



**Administrative Tribunal**

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1044

Case No. 1147: KHALILI

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

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Kevin Haugh, Vice-President presiding; Mr. Spyridon Flogaitis;  
Ms. Brigitte Stern;

Whereas at the request of Mariam Khalili, 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), the President of the Tribunal, with the agreement of the Respondent, extended to 31 July 2000 the time limit for the filing of an application with the Tribunal;

Whereas, on 15 July 2000, the Applicant filed an Application requesting the Tribunal to:

"...

- a. [Rescind] the contested decision.
- b. [Consider the] period of cessation special leave without pay.
- c. [Compensate the] Applicant for injury and expense sustained."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 March 2001, and periodically thereafter until 30 September 2001;

Whereas the Respondent filed his Answer on 23 September 2001;

Whereas, on 12 April 2002, the Applicant filed Written Observations and, on 25 June 2002, the Respondent submitted comments thereon:

Whereas the facts in the case are as follows:

The Applicant joined the Agency as an Area staff member in the capacity of Area Education Officer, North Area, Aleppo, Syria, (AEDO) at Grade 13, on a temporary indefinite appointment, on 1 September 1994.

On 3 February 1997, the Director of UNRWA Affairs, Syrian Arab Republic (SAR) wrote to the Applicant stating that he had received a report that she might "be guilty of serious misconduct" in connection with "the recent mid-term school exams in the North Area", that an investigation was being made and that she would be suspended from duty without pay effective 4 February 1997 under staff rule 110.2.

On 4 February 1997, the Director of UNRWA Affairs, SAR, convened a Board of Inquiry (BOI) to investigate alleged improprieties perpetrated by certain staff members during the recent mid-term school exam in the North Area which led to disruption in the exam. The BOI was asked to submit its report no later than 19 February 1997.

In its report of 9 March 1997, the BOI found, inter alia, that the Applicant:

- "(a) Did not properly monitor the preparations for the Unified English Exam or give guidance to the Head Teachers of the schools;
- (b) Did not properly supervise the Exam itself;
- (c) Failed to notify her supervisors that certain improprieties had taken place at two of the schools as she 'did not consider the matter serious';
- (d) Did not properly instruct the committees composed for correction of the Exam on the procedures to be followed;

(e) Did not properly conduct an internal investigation into alleged manipulation of exam papers at the Zeeb School, in particular by influencing the results; and,

(f) Illegally attempted to gain access to her desk drawer, through the Education Clerk, during the period of suspension."

On 24 April 1997, the BOI presented the Applicant with the above allegations and requested her to "reply and comment" thereon. In her reply, the Applicant complained that the BOI lacked "neutrality and honesty" and indicated that the accusations against her were the result of "wilful planning of the Area Officer who has a grudge against me". On 27 April, the Applicant wrote to the Director of UNRWA Affairs, SAR, setting out her version of the case. She stated that several people interviewed by the BOI had misrepresented the facts, that she had been falsely accused, and insisted that she was the victim of a conspiracy on the part of certain staff members who were not happy with her appointment as AEDO. She was informed that, as the investigation proceedings were still underway, her letter would be forwarded to the BOI for its consideration.

On 30 June 1997, the Officer-in-Charge of UNRWA Affairs, SAR, advised the Applicant that, based on the findings of the BOI report, he had decided that her conduct was incompatible with the status of an UNRWA staff member and that, therefore, he 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 2 July 1997. On 6 July 1997, the Applicant addressed a memorandum to the Director of UNRWA Affairs, SAR, requesting review of the decision which was "built completely on false and foundless accusations and ... vitiated by prejudice and other *improper* extraneous factors". On 21 July 1997, the Officer-in-Charge of UNRWA Affairs, SAR, advised her that the decision stood.

On 15 November 1997, the Applicant lodged an appeal with the Area Staff Joint Appeals Board (JAB). The JAB adopted its report on 29 June 1999. Its evaluation, judgement, and recommendation read, in part, as follows:

### **"III. EVALUATION AND JUDGMENT**

20. ...

...

C) ... [T]he Board establishes that the punishment is too harsh and that the Appellant was severely punished on behalf of a whole bunch of people.

#### **IV. RECOMMENDATION**

21. In view of the forgoing ... the Board unanimously makes its recommendation that the decision to terminate the Appellant's appointment in the interest of the Agency should be reviewed with a view of reinstating the Appellant and to be punished with a punishment commensurate with the reviewed."

On 28 July 1999, the Commissioner-General transmitted a copy of the JAB report to the Applicant and informed her as follows:

"...

I believe that the Joint Appeals Board's evaluation of the case and its conclusions are incorrect. ...

In concluding that the decision ... should be reviewed with a view to reinstating you and to punishing you with a punishment commensurate with the reviewed decision the Board appears to erroneously characterize the decision taken as a disciplinary measure. A termination in the interest of the Agency is an administrative measure which does not constitute a 'punishment'. Such an administrative decision is taken when the Agency loses faith in a staff member's ability to perform his or her duties.

In view of the above, I have rejected the recommendation of the [JAB] that the Administration's decision ... should be reviewed and I have dismissed your appeal.

..."

On 15 July 2000, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The findings of the BOI as well as the contested decision are premised on mistake of facts, error of law, bias and prejudice.
2. The Applicant was the victim of a conspiracy perpetrated by the Area Officer and the Chief, Field Education Programme, who were not happy with her appointment as AEDO.

3. The fact that other exams in Arabic and English went smoothly is evidence that the charges against the Applicant were fabricated. The Applicant did all she could in a timely fashion and with dedication.

Whereas the Respondent's principal contentions are:

1. As it appeared that there was a *prima facie* case that the Applicant may have committed serious misconduct, she was properly suspended without pay in accordance with the provisions of area staff rule 110.2, pending the outcome of the BOI's investigation.

2. As the Applicant was suspended without prejudice to her rights, on the termination of her appointment in the interest of the Agency, she was paid her full salary for the period between her suspension from duty and the effective date of termination.

3. The decision to terminate the Applicant's appointment in the interest of the Agency fell within the discretion of the Respondent, was appropriate in the circumstances, and was not vitiated by improper motive or procedural defect.

4. The Applicant was not made a scapegoat for the misconduct of other staff members: a number of teachers were disciplined for their role in this unfortunate exam process.

The Tribunal, having deliberated from 1 to 23 July 2002, now pronounces the following Judgement:

I. It appears to the Tribunal that there is an incontrovertible or inescapable logic to the proposition that if individual teachers are to be held accountable and responsible for their individual failures to comply with protocols, regulations or norms in the exercise by them of their functions relating to the Unified English Exam and that such individual teachers should be required to suffer punishment for their failures, that little responsibility for those failures could ordinarily be attributable to the alleged inadequate instruction or supervision by the Applicant of those teachers, particularly when the teachers worked at different centres so that individual physical supervision of each of them by the Applicant would not have been possible. Conversely, it appears that if the failures of the individual teachers in the manner alleged were due to lack of instruction and supervision of them by the Applicant, they, the individual teachers,

should have been excused the various failures found against them, so that they should not have been punished for their individual failures as if they had been guilty of misconduct.

This is self-evident, because if the individual teachers' failures arose by reason of the fact that they had not been adequately instructed or supervised and that consequently they did not know what to do, then the fault or responsibility lay with the person who was meant to carry out the instruction or supervision and not with the individual teachers. On the other hand, if the teachers breached standards or regulations which they knew about or which they ought to have known about either intuitively or from experience, then the teachers themselves ought to have been seen as culpable so that their failures ought not to have been attributable to a lack of supervision or instruction.

Arising from the investigations made in relation to the particular Unified English Exam some six teachers and one school supervisor were found to have been guilty of misconduct and each was censured and each was suspended from duty without pay for periods varying between one week and six months. In the opinion of the Tribunal the logic of the situation is that the Administration must have considered that each and every one of those persons had acted culpably by virtue of their individual failures or breaches so that their actions could not have been excused by reason of ignorance arising either from lack of supervision or from lack of instruction. Nonetheless, it is now submitted as against the Applicant that it was her failure in relation to the matter of supervision or instruction which caused the breaches or departures from expected standards, being the very same failures or departures for which those teachers were punished.

II. This problem or paradox is very important in the instant case as the Administration asserts that it was the adverse findings made against the Applicant in relation to supervision and instruction of those teachers which was the primary reason for the administrative decision to terminate her position "*in the interest of the Agency*" and that this consequence would have ensued, even without the other findings made against her which the Administration accepts or argues were secondary or peripheral. Whilst the BOI and to a lesser extent the JAB found unfavourably against the Applicant on the supervision issue, it did so in a somewhat unspecific way. It failed to identify individual acts or omissions on the part of the Applicant, said to have been responsible for the teachers' wrongdoings or failures in relation to matters which the

teachers would not have been expected to have known, in the absence of proper instruction or supervision.

III. The Tribunal is likewise concerned about another aspect of the case which appears to create another self-evident paradox or contradiction. When by letter of 3 February 1997, the Director of UNRWA Affairs, SAR, wrote to the Applicant advising that it had been reported to him that she may be guilty of serious misconduct and advising her that she was suspended from duty without pay effective 4 February 1997 the charge that she had failed to give proper supervision in relation to the Exam was expressly described as a charge of serious misconduct. She was told that should the charge of serious misconduct prove to be well founded, she might be subject to summary dismissal or termination or other disciplinary measure in accordance with the appropriate Staff Rules. Again, when setting out the terms of reference of the BOI, the Director of UNRWA Affairs, SAR, recited that "*It would appear that certain improprieties have been perpetrated by certain staff members during the mid term school exam in North Area*" and the allegations against the Applicant alleged to constitute that impropriety were again set out in unambiguous terms as the failure to give proper supervision, in addition to the lesser or peripheral allegations made against her. The Tribunal is satisfied that this term "impropriety" connotes culpable conduct or wilful conduct of a sort meriting punishment rather than connotes conduct arising from innate inefficiency, inability or incapacity.

IV. It was on a finding on those self-same allegations adverse to the Applicant by the BOI which resulted in the administrative decision to terminate the Applicant's position, allegedly in the interest of the Agency. The Administration now seeks to maintain that these findings were not viewed as findings of misconduct and to argue that they merely caused the Administration to lose confidence in the Applicant and to thereby justify the decision to terminate her appointment "*in the interest of the Agency*". In the view of the Tribunal, having regard to the background as stated above it is impossible to accept that the findings made against the Applicant can now be regarded either by the Tribunal or by the Administration as being findings other than findings of misconduct. The Tribunal considers that the position which the Administration now seeks to take is quite untenable and illogical.

V. It seems clear to the Tribunal that the reality of the situation is that the Administration did consider the findings of the BOI constituted findings of misconduct and that it effectively determined to dismiss the Applicant, albeit that it chose to describe it as termination "*in the interest of the Agency*" which was not truly the case. The Tribunal further cannot accept that there is reasonable proportionality in a decision to terminate the Applicant's position for her shortcomings in supervision, when punishment of a far less severe nature was meted out against the individual teachers whose failures and whose breaches of regulations were said to have caused the Administration to suffer the embarrassment of which it now complains.

In all of the circumstances in the opinion of the Tribunal the decision to terminate the Applicant's appointment "*in the interest of the Agency*" was in effect a punishment and a disciplinary sanction made on a finding of misconduct rather than a dismissal in the interest of the Agency on the grounds that the Agency had lost confidence in the ability of the Applicant to perform her duties. (See Judgement No. 877, *Abdulhadi* (1998).) It accordingly orders that she should be reinstated in her position, and that having done so, should the Administration wish to punish her in relation to her supervisory shortcomings or in relation to the ancillary or secondary charges (which in the opinion of the Tribunal were properly made out) it would be difficult to justify punishment more harsh than that metered out to the individual teachers being a censure and a suspension without pay for such period as might be considered appropriate.

VI. In view of the foregoing, the Tribunal:

1. Finds in favour of the Applicant and orders the rescission of the decision of the Respondent, dated 30 June 1997, to terminate the Applicant's appointment in the interest of the Agency;
2. Orders that the Applicant be reinstated in a position with the grade and the step that she held when she was separated, with full payment of salary and emoluments from the date of her separation from service;
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, the Tribunal fixes the compensation to be paid to the Applicant at 18 months of her net base salary at the rate in effect at the date of her separation from service; and,



4. Rejects all other pleas.

(Signatures)

Kevin HAUGH  
Vice-President, presiding

Spyridon FLOGAITIS  
Member

Brigitte STERN  
Member

Geneva, 23 July 2002

Maritza STRUYVENBERG  
Executive Secretary