FARARJEH

v.

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

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Anna Segall
Introduction

1. This is an application by Sufian Fararjeh (the “Applicant”) against the 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 for misconduct.

Facts

2. On 1 June 1988, the Applicant entered the service of the Agency as a Sanitation Labourer, Grade 1, Step 1 at Zarqa Camp in Zarqa, Jordan. At the time of the events relating to this application, he occupied the post of School Attendant, Grade 1, Step 21 at Ruseifeh Preparatory Girls School No. 2, in Zarqa, Jordan.

3. On 8 April 2010, four students in the above-mentioned school made allegations of sexual harassment against the Applicant to the Head Teacher. The Area Education Officer, Zarqa verbally requested two school supervisors to follow up on the matter in order to establish the facts.

4. On 11 April 2010, the supervisors submitted a preliminary report to the Area Education Officer, Zarqa.

5. On 12 April 2010, the preliminary report was submitted by the Area Education Officer, Zarqa to the Focal Point, Sexual Exploitation and Abuse.

6. By letter dated 14 April 2010, the Applicant was informed by the Director of UNRWA Operations, Jordan (“DUO/J”) that:

   You are hereby informed that a charge of serious misconduct has been made against you. In particular, it has been reported to me that you were involved in sexual harassment and exploitation case.

   I have decided to establish an investigation committee to examine that charge made against you. At this stage, there is prima facie evidence to support the charge of misconduct has occurred. Therefore, as of today, you are suspended from duty with full pay and until further notice, pending the outcome of
the investigation in accordance with the provisions of Area Staff Rule 110.2 and Area Staff Directive A/10 part II. This suspension is without prejudice to your rights.

Should the charge of misconduct prove to be well founded, you may be subject to disciplinary measures in accordance with the Area Staff Rule 110.1 against you up and including possible termination for misconduct. …

7. By letter dated 15 April 2010, the DUO/J established a Board of Investigation (“BoI”) to examine the allegations against the Applicant and to establish:

1. An accurate and detailed description of all relevant facts, in the form of a detailed narrative related to the alleged act of indecent assault.

2. Whether there is a reason to believe that there were any instances of indecent assault with regard to each student (if so please set forth separately the details of each such instance and the evidence in support thereof).

The DUO/J instructed the BoI as follows:

Your investigation should scrupulously observe general principles of fairness and due process as well as relevant Agency rules and procedures.

8. The BoI was comprised of the Field Administration Officer, the Field Nursing Officer and the Area Health Officer, Zarqa. The BoI interviewed witnesses about the allegations. It set out its conclusions in a report dated 26 April 2010, noting inter alia:

III. Conclusions:

1- The committee found the testimonies presented by the four students to be credible, although interviewed separately; they gave identical versions of events.

2- The committee could not find any physical evidence. However, the defendant was found not to be credible, he deliberately gave untrue answers, such as …
9. By letter dated 3 May 2010, the Field Human Resources Officer informed the Applicant of the findings of the BoI and invited him to respond within five working days from the receipt of the letter.

10. By letter dated 12 May 2010, the Applicant responded to the findings of the BoI, noting *inter alia* that:

   During my services with UNRWA, I have not been subject of any complaint of this kind or of any other kind. There are no letters of reprimand or censure in my file. You may review my file for verification.

   *
   *
   *

Based on what has been stated in the case file including the interrogation and the statements of three girls aged 9, 10, and 14 years old, the following points could be raised:

Does anyone have the courage\(^1\) to assault three girls at the same time and in the same place? How could three little girls agree to complain against the same person at the same time? This forces us to raise other questions; “Who is behind these girls? What is their motive? These questions should have been the core of the investigation not to press charges against someone who is well known for good conduct during his years of service.

11. By letter dated 18 May 2010, the Office-in-Charge, UNRWA Operations terminated the Applicant’s appointment for misconduct, stating *inter alia*:

   Having reviewed the findings of this investigation, including reviewing your personnel file, interviews with the students, as well as your letter in response to the Due Process Letter, it has been concluded that you were found guilty of misconduct. In particular, you have abused your position, authority and power as a School Attendant by committing indecent acts amounted [sic] to sexual harassment against female students at the aforesaid school.

   (…) Your overall conduct in and surrounding this matter has seriously undermined the Agency’s confidence in you as a School Attendant. Therefore, it has been decided to terminate your services from the Agency for misconduct under Staff

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\(^1\) Although the translated version of the Applicant’s letter dated 12 May 2010 reads “courage”, the word used by the Applicant in his original letter in Arabic means “audacity”.
Regulation 10.2 and Staff Rule 110.1 with immediate effect.
Your last day in the Agency’s services will be 19 May 2010.

12. By undated letter, the Applicant requested the DUO/J to reconsider the
impugned decision and asserted that “the investigation committee is not qualified
to carry out the investigation”.

13. By letter dated 8 June 2010, the DUO/J replied to the Applicant’s request
for decision review. The contested decision was upheld.

14. On 16 June 2010, the Applicant filed his application.

15. By undated letter, the Applicant filed with the Tribunal a motion for
production of documents, i.e. the investigation report and several
correspondences.

16. By Order No. 020 (UNRWA/DT/2012) dated 15 July 2002, the Tribunal
ordered the Respondent to produce to the Tribunal the full unredacted
investigation report with supporting documents.

17. On 21 November 2012, the Tribunal provided the Applicant with a
redacted version of the investigation report and a redacted version of the
witnesses’ statements to protect the identity of witnesses.

18. On 12 December 2012, the Respondent filed his reply.

Applicant’s contentions

19. The Applicant contends that:

(i) he has been working for the Agency for 25 years and he is the only
support of his family;

(ii) he did not commit any sexual harassment;

(iii) his termination was arbitrary and not based on legal rules or any
court decision;

(iv) he was not allowed to defend himself and to produce evidence in his
defence;
(v) the complainants or their families have not filed a criminal suit against him.

20. The Applicant requests that the Tribunal rescind the impugned decision and order his reinstatement and payment of his entitlements.

**Respondent’s contentions**

21. The Respondent submits that the decision to terminate the Applicant’s appointment was properly made, and that the relief sought by the Applicant has no basis in fact or in law.

22. The Respondent requests that the Tribunal dismiss the application.

**Considerations**

*Preliminary Issues*

23. As stated above, the Respondent filed his reply on 12 December 2012. In his reply to the application, the Respondent requested leave from the Tribunal to take part in the proceedings.

24. Article 30 of the Rules of Procedure of the Tribunal gives the authority to the Tribunal to shorten or extend time limits fixed by the Rules or to waive any rule\(^2\) when the interests of justice so require. Pursuant to Article 14 of the Rules, the Tribunal may make any order or give any direction which appears to be appropriate for a fair and expeditious disposal of the case and to do justice to the parties. It is the Tribunal’s belief that submissions from both parties will better equip the Tribunal to render a fair and comprehensive judgment. The Tribunal finds that it is in the interest of justice – and it would be appropriate for a fair and expeditious disposal of the case, and would do justice to the parties – for the Tribunal to extend the time limit under Article 6 and accept the late filing of the Respondent’s reply rather than exclude a party on a procedural basis. Therefore, the Tribunal accepts the Respondent’s reply.

\(^2\) The Tribunal notes the exception of decision review per Article 8 of the Statute of the UNRWA Dispute Tribunal which states: “The Dispute Tribunal shall not suspend, waive or extend the deadlines for decision review”.
Main Issue

Was the Respondent’s decision to terminate the Applicant’s appointment for misconduct properly made?

25. It is important to refer to the legal and administrative framework applicable in the case at bar and to the existing jurisprudence.

26. Area Staff Regulation 1.4 provides in relevant part that:

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.

27. Under former Area Staff Regulation 10.2, which was applicable at the time of the decision:

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

28. Pursuant to Area Staff Personnel Directive No. A/10/Rev.1, paragraph 3.2, the Commissioner-General has delegated to Field Office Directors the authority to impose disciplinary measures on area staff serving in the field.

29. With regard to what is “unsatisfactory” for the purpose of former Area Staff Regulation 10.2, Area Staff Personnel Directive No. A/10/Rev.1 provides:

4. Policy

4.1 Disciplinary measures will normally be imposed for wilful misconduct, irresponsible conduct, or wilful failure to perform assigned duties or to carry out specific instructions.

*   *   *

4.3 … the following are examples of instances where disciplinary measures would normally be imposed:

A. Refusal to carry out and discharge the basic duties and obligations specified in the Staff Regulations, Rules and the Directives of the Agency, and in particular, departures from the standards of conduct specified in Chapter I of the Staff Regulations;
B. wilful or irresponsible failure to comply with contractual obligations;

C. wilful or irresponsible failure to comply with written or oral instructions of supervisors;

D. repeated minor infractions.

* * *

30. The disciplinary measures which may be taken against staff members whose conduct is unsatisfactory are provided in Area Staff Rule 110.1, paragraph 1:

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

31. With regard to termination for misconduct, Area Staff Personnel Directive No. A/10/Rev.1 provides:

Where a staff member’s appointment is terminated for misconduct under Area Staff Regulation 10.2, this will constitute a disciplinary measure affecting entitlement to termination indemnity. In such cases the letter of termination will state that termination is for misconduct of the staff member.

32. As held by the former United Nations Administrative Tribunal in Judgment No. 1321 (2007), paragraph IX:

The Tribunal wishes to affirm, once again, that it is within the discretionary authority of the Secretary-General to decide whether a staff member has met the standards of conduct laid down in the Charter and the Staff Regulations and Rules.

33. By memorandum dated 8 January 2004, the Commissioner-General made specifically applicable to all UNRWA staff the Secretary-General’s Bulletin on Special Measures for Protection from Sexual Exploitation and Sexual Abuse (“ST/SGB/2003/13”) dated 9 October 2003. Here are excerpts of ST/SGB/2003/13:

**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, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. Similarly, the term “sexual abuse” means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.

* * *

Section 3

Prohibition of sexual exploitation and sexual abuse

* * *

3.2 In order to further protect the most vulnerable populations, especially women and children, the following specific standards which reiterate existing general obligations under the United Nations Staff Regulations and Rules, are promulgated:

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

(b) Sexual activity with children (person under the age of 18) is prohibited regardless of the age of majority or age of consent locally. Mistaken belief in the age of a child is not a defence;

* * *

34. In General Staff Circular No. 01/2007 dated 30 January 2007, the Commissioner-General informed all staff of the adoption by UNRWA of the UN Statement of Commitment on Eliminating Sexual Exploitation and Abuse which calls, inter alia, to:

5. Take appropriate action to the best of our abilities to protect persons from retaliation where allegations of sexual exploitation and abuse are reported involving our personnel.

* * *

7. Take swift and appropriate action against our personnel who commit sexual exploitation and abuse. This may include administrative or disciplinary action, and/or referral to the relevant authorities for appropriate action, including criminal prosecution. (emphasis in the original text)
35. On 26 October 2008, the Agency communicated to all staff members General Staff Circular No. 04/2008 regarding the Sexual Exploitation and Abuse Complaints Procedure, which adopted the definitions of “sexual exploitation” and “sexual abuse” found in ST/SGB/2003/13 and set out the procedure to be followed when a complaint of sexual exploitation and abuse is received by a focal point. In the field, the focal point must forward the complaint to the Field Administration Officer who will make a recommendation to the Field Office Director. Possible actions include:

- Preliminary investigation;
- Further investigation of the complaint through such means as the establishment of a Board of Inquiry;
- Introduction of procedural or policy changes which would serve to reduce the incidents of [sexual exploitation and abuse] in the future;
- Any other action as deemed appropriate.

36. Accordingly, while recognising that disciplinary matters are within the discretionary authority of the Commissioner-General, the Tribunal will follow the United Nations Appeals Tribunal in Haniya 2010-UNAT-024 and Maslamani 2010-UNAT-028 when reviewing a disciplinary measure. That is, the Tribunal will consider (i) whether the facts on which the sanction is based have been established, (ii) whether the established facts qualify as misconduct, and (iii) whether the sanction imposed is proportionate to the offence. Noting however, as held by the United Nations Appeals Tribunal in Abu Hamda 2010-UNAT-022:

As a normal rule Courts/Tribunals do not interfere in the exercise of a discretionary authority unless there is evidence of illegality, irrationality and procedural impropriety.

Have the facts on which the sanction was based been reasonably established?

37. Looking at the record in the file, the Tribunal finds that the facts on which the sanction was based have been reasonably established. Indeed, the record shows that when four female students (the “complainants”), ages 10 to 14, complained of sexual harassment against the Applicant to their Head Teacher, the
Area Education Officer in Zarqa immediately requested follow-up from two school supervisors, who subsequently handed him a preliminary report. This report was then submitted to the Focal Point, Sexual Exploitation and Abuse. When the Applicant was at first informed of the allegations against him in the Head Teacher’s office, he offered his resignation. It was not processed pending the result of the investigation, however he was suspended from duty with full pay. A BoI was set up with instructions from the DUO/J to “scrupulously observe general principles of fairness and due process as well as relevant Agency rules and procedures”, to examine the allegations against the Applicant and to establish all relevant facts, i.e. any detailed instances of indecent assault with regard to each student and the evidence in support thereof.

38. The BoI was duly constituted and given its terms of reference. It was comprised of the Field Administration Officer, the Field Nursing Officer and the Area Health Officer, Zarqa. It interviewed witnesses about the allegations: the Applicant (twice), the Applicant’s brother, the Head Teacher, a female school attendant, the school counselor and the four complainants. Given the sensitivity of the case, the culture and potential reaction from the complainants’ families, the BoI decided to limit the scope of its investigation in order to maintain a high level of confidentiality.

39. The Tribunal notes that the BoI found in its report (i) that the testimony of the complainants was credible and that (ii) the Applicant had deliberately given untrue answers. When invited to respond to the findings of the BoI, the Applicant affirmed his innocence and raised questions as to who was behind these girls and what their motive was.

40. Upon reading the replies of the Applicant to the questions addressed to him during two interviews, the Tribunal finds that the Applicant was not a credible witness. When asked whether he knew the name of any teacher in the school, he replied that he knew none. Yet, one witness stated that the Applicant knew the names of some teachers and another witness stated that the Applicant had mentioned the name of two or three teachers in her presence. Two days later during the second interview, the Applicant gave the name of two teachers: when
confronted with his statement at the first interview, he could not explain his contradiction. Also, one witness testified that she and her husband would occasionally give a car ride to the Applicant to work. The Applicant denied it, but when confronted with the testimony of that witness, he admitted to the fact. Another witness stated that she had never received complaints against any one of the complainants, saying: “The students were questioned several time [sic] and gave the same answer, and in such sensitive matters I find it difficult to believe that students could give false statement”.

41. The Tribunal notes that it proved difficult for the BoI to get in touch with the Applicant as he evaded their calls and their SMS messages. The BoI ended up having to send someone to his home but the Applicant was not available. His brother who was there called the Applicant on the same telephone number where it had proven so difficult to reach him. The Tribunal finds that the Applicant’s explanations as to why he did not pick up calls and messages from the BoI were implausible and did not make much sense. After his second interview with the BoI, the Applicant requested management to ease the disciplinary measure to a “final warning and two months’ suspension from duty without pay instead of summary dismissal”.

42. The four complainants were 10 to 14 years old at the time of the events, three being in 4th grade and the eldest in 7th grade. One complainant testified that twice in one month, the Applicant had hugged her and put his hand on the “body part we use to urinate”. One complainant testified that the Applicant had put his hand above the uniform on the “body part we use for urination”, and one complainant testified to have seen the Applicant put his hand on the “body part we use for urination” of her schoolmate. The fourth complainant, the eldest, testified that one day she was absent from school and had gone out to buy a few things. The Applicant saw her as she was passing by the school and made an inappropriate proposition to her: “We will go to the closed classroom for 5th Grade B. We will wash the classroom and close the door while we are there”. She ran away.
43. What was the Applicant’s response to the allegations? The evidence in the record indicates that the Applicant was first informed of the allegations against him in the presence of the Head Teacher, her Assistant and the Education supervisors. He was asked to respond in writing. In his written response, he denied everything. The Tribunal notes that the Applicant offered his resignation after first being told about the allegations in order, he said, to protect his reputation. However, his request to resign was not processed and the Applicant was suspended with full pay pending the outcome of the investigation. After the second interview, the Applicant immediately requested early voluntary retirement. In his written response to the findings of the BoI, the Applicant claimed his innocence and argued that the BoI should have investigated who was behind the complainants, stating that the allegations are not believable because he is in his fifties and a grandfather. He also indicated that he had never been charged with anything while employed by the Agency.

44. The Applicant is reminded that the age factor, grand-parenthood or raising doubts about the motive of the complainants do not constitute evidence of his innocence. Sexual harassment knows no age limits. If, as he alleges, there was a hidden motive on the part of the complainants, the Applicant has failed to submit supporting evidence. If anything, his offer to resign, his request for early voluntary retirement or his petition to ease the sanction tend to show guilt.

45. In order to rebut the allegations against him, the Applicant needs to produce evidence. He submitted written statements by some school staff members who attested to his hard work and good morals. However, none of the persons who wrote these statements was with the Applicant, as was an eye witness, when he groped a minor girl or made an improper proposition to a fourteen year old girl. Most importantly, his own testimony in the interviews which could have been direct and convincing evidence in his defence, lacked credibility. As for his claim that he had never been charged with anything during his service with the Agency, the Tribunal would like to point out that until his misconduct was reported by the complainants, there was no reason to discipline him. The disciplinary decision relates to specific instances of misconduct and not to the Applicant’s overall performance throughout his employment with the Agency.
46. Based on the evidence gathered during the investigation, the Tribunal is satisfied that the facts on which the disciplinary measure was based have been reasonably established. The Tribunal would like to refer to the United Nations former Administrative Tribunal Judgment No. 1022, *Araim* (2001), holding that:

[T]he Administration is not required to prove its case beyond reasonable doubt. It has only to present adequate evidence in support of its conclusions and recommendations. Adequate means “reasonably sufficient for legal action” … in other words sufficient facts to permit a reasonable inference that a violation of law had occurred.

*Do the facts amount to misconduct?*

47. Sexual exploitation and sexual abuse as per ST/SGB/2003/13 are characterised as serious misconduct. The importance of having a work environment in the Agency completely free of sexual exploitation and abuse was pointed out to all staff by General Staff Circular No. 01/2007 of 30 January 2007.

48. The Tribunal finds that the Applicant’s conduct was inconsistent with the standard of conduct expected of a member of the United Nations and with the express directives of the Agency regarding sexual exploitation and sexual abuse. The Applicant’s conduct, all the more serious as he was a school attendant and therefore had the duty to look after the school and its students, legally supports the characterisation of misconduct. The Tribunal would like to refer to the former UN Administrative Tribunal Judgment No. 897, *Jhuthi* (1998):

[…] In disciplinary cases, when the Administration produces evidence that raises a reasonable inference that the Applicant is guilty of the alleged misconduct, generally termed a prima facie case of misconduct, that conclusion will stand. The exception is if the Tribunal chooses not to accept the evidence, or the Applicant provides a credible explanation or other evidence, that makes such a conclusion improbable.

The Tribunal finds that the Applicant has failed to provide evidence substantiating his claim that he did not commit the misconduct he is charged with.

49. As evidenced in the record, the DUO/J has considered all the available evidence, including the findings and conclusions of the BoI, as well as the
Applicant’s response. Having the responsibility to enforce the standards of conduct of the Agency’s staff members, the DUO/J decided to terminate the Applicant’s services with the Agency for misconduct. The Tribunal finds that in so doing, the DUO/J exercised the Commissioner-General’s delegated authority under Area Staff Personnel Directive No. A/10/Rev.1 regarding disciplinary measures. The Tribunal also finds that the DUO/J did not err as a matter of law as he complied with the requirements of former Area Staff Regulation 10.2, Area Staff Rule 110.1, Area Staff Personnel Directive No. A/10/Rev.1, Secretary General’s Bulletin ST/SGB/2003/13 on Special Measures for Protection from Sexual Exploitation and Sexual Abuse, General Staff Circular No. 01/2007 on the Statement of Commitment to Eliminating Sexual Exploitation and Abuse and General Staff Circular No. 04/2008 on Sexual Exploitation and Abuse Complaints Procedure.

**Was the Respondent’s discretionary authority tainted by procedural irregularities, prejudice or other extraneous factors, or error of law?**

50. The Tribunal must also consider whether the Respondent’s decision to terminate the Applicant’s appointment for misconduct was exercised arbitrarily or capriciously, was motivated by prejudice or other extraneous factors, or was flawed by procedural irregularity or error of law, as held in *Assad 2010-UNAT-021*.

51. The Applicant claims that the decision was not based on facts. However, his claim is unsubstantiated as the record indicates that a preliminary assessment was made, and that an investigation was conducted by a BoI focusing on the assessment of the credibility of the persons it interviewed. The Applicant also claims that he was not allowed to defend himself and present documents in his defence. This is contradicted by the evidence which shows that the Applicant was informed early on about the allegations against him first by the Head Teacher, then by the DUO/J and finally by the FHRO. At each step, the Applicant was given the opportunity to respond and to provide evidence in his defence. While the statements he filed attest that he is a hard working person of good character, such statements do not serve to establish that the Applicant did not commit
misconduct. Indeed, the testimony of the four complainants who were interviewed separately was found credible and the Tribunal has not been provided with any evidence to the contrary. The complainants’ testimony, coupled with the lack of credibility of the Applicant’s testimony for the reasons stated earlier, satisfy the Tribunal that the Applicant is indeed guilty of sexual harassment and sexual abuse of four minor girls and therefore of misconduct.

52. The Applicant alleges that the impugned decision was not based on legal rules or any court’s decision, further claiming that there was no criminal complaint against him from the complainants or their families. The Tribunal would like to remind the Applicant that the Respondent’s decision is guided by the Agency’s Regulations and Rules, not by national courts, as held by the former UN Administrative Tribunal in Judgment No. 1451 (2009), paragraph VII:

In Judgement No. 436, Wiedl (1988) the Tribunal held that judgements of national courts are not binding on the Secretary-General in the exercise of his discretionary power, and that “irrespective of the [national court’s] judgment, it would not have prevented the Respondent from taking action under staff regulation 10.2 if he considered such action justified in the light of all the facts available to him”.

53. The Respondent had a duty to take swift action when the complainants reported sexual harassment to the Head Teacher against the Applicant, not wait until the case is brought before national courts, thus putting the complainants at risk of reprisal, or other students at risk of sexual harassment in case the allegations proved well-founded.

54. The United Nations Appeals Tribunal has held that the party who alleges a fact bears the burden of proving its veracity (see for example Azzouni 2010-UNAT-081 and Hepworth 2011-UNAT-178). The Applicant is also reminded that the burden of proof rests on him to establish that the Respondent’s exercise of his discretionary authority was arbitrary or capricious, motivated by prejudice or extraneous factors, or flawed by procedural irregularity or error of law, and that he must adduce convincing evidence to substantiate his allegations. Accordingly, the Tribunal finds that the Applicant has not provided any convincing evidence to demonstrate that the decision to terminate him was
exercised arbitrarily or capriciously, motivated by prejudice or extraneous factors, or flawed by procedural irregularity or error of law.

Was the Respondent’s decision to terminate the Applicant’s appointment so disproportionate or unwarranted as to amount to an injustice?

55. As determined by the United Nations Appeals Tribunal in Aqel 2010-UNAT-040, the level of the sanction falls within the ambit of the Administration and can only be reviewed in cases of “obvious absurdity or flagrant arbitrariness”.

56. When considering proportionality, and while recognising the Commissioner-General’s broad discretionary power in relation to disciplinary matters including the proper sanction for misconduct, the Tribunal takes special note of the nature of an applicant’s post. Referring to the conduct of a staff member, the United Nations Appeals Tribunal in Haniya 2010-UNAT-024 stated at paragraph 34:

His misconduct is particularly grave in light of the position he held [i.e., a position of trust that he failed to respect], and the responsibilities he was entrusted with…

57. As a School Attendant, the Applicant was entrusted with the responsibility of promoting an environment on the school premises completely free of sexual exploitation and abuse, as per General Staff Circular No. 01/2007 of 30 January 2007. As he must ensure the protection of all students at the Agency schools, the Respondent has a duty to enforce the highest standards of conduct and therefore is justified, in the Tribunal’s opinion, to avail himself of the broad discretion vested in him to impose an appropriate disciplinary sanction, i.e. termination for misconduct in this case.

58. Having determined that the facts on which the sanction was based have been properly established, and that they legally support the characterisation of misconduct on the part of the Applicant, the Tribunal finds that the sanction of terminating the Applicant’s services is a logical and proportionate response to the Applicant’s actions and was not so disproportionate as to amount to an injustice.
59. Although it is satisfied that the Applicant was made well aware of the charges against him and of the findings of the BoI and given ample opportunity to rebut the allegations and produce evidence in his defence prior to the Respondent’s decision to terminate his appointment, the Tribunal would like to emphasise that, in termination cases for misconduct, the Respondent is expected to give a copy of the investigation report, unredacted if necessary, to the staff member who is being terminated rather than wait for an order from the Tribunal to do so.

Is there any legal basis to the remedies sought by the Applicant?

60. Having determined that:

   (i) the facts on which the disciplinary measure was based have been reasonably established;

   (ii) the facts legally supported the characterisation of misconduct;

   (iii) the disciplinary measure was proportionate to the offence;

   (iv) 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

61. Given all of the above, the application is dismissed.

(Signed)

Judge Bana Barazi
Dated this 27th day of February 2013

Entered in the Register on this 27th day of February 2013

(Signed)

Laurie McNabb, Registrar, UNRWA DT, Amman