submitted a request for review of the decision to place him on ALWOP.

8. On 9 October 2019, the Deputy Commissioner-General affirmed the impugned decision.
9. On 5 November 2019, the present application was filed with the UNRWA Dispute Tribunal ("Tribunal"). The application was transmitted to the Respondent on 11 November 2019.

10. On 2 December 2019, the Respondent filed his reply. The reply was transmitted to the Applicant on 3 December 2019.

**Applicant’s contentions**

11. The Applicant contends:

   i) He did not have an opportunity to defend himself, as his statement had not been taken; and

   ii) He was not informed about the allegation against him.

12. The Applicant requests the rescission of the impugned decision.

**Respondent’s contentions**

13. The Respondent contends:

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

   ii) There is *prima facie* evidence in support of the allegation of serious misconduct of sexual exploitation and abuse against a female beneficiary committed by the Applicant;

   iii) The continuance of the Applicant in his post pending the investigation would prejudice the interests of the Agency, especially with the view of the risk of repeated wrongdoing;

   iv) The Applicant has previously faced a number of complaints related to sexual misconduct; it is the Agency’s duty to protect the beneficiaries from sexual exploitation and abuse;
v) The decision to place the Applicant on ALWOP does not prejudice the outcome of the investigation; the Applicant will be given a full and fair opportunity to respond to the findings of the investigation; and

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

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

Considerations

15. The Applicant contests the decision to place him on ALWOP pending investigation.

16. At the time relevant to the instant application, the Applicant occupied the post of Medical Officer, GFO. Following a complaint of sexual exploitation and abuse committed by the Applicant against a female beneficiary, the DUO/G decided to place the Applicant on ALWOP pending the outcome of the investigation.

17. In this respect, Area Staff Regulation 10.4 stipulates:

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.

18. 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.

3. Such administrative leave shall be with full pay except (i) in cases in which there is probable cause that a staff member has engaged in sexual exploitation and sexual abuse, or (ii) when the Commissioner-General decides that exceptional circumstances exist which warrant the placement of a staff member on administrative leave with partial pay or without pay.

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.

19. Area Personnel Directive No. A/10/Rev.3 on Disciplinary Measures and Procedures provides as follows:

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.
20. In the present case, given the Applicant’s position as Medical Officer and the allegations of sexual exploitation and abuse raised against him, the Tribunal has no doubt that the Agency’s decision to place him on administrative leave was an appropriate action due to the risk of repeated wrongdoing. The Applicant’s continued presence at work would have been contrary to the interests of the Agency in the sense of the above-quoted Area Staff Rule 110.2, paragraph 2. Therefore, the Tribunal notes that the Agency’s decision to place the Applicant on administrative leave was lawful.

21. As a next step, the Tribunal must review whether the Applicant’s administrative leave, being without pay, was lawful. The United Nations Appeals Tribunal (“UNAT”) has established that administrative leave would be without pay in cases where there is probable cause that a staff member has engaged in sexual exploitation and abuse (Muteeganda 2018-UNAT-869, paragraphs 30–32). The Respondent asserts that there is prima facie evidence in support of the allegation against the Applicant based on the information from a beneficiary reporting an incident where the Applicant had sexually exploited and abused a female beneficiary. In addition, there were previous complaints with similar allegations against the Applicant. Consequently, the Tribunal holds that there is probable cause that the Applicant has engaged in sexual exploitation and abuse of a female beneficiary. Therefore, in accordance with the Area Staff Rule 110.2, paragraph 3 and the UNAT’s jurisprudence, the decision to place the Applicant on ALWOP was lawful.

22. The only contention raised by the Applicant was that he had not been informed about the allegation against him, and thus, he did not have the opportunity to defend himself before the impugned decision had been made. The Tribunal recalls that, as the contested decision is not a disciplinary measure, there is no obligation on the part of the Agency to inform the Applicant about the charges against him before placing him on ALWOP. The decision to place the Applicant on ALWOP does not prejudge the outcome of the investigation, during which the Applicant will be provided with the opportunity to respond to the allegations and defend himself. Therefore, the Applicant’s contention in this regard is without merit.
23. In view of the foregoing, the Tribunal concludes that the Agency’s decision to place the Applicant on ALWOP is lawful. Therefore, the application must be dismissed.

**Conclusion**

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

The application is dismissed.

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Judge Jean-François Cousin

Dated this 5th day of November 2020

Entered in the Register on this 5th day of November 2020

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Laurie McNabb, Registrar, UNRWA DT, Amman