



Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 1027

Case No. 1133: ODEH

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. Julio Barboza, First Vice-President, presiding; Mr. Kevin Haugh,
Second Vice-President; Ms. Marsha Echols;

Whereas, on 20 April 2000, Adnan Abdallah Tayem Odeh, 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 containing pleas which
read as follows:

"PLEAS

- I [appeal] against the decision [to terminate] my services with UNRWA as an
Obstetrician/Gynaecologist on 8.3.99.
- I [contest] all the letters of reprimand, the letter of censure, and all subsequent
measures. None of these had ever been investigated or their content ever ascertained,
despite my repeated requests for full investigation.
- I invoke to clear my name of the libelous statements, accusations, insults and
offenses by the Agency Officials on my person to humiliate me which, in turn, gravely
damaged my career and reputation *including*:

1. The sanctity of my dwelling was breached by the Officer-in-Charge on 5.1.98 ...
2. I was falsely accused by the Chief, Field Health Programme, of issuing threats to kill the Officer-in-Charge ...
3. To further defame me, the Chief, Field Health Programme, alleged that he gained access, illegally, to my service file in the Medical Association, and subsequently he claimed that the Medical Association had served me with a letter of censure due to that presumed threat ...
4. I was accused by the Chief, Field Health Programme, of threatening the anesthetic's technician ...
5. The Officer-in Charge openly challenged the validity of my professional competence and experience ...
6. I was referred to [the] Governor['s] Office by the Hospital Director and insulted by the Governor thereafter. The Hospital Director influenced the Deputy Governor who was a personal friend of his ...
7. The Hospital Director was responsible for me being summoned to the Palestinian Preventive Security System/Establishments and Hospitals Division ... Also, he defamed me by stating that he received comments from the Preventive Security System on my misconduct ...
8. In order to further damage my career and reputation, both the Hospital Director and Chief, Field Health Programme, tried to involve me in a sexual scandal and to link my termination to moral misconduct. The public notion in my local, semi-closed society took that path ...
9. I was humiliated by the irresponsible, insulting utterances presented in the Hospital Director['s] letter ... which was not properly translated to English, particularly, the insulting statements ...

Amount of Compensation:

- I was supposed to work with the Agency until my retirement by the age of 60. Hence, I [request] compensation till that age. The contract has no time limits following completion of the initial 6 months' probationary period ...
- Compensation for the psychological trauma to me and my family and for the irreparable damage to my reputation and career as an Obstetrician and Gynecologist from the termination of my services in conjunction with social scandals. [The defamation] was devastating to the extent that once I received the Commissioner-

General[']s rejection of the Joint Appeals Board on 22.2.2000, I was obliged to migrate with my family to Jordan to avoid further damage and in an attempt to reestablish my career afresh.

- Compensation for the extra work I was forced to do during the period of my employment with UNRWA, against the Agency Work Laws ...
- Compensation for [barring] me from promotion, as I was denied promotion without assigning any valid reason since my employment ...
- Compensation and reconsideration for [the above]-mentioned irresponsible, humiliating statements, insults and offenses on my person to humiliate me by the Agency Officials which were supported and upheld by the Agency."

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 30 November 2000 and thereafter until 31 December 2000;

Whereas the Respondent filed his Answer on 19 December 2000;

Whereas the facts in the case are as follows:

The Applicant entered the service of the Agency on 1 May 1997, on an eight-month fixed-term contract as an Obstetrician/Gynaecologist, Qalqilia Hospital, West Bank. On 1 January 1998, the Applicant's contract was extended until 31 December 1999. The Applicant's appointment was terminated on 8 March 1999.

On 26 and 31 December 1997, the Applicant received letters of reprimand from the Officer-in-Charge, Qalqilia Hospital, (the Officer-in-Charge) for improper treatment of a patient and wrong treatment of a patient, respectively. On 1 January 1998, the Applicant wrote to the Chief, Field Health Programme, West Bank, (the CFHP), alleging that the reprimands were unjustified and asking him to investigate the matter. The same day, the Applicant received a third letter of reprimand from the Officer-in-Charge, for delay in reporting for duty and falsifying his arrival time. The following day, 2 January 1998, the Applicant received a fourth letter of reprimand, from the CFHP, for having an "improper approach" towards his patients.

On 10 February 1998, the Officer-in-Charge prepared the Applicant's Periodic Report, rating him as unsatisfactory in all categories. He added "[t]he [staff member] was given a lot of letters of reprimand concerning his performance, judgement and relations, but he did not respond

and continuously creates a lot of problems". On 11 February 1998, the CFHP, wrote to the Field Personnel Officer (FPO) in connection with the Periodic Report. He agreed that the Applicant had "difficulties in dealing with people", but disagreed that his technical ability was inadequate. He presumed that some of the Applicant's ratings were influenced by the Officer-in-Charge, following a series of clashes. He asked the FPO to "alert the [Applicant] about his negative behaviour, [as] this no doubt would affect his employment with UNRWA".

On 18 February 1998, the Field Administration Officer, West Bank, issued a letter of written censure to the Applicant, citing complaints of "misbehaviour" and poor evaluation.

On 22 November 1998, the Applicant received a performance evaluation report (PER). The Hospital Director, his First Reporting Officer, concluded that, while the Applicant was technically competent, he did not have good relationships with his colleagues. The Second Reporting Officer, CFHP, recommended that the Applicant's contract should not be extended.

Following a series of incidents at the hospital in December 1998, in which the Applicant was involved, on 13 January 1999, the CFHP wrote to the FPO recommending that the Applicant's appointment be terminated.

On 8 February 1999, the Director of UNRWA Operations, West Bank, advised the Applicant that, in light of his continued poor performance and the recent incidents, his appointment would be terminated in accordance with clause 17 of his letter of appointment, effective 8 March 1999.

On 24 February 1999, the Applicant requested administrative review of the decision to terminate his appointment. The Director of UNRWA Operations, West Bank, replied on 1 April 1999, stating that he saw no basis to reverse the decision.

On 27 April 1999, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB submitted its report on 22 August 1999. Its evaluation, judgement and recommendation read as follows:

"III. EVALUATION AND JUDGEMENT

17. ...

i) The Board noted that the termination of the Appellant's appointment was not properly made in accordance with Area Staff Rules and Regulations.

a) ... the Board noted the following:

...

... the ... periodic report [dated 13 February 1998] was tampered with (the whole aspects of the ratings were changed from satisfactory to unsatisfactory) in a way which makes the board doubt the credibility of this report.

Furthermore, the Board noted that section 5 (Professional and Technical Competence) which usually depends on the staff member's qualifications and experience, was not logically evaluated. In this respect the letter from [the] Chief, Field Health Programme to [the] Field [P]ersonnel Officer dated 11 February 1998 supported the Board's point of view that the evaluation of the Appellant was not fair and that there should have been an investigation in the matter.

...

b) [With] reference to the four letters of reprimand the Board noted the following:

1) The Board believes that the first letter of reprimand dated 26 December 1997 ... was unfounded and issuing disciplinary measures in this case is inappropriate.

2) The second letter of reprimand dated 31 December 1997 ... was unfounded.

3) The letter of reprimand dated 1 January 1998 ... [was] also unfounded.

4) The letter of reprimand dated 2 January 1998, from the Chief, Field Health Programme ... was unfounded ...

ii) The Board is of the opinion that all the following consequences were based on unjustified measures that led each party to personalize the technical and the administrative matters.

IV. RECOMMENDATION

18. ..., the Board unanimously makes its recommendation that the Administration's decision appealed against be reviewed."

On 24 September 1999, the Commissioner-General transmitted a copy of the JAB report to the Applicant and informed him as follows:

"...

The Board did not question any of the bases for the Administration's decision to terminate your services which are clearly set out in the letter of termination dated 8 February 1999. Nor did the Board question other relevant facts leading to the decision. However, the Board did question the correctness of the letters of reprimand addressed to you and the first Performance Evaluation Report completed in February 1998 and opined that 'all the following consequences were based on unjustified measures that led each party to personalize the technical and the administrative matters'. The Board therefore recommended that the decision appealed against should be reviewed. In view of the Board's apparent misgivings I have accepted the recommendation that the Administration's decision appealed against should be reviewed before a final decision is taken on your appeal.

..."

On 15 February 2000, the Commissioner-General informed the Applicant, that the Administration's review of his case confirmed that the decision to "terminate his services for misconduct was not tainted by improper motives and extraneous factors and that the JAB's apparent misgivings [were] without foundation." Accordingly, he decided to uphold the decision appealed against.

On 20 April 2000, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Applicant had a right to employment with the Agency until retirement.
2. The Applicant was denied promotion.
3. The letters of reprimand and the letter of censure were not investigated, despite the fact that the Applicant contested them.
4. The Respondent's actions humiliated the Applicant and caused grave damage to his career and reputation.

Whereas the Respondent's principal contentions are:

1. The majority of the Applicant's pleas are non-receivable, as the Applicant did not request administrative review thereof or appeal such decisions to the JAB. The Applicant's plea contesting his termination is the sole plea receivable by the Tribunal.

2. The JAB erred in concluding that the Area Staff Regulations and Rules were not followed, as the Applicant's letter of appointment expressly states that he is not an Area staff member.

3. The JAB erred in its findings of fact and law, and in its recommendation.

4. The appropriate standard of review is whether the decision to terminate the Applicant's appointment was vitiated by improper motive or was procedurally defective. The Applicant bears the onus of proof in this matter.

5. The Respondent's decision was procedurally correct and not motivated by any improper motive.

6. The Applicant's contract was for a short, fixed-term period and gave no expectation of employment until retirement.

The Tribunal, having deliberated from 24 October to 21 November 2001, now pronounces the following Judgement:

I. The Tribunal notes that, in addition to the termination of the Applicant's appointment, he has raised a number of issues for consideration which were neither challenged by the Applicant at the time they occurred, nor the subject of requests for administrative review or appeals before the JAB. Therefore, the Tribunal declares all matters other than the termination of appointment non-receivable.

II. It is clear from the letter of 8 February 1999 that the issue of the allegedly bad staff relationships (allegedly caused by or arising from the employment of the Applicant) was a central consideration in the decision to terminate the Applicant's appointment as Obstetrician and Gynaecologist at Qalqilia Hospital. If that was ever in doubt, it became absolutely clear on a reading of the documentation submitted by the parties to the JAB to which the Applicant had appealed the said decision.

III. Even a cursory reading of the said documentation reveals a sorry story of appalling feuding, particularly as between the Applicant and the Officer-in-Charge of the said Hospital. That this was so, is even more apparent on the reading of the documentation submitted by the parties in this Application to the Tribunal and in the Respondent's Answer thereto.

A consideration of both the JAB documents and the documents relating to this Application, reveals a virtual war of attrition as between the Applicant and the said Officer-in-Charge of the Hospital, with the resultant polarisation of staff who were either drawn into the said dispute or clearly influenced by the said conflict. Many a reader of the said documents might be inclined towards the view "*that there were two of them in it*" and that the Applicant's obvious antipathy or hostility or perhaps even blind prejudice towards the Officer-in-Charge was matched by similar feelings and emotions demonstrated by the Officer-in-Charge of the Hospital towards the Applicant. That these two protagonists were at each other's throats seems clear to the Tribunal, beyond issue, but to concentrate the rights and wrongs of that dispute and the personnel drawn into it is to become distracted from the real issues central to the proceedings before the JAB and to these proceedings before the Tribunal, which involve the lawfulness or efficacy or otherwise, of the decision to terminate the Applicant's appointment and whether same was tainted by prejudice, improper motive or was otherwise procedurally defective.

IV. In the view of the Tribunal, the JAB took an overly restrictive view of the issues raised in the appeal before it. In its report and recommendations it confined itself to consideration of matters which, in the view of the Tribunal, were somewhat peripheral to the central issue and the Tribunal further considers that the JAB dealt with the limited issues which it considered in an overly simplistic fashion. In essence, the JAB confined itself to what were essentially the limited issues as to the manner of the completion of the Applicant's PER of 13 February 1998 and to a likewise over-simplistic analysis of the background to four letters of reprimand, dated 26 and 31 December 1997 and 1 and 2 January 1998 rather than to deal with the broader picture and to deal with the wider issues which were clearly pertinent to the decision to terminate the Applicant's said appointment and to investigate all of the issues identified in the Respondent's letter of termination.

V. At this juncture, it is important to recall and to identify the nature and terms of the Applicant's appointment to the said post as Obstetrician/Gynaecologist at the Qalqilia Hospital. He was appointed by a Category X letter of appointment initially until 31 December 1997 but which was on 1 January 1998 extended to 31 December 1999. Accordingly, the Applicant's appointment never carried with, on its face, a legal expectation or entitlement to continue until "ordinary retirement age" as is alleged by the Applicant.

The said letter of appointment expressly provided that the Applicant should not be considered in any respect "as being an Area Staff member" and should not be "subject to any of the Staff Regulations and Staff Rules and other conditions of service applicable to Area Staff members" except where otherwise expressly provided and the said letter of appointment provided at paragraph 17 (A) thereof that "following the confirmation of this appointment ... this appointment may be terminated by the Agency at its discretion at any time after giving [the Applicant] not less than 30 calendar days written notice". Notwithstanding the above, the Respondent has conceded for the purposes of this Application that the Applicant enjoyed similar legal protection to that enjoyed by Area staff members. In effect, the Respondent concedes that to achieve an effective and lawful early termination of the Applicant's appointment, the Tribunal should be satisfied that it was effected "in the interest of the Agency" and that it was not arbitrary or capricious and establish that it was not as a result of or tainted by, prejudice, malice, improper motive or other extraneous consideration. The Tribunal considers that the said concession was appropriately and properly made and recognizes that it properly states the true legal position and the rights of the Applicant.

VI. In addition to the matters which were considered by the JAB, the said letter of termination had made reference to allegations of irresponsible behaviour on the part of the Applicant, said to have occurred on 28 and 29 December 1998. These allegations concerned complaints that he had summoned his brother-in-law, an Anesthesiologist, to treat a patient when his brother-in-law, had to the knowledge of the Applicant, been suspended from duty and when the Applicant had been informed that a new Anesthesiologist had been summoned to the Hospital to treat the said patient and that he was on his way and to an allegation that the Applicant had refused to allow the said new Anesthesiologist to examine the said patient or to conduct a procedure on her which the Director had arranged for him to carry out and that the

Applicant had refused to administer blood to the said patient although same had been recommended by the said new Anesthesiologist.

VII. Apart from disputing the date upon which the Applicant's brother-in-law had attended at the said Hospital and from disputing that his said brother-in-law had ever actually attended the said patient (an allegation which had not been made against him) the Applicant denied the said charges. These said complaints or charges were never investigated by the JAB nor had it purported to make any findings or recommendations on foot thereof.

VIII. As already stated, the JAB has dealt only with limited issues raised by the letter of termination. Having considered only those limited issues it expressed the suspicion that the Applicant's first performance report had been tampered with in a way which caused the JAB to doubt its credibility, and having expressed the opinion that the section headed "Professional and Technical Competence" therein had not been logically evaluated, and having expressed the opinion that the four letters of reprimand were either inappropriate or unfounded, made its recommendation that the administrative decision appealed against should be reviewed.

IX. The Tribunal is satisfied that following upon the said recommendation the Respondent caused a thorough review of the issues which had been raised and of the matters relied upon for the decision to terminate the Applicant's appointment and the Tribunal is satisfied that such a review was carried out. Having considered the findings of the said review the Respondent concluded that the decision "to terminate the Applicant's appointment for misconduct was not tainted by any improper motives or extraneous factors" and that the misgivings expressed by the JAB relating to the Applicant's first performance report and to the correctness of the letters of reprimand already referred to were without foundation and decided to dismiss the Applicant's appeal.

X. At this point it is perhaps appropriate to contrast the wording of the letter of 8 February 1999 (in which the Applicant was first notified of the decision to terminate his appointment in accordance with clause 17 of his letter of appointment) with the wording of the letter of

15 February 2000, wherein the Commissioner-General confirmed the decision, having reviewed the case in the light of the recommendation of the JAB.

The letter of 15 February 2000 contains for the first time the assertion that the original decision had been made to terminate the Applicant's services for "misconduct". The letter of 8 February 1999 contains no such words but clearly indicates that the decision had been made on findings of unsatisfactory relations as between the Applicant and both colleagues and patients, and on findings of "poor conduct" and on findings of behaviour of an irresponsible manner both with clients and colleagues on 28 and 29 November 1998 which have been detailed above.

It seems clear to the Tribunal that the Respondent's decision to invoke clause 17 of the letter of appointment had essentially been made on being satisfied that the Applicant's continuing presence in the said Hospital was not conducive to the maintenance of good order and good staff relations in the said Hospital and that his continuing presence there was not conducive to the smooth or efficient running of the Hospital whether his behaviour was categorized as misconduct or otherwise. In the circumstances, the Tribunal considers that the use of the term "misconduct" in the letter of 15 February 2000 was in effect surplusage and that in essence the decision had been made "in the interest of the Agency" independently of where fault might lie.

XI. The Tribunal is satisfied that there was ample cogent material available to the Respondent to justify both the initial decision to terminate the Applicant's appointment and to justify the affirmation of that decision when it was reviewed by the Respondent in accordance with the JAB's recommendation.

On any reading of the papers, it is clear that a situation of grave disharmony existed within the Qalqilia Hospital throughout the duration of the Applicant's appointment and that rifts and divisions had arisen within the staff employed there, which were either caused or contributed to by the Applicant's inability to work harmoniously along with other members of the staff and that accordingly the Respondent was entitled to prematurely determine the Applicant's appointment having given thirty days notice, as the said decision was clearly made in the interest of the Agency. The Tribunal finds that the Applicant has not established malice, prejudice or other improper motive for the said decision nor can it find evidence that it arose from the consideration of any extraneous or improper matter or that it was tainted by any improper consideration and accordingly is satisfied that the said decision was lawful and effective.

XII. In view of the foregoing, the Application is rejected in its entirety.

(Signatures)

Julio BARBOZA
First Vice-President, presiding

Kevin HAUGH
Second Vice-President

New York, 21 November 2001

Maritza STRUYVENBERG
Executive Secretary

* * *

DISSENTING OPINION OF MS. MARSHA A. ECHOLS

I. I dissent.

II. Although clause 17 (A) of the Applicant's letter of appointment authorized the Respondent to terminate the appointment at his discretion with not less than thirty days notice or if certain other circumstances existed - *i.e.*, without giving a reason - the Respondent issued a letter of termination that cited reasons for the termination.

The reasons given to the Applicant included difficulties in dealing with staff and patients, physical harassment and a low standard of personal relations for which the Applicant had received a written censure. The letter of termination also noted that the Applicant had behaved "in an irresponsible manner with ... clients and colleagues" on two days. The statement of justification for the termination might have been provided because the Respondent considered that the Applicant enjoyed legal protection similar to that enjoyed by Area staff members under Chapter IX of the Area Staff Regulations, which protection includes termination only if there is a

justification. None of these circumstances individually or collectively was termed misconduct. The effect of the action was a separation from service under Chapter IX of the Area Staff Regulations, instead of under Chapter X. A confirmation of the view that this was considered to be a Chapter IX termination is provided by the fact that the Applicant's appeal was heard by a JAB rather than by a Joint Disciplinary Committee (JDC).

III. In a brief report, the JAB questioned the foundation for certain conclusions the Respondent had made and noted that "all the following consequences were based on unjustified measures that led each party to personalize the technical and the administrative matters". It recommended that the "decision" "be reviewed". The Respondent accepted the recommendation, stating that the review would occur before a final decision was taken on the appeal.

IV. After reviewing the Applicant's personal file, the JAB report and the Applicant's submissions to the JAB, in a February 2000 letter to the Applicant, the Respondent concluded that the review had confirmed the propriety of his "decision to terminate your services *for misconduct*". (Emphasis added.) It is the February 2000 decision that is appealed by the Applicant.

V. Although the facts had not changed and still revealed the problematic behavior of both sides, the February 2000 decision characterizing the behavior of the Applicant as misconduct and terminating him on that basis cannot be excused by calling the use of the legal term a "surplusage", as the majority does. "Misconduct" is a legal term of art and is defined in Area staff regulation 10.2. A charge of misconduct leads to the institution of disciplinary proceedings according to Area staff rule 110.1. These rules to a great extent protect staff members and restrict the discretion otherwise accorded to the Agency in personnel matters.

Although the Applicant was terminated for misconduct, the Staff Regulations and Staff Rules regarding disciplinary procedures were not followed.

VI. It is unimportant that the interests of the Agency might have been served by the Applicant's separation from service, since the "interest of the Agency" was not given as a justification for the termination in either letter, although it is an option under Area staff regulation 9.1. A dismissal for misconduct is a disciplinary measure that must be preceded by referral to a JDC.

VII. The Tribunal has said consistently that the legality of a determination by the Respondent will be judged by the rationale stated. (See Judgement No. 1003, *Shasha'a* (2001).) This is the rule followed even when the Agency is not obligated to offer a reason for its action.

The February 2000 letter also raises the question of notice to the Applicant. Staff Regulations and Rules, as interpreted by the Tribunal, require that a staff member be notified and given an opportunity to respond to claims. (See Judgement No. 744, *Eren et al* (1995).) The Applicant had no opportunity to respond to the charge of misconduct before he was terminated.

VIII. In view of the foregoing, I cannot join in the majority opinion.

(Signatures)

Marsha A. ECHOLS
Member

New York, 21 November 2001

Maritza STRUYVENBERG
Executive Secretary