HSAYYAN

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 Nidal Mahmoud Hsayyan (the “Applicant”) against the decisions of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (the “Respondent”) to censure and to suspend him without pay for one week.

Facts

2. On 5 June 2000, the Applicant entered the service of the Agency as an Assistant Pharmacist, Grade 2B, Step 1, on fixed-term appointment. His employment was extended several times. At the time of events related to the application, the Applicant was Assistant Pharmacist, Grade 7, at the Irbid Town Health Centre, Jordan (“Health Centre”).

3. On 28 March 2010, a supervisory visit to the Health Centre by the Field Pharmacist, Jordan and the Deputy Field Pharmacist brought to light discrepancies in the record-keeping.

4. By email dated 4 May 2010, the Field Pharmacist reported the findings from his visit to the Chief, Field Health Programme, Jordan (“CFHP”) concluding:

   - it seems to us that intentional falsification has been made on the records;
   - AHO [Area Health Officer] and SMO [Senior Medical Officer] are kindly requested to identify the staff who was on the NCD [non communicable diseases] and General records during the concerned period of time (during November 2009) to clarify the responsibilities, based on the overlapping which is well known by the staff and SMO, in addition to the hand writing investigation.

5. By email dated 9 May 2010 to the Deputy Director of UNRWA Operations, Jordan, the CFHP recommended that a fact-finding committee be set up “to collect information on this serious suspicion of forging and falsification of drug registry” at the Health Centre Pharmacy.
6. On 12 May 2010, the CFHP requested that the Deputy Chief, Field Health Programme, Jordan ("DFCHP") establish an Audit Committee composed of the DFCHP, the Field Pharmacist, and the AHO, Irbid. The committee reviewed the records of the Health Centre and interviewed Assistant Pharmacists, including the Applicant, as well as Doorkeeper/Cleaners.

7. The Audit Committee presented its findings and conclusion in a report dated 1 June 2010:

   Conclusion:

   * * *

   There is duplication of recording of some medicines issued to patients on at least four occasions, by two assistant pharmacists namely Mr. Adel Barakat on 10 & 12 Nov. 2009 and Mr. Nidal Hsayyan on 13/10 and 17/12/2009.

   There are three eye witnesses namely doorkeeper cleaner Mr. Nader Odatallah, A. Pharmacist Mr. Adel Barakat & A. Pharmacist Mr. Hisham Nassar, who witnessed Mr. Nidal Hsayyan A. Pharmacist issuing medicines to people without being prescribed by medical officer, or against a clinic record, this was on several occasions during the past few months.

8. By memorandum dated 13 June 2010 to the Field Human Resources Officer ("FHRO"), the CFHP concurred with the conclusions of the Audit Committee and recommended the following:

   Assist. Pharmacist Mr. Nidal Mahd Hsayyan, E. No. 5Z3750, who did also duplication of recording of the issued medicines which lead to financial loss to UNRWA. Moreover, he was seen by three eye witnesses to dispense medications to persons known to him without being prescribed by medical officer or registered at the pharmacy register on several occasions which is an obvious case of theft and misconduct. In the [sic] light of the above I recommend termination of this staff member services. Meanwhile, I recommend suspending or transferring him immediately to another health center until the final decision is completed.

9. By letter dated 14 June 2010, the FHRO advised the Applicant of the Audit Committee’s conclusion, namely:
It was confirmed that you duplicated the registration of medicine dispensed to patients on the daily records on two occasions; on 13/10/2009 and on 17/12/2009, and you dispensed medicine without medical prescription form the medical officers on Irbid Town Health Centre.

The Applicant was given one week from the date of receipt of the letter to respond to the conclusion of the Audit Committee.

10. By letter dated 20 June 2010, the Applicant responded, explaining why unintentional mistakes might occur while registering medicines and placing the responsibility on all pharmacists, not just himself. As for the allegation that he had dispensed medicine to patients without medical prescriptions, the Applicant stated:

    … there is no tangible evidence in support of this claim … a staff from either the pharmacy or clinic may notice me issuing medicine through the door and thinks that I’m issuing it without a prescription … Nobody can say for sure that I have issued medicine without a prescription …

11. By letter dated 21 June 2010, received on 25 June 2010, the FHRO advised the Applicant that:

    … it has been concluded that you were found guilty of dispensing medications to patients without medical prescriptions from medical officers of the Irbid Town Health Centre, you also duplicated the registration of medicine dispensed to patients on the said health centre records on two occasions; on 13 October 2009 and 17 December 2009. In view of the foregoing, it has been decided to serve you with this Letter of Censure and to suspend [you] form [sic] duty without pay for one week; the dates of which will be conveyed to you by your supervisor in due time.

12. By letter dated 22 July 2010, the Applicant requested the DUO/J to review the disciplinary decisions, reiterating the various reasons why multiple registrations of medicines – by all pharmacists – may occur and contesting the finding that he had issued medicines without prescriptions. The Applicant also pointed out that he had received no complaint from the head of the clinic or health officer or in his Performance Evaluation Report, adding that he was being singled out at the health centre for disciplinary action as

    … other colleagues where [sic] given no reprimand or anything although we were all involved in the mistakes that were detected according to the decision.
13. By letter dated 2 August 2010, the DUO/J confirmed the disciplinary decisions, having considered that there were no new facts to justify changing the decisions.

14. On 15 September 2010, the Applicant’s undated application was received by the Officer-in-Charge, Secretariat of the Joint Appeals Board (“JAB”).

15. On 17 April 2011, upon the request of the Registrar of the Tribunal, the Applicant submitted his application on the new Tribunal application form.


17. Upon review of the case file, the Tribunal found a document in Arabic that had not been translated by the Respondent into English. For internal purposes, the Tribunal translated the document and discovered that the document was the Applicant’s request for relief. On 17 February 2013, the Tribunal forwarded the Respondent a courtesy copy of this translation and provided the Respondent leave to file an amended reply.

18. By email dated 20 February 2013, the Applicant requested that the Tribunal translate the Respondent’s reply into Arabic as well as all the emails from the Registry and all documents filed by the Respondent in the case.


Applicant’s contentions

20. The Applicant contends the following:

   (i) the errors in registering the medications on the daily record sheets were unintentional and were committed by all pharmacists due to “work pressure and poor organization at the clinic”;

---

1 While the JABs were abolished UN wide in July of 2009, the JAB OiC Secretariat continued to receive appeals until the Tribunal became operation. The Tribunal notes that the Judge of the UNRWA Dispute Tribunal was appointed on 29 May 2010.
(ii) no one could prove that he had dispensed medicines without prescriptions;

(iii) no one had ever admonished him for or accused him of dispensing medicine without a prescription;

(iv) since he entered the service of the Agency in 2000, no one had questioned the integrity of his work;

(v) there is a conspiracy against him by two of his colleagues to lie to the Audit Committee because he had objected to alleged “illegal matters” happening at the clinic.

21. The Applicant requests the following relief:

   (i) rescinding the unfair decision;

   (ii) taking legal action against all those who conspired against him and those who provided false testimonies;

   (iii) restoring his “due right to be reevaluated”;

   (iv) awarding him compensation for the financial losses he suffered in the process of appealing the decision.

Respondent’s contentions

22. The Respondent contends that

   (i) the decisions to censure and suspend the Applicant without pay for one week were properly made;

   (ii) the remedies sought by the Applicant have no legal basis.

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

Considerations

Preliminary Issues

24. As stated above, the Respondent submitted his reply on 21 December 2012. In his reply to the application, the Respondent requested leave from the Tribunal to take part in the proceedings.
25. Article 30 of the Rules gives authority to the Tribunal to shorten or extend a time limit fixed by the Rules or waive any rule 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. Therefore, the Tribunal finds that it is in the interests of justice – and that 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. Therefore, the Tribunal accepts the Respondent’s reply.

Request for Investigation Report

26. On 2 January 2013, the Applicant requested a copy of the investigation report. The Tribunal contacted counsel for the Respondent and inquired whether there was a separate “investigation report” other than the “audit report”. The Tribunal also ordered the Respondent to provide the Applicant with any statements that he had made to the Audit Committee and to produce, ex parte, the witness statements taken during the audit report.

27. On 16 January 2013, the Respondent confirmed that the audit report was indeed the only report, provided the Applicant with copies of his statements to the Audit Committee and provided the Tribunal, ex parte, the witness statements.

28. By email dated 16 April 2013, the Tribunal disclosed the witness statements to the Applicant. The Tribunal provided the Applicant with a one week deadline to submit observations.

---

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”.
3 The Tribunal notes that the audit report was annexed to the Respondent’s reply and therefore the Applicant was provided a copy.
4 The Tribunal notes that the audit report contains summaries of both the witnesses’ and Applicant’s statements, however does not contain the actual statements themselves.
29. By email dated 22 April 2013, the Applicant submitted his observations on the witness statements. The Applicant objected *inter alia* to the questions of the Audit Committee, questioned the credibility of certain witnesses and alleged contradictions in the witness statements and omissions in the translations. The Applicant also requested that the Tribunal call two witnesses for questioning.

30. By email dated 24 April 2013, the Tribunal requested the Applicant to provide specific examples of the omissions. A deadline was set for close of business on 25 April 2013.

31. On 25 April 2013, the Applicant submitted an email to the Tribunal in Arabic, which the Tribunal’s translator was unable to translate given the format and confused syntax. Accordingly, the Registry wrote to the Applicant and requested that he resubmit his observations in a word document.

32. The Applicant did not respond to the Tribunal’s request and consequently the translator was unable to translate the email.

*Request for translation of the Respondent’s reply and miscellaneous documents*

33. As pointed out in paragraph 18, by email dated 20 February 2013, the Applicant requested that the Registry provide him with Arabic translations of the Respondent’s reply, all the emails from the Registry and all documents filed by the Respondent in the case.

34. By email dated 21 February 2013, the Administrative Officer of the Tribunal wrote to the Applicant in Arabic, explaining that the Tribunal does not translate the Respondent’s replies and referred him to the Legal Officer (Staff Assistance) “the LOSA” for further assistance.

35. By email dated 23 February 2013, the Applicant again requested that he be provided with a translation of the Respondent’s reply. The Applicant further noted, *inter alia* that:

I would like to express astonishment to Her Honour that I was not provided with the said translation. To be specific, I do not know what I would gain from contacting the Legal Officer [Staff Assistance] who is
in charge of serving about 30000 staff members! … The Respondent’s reply contains specific terms and expressions that need a clear understanding which, under these circumstances, is unattainable for me…This poses a risk to my application, not to mention the financial burdens that I will have to bear.

36. By email dated 27 February 2013, the Administrative Officer again wrote to the Applicant in Arabic, stating:

Please be advised that consistent with the practices of the United Nations Dispute Tribunal the UNRWA Dispute Tribunal is independent and does not translate any documents for either the Applicant or the Respondent. In practice, the UNRWA Dispute Tribunal translates documents for the use of the Judge and her staff and provides copies to the parties as a *courtesy* only.

I again refer you to the Legal Office (Staff Assistance), which would be appropriate office to provide you with further assistance and advice.

37. The Tribunal notes that unlike the United Nations Dispute Tribunals and the United Nations Appeals Tribunal, the UNRWA Dispute Tribunal does not have ready access to the independent United Nations translations service in New York and Geneva. While the Tribunal acknowledges the Applicant’s concerns, it reaffirms its position that it is not appropriate for an independent and neutral Tribunal to be the entity responsible for translating documents for either party to a proceeding. It is important to note that Arabic is the native language of the overwhelming majority of staff members (roughly 30,000) working for the Agency. When the Agency established the UNRWA Dispute Tribunal and allowed filings to be in both English and Arabic, it should have been more cognisant of the need to translate documents for staff members. The Tribunal finds the Agency’s failure to foresee the necessary staff/resources to handle the translation of documents not only to be culturally insensitive to the Agency’s overwhelmingly local staff, but also an obvious indication of its loss of touch with the needs of the majority of its workforce.
Main Issues

Were the Respondent’s decisions to censure and suspend the Applicant without pay for one week properly made?

38. Area Staff Regulation 10.2 provides that:

The Commissioner-General may impose disciplinary measures on staff members who engage in misconduct.

39. Pursuant to Area Staff Personnel Directive No. A/10/Rev.1 (“PD A/10”), paragraph 3.2, the Commissioner-General has delegated to Field Office Directors (in their fields) the authority to impose disciplinary measures, who may delegate it in turn to Field Administrative Officers.

40. With regard to disciplinary measures which may be taken against staff who engage in misconduct, Area Staff Rule 110.1, paragraph 1, provides that:

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

41. Personnel Directive No. A/10 (“PD A/10”) defines the various disciplinary measures described in Chapter X of the Area Staff Regulations and in Area Staff Rule 110.1 and identifies the guidelines and policies to be followed in applying these Regulations and Rules. In relevant part, it states:

4. POLICY

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

4.2 Such conduct is distinguished from innate inefficiency or incapacity, the correction of which will normally be the subject of appropriate administrative action other than disciplinary measures.

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. Willful or irresponsible failure to comply with contractual obligations;

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

D. Repeated minor infractions.

7. WRITTEN CENSURE

7.1 A written censure is a letter addressed to a staff member in which he/she is advised of serious shortcomings in behavior. The necessity for a written censure may arise from a single incident or from repeated verbal or written reprimands to a staff member. A written censure may or may no be combined with suspension without pay or demotion, as circumstances warrant.

* * *

8. SUSPENSION WITHOUT PAY

8.1 Staff members suspended without pay as a disciplinary measure shall be relieved of their duties for the total period of suspension. During this period, no salary or allowances will be paid. Suspension without pay will not exceed 30 calendar days without the prior written approval of the Director of Personnel.

42. The Tribunal would like to recall that the Commissioner-General is accorded broad discretionary authority with regard to disciplinary matters, including the determination of what constitutes “misconduct”. As noted 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 & Rules.
43. Accordingly, while recognising that disciplinary matters are within the broad discretionary authority of the Commissioner-General, when reviewing a sanction imposed by the administration 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, Haniya 2010-UNAT-024 and Maslamani 2010-UNAT-028. However, the Tribunal notes, as held by the United Nations Appeals Tribunal is Abu Hamda 2010-UNAT-022, that:

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?*

44. Looking at the record in the file, the Tribunal finds that the facts on which the disciplinary measure was based have been reasonably established.

45. The record indicates that in the process of establishing the facts, the Audit Committee reviewed the pharmacy records and interviewed six witnesses, including four Assistant Pharmacists (including the Applicant) and two Doorkeeper/Cleaners. The Tribunal notes that in his observations, the Applicant objects to types of questions used by the Audit Committee, particularly “have you ever seen any Assistant Pharmacist dispensing medicine without a medical card?” The Applicant believed the question was “leading or directing the witnesses’ answers and creating an expectation that a particular person is targeted”. The Tribunal does not find such a question unreasonable, unfair, illegal, irrational or procedurally incorrect. Moreover, the Tribunal notes that every witness was asked this question at the beginning of the interview.5

46. When reviewing the pharmacy records, the Audit Committee found that on at least two occasions (13 October 2009 and 17 December 2009), duplicate recordings

---

5 The Tribunal notes that when the question was posed to the Doorkeep/Cleaners the word “assistant” was omitted, i.e. “Have you ever seen any of the pharmacists issuing medicine without a file?”.
of medicines had occurred. Upon interviewing the witnesses, all four assistant pharmacists (including the Applicant) confirmed that the Applicant was responsible for the recording of medications on that day. The Tribunal notes that the Applicant, while implicating the other pharmacists at the Health Centre, has not denied having committed the error. He stated that they were unintentional and attributed them to “work pressure and poor organization” at the clinic. Incidentally, the registration errors committed by his colleagues do not make the Applicant’s own mistakes any less serious.

47. The Tribunal also notes that the Applicant was seen by three eye witnesses dispensing medications to persons known to him without being prescribed by a medical officer or registered in the pharmacy register on several occasions. In the Applicant’s observations to the witness statements he contests the credibility of the three witnesses that testified that they had seen him dispensing medicine without a prescription. The Tribunal notes that two of the witnesses are Assistant Pharmacists and the third is a Doorkeeper/Cleaner. The Applicant requests for the Tribunal to disregard the testimonies of the three aforementioned witnesses and instead only focus on the testimony of the other three witnesses who agreed any errors in registration were unintentional errors and the responsibility lies with all the staff of the pharmacy. The Tribunal rejects the Applicant’s suggestion that such incriminating evidence lacks credibility simply because the opinions of three other witnesses is more accommodating to his position. It is not up to the Tribunal to pick and choose evidence which is helpful to one party, but instead the Tribunal is required to review all relevant evidence. Upon review of the witness statements, the Tribunal rejects the Applicant’s claim that the three inculpatory testimonies lack credibility. Accordingly, the Applicant’s request to call witnesses to clarify the issue is denied as he has failed to demonstrate that the testimonies of witnesses lack credibility.

48. As for the Applicant’s contention that he had never been admonished before and no one had had any issues with his work, the Applicant is reminded that the disciplinary sanctions of censure and suspension without pay for one week are not about his overall performance during his entire employment at the Agency. The sanctions relate to specific cases of misconduct having occurred in October 2009 and
December 2009. Until the Applicant’s misconduct was uncovered by the Audit Committee, there was no reason to admonish him.

49. Noting that the “Administration is not required to prove its case beyond reasonable doubt”, as affirmed by the former United Nations Administrative Tribunal in Judgment No. 1022, *Araim* (2001), paragraph V, the Tribunal finds that the Respondent has established the facts regarding the Applicant’s duplication of registration and the dispensation of medicines without prescriptions. The Tribunal also finds that the Applicant has failed to provide evidence - convincing or otherwise – to rebut the findings of the Audit Committee.

*Do the facts amount to misconduct?*

50. The Tribunal recalls that the Commissioner-General is accorded broad discretionary authority with regard to disciplinary matters and to decide whether a staff member has met the standards of conduct set out in the Staff Regulations and Rules, as affirmed by the jurisprudence. The evidence in the record indicates that the Tribunal finds that the evidence showing that the Applicant had (i) duplicated medicine registration and (ii) dispensed medicines without prescriptions legally supports the characterisation of misconduct. The Tribunal finds that the Respondent duly exercised his broad discretionary authority with regard to disciplinary matters when determining that the Applicant was guilty of misconduct.

51. The Tribunal also finds that in censuring the Applicant and suspending him without pay for one week, the DUO/J, in his exercise of the Commissioner-General’s delegated authority to impose disciplinary sanctions, complied with the requirements of Area Staff Regulation 10.2, Area Staff Rule 110.1 and Area Staff Personnel Directive No. A/10/Rev.1.

*Were the sanctions imposed proportionate to the offence?*

52. As held by the United Nations Appeals Tribunal in *Sanwidi* 2010-UNAT-084, the principle of proportionality means that an administrative action should not be more excessive than is necessary for obtaining the desired result. The requirement of
proportionality is satisfied if a course of action is reasonable, but not if the course of action is excessive.

53. In view of the Applicant’s conduct as described above, and given that the facts on which the sanction was based have been established, that the Applicant had been properly found to have engaged in misconduct, and that the decision to censure him and to suspend him without pay for one week was not flawed by arbitrariness or error of law, the Tribunal is of the opinion that the disciplinary measures imposed on the Applicant, censure and suspension without pay for one week, were not so disproportionate or unwarranted as to amount to an injustice.6

Was the Respondent’s decision exercised arbitrarily, motivated by prejudice or flawed by procedural irregularity or error of law?

54. The question to ask now is whether the Respondent’s decision to censure and suspend the Applicant without pay for one week exercised arbitrarily or capriciously, were motivated by prejudice or other extraneous factors, or were flawed by procedural irregularity or error of law, as held in Assad 2010-UNAT-021.

55. The Applicant alleges that there was a conspiracy against him because his colleague “apologized about sending a letter in relation to her testimony due to a psychological pressure”. However, the Tribunal notes that this witness did not accuse the Applicant of dispensing medicines without prescriptions. The Applicant also contends that one Assistant Pharmacist whom he mentions by name had told him that an Audit Committee member advised him to testify against the Applicant. The Tribunal does not give much probative value to hearsay and notes that the evidence in the record indicates that this staff member is the other pharmacist who was found to have duplicated the recording of some medicines.

56. The Applicant also claims that the division of labour in the pharmacy in April 2010 was part of the conspiracy against him. However, the Tribunal notes that the subject of the Audit Committee report focused on the October and December 2009 allegations of drug recording duplication.

6 The Tribunal recalls that by memorandum dated 13 June 2010, the CFHP recommended the termination of the Applicant’s appointment for misconduct to the FHRO, however the Agency chose a less severe sanction.
57. The evidence shows that by letter dated 14 June 2010, the Applicant was informed of the allegations against him and was given the opportunity to rebut such allegations. The Tribunal thus fails to see improper motivation or procedural error in the sequence of steps which led to the disciplinary measures against the Applicant. The Tribunal refers to the jurisprudence of the former United Nations Administrative Tribunal Judgment No. 834, *Kumar* (1997) which clearly states that the Applicant bears the burden of proof and must produce convincing evidence that the contested decision was tainted by improper motivation or other extraneous factors. The Tribunal finds that the Applicant has failed to provide evidence to substantiate his allegations.

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

58. The Applicant requested to have the Tribunal take legal action taken against those persons who had allegedly conspired and provided false testimonies against him. The Applicant is reminded that adjudicating conflicts or matters between staff members does not fall within the jurisdiction of the Tribunal. The Tribunal’s competence is set out in Area Staff Regulation 11.1 which provides, in relevant part, that:

(A) The UNRWA Dispute Tribunal shall, under conditions prescribed in its Statute of Rules of Procedure, which are set out in Staff Regulations 11.3 and 11.4, hear and render judgment on an application from a staff member:

(i) to appeal an administrative decision that is alleged to be in non-compliance with his or her terms of appointment or contract of employment, including all pertinent regulations and rules and all relevant administrative issuances;

59. Furthermore, in the Applicant’s contentions he alleges that two of his colleagues conspired against him and lied to the Audit Committee because he had objected to “illegal matters happening in the clinic”. The Tribunal notes that the Applicant has offered only hearsay evidence and failed to provide convincing evidence to support his allegations that he was the object of a conspiracy and false testimonies. The Tribunal reiterates that it cannot give much probative value to hearsay evidence. As for the Applicant’s request that his “due right [to] be
reevaluated”, the Tribunal finds it rather confusing. If the Applicant means that the Respondent should reevaluate the decision to sanction him, he is reminded that, the DUO/J did conduct a decision review. If the Applicant means that his due process rights were violated, the Tribunal has determined in the paragraphs above that on the contrary, the Applicant’s due process rights have not been violated. The Applicant was interviewed twice and advised of the allegations against him. He was provided with all the evidence in the case file, including the audit report, his statements made to the Audit Committee, the unredacted witness statements and was accorded time to submit observations.

60. Having determined that:

(i) the facts on which the disciplinary measures were based have been reasonably established;

(ii) the facts legally amount to misconduct;

(iii) the Respondent's decision was properly made;

(iv) the disciplinary measures were not disproportionate to the offence;

(v) the discretionary authority of the Respondent was not exercised arbitrarily, nor tainted by evidence of improper motivation nor flaws by procedural irregularities or error of law,

the Tribunal finds that the Applicant’s request for relief has no basis in fact or in law.
Conclusion

61. For the reasons provided above, the Tribunal dismisses the application.

(Signed)

Judge Bana Barazi

Dated this 1st day of May 2013

Entered in the Register on this 1st day of May 2013

(Signed)

Laurie McNabb, Registrar, UNRWA DT, Amman