
ADMINISTRATIVE TRIBUNAL

Judgement No. 806

Case No. 900: EL-HAJ

Against: The Commissioner-General
of the United Nations
Relief and Works Agency
for Palestine Refugees in
the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Samar Sen, President; Mr. Hubert Thierry,
Vice-President; Mr. Francis Spain;

Whereas, on 20 June 1995, Abdul Hadi Ibrahim El-Haj, a former area staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency) filed an application that did not fulfil the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 11 September 1995, the Applicant, after making the necessary corrections, again filed an application containing pleas which read, in part, as follows:

"... I request UNAT [United Nations Administrative Tribunal] to reinstate me to service with full payment of all my dues and arrears related to my suspension period."

Whereas the Respondent filed his answer on 14 May 1996;

Whereas the Applicant filed written observations on 30 July 1996;

Whereas, on 26 October 1996, the Applicant filed an additional document with the Tribunal;

Whereas, on 28 October 1996, the Tribunal requested the Respondent to provide it with the answers to certain questions, which answers were provided on 31 October 1996;

Whereas, on 2 November 1996, the Applicant filed additional documents with the Tribunal;

Whereas, on 6 November 1996, the Respondent filed with the Tribunal a response to the Applicant's memorandum of 2 November 1996;

Whereas, on 15 November and 3 and 16 December 1996, the Applicant submitted additional documents to the Tribunal;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 17 October 1960, as a Teacher at the grade 5, step I level, in Gaza, on a probationary appointment. From 8 to 10 September 1962, the Applicant was suspended without pay under Area staff rule 110.1 for failure to observe the standards of official conduct as required under the Area Staff Rules. He received a written censure from the Acting Field Personnel Officer, UNRWA, Gaza, on 10 September 1962. The Applicant's periodic report for the period 17 October 1960 to 21 September 1961 rated him as "a staff member who maintains a good standard of efficiency". His periodic report for the next period, ending on 9 September 1962, rated him as "an unsatisfactory staff member". The Applicant's annual increment was deferred by letter dated 28 February 1963, from the Field Personnel Officer, Gaza. He was suspended for ten days for negligence in the performance of his duties, after having received two warnings. His periodic report for the period ending 1 July 1963 rated his performance "unsatisfactory". The Applicant was demoted from grade 5 to grade 3 from 1 September 1963 until 1st March 1964.

The Applicant's performance evaluation reports (PERs) for the years 1964 through 1972 rated him as "a staff member who maintains a good standard of efficiency". Effective 31 January 1973, the Applicant was suspended without pay for failing to resume his duties

since 27 January 1973. His PER for that year stated that he maintained "only a minimum standard of efficiency" and his annual increment was deferred for six months. His PERs for 1974 and 1975 showed a "good standard of efficiency". His performance for the years 1976 through 1979 was rated "satisfactory". In 1980, he was rated "an unsatisfactory staff member". By a letter dated 15 May 1980, the Applicant was given a "final warning" by the Director of UNRWA Operations (DUO), Gaza, and was placed on probation for one year. By a letter from the Acting Field Administrative and Finance Officer, UNRWA, Gaza, dated 2 January 1981, the Applicant was informed that his services would be terminated on medical grounds pursuant to Area staff rule 109.7. The Applicant appealed this decision and, on 19 June 1981, the Joint Appeals Board (JAB) recommended that the Applicant be reinstated in another suitable post. The Applicant was reinstated with effect from 3 January 1981.

By a letter dated 8 August 1982, from the DUO, Gaza, the Applicant was informed that, effective 7 September 1982, his appointment was to be terminated in the interest of the Agency, due to his unsatisfactory performance.

The Applicant submitted an appeal against this decision to the JAB on 18 September 1982. In its report dated 19 November 1982, the JAB upheld his termination. It recommended, on humanitarian grounds and in view of the Applicant's long service with the Agency, that he be given priority for reinstatement in a non-teaching post.

Effective 1 March 1985, the Applicant was re-employed by the Agency in the Eligibility and Registration Division as a Clerk "D".

On 3 January 1994, a Senior Clerk was transferred to the post of Acting Camp Eligibility and Registration Officer (A/CERO) in Deir-el-Balah, the Applicant's place of work. By letter of 23 January 1994, the Applicant complained to the Field Administrative Officer that this transfer had deprived the Applicant of the post of A/CERO and the associated "privileges". By letter of 27 January 1994, the Field Administrative Officer replied that the Applicant had no right to be appointed as A/CERO and the appointment

of the Senior Clerk to the post would, in any event, have no bearing on the Applicant's prospect of being promoted to the position of CERO. Further correspondence on this subject followed.

A periodic report on the Applicant was completed on 12 February 1994; the Applicant's immediate supervisor, the CERO, gave the Applicant low ratings throughout. The CERO also noted that: "He is not ready to hear any discussion to improve his situation from any supervisor". The Applicant's intermediate reporting officer, the Field Eligibility, Registration, Distribution and Accommodation Officer, rated the Applicant as "on the whole, an unsatisfactory staff member", and his overall supervisor, the Acting Deputy Chief, Field Relief and Social Services Programme, noted in the report that the Applicant's supervisor (the CERO) had advised that the Applicant would not do any job requested by the CERO.

On 22 February 1994, the Acting Chief of the Field Relief and Social Services Programme sent a memorandum to the Field Administrative Officer concerning the Applicant's refusal to cooperate with the CERO and to carry out work assigned by him. On 2 March 1994, the Field Administrative Officer wrote to the Applicant censuring him and suspending him without pay for three days due to the latter's refusal to follow instructions from his superiors. The letter warned the Applicant that, should his official conduct again be the subject of a complaint, the Agency would be obliged to take action, which might include termination.

On 5 March 1994, the Field Administrative Officer again wrote to the Applicant concerning his performance. As a result of the deficiencies and inadequacies identified in the Applicant's periodic report, the Agency decided to defer consideration of the Applicant's annual increment for three months.

In a reply dated the same day, to the Field Administrative Officer, the Applicant objected to his suspension without pay (notified to him by the letter of 2 March 1994) and restated his earlier objection to the appointment of the Senior Clerk as CERO. He stated: "I cannot cooperate with [him]. He is nothing in

comparison with me. He is the wrong person in the wrong place. He has not any skills or competence."

On 7 March 1994, the Field Eligibility, Registration, Distribution and Accommodation Officer sent an action slip to the Acting Deputy Chief of the Field Relief and Social Services Programme in which he advised him of the Applicant's continued failure to cooperate with the CERO and of his insistence on performing work during his suspension.

On 8 March 1994, the Field Administrative Officer addressed a "Final Warning" letter to the Applicant. He reiterated that the Agency would not "tolerate gross insubordination", such as refusing to cooperate with his superiors, and noted that the Applicant's performance was "unsatisfactory in almost every respect". He warned the Applicant that if his performance did not improve markedly, the Agency would terminate his services.

On 3 April 1994, the Acting Chief, Field Relief and Social Services Programme, notified the Field Administrative Officer that the Applicant was refusing to cooperate with his supervisor (the CERO). He attached a memorandum from the CERO that listed a number of instances of alleged non-cooperation. On 4 April 1994, the Acting Deputy Chief, Field Relief and Social Services Programme, wrote to the Field Administrative Officer stating that the CERO had also reported that the Applicant refused to obey the CERO's instructions and to cooperate with him.

The Applicant's periodic report dated 31 May 1994 was prepared for the purpose of deciding whether the Applicant should receive his deferred salary increment. The CERO gave the Applicant low ratings in six categories and satisfactory ratings in the remaining two. He noted, "I discussed [the Applicant's] performance

of his duties and cooperation ... but he refused to cooperate with me, and insists [on] work[ing] according to his wishes".

The Applicant's intermediate reporting officer, the Acting Field Eligibility and Registration Officer, rated the Applicant as "on the whole, an unsatisfactory staff member". He noted, "[t]he employee doesn't cooperate with his supervisor and works according to his wishes and not his job description". The comments of the Applicant's overall supervisor, the Field Eligibility, Registration, Distribution and Accommodation Officer, were similar. The Officer-in-Charge of the Relief and Social Services Department also noted that the Applicant's performance was unsatisfactory.

On 1 June 1994, the DUO, Gaza, wrote to the Applicant and advised him that, as a result of the most recent periodic report, the Applicant would not receive his deferred annual increment. Further, he noted that, since the final warning contained in the Field Administrative Officer's letter of 8 March 1994, the Applicant had "made no serious attempt to improve [his] performance. Therefore, I have no choice but to terminate your services in the interest of the Agency under Area staff regulation 9.1, effective 4 June 1994."

On 6 June 1994, the Applicant requested the DUO, Gaza, to review the decision to terminate his services. On 13 June 1994, the DUO, Gaza, confirmed the decision.

On 18 July 1994, the Applicant lodged an appeal with the JAB. The JAB adopted its report on 3 April 1995. Its evaluation, judgement and recommendation read, in part, as follows:

"(a) ... the Board noted that:

- (1) The Appellant had had a turbulent career as reported and documented during his service with the Agency in different positions (teaching and clerical).
- (2) The Appellant has been the subject of adverse reporting and complaint by his supervisors.
- (3) Several disciplinary measures including written

censure and suspension without pay were taken against the Appellant as a result of his insubordination. He was given a letter of final warning and his annual increment was deferred in the hope that he would show improvement in his performance.

- (b) The Board could not establish that the decision to terminate the Appellant's service was triggered by any extraneous factors, or was motivated by bias or prejudice against the Appellant, particularly in the absence of any satisfactory reporting on his performance.
- (c) In this context, the Board is of the opinion that the Administration has acted within the framework of standing rules and regulations.

III. Recommendation

25. In view of the foregoing, and without prejudice to any further oral or written submission to any party the Appellant may deem pertinent, the Board unanimously makes its recommendation to uphold the Administration's decision to terminate the Appellant's service in the interest of the Agency under Area staff rule 109.1; and that the case be dismissed."

On 3 May 1995, the Commissioner-General transmitted to the Applicant a copy of the JAB report and informed him as follows:

"I enclose herewith a copy of the report on the Area Staff Joint Appeals Board of 3 April 1995, regarding your appeal. You will note that the Board has concluded that the Administration's decision to terminate your appointment in the interest of the Agency, pursuant to Area staff regulation 9.1, was lawful and proper. The Board, therefore, recommended that the Administration's decision be upheld and that your appeal be dismissed. I accept these conclusions and recommendations; your appeal is, therefore, dismissed."

On 11 September 1995, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contention is:

The Respondent's decision to separate him from service was

arbitrary and motivated by prejudice.

Whereas the Respondent's principal contentions are:

1. The Area Staff Rules and Regulations require that the decision to terminate the Applicant's services must stand unless it was procedurally defective or improperly motivated.

2. The facts show that the Applicant's performance was poor and that the decision to terminate his services was therefore proper.

The Tribunal, having deliberated from 24 October to 21 November 1996, now pronounces the following judgement:

I. The Tribunal accepts the Applicant's plea that all the events which took place prior to his appointment, on 1 March 1985, as a Clerk in the Eligibility and Registration Division, should be considered as irrelevant in judging the Applicant's present complaint. It follows, of course, that the Applicant's own allegation of prejudice and revenge made by him against various officials of UNRWA before March 1985 should also be excluded from the scope of the present judgement.

II. The principal feature of this case is the appointment, on 3 January 1994, of a grade 8 clerk (senior to the Applicant) as Acting Camp Eligibility and Registration Officer (A/CERO) at the Deir-el-Balah Distribution Office when the incumbent became sick at the time of his retirement. The Applicant had expected to be appointed to this post, and he very much resented that someone else had been made A/CERO. The Applicant considered that the person selected had been guilty of wrong-doing, that he was much less qualified than the Applicant and that his appointment was brought about by manipulation by the Director, Field Relief and Social Services Programme (D/FRSSP). The Applicant began a sustained

protest against this appointment which he felt was not only unjust and unfair but was intended to deprive him of what he considered to be his right and was meant to "close and divert the vacancy to another place in favour of another person". He specifically accused the D/FRSSP of having an arbitrary attitude and stated that the appointment of the person selected would deprive the Applicant of his right to be considered for the post. The Applicant's argument was based on his feeling that his temporary appointment as CERO would have enabled him to claim the post later, inasmuch as such temporary appointments often place the official concerned in a favourable position in relation to other candidates for the post.

III. The Applicant's first protest was answered by the Field Administrative Officer, who found "nothing wrong" in the D/FRSSP's action. The appointment of an A/CERO would not deprive the Applicant of being considered for the post.

This reply was met with a barrage of accusations by the Applicant, not only against the D/FRSSP but also against UNRWA, which the Applicant considered to be a totalitarian organization, that was unfair especially to junior officers and manipulated by interested persons. These protests emanated, apparently, from his chagrin and resentment; however, they were virtually ignored. Meanwhile, it was found that the Applicant's work was not at all satisfactory and that he was blatantly refusing to follow any instruction from the A/CERO, who was his supervising officer, but whom he considered to be unworthy of the job and incompetent compared to himself. These developments led first to the Applicant's suspension (which he refused to accept), then to the withholding of the increments which would normally be due to him and finally to his termination. During these events, he denied all accusations, and stressed his zeal for probity and integrity, as well as his competence and fairness. Meanwhile, the Respondent issued, on 2 March 1994, a written censure warning the Applicant that "UNRWA is not willing to accept gross insubordination as

displayed through your behaviour. The fact that you were not appointed as A/CERO does not give you the right to refuse to cooperate with your supervisor." His work continued to be "less than satisfactory" and he was told that "[f]ailure to secure a satisfactory periodic report within twelve months may result in termination of your services with the Agency for unsatisfactory performance."

IV. The Applicant still insisted that his work was above reproach and he became increasingly obstreperous. In a letter dated 5 March 1994, he said, inter alia, "You intend to suspend me wrongfully" and much more in the same vein. However, he had been supplied with details of his failure to cooperate with the A/CERO and of the many other lapses found in his work and attitude. The Applicant did not agree with any of these assessments and refused to sign the periodic reports which contained unfavourable comments. In a letter dated 13 June 1994, marked "Private and Official", the Director of UNRWA Operations (DUO), Gaza, dealt with the subject entitled "Review of Termination of Service" of the Applicant and said "You claim prejudice because you criticised an 'unwise and harmful measure'. However, you were terminated because of your actions and not because of your words". He pointed out various incorrect statements which the Applicant had made and concluded "Your letter contains no new arguments which lead me to overturning my decision to terminate your services in the interest of the Agency. That decision is hereby confirmed."

V. Immediately, a significant change became noticeable. In the Applicant's letter of 18 June 1994, addressed to the DUO, Gaza, he said, inter alia, "I now consider that letter from the past and let bygones be bygones. I therefore intend to open a new chapter promising to cooperate fully with all my superiors especially my direct superior, [the A/CERO]." This can only mean, in the view of the Tribunal, that he not only retracted many, if not all, of his

accusations against the Respondent, but also agreed to cooperate with his supervisor, the A/CERO.

VI. The Tribunal also notes that the Applicant was given a further chance to improve his prospects. An examination was held to fill the vacancy resulting eventually from the retirement of the regular CERO of Deir-el-Balah Distribution Office. The Applicant claims that he came first in this test, but the record shows that this was not so.

From 17 April 1994, when the Applicant was told why he had not been selected for the vacant job of CERO of Deir-el-Balah Distribution Office, his conduct and performance improved. This opinion was given by the A/CERO who had previously complained about his lack of cooperation and his insubordination. However, the evidence shows that the favourable message written by the A/CERO on 2 May 1996 was "because he was blamed by people who told him not to be the one who could cause [the Applicant's] separation from the Agency." That some such pressure or duress was at the back of the A/CERO's apparent change in attitude was further confirmed by the A/CERO's comments in subsequent documents. The instances of breaches of discipline and insubordination for which the Applicant's services were terminated all occurred well before the examinations of April 1994.

VII. The Joint Appeals Board (JAB) enquired into the Applicant's complaints and unanimously recommended "to uphold the Administration's decision to terminate the Appellant's service in

the interest of the Agency under Area staff rule 109.1; and that the case be dismissed."

The Tribunal accepts the finding of the JAB and has not found that the Applicant produced any reliable evidence to establish prejudice or bias on the part of the Respondent in the action taken against the Applicant.

VIII. In view of the above, the Tribunal rejects the application in its entirety.

(Signatures)

Samar SEN
President

Hubert THIERRY
Vice-President

Francis SPAIN
Member

New York, 21 November 1996

R. Maria VICIEN-MILBURN
Executive Secretary