
ADMINISTRATIVE TRIBUNAL

Judgement No. 877

Case No. 981: ABDULHADI

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. Hubert Thierry, President; Ms. Deborah Taylor Ashford, Vice-President; Mr. Kevin Haugh;

Whereas, on 16 June 1997, Maysaa' Ahmed Abdulhadi, a former 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 requesting, inter alia:

- "a. Rescission of the decision of termination ...
- b. ... period of cessation until time of judgement and[/]or reinstatement [to be considered] special leave with full pay.
- c. [Alternatively] payment of compensation for injury left for the Tribunal to assess, ..., plus salaries ... [from] cessation until time of judgement, and interest, assessed and paid in US dollars at the UN operational rate available on separation.
- ...
- e. Payment of legal counsel and secretarial fees assessed at US \$700."

Whereas the Respondent filed his answer on 27 November 1997;

Whereas the Applicant filed written observations on 10 January 1998;

Whereas the Respondent filed an additional submission on 25 February 1998;

Whereas the Applicant filed additional submissions on 7 April 1998;

Whereas, on 6 July 1998, the Tribunal requested the Respondent to provide the Tribunal with a certain document;

Whereas, on 9 July 1998, the Respondent replied that the requested document was unavailable;

Whereas, on 12 July 1998, the Applicant submitted an additional document;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 17 December 1985, as Claims Assistant "C" at the Field Finance Office, Syria Field Office, on temporary assistance basis through 30 April 1986. On 1 May 1986, she was granted a temporary indefinite appointment for a probationary period as an area staff member, in the post of Claims Assistant "C", at grade 8 in the Field Finance Department, Syrian Arab Republic (SAR). She was promoted to grade 9, on 1 May 1987. On 1 December 1990, the Applicant's post was reclassified to Assistant Claims Examination Officer and the Applicant was promoted to grade 10. On 1 September 1992, she was promoted to grade 11. She was separated from service at close of business, 12 January 1995.

During the period 22 November to 1 December 1994, the Audit Office, Headquarters (Amman) conducted a special audit of payments of long outstanding balances owed to staff members by the Syria Field Office. The Auditors contacted 40 of the 44 staff members or former staff members listed on the attachments to the payment vouchers concerned. Of these, 15 categorically stated that they had not received the amounts on the vouchers and that their signatures on those vouchers had been forged.

According to their Special Audit Report, the Auditors were unable to determine exactly who effected the payments in question. They found that almost everybody in the Finance Department had access to the safe and had acted as replacement cashier when the

cashier was absent. They noted that the Applicant acted as paymaster on several occasions and that her work was not effectively checked by her supervisor. A graphologist compared the signatures of all Finance staff to the forged signatures and excluded all staff as possible suspects, except the Applicant. However, although the graphologist noted similarities in construction between the Applicant's signature and the forged signatures, he was unable to establish conclusively that the Applicant was responsible for any of the forged signatures.

On 11 January 1995, the Officer-in-Charge, UNRWA Affairs, SAR, wrote to the Applicant to inform her that the Agency had decided to terminate her appointment in the interest of the Agency under area staff regulation 9.1 and area staff rule 109.1, effective close of business on 12 January 1995. The reasons for her termination were given in that letter as follows:

"... audit investigations [conducted in the Field Finance Department] have uncovered a substantial amount of forged signatures on payment vouchers which you prepared amounting to more than SYP[Syrian pounds] 30,000.00, which monies were supposed to be paid to various existing and retired staff members in Syria Field.

In view of your failure to cooperate with the audit investigation and the improprieties indicated in the audit findings, including e.g. your involvement in the attempted cover-up of one of the forged payments, the Agency has lost confidence in you. ..."

On 6 February 1995, the Applicant contested all accusations against her and requested the Director of UNRWA Affairs, SAR, to reverse the decision to terminate her appointment in the interest of the Agency.

By letter dated 20 February 1995, the Director of UNRWA Affairs, SAR, informed the Applicant that he had reviewed her case and her personal file and was satisfied that the decision taken to terminate her appointment should stand.

On 15 March 1995, the Applicant lodged an appeal with the Joint Appeals Board (JAB). On 14 April 1997, the JAB adopted its report. Its evaluation and recommendation read, in part, as follows:

" ...

(c) The Board noted that the Appellant failed to produce any counter productive evidence, and that the Appellant did [sic] cooperate with the Auditors and that [her attitude] was one of hostility.

(d) The Board also notes that the Administration's decision to terminate the Appellant's appointment was based on the recommendation of the Auditors.

(e) Based on the above, the Board is of the opinion that the Administration has acted within the framework of standing Rules and Regulations without prejudice or any other extraneous factors.

IV. RECOMMENDATION

14. In view of the foregoing and without prejudice to any further oral or written submission ..., the Board unanimously makes its recommendation to uphold the Administration's decision and that the case be dismissed."

On 29 April 1997, the Commissioner-General transmitted to the Applicant a copy of the JAB report and informed her as follows:

"... I have carefully reviewed the Board's report and noted its conclusions. The Board noted the findings of the audit team in relation to your conduct and that the decision to terminate your services was based on the audit recommendation. In the absence of any prejudice or any other extraneous factors, the Board recommended that your appeal be dismissed.

I agree with the Board's conclusions and I therefore dismiss your appeal."

On 16 June 1997, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant's termination was based on fabricated, unsubstantiated charges

of forgery. Although the Applicant is responsible for preparing vouchers, she is not responsible for paying them and thus could not have been involved in any improper payments. The Applicant's personal file attests to her good character, her diligence and conscientiousness. The Applicant refutes the claim that she refused to cooperate with the investigation by the Auditors.

2. The Audit Report itself is fraudulent because only one of the Auditors signed it.

3. The members of the JAB were unqualified to assess the Audit Report and should have sought technical expertise.

4. The Applicant had not received a letter informing her of the final composition of the JAB. She was opposed to the JAB member representing the staff because "he belonged to an outside faction, he is not an elected member of the Staff Union, and he is precisely ignorant of the English language."

5. The Respondent failed to follow the personnel directive A/10/Rev.1 concerning disciplinary measures applicable to staff members. The termination was a disciplinary measure, not an administrative measure.

6. The Applicant was denied due process because she was denied legal representation by a retired staff member before the JAB.

7. The Applicant is entitled to payment of compensation in US dollars at the rate of exchange available at the time of separation.

Whereas the Respondent's principal contentions are:

1. The Respondent had broad discretion to terminate the Applicant's appointment under area staff regulation 9.1. The Applicant failed to show that the decision was based on any improper motive.

2. In arriving at his decision, the Respondent did not rely on the Auditors' "strong suspicion" that the Applicant had engaged in fraudulent conduct, but based it on her

lack of cooperation with the Auditors and on her admitted participation in a cover-up of an improper payment.

3. The Audit Report was properly signed by the Auditor responsible for the inquiry and the Chief of the Agency's Audit Office.

4. Neither the Applicant nor the Respondent had the opportunity to object to the final constitution of the JAB due to the difficulty of convening the members who had been selected. The Applicant provides no evidentiary support for her first objection, that one member "belonged to an outside faction". Her second objection, that that member was not elected to the Staff Union, is of no consequence because "paragraph 3 of the area staff rule 111.2 provides that [JAB] members and alternates are selected by the competent organ of the Staff Union". That member was so selected. Her third objection, that he speaks no English is also inconsequential because all members of the JAB spoke Arabic. He could participate in the discussions of the JAB.

5. Personnel directive A/10, relied on by the Applicant, is not relevant to this matter because the Applicant was not subject to a disciplinary measure, as defined in area staff rule 110.1.

6. Under the applicable rules, the Applicant was not entitled to representation by a former staff member before the JAB, but by a current staff member. As she was not denied such representation, her rights were not violated.

The Tribunal, having deliberated from 8 to 31 July 1998, now pronounces the following judgement:

I. The sole conclusion contained in the Audit Report specific to the Applicant was the Auditors' "strong suspicion" that the Applicant had "cashed the outstanding amounts and forged the signatures of staff listed in the attachments to the Cash Payment Vouchers". The

Audit Report did not set forth conclusions regarding the Applicant's participation in the Finance staff's alleged cover-up of an error in the Agency books, in which payments were listed as having been made to another staff member (hereinafter Ms. X), who denied having ever received such payments. The only reference in the Audit Report to such cover-up was a recommendation that the Accounting Control Officer and the Cashier who had admitted participation be reprimanded for not having reported the cover-up to the Field Finance Officer.

The Tribunal notes that there was a dispute in the evidence before the Auditors as to who had instigated that cover-up, as demonstrated by the Brief Interview Notes ("the Interview Notes") accompanying the Audit Report. However, the Audit Report itself neither addressed nor resolved that dispute. Insofar as it concerned the Applicant, the Audit Report:

- (i) Observed that during the interviews the Applicant "demonstrated a total lack of cooperation and her attitude was one of hostility", noting that her closing remark to the Field Administration Officer was: "Do whatever you want; I know how to appeal";
- (ii) Noted that a graphologist, who compared the signatures of all the Finance staff with the signatures allegedly forged, excluded all signatures except that of the Applicant, though "he could not say for certain that the various signatures had been forged by her";
- (iii) Voiced the "strong suspicion" that it was the Applicant who "cashed the outstanding amounts and forged the signatures of the staff listed in the attachments to the Cash Payment Vouchers"; and
- (iv) Recommended "that disciplinary action be taken against [the Applicant] (possible separation on grounds of serious misconduct)"

II. The Interview Notes accompanying the Audit Report did address the alleged cover-up of the erroneous payment to Ms. X. In the Interview Notes, the Auditors stated that the Applicant had admitted her participation therein. They further noted that throughout her interviews, the Applicant's attitude had been "defiant and arrogant" and that "when we stressed on the seriousness of the matter and implied that we thought she might be involved,

she became quite hostile and remarks were made to the effect that if we tried to threaten her she would know to resort to legal procedures.” The Auditors recorded in the Interview Notes the Applicant’s purported remark, “Do what you want, I know how to appeal” as an example of hostility, arrogance, defiance and/or a lack of cooperation.

III. Whilst the Audit Report and the Interview Notes characterize the Applicant’s conduct in relation to the Audit Investigation as having been “hostile”, “defiant and arrogant”, and uncooperative, the Auditors offer only two examples in support of their conclusion. The Tribunal notes that the remark “Do what you want, I know how to appeal” is at least equally consistent with a perception on the Applicant’s part that the interviewers were unreasonably refusing to accept her protestation of innocence and that they were determined to find against her no matter what she said. The Tribunal finds it more likely that it was frustration or despair which would have caused such a remark, rather than hostility or defiance on her part. This is also so of the other attributed remark that “if they” (meaning the interviewers) threatened her “she would know to resort to legal procedures”. It is clear from its context, that this remark was made in response to the suggestion that her protestation of innocence was not being believed.

The allegations that the Auditors made against the Applicant were serious. If they had any substance, they should have been supported by cogent evidence and by unambiguous examples. The Tribunal is satisfied that no such cogent evidence has been presented. The Auditors do not suggest that the Applicant declined to answer their questions. It is possible that the Auditors, not receiving the answers that they wished to hear may have been exasperated by her refusal to make incriminating admissions.

IV. The Tribunal notes the Auditors’ recommendation that disciplinary action be taken against the Applicant and that, based on the Auditors’ “strong suspicion” against the Applicant, suggested “possible separation on grounds of serious misconduct”. Whatever were the Auditors’ intentions, the Respondent should have interpreted such recommendation as

suggesting that disciplinary proceedings be instituted. Instead, by letter dated 11 January 1995, the Respondent terminated the Applicant's appointment "in the interest of the Agency", because the Agency had lost confidence in the Applicant "in view of [her] failure to cooperate with the audit investigation and the improprieties indicated in the audit findings, including e.g. [her] involvement in the attempted cover-up of one of the forged payments."

The Tribunal finds that, considering the serious implications of the "strong suspicion" voiced against the Applicant, as well as the Auditors' recommendation, the Respondent should not have terminated the Applicant without first holding disciplinary proceedings. Not only would such proceedings have been an appropriate forum to resolve the multiplicity of issues which had been raised in the Audit Report; such proceedings also would have had the added benefit of providing necessary due process to the Applicant. The Tribunal has pointed out on previous occasions the consequences that ensue when the Administration deprives staff members of due process.

In Ortega et al (Judgement No. 610 (1993)) the Tribunal observed that the option of administrative action (rather than disciplinary proceedings) should only be resorted to when it does not prejudice or damage the position of staff and is not detrimental to staff. (Cf. Judgement No. 576, Makwali (1992)). Despite the stated reasons for the termination, the Applicant in this case was essentially accused of forgery and fraudulent conversion. Where, as here, gross misconduct is alleged, such allegations should be investigated by a disciplinary board or committee.

V. The Tribunal thus finds that the decision to terminate the Applicant's appointment was unlawful. It finds that the conclusion of non-cooperation was made by the Auditors without demonstrable or cogent grounds or without supporting evidence and without affording the Applicant appropriate due process. The Tribunal also notes that no other person found to have been involved in the attempted cover-up of money paid to Ms. X was terminated by reason thereof. Accordingly, the Tribunal cannot conclude that the decision to terminate the Applicant's service would have been made on that finding alone.

VI. Further, while the Audit Report noted that the graphologist who “was asked to examine and compare the signatures of all Finance staff with the ‘forged’ signatures ... immediately excluded all of them except for [the Applicant’s]”, the graphologist also apparently stated “that although there were certain similarities in the construction of the signatures, he could not say for certain that the various signatures had been forged by her.” During its deliberations, the Tribunal requested the Respondent to provide the Tribunal with the graphologist’s report. In reply, the Respondent stated that “the graphologist did not submit a report”. The lack of a written report by the graphologist demonstrates further the flaws in these proceedings, as it meant that his findings were never capable of independent review.

VII. The Tribunal is compelled to point out that the Joint Appeals Board (JAB) in this case singularly failed to deal with any of the real issues which had been raised in the proceedings before it. The JAB failed to analyse the evidence which had been before the Auditors or the manner in which the Auditors conducted their investigation.

The Tribunal is satisfied that the JAB had done no more than go through the motions of giving the case a hearing and that it had done no more than pay lip service to its duties and obligations in that regard. The JAB merely observed that the Applicant had failed to produce “counter-productive evidence” of cooperation with the Audit or to show that her attitude during the investigation had not been hostile. The Tribunal is satisfied that this approach was wholly unsatisfactory and that the JAB had improperly reversed the burden of proof. The JAB merely concluded that the Agency, in deciding to terminate the Applicant’s services, had “acted within the framework of standing rules and regulations without prejudice or any other extraneous factors.”

VIII. The Tribunal is satisfied that the decision to terminate the Applicant’s services was

made without adequate evidence, was tainted and unlawful, and therefore should be set aside and rescinded. The Applicant should accordingly be restored to the post which she held prior to the purported termination or to a comparative post. Should the Commissioner-General decide that she should be compensated without further action in her case, the Tribunal assesses the compensation to be paid to her in the amount of two years' net base salary.

IX. The Applicant takes exception to the signatures which appeared on the Audit Report. The Tribunal is satisfied that the Report was appropriately signed in accordance with the usual practice, bearing the signatures of the Senior Auditor and the Chief of the Agency's Audit Office. The Tribunal is satisfied that the absence of the other Auditor's signature gives rise to no sinister implication. This ground is rejected.

X. The Applicant takes further exception to being denied the right to be represented by a retired former staff member, before the JAB. The rule which governs this aspect is paragraph 7 of a staff rule 111.3. It provides for representation by a serving staff member. Whilst the attorney in question had been a staff member, by April 1997 he had retired. Accordingly, he was ineligible to represent the Applicant. The Tribunal is satisfied that the staff rule provides adequately for representation before the JAB and that the rule is not unfairly discriminatory. Accordingly, this ground is also rejected.

XI. The Applicant further objects to the composition of the JAB on the grounds that one of its members was of "another faction" and that she was not given sufficient notice of the substitution of this person for the person originally nominated, so as to allow her an adequate opportunity to object. Be that as it may, this issue is moot, as the Tribunal has already rejected the conclusions of the JAB in this matter.

XII. For the foregoing reasons, the Tribunal:

1. Finds in favour of the Applicant and orders the rescission of the decision of

the Commissioner-General, dated 11 January 1995, to terminate the Applicant's permanent appointment;

2. Orders that the Applicant be reinstated in a position with the same grade and at the same step that she held when she was separated, with full payment of salary and emoluments from the date of her separation from service, less her earnings from other employment, if any;

3. Should the Commissioner-General, within 30 days of the notification of this judgement decide, in the interest of the Agency, that the Applicant shall be compensated without further action being taken in her case, in accordance with article 9 of its Statute, the Tribunal fixes the compensation to be paid to the Applicant at two years of her net base salary, at the rate in effect at the time of her separation from service.

4. Rejects the Applicant's request for costs.

5. Rejects all other pleas.

(Signatures)

Hubert THIERRY
President

Deborah Taylor ASHFORD
Vice-President

Kevin HAUGH
Member

Geneva, 31 July 1998

R. Maria VICIEN MILBURN
Executive Secretary