



**UNRWA DISPUTE TRIBUNAL**

Case No.: DT/HQG/2008/17  
Judgment No.: UNRWA DT/2011/004  
Date: 2 August 2011  
Original: English

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**Before:** Judge Bana Barazi

**Registry:** Amman

**Registrar:** Laurie McNabb

ABU ALOUF

v.

COMMISSIONER GENERAL  
OF THE UNITED NATIONS RELIEF AND  
WORKS AGENCY FOR PALESTINE REFUGEES

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**JUDGMENT**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
W. Thomas Markuszewski

## **Introduction**

1. This is an application by Ali Abu Alouf (the “Applicant”) against an administrative decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (the “Respondent”) to terminate his appointment in the interest of the Agency.

2 Pursuant to General Assembly Resolution 63/253 of 24 December 2008, the Joint Appeals Board (the “JAB”) was abolished as of 1 July 2009. Effective 1 June 2010, as set out in Area Staff Regulation 11.1, the Agency established the UNRWA Dispute Tribunal (“the Tribunal”) and all appeals pending with the Joint Appeals Board on the date of its abolition, including this application, were transferred to the Tribunal.

3. As a transitional measure, Article 2, paragraph 5 of the Statute of the Tribunal provides that the Tribunal shall be competent to hear and pass judgment on cases filed prior to the establishment of the Tribunal and in respect of which no report of a Joint Appeals Board has been submitted to the Commissioner-General.

## **Facts**

4. At the time of the events relating to the application, the Applicant was an Administrative Officer in the Public Information Office, in Gaza.

5. On 2 October 2008, a staff member at the Public Information Office submitted an anonymous email to an Agency senior staff member alleging that the Applicant had spread rumours about her sexual history and had asked an inappropriate sexual question in an interview (for a position under the Applicant’s direct supervision) and requested both matters to be investigated.

6. On 4 October 2008, following an initial fact-finding inquiry conducted by the Agency's Human Resources Department which confirmed the allegations, the Director of Human Resources (the "DHR") requested the Field Legal Officer, Gaza, to *inter alia* investigate and report on:

- a) Complaints by the holder of the above mentioned position;
- b) Complaints of slander against a long-term staff member currently on maternity leave;
- c) Suspected instances of sexual harassment during assignments of the Applicant in Jerusalem, and;
- d) Other instances of sexual harassment to be possibly reported during the course of the investigation.

7. By letter dated 5 October 2008, the DHR informed the Applicant that he would be suspended with full pay pending the outcome of the investigation.

8. By emails dated 29 October 2008 and 7 November 2008 to the Commissioner-General, the Applicant asserted that he was innocent.

9. By letter dated 9 November 2008, the DHR informed the Applicant of the findings of the investigation and requested him to provide his response.

10. By letter dated 12 November 2008 to the DHR, the Applicant responded among other things that he was the subject of conspiracies by the staff, and that the charges were based on rumours rather than facts.

11. By letter dated 26 November 2008, the Applicant was informed by the DHR that he had not provided substantive answers to the findings and that his behavior constituted misconduct. The DHR added that in view of the circumstances in Gaza and the Applicant's financial commitment to his family, his appointment would be terminated in

the interest of the Agency pursuant to Area Staff Regulation 9.1, rather than for misconduct pursuant to Area Staff Regulation 10.2.

12. By letter dated 24 December 2008, the Applicant submitted an appeal to the JAB.

13. By letter dated 5 January 2009, the DHR informed the Applicant that she had confirmed the decision to terminate his appointment in the interest of the Agency.

**Applicant's submissions**

14. The Applicant submits that:

- (i) the accusations against him are based on rumours rather than facts;
- (ii) the investigation was carried out by one person, whereas Area Staff Rules mandate the establishment of a Board of Inquiry; and
- (iii) one of the bases for termination was an incident between him and a colleague prior to the alleged events, which was ultimately resolved.

15. The Applicant requests the Tribunal to order the Respondent to:

- a. reinstate him to his post; or in the alternative,
- b. establish a Board of Inquiry "to investigate all the witnesses and give its findings with evidence"; and
- c. pay him USD \$ 1,000,000.00 as compensation for "psychological, and emotional pain to [him] and [his] family and the irr(e)vers(i)ble damage to [his] reputation as a result of this Termination."

**Respondent's submissions**

16. The Respondent submits that:

- (i) the termination of the Applicant's appointment was legal and that the Applicant's actions constituted misconduct;
  - (ii) the Applicant has not provided any evidence that the decision to terminate his appointment in the interest of the Agency, or the investigation by which the facts were established, was arbitrary or capricious, was motivated by prejudice or other extraneous factors, or was flawed by procedural irregularity or error of law;
  - (iii) the applicant also failed to show that the decision to terminate his services was so disproportionate or unwarranted as to amount to an injustice;
  - (iv) the relief sought by the Applicant has no legal basis.
17. Finally, the Respondent requests the Tribunal to dismiss the application.

## **Considerations**

### *Main issues*

#### *Was the DHR's investigation properly done?*

18. According to the evidence in the file, the investigation conducted by the Field Legal Officer, Gaza was initiated only after a preliminary fact-finding inquiry was conducted by staff of the Agency's Human Resources Department in which the allegations were confirmed by several witnesses.

19. The investigation report set out the following findings based on evidence:

- The Applicant repeatedly used his actual and perceived position of authority within the organization to sexually harass female employees. The harassment is classified to be generally sexual in nature, unwelcomed, repeated over time and places, thus demonstrating a pattern of behavior that was reasonably perceived by

the woman as offensive and humiliating. As a result it created a hostile work environment interfering with his colleagues' ability to perform their work.

- The Applicant has been able to prevent women from speaking freely about his harassment and intimidation because he has cultivated an aura of power and invulnerability that intimidated women in the Agency; as one of the witnesses at the Jerusalem Public Information Office stated, there was a feeling among staff that Mr. Abu Alouf was king.
- The Applicant had a pattern of implying that employment would be based on the willingness of the female interviewee to give sexual favors.
- The Applicant has demonstrated a pattern of sexual harassment. He has made repeated unwelcome requests to female employees for social engagements. He attempted to isolate female employees. He made unwelcome personal phone calls to female employees. He consistently looked at his female colleagues in an overt sexual manner and he physically invaded female employees' personal space at their desks. There is also credible evidence that the Applicant sexually touched female staff members.
- Work was negatively affected by the sexualized and intimidating environment the Applicant created. There were at least three women who either refused to come to work in the Public Information Office and/or who have been less effective in their work because of the Applicant's behavior.

20. The Applicant was informed of these findings, and was requested to respond. He denied each of them, stating that many of the charges were based on rumours, that harassment is prohibited in his religion, and that he is a pious and observant person.

21. The Tribunal is of the opinion that the Respondent has no obligation under the Staff Regulations and Rules to establish a Board of Inquiry "to investigate all the

witnesses and give its findings with evidence”, as requested by the Applicant. The United Nations Appeals Tribunal confirms in its Judgment *Nwuke* 2010-UNAT-099 para. 30, that:

*A staff member has no right to compel the Administration to conduct an investigation unless such right is granted by the Regulations and Rules.*

22. Furthermore, no procedural requirement for the number of persons appointed to carry out investigations is set forth in the Agency’s regulatory framework. The Tribunal is guided by the jurisprudence of the United Nations Administrative Tribunal, Judgment No. 960, *Qasem* (2000), para. V, which provided that:

*When the Administration wishes to have such matters investigated, the Tribunal is satisfied that there are no mandatory procedures or requirements as to how this should be done and that there is no obligation as to the number of persons appointed to carry out such investigations.*

23. The Tribunal finds no evidence, brought forward by the Applicant or otherwise in the file, that the Respondent’s investigation by which the facts were established, was in any way arbitrary or capricious, or motivated by prejudice or other extraneous factors, or flawed by procedural irregularity or error of law.

24. In response to the findings of the investigation report, the evidence brought forward by the Applicant consisted in denying any sexual harassment based on the fact that he is a religious man, which the Tribunal finds far from being clear and convincing evidence in support of his allegations of having committed no wrongdoing. The Applicant has failed to discharge the requisite onus of proof.

*Was the decision to terminate the Applicant’s appointment reasonably established?*

25. The Applicant's conduct was in breach of General Staff Circular No. 04/2000 dated 2 July 2000, applicable to all Agency staff:

*Harassment in any form is an affront to human dignity. Generally, harassment consists of any improper behavior that is directed at, and is offensive to any ... [staff member] and which a reasonable person would know to be unwelcome. It comprises comments or displays of behavior that demean, belittle, or cause personal humiliation or embarrassment to a person. ... [Staff members] should not engage in any form of harassment.*

26. It was also in breach of ST/SGB/2003/13 promulgated by the Secretary-General and applicable to UNRWA staff:

#### **Section 1**

##### **Definitions**

*For the purposes of the present bulletin, the term "sexual exploitation" means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, ...*

#### **Section 2**

##### **Scope of application**

2.1 *The present bulletin shall apply to all staff of the United Nations, including staff of separately administered organs and programmes of the United Nations.*

\* \* \*

3.2

*(a) Sexual exploitation and sexual abuse constitute acts of serious misconduct and are therefore grounds for disciplinary measures, including summary dismissal;*



27. The Tribunal also found that the Applicant's conduct breached General Staff Circular 01/2007 of 30 January 2007 stating that:

*All UNRWA staff bear a duty to eliminate sexual exploitation and sexual abuse. This duty is mandatory not least because it is based on universal legal principles and reflects core principle that lie at the heart of the UN Charter.*

28. The Respondent having found, upon proper investigation, that the Applicant as a member of his staff had breached the very principles of the Agency he worked for decided to terminate his appointment. Referring to the United Nations Administrative Tribunal, in its Judgment No. 1103 *Dilleyta* (2003), para. VII:

*Staff members have a duty to maintain the highest standards of conduct and the Respondent has the responsibility to enforce these standards.*

The Tribunal determines that the Respondent acted in conformity with his responsibilities and in accordance with the Area Staff Regulations and Rules.

29. Also Area Staff Regulation 9.1 provides that:

*The Commissioner-General may at any time terminate the appointment of any staff member if, in his opinion, such action would be in the interest of the Agency.*

30. As for Area Staff Regulation 10.2, it provides that:

*The Commissioner-General may impose disciplinary measures on staff members whose conduct is unsatisfactory.*

31. Area Staff Personnel Directive No. A/10, para. 4.1, provides that:

*Disciplinary measures may normally be imposed for willful misconduct, irresponsible conduct, or willful failure to perform assigned duties or to carry out specific instructions.*

32. Misconduct has been defined within the United Nations as:

*Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances,...*

33. In view of the principles set above, and of the Applicant's conduct, and in line with the broad discretionary authority accorded to the Commissioner-General with regard to staff appointment in Area Staff Regulation 9.1, including the determination of what constitutes "misconduct" under the Staff Regulations and Rules and what is the proper punishment for misconduct, the Tribunal finds that the Respondent was justified in deciding that the Applicant's acts constituted misconduct and in exercising his authority, pursuant to Area Staff Personnel Directive No. A/9, para. 4.1, by terminating the Applicant's appointment.

34. The Tribunal finds that termination of the Applicant's appointment in the interest of the Agency was an appropriate discretionary administrative decision, properly determined to constitute a disciplinary action, where the facts reasonably established that the Applicant had sexually harassed female staff members and candidates for staff positions.

*Was the sanction disproportionate to the offense?*

35. Area Staff Rule 110.1, para. 1, provides that:

*Disciplinary measures under staff regulation 10.2 shall consist of written censure, suspension without pay, demotion, or termination for misconduct...*

36. The Tribunal is reminded that the United Nations Appeals Tribunal has taken note of the nature of an appellant's post. In Judgment *Haniya* 2010-UNAT-024, para. 34, it stated:

*His misconduct is particularly grave in light of the position he held, and the responsibilities he was entrusted with.*

37. Termination for misconduct, as a disciplinary measure, is more severe than "termination in the interest of the Agency". Termination in the interest of the Agency preserves certain (primarily financial) termination benefits not payable if termination is for misconduct or if a staff member is summarily dismissed for serious misconduct. In addition, termination in the interest of the Agency is often seen as avoiding public perceptions (and the impediment to future employment) associated with termination as a disciplinary measure. The Tribunal finds that even as the Respondent was exercising his authority to legitimately sanction the Applicant's misconduct, he did it in such a manner which was less severe on the Applicant, taking into consideration the circumstances in Gaza and his financial commitments to his family.

38. Consequently, the Tribunal finds that the Respondent's decision to terminate the Applicant's services was neither disproportionate nor unwarranted as to amount to an injustice.

39. As for the Applicant's submission that the letter of termination contained an "inappropriate reference to an old case that was settled", it is important to recall that the reference was to an earlier warning the Applicant had been given, when he had physically confronted a staff member during working hours inside UNRWA offices, that stated "all staff members are expected to adhere to the values of respect and courtesy". There is

nothing inappropriate in this reference and it is obvious, from all the above, that the termination was not based on this old case.

40. With regard to the Applicant's request for compensation for psychological, and emotional pain as well as irreversible damage to his reputation, the Tribunal notes that the Applicant has failed to provide any evidence to substantiate his claim. As the disciplinary sanction was based on established facts, the Tribunal finds that there is no basis for this claim and no compensation will be awarded "when absolutely no harm has been suffered", as stated by the United Nations Appeals Tribunal in Judgment *Antaki* 2010-UNAT-095.

#### **Conclusion**

41. There is no merit in the application and it is dismissed in its entirety.

***(Signed)***  
\_\_\_\_\_  
Judge Bana Barazi

Dated this 2nd day of August 2011

Entered in the Register on this 2nd day of August 2011

***(Signed)***  
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Laurie McNabb, Registrar, Amman