



Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 1020

Case No. 1101: HZAYYEN

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

THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL,

Composed of: Mr. Kevin Haugh, Vice-President, presiding; Ms. Marsha A. Echols;
Mr. Spyridon Flogaitis;

Whereas, on 28 May 1998 and 30 May 1999, Iman Mahmoud Hzayyen, a former staff member of the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 27 September 1999, the Applicant, after making the necessary corrections, again filed an Application containing pleas which read as follows:

"II. Pleas

- a. The case was a pure[ly] personal one, and does not, in any way, affect ... UNRWA's interests, and the complainant did not lodge the case but was summoned by the Principal of the Training College in his office to do so, because he has a personal grudge against me.

- b. ... UNRWA, by accepting the case, and decid[ing] to terminate my services, has played the role of ... Police and Local Government [which it] is not supposed to do so. Moreover, ... staff rule 110.1 according to which the decision of termination was taken has no stipulation or text regard[ing] the Automatic [Teller] Machine (ATM), as these were not invented at that time and the alleged case was not proved. (...)
- c. The case was not thoroughly probed or investigated by ... UNRWA, despite my repeated requests to the Acting Director of UNRWA Operation[s] in Jordan ...
- d. It is the habit in ... UNRWA, that termination actions are preceded by investigations, issue of verbal warning, three written warnings and a final warning. Then the termination is decided if the staff member [does] not improve his conduct.
- e. The complainant ... once took my handbag and [hid] it for a whole day at her office, this ... shows that she is also a thief but she was not interrogated, despite my request for them to do so, on the contrary, she was promised a promotion if she lodge[d] the accusation ... against me.
- f. For all the aforesaid, and due to the social desolation of my prestige and dignity, especially [as] I became ... jobless, ... I am asking either for ... reinstatement to ... or an amount of compensation equal to \$20,000 ..."

Whereas, at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent answer until 31 March 2000;

Whereas the Respondent filed his Answer on 30 March 2000;

Whereas the Applicant filed Written Observations on 11 June 2000;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA as an Area staff member on a temporary indefinite appointment, subject to probationary service of twelve months, as Secretary "C", at the Amman Training Centre in Jordan, on 20 February 1995. On 19 March 1996, her appointment was confirmed in writing by the Field Personnel Officer and Deputy Field Administration Officer.

On 14 June 1997, in the presence of the Principal, Amman Training Centre, and two other staff members, the Applicant signed an affidavit confessing to having taken a colleague's ATM card and PIN number from her handbag and making four withdrawals from her bank account, totalling 350 Jordanian dinars (JD). On 19 June 1997, the colleague made a written complaint to this effect. On 25 June 1997, the Acting Director of UNWRA Operations, Jordan, wrote to the Applicant advising her that she was suspended as of close of business that day.

On 21 July 1997, the Deputy Director of UNWRA Operations, Jordan, interviewed the Applicant. In the course of this interview, the Applicant admitted taking the ATM card and PIN number and making the withdrawals, but claimed to have repaid the money. She would not verify her signature on the affidavit of 14 June. On 27 July 1997, the Director of UNWRA Operations, Jordan, (the Director) advised the Applicant that she would be terminated from the Agency's service for misconduct under Area staff regulation 10.2 and Area staff rule 110.1, with effect from close of business, 25 June 1997.

On 1 August 1997, the Applicant attempted to lodge an appeal with the Area Staff Joint Appeals Board (JAB). On 12 August, the Secretary of the JAB advised her that she should first request administrative review of the Director's decision. On 17 August 1997, the Applicant requested review of her termination and on the same day she lodged an appeal with the JAB. On 27 August, the Director denied her request.

The JAB adopted its report on 2 March 1998. Its evaluation, judgement and recommendation read as follows:

"III. EVALUATION AND JUDGEMENT

14. ...

(a) The Board noted the fact that the Appellant admitted that she removed the credit card and personal identification number from the bag of her colleague as an innocent joke, and that she used them to withdraw money from her colleague's bank account, which is something the Appellant could have easily denied if she had a pre-meditated intention to steal, taking into consideration that it is impossible to identify the person who withdrew the money.

Furthermore, the Appellant returned the money two days after the incident.

(b) The Board noted that, the [colleague] did not press charges to the police nor did she officially submit a complaint against the Appellant, instead she was called to the Principal's office to sign an affidavit several days after the money was returned to her.

(c) The Board is of the opinion that the Appellant made a mistake by taking and using the ATM card and the PIN but it [was not] a mistake that justifies termination of her services for misconduct, because good intentions were the basis of her relationship with the staff member concerned.

IV. RECOMMENDATION

15. ... the Board unanimously makes its recommendation that the Administration's decision appealed against be reviewed with a view to reinstating the Appellant and taking any disciplinary measure(s) excluding termination of her services, and that her absence as from 25 June 1997 be dealt with in accordance with standing UNRWA Rules and Regulations]."

On 2 April 1998, the Commissioner-General transmitted a copy of the JAB report to the Applicant and informed her as follows:

"...

I have carefully reviewed the Board's report and considered the recommendation. However, I cannot accept the recommendation. In my view, the Board failed to appreciate the serious nature of your actions. I do not agree or accept that it was a joke, or that there was no premeditation, when you went to the bank four times and withdrew money each time, until JD 350 had been withdrawn and your colleague's account was empty. I believe that such conduct warrants the disciplinary measure imposed, namely termination for misconduct. Consequently, I hereby dismiss the appeal."

On 27 September 1999, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The penalty exacted by the Commissioner-General for the alleged misconduct should have been a warning and not discharge for misconduct.

2. The Commissioner-General erred by not acceding to the report of the JAB, which recommended reinstatement and disciplinary action excluding termination.

3. The matter was improperly investigated and the Applicant was not afforded the right to defend herself.

4. The allegations against the Applicant were based on bias and were improperly motivated.

5. The matter in question is outside the jurisdiction of UNWRA, is purely personal and was the result of a practical joke between two colleagues.

Whereas the Respondent's principal contentions are:

1. The Commissioner-General can exercise broad discretionary powers with regard to disciplinary matters and this includes determination of what constitutes misconduct as well as the appropriate sanction.

2. The determination of the Field Director that the Applicant engaged in misconduct was proper and was supported by the evidence; consequently the imposition of a disciplinary measure was appropriate.

3. The Administration's decision to terminate the Applicant was proper in light of the seriousness of the conduct. The disciplinary measure of termination for misconduct imposed on the Applicant was appropriate.

The Tribunal, having deliberated from 28 June to 26 July 2001 in Geneva, and from 1 to 20 November 2001 in New York, now pronounces the following Judgement:

I. There is a large measure of agreement regarding the background facts of this Application. On Saturday 31 May 1997, the Applicant then employed as a Secretary by UNRWA at Amman Training College, Education Department, took possession of an ATM card (Automatic Teller Machine Card) and a card bearing the PIN number required to operate same, from the desk or handbag of a colleague. She took them without the knowledge or permission of the owner of these items and she attended at the branch of a local bank where a Teller Machine was located and by

means of four transactions she drew down the sum of JD 350 from her colleague's account thereby clearing it of its credit balance.

II. The Applicant maintains that this was not an act of dishonesty and therefore it was not misconduct. Alternatively she submits that if it amounts to misconduct it should, in accordance with what she says is established practice, have been preceded by three written warnings and a final warning before she could be legitimately terminated. In the alternative she submits that it was a matter between herself and her said colleague which ought not have legitimately concerned UNRWA and that her actions did not contravene any specific staff rule as the Staff Rules did not contemplate or acknowledge ATM machines or ATM cards so that no staff rule was breached.

The Applicant has maintained that she took her colleague's card and PIN number "as a joke" and that she withdrew the money as a joke because the colleague in question had previously played a joke on the Applicant by hiding her handbag until the end of work one day. She maintains that she further engaged in the exercise to give her colleague a practical demonstration or lesson as to her foolishness in leaving her ATM card and the PIN number exposed on her desk, where they might be stolen. She maintains that it was her intention to give back the JD 350 to her colleague the next day. As it transpired, her said colleague accused the Applicant of having taken the card and PIN number and withdrawn the money and she indicated that she had evidence to support those accusations and threatened she would go to the police, only then did the Applicant admit to having done so and promised to repay the money. Even then it was necessary for the Applicant to take her said colleague back to the Applicant's home and on to the Applicant's bank in order to get money to pay restitution and even then she was JD 20 short, which she promised to pay to her colleague at a later date.

The Applicant submits that her said colleague never initiated a complaint against her at her own initiative and that this was not done until the intervention of one of her superiors whom she claims bore a grudge against the Applicant. This may or may not be so but it is irrelevant. What matters here was whether there was evidence of misconduct or whether what happened should rather be properly classed as a joke or a mistake which ought not to be classified as misconduct.

III. A JAB was duly convened to investigate the matter and to make recommendations. It concluded that there was not sufficient evidence to establish fraudulent intent on the part of the Applicant. It appears to the Tribunal that this finding arose primarily because the JAB had inferred from the fact that the Applicant had admitted acts which might otherwise have been difficult to prove and because she had repaid the money to her colleague two days later, that this was inconsistent with guilty intent. It further considered relevant the fact that the colleague whose ATM card had been taken and whose account had been drawn down did not voluntarily initiate a complaint on her own initiative, but that it was instigated by their Principal. In the circumstances the JAB saw fit to categorise the Applicant's actions as "a mistake" and at that a mistake which did not justify termination for misconduct "because good intentions were the basis of her relationship with the staff member concerned".

On being asked to reconsider the earlier decision to terminate the Applicant's appointment for misconduct in the light of the findings and recommendation of the JAB, the Respondent declined to alter the earlier decision. He did not agree with the JAB that the Applicant's actions could reasonably be described as a joke. He expressed his view that it was misconduct and that termination was warranted. He pointed out that there had been four separate withdrawals so as to empty out the colleague's account. These were never explained. He impliedly posed the question as to why this had been done as if all the Applicant had intended was to perpetuate a joke or to give her colleague a salutary lesson as to the foolishness of keeping her PIN number alongside her ATM card, one withdrawal would have sufficed.

IV. The Respondent in his Answer filed in these proceedings further points to the Applicant's failure to have volunteered her actions of the previous Saturday to her colleague when they met on the following Monday and points to the sequence, that it was her colleague who had confronted and accused the Applicant and threatened the police before the Applicant made the admission. He further points out that when the admission was made, that it was necessary for the Applicant to bring her colleague to the Applicant's house and thereafter to the Applicant's bank to get the money to make restitution and even then she was unable to do so and had to owe the said colleague JD 20.

It is submitted that had the Applicant truly intended her actions as a joke she would have announced her involvement before being accused and threatened with the police and she would have been then and there in sufficient funds to make immediate restitution.

V. The Tribunal having carefully considered the record and the submissions of both parties is fully satisfied that the view on the facts taken by the Respondent when he determined that the Applicant's conduct amounted to misconduct was very fair, proper and reasonable. The decision was neither arbitrary, based on a mistake of fact nor influenced by prejudice or bias. Many people when told that there is evidence to incriminate them admit their involvement in the events alleged and the Tribunal cannot accept that the Applicant's admissions (the bulk of which in any event she later retracted) were hallmarks of innocence. The Tribunal rejects the JAB's observation that the matter was one between colleagues and consequent implication, therefore of little concern to an organization, particularly when not initiated by a complaint made by the colleague on her own initiative.

VI. Where it appears to an organization that there is evidence which suggests that one staff member has stolen from another, it is clearly a matter properly meriting the interest of the employing organization and if facts are found which establish such theft, then a finding of misconduct is open to the Administration and termination could well be considered justifiable without the need for previous reprimands or warnings.

VII. Although the issue was not raised by the Applicant, the Tribunal has considered whether summary dismissal for the taking of JD 350 was disproportionate. The Tribunal is not persuaded that it was.

VIII. In the circumstances all of the Applicant's claims are rejected and the Applicant's Application is dismissed in its entirety.

(Signatures)

Kevin HAUGH
Second Vice-President, presiding

Marsha A. ECHOLS
Member

Spyridon FLOGAITIS
Member

New York, 20 November 2001

Maritza STRUYVENBERG
Executive Secretary