



**Administrative Tribunal**

Distr.  
LIMITED

AT/DEC/1092  
30 January 2003

ORIGINAL: ENGLISH

---

ADMINISTRATIVE TRIBUNAL

Judgement No. 1092

Case No. 1192: EL-HUDHUD

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. Julio Barboza, First Vice-President, presiding; Mr. Kevin Haugh,  
Second Vice-President; Ms. Brigitte Stern;

Whereas, on 2 October 2000, Tayseer Radwan El-Hudhud, 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 that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 10 May 2001, the Applicant, after making the necessary corrections, again filed an Application containing pleas which read, in part, as follows:

"Section II: PLEAS

...

- (a) ... I am requesting the Tribunal to order ... the [production of] files ...  
... I am requesting the Tribunal ... to ... [hear] ... witnesses ...

And I am requesting the Tribunal to order ... a scientific committee to judge the dispute in treating [specific patients] ...

- (b) I am requesting the Tribunal to order UNRWA ... to rescind the following decisions:
  1. The written reprimand ... dated 23 February 1997.
  2. The first written censure ... dated 7 April 1997.
  3. The second written censure and the unpaid suspension from duty for one week ... dated 28 April 1998.
  4. The decision ... not [to renew] my fixed-term contract.
- (c) I am requesting the Tribunal to [order my reinstatement] and ... transfer ... to Amman ...
- (d) I am asking for the appropriate compensation for ... financial, social and psychological injuries."

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 October 2001 and thereafter until 28 February 2002;

Whereas the Respondent filed his Answer on 28 February 2002;

Whereas the Applicant filed Written Observations on 4 May 2002;

Whereas, on 12 November 2002, the Tribunal decided not to hold oral proceedings in the case;

Whereas the facts in the case are as follows:

The Applicant entered the service of the Agency on 9 April 1994, on a 21-month fixed-term "Category X" contract as an Obstetrician/Gynecologist at the Grade 15 level, at Irbid Health Centre. His appointment was subsequently extended and, on 11 January 1999, the Applicant was granted Area staff member status with retroactive effect from 1 January 1997. The Applicant separated from service on 31 December 1999, at the expiration of his final fixed-term contract.

On 23 February 1997, the Applicant was served with a letter of reprimand for neglecting official obligations in favour of his private practice. On 7 April, he was informed that following a complaint which had been lodged concerning the standard of his official conduct, he was being served with a letter of censure and a one-day suspension from duty without pay.

A subsequent report on the Applicant's performance and conduct concluded that his performance, reliability and official conduct had deteriorated below the required standard and that the quality of his work and judgement was very poor. Accordingly, on 28 April 1998, the Applicant was served with a second letter of censure and was suspended from duty without pay for one week.

On 7 May 1998, the Applicant's periodic report for the period to 31 December 1997 was completed, reflecting unsatisfactory performance and stating that he "maintain[ed] only a minimum standard of efficiency". The Applicant's annual increment was deferred for nine months as a result.

On 15 June 1998, the Agency received an undated request from the Applicant for review of "a disciplinary measure". In his reply, the Officer-in-Charge, UNRWA Operations, Jordan, noted that, in view of the time limits contained in staff rule 111.3, he had reviewed only the decision to impose a second letter of censure and one-week suspension without pay and the decision to defer the Applicant's annual increment, and that he saw no reason to reverse either decision.

On 15 July 1998, the Applicant lodged an appeal with the Joint Appeals Board (JAB) regarding the disciplinary measures taken against him.

In his periodic report for the nine-month period to 1 October 1998, the Applicant's performance was rated as satisfactory; "a staff member who maintains a good standard of efficiency".

In its report of 19 April 1999, the JAB unanimously recommended that the decisions appealed against be upheld and the appeal be dismissed. The Commissioner-General accepted this recommendation on 12 May 1999.

In his periodic report for the one-year period to 1 October 1999, the Applicant's performance was again rated as satisfactory; "a staff member who maintains a good standard of efficiency".

On 19 October 1999, the Chief, Field Health Programme, Jordan, was informed that, as the Applicant's fixed-term contract was due to expire on 31 December, his recommendation on the extension of the Applicant's appointment was required. On 9 November, the Chief confirmed the continued need for the post but recommended against an extension of the Applicant's appointment in view of his unsatisfactory performance and conduct over the previous three years. The Chief noted that the Applicant's performance had improved during 1999 but

"not to the extent expected from a Senior Staff member" and that his relationship with his supervisors had remained "tense and difficult".

On 29 November 1999, the Director of UNRWA Operations, Jordan, advised the Applicant that his fixed-term contract would not be renewed. The Applicant requested administrative review of this decision on 27 December. On 24 January 2000, the Director of UNRWA Operations, Jordan, replied that the Applicant's letter of appointment had "clearly stated" that his fixed-term appointment would automatically expire on 31 December 1999 and that it "ha[d] not been possible to renew the ... contract".

On 16 February 2000, the Applicant lodged an appeal with the JAB against the decision not to renew his fixed-term contract. The JAB adopted its report on 18 June. Its evaluation and judgement, and recommendation, read, in part, as follows:

### **"III. EVALUATION AND JUDGEMENT**

28. ...

- a) The Board noted that the Administration's decision of non-renewal of the [Applicant's] fixed-term contract was properly made in accordance with Area Staff Rules and Regulations
- b) In this context, the Board believes that the Administration has acted within the framework of standing Rules and Regulations without the interference of prejudice or any other extraneous factors.

### **IV. RECOMMENDATION**

29. In view of the foregoing ..., the Board unanimously makes its recommendation to uphold the Administration's decision appealed against and that the case be dismissed."

On 18 July 2000, the Commissioner-General transmitted a copy of the report to the Applicant and informed the latter that he agreed with the JAB's findings and conclusion, and had decided to accept its unanimous recommendation and to dismiss the appeal.

On 10 May 2001, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Applicant only encountered problems with the Administration after he criticized the management style of the Medical Officer-in-Charge. He was one of a number of medical personnel who suffered retaliation as a result.

2. The Applicant's election to the Area Staff Union influenced the Administration's decision not to renew his fixed-term appointment.

Whereas the Respondent's principal contentions are:

1. The Applicant should not be permitted to mount a collateral attack on matters previously unsuccessfully challenged: only the decision not to renew his contract is properly before the Tribunal.

2. The decision not to renew the Applicant's fixed-term appointment was procedurally correct.

3. The Applicant had no legitimate expectation of renewal of his appointment.

The Tribunal, having deliberated from 12 to 27 November 2002, now pronounces the following Judgement:

I. The Applicant is and was at all material times a gynaecologist/obstetrician. He commenced employment with the Agency effective 9 April 1994, under a Category X employment contract; a fixed-term appointment which had as its expiry date 31 December 1995.

Such Category X contracts were introduced as a temporary measure during a period when, although it was necessary to increase the services provided by the Agency due to a sudden increase in the number of Palestinian refugees in the Agency's area of operations, there was insufficient and inconsistent funding of the Agency's budget as would have enabled the Agency to take on such additional personnel as were required on more traditional contracts. Those appointed under Category X letters of appointment were stated not to be staff members of the Agency and it was intended thereby that such persons should not enjoy all of the rights and privileges traditionally enjoyed by staff members of the Agency.

By a mass Personal Action Form dated 20 December 1995, the Applicant's initial appointment was extended until 31 December 1996; that appointment was extended in turn until 31 December 1999, by another mass Personal Action Form dated 5 December 1996.

II. Between the commencement of the Applicant's employment with the Agency and 11 January 1999, his career with the Agency was, to say the least of it, fraught and turbulent. Some examples are set out hereunder:

- (a) On 23 February 1997, the Applicant was served with a letter of reprimand for neglecting his official obligations to the Agency in favour of his private medical practice;
- (b) On 7 April 1997, he was suspended from duty without pay for misconduct, insubordination and poor judgment in dealing with other staff members;
- (c) On or about 28 April 1998, he was served with a further letter of censure and suspended from duty for a week without pay, for preparing a false medical report and for failing to follow technical instructions in relation to the management of gestational diabetes, allegations which had been found against him in a report of 9 February 1998;
- (d) The Applicant's periodic report for the period to 31 December 1997 disclosed that his work performance "was not to the required standard" and, as a result, payment of his annual increment, which had been due 1 January 1998, was deferred for nine months.

III. On 15 July 1998, the Applicant appealed to the JAB against these reprimands, censures, the suspension from duty and the deferral of his increment. The JAB unanimously recommended that the appeal be dismissed. The Commissioner-General accepted the recommendation and so advised the Applicant. The Applicant did not make an application to the Tribunal against this decision but rather acquiesced in the finding because, as he put it, "I preferred not to apply or request for revising the disciplinary measures against me, in order to cool it down and to have an end to the conflict".

IV. The Applicant now seeks in this Application to mount an attack on those matters and findings which he had previously unsuccessfully challenged before the JAB. The provisions of article 7 (4) of the Statute of the Tribunal are unambiguous: an application "shall not be receivable unless it is filed ... within ninety days ... from the date of communication of the joint body's opinion containing recommendations unfavourable to the Applicant". In Judgement No. 1033, *Hossain* (2001), the Tribunal held as follows:

"The Tribunal recalls Judgement No. 359, *Gbikpi* (1985), in which it stated that 'the suspension of a time-limit must be justified by serious reasons which prevented the Applicant from acting, and must be for a reasonably short time'. In the instant case, the Applicant made no request for suspension of the time-limits established in article 7 of the Statute and Rules of the Tribunal, and has not brought to the Tribunal's attention any 'serious reason' which might justify such suspension."

The Tribunal is satisfied that this instant challenge is not admissible as no Application was made to the Tribunal at the appropriate time or in the appropriate proceedings and it is now far too late for the Applicant to seek to do so. To allow such a challenge would offend against the principles of finality of litigation and, as to those matters, the Applicant is bound by the Commissioner-General's "final decision" on his earlier appeal. To decide otherwise would be to permit interminable litigation, to ignore time limits and to admit to a principle where there would be no finality of litigation and where proceedings and repeated challenges to the same finding would become interminable.

By seeking to challenge these matters now, the Applicant presumably hoped to have these findings expunged from his record as he believed that they must have been at least in part responsible for the decision not to renew his contract, being the decision which is central to this Application.

At this juncture, the Tribunal considers it appropriate to refer to a document relevant to this episode, which raises some concerns. It is a "Note for the record" written by the Deputy Chief, Field Health Programme, concerning a meeting between him, the Chief, Field Health Programme, and the Applicant, the relevant paragraphs of which read as follows:

"The performance and conduct of [the Applicant], during the last year, was discussed. It was made clear by the Chief, Field Health Programme, that it is very important to follow the Technical Instructions as established by the Agency, and that violations of the Technical Instructions is a very serious misconduct, where the severe disciplinary measures are taken against the violators.

[The Applicant] responded positively, by undertaking to try his very best in the future, to be an active staff member and to abide by the Instructions, keeping a good record of reliability, team work spirit and involvement for the best of the refugees and the Agency. He, further, undertook not to object to any disciplinary measure, that will be taken against him, and to consider it as an incentive to improve his performance in the future."

The Applicant has maintained that he believed that the aim of the meeting referred to in the said document was to threaten him with termination of his services, that he was given a last chance which he decided to accept and which involved him giving an undertaking not to object to the disciplinary measures being taken against him. The Tribunal understands by this that he contends that if he did not further appeal the matters in question, but accepted the disciplinary sanctions that had been invoked against him, the threat of termination in reliance of those matters would be withdrawn. The document in question gives a certain amount of support to that understanding, for otherwise it is not clear why the Applicant would be recorded as undertaking not to challenge the disciplinary measure referred to. He must have understood that there would be some *quid pro quo* and, in the view of the Tribunal, the likely one is that if he accepted those punishments all parties would then move forward, meaning that these matters would be considered as forgiven and would not be dredged up again at some later time as grounds for not renewing his appointment and thereby separating him from service. Accordingly, insofar as the decision to separate the Applicant from service may have been motivated by his earlier behaviour, as appears from the notation on the first page of the 9 November 1999 interoffice memorandum, later referred to, this would appear to be in breach of the spirit, if not the letter, of that understanding.

V. Sometime in January 1999, a post on the Agency's Manning Table became available and, on 11 January 1999, the Applicant was offered and accepted a three-year fixed-term appointment via the "modified" Category X letter of appointment as an Area staff member effective 1 January 1997. In accordance with the terms of this new contract, the Applicant became a member of the Agency's Area staff. This new appointment was for a fixed term once again, expiring 31 December 1999, and once again it expressly provided that it did not carry any expectation of renewal.

Whilst, as stated above, the Applicant's early career had been, to say the least of it, fraught and turbulent, it appeared to be settling down and proving more satisfactory to the Agency with the passage of time. This is evidenced by the fact that the Applicant's periodic report for the nine-month period to 1 October 1998 rated him as "a staff member who maintains a good standard of efficiency" and his periodic report for the period ending 1 October 1999 rated him in an identical manner. This was a great improvement over the rating for the period to 31 December 1997, which had evaluated his performance as "not to the required standard".



On 19 October 1999, the Field Personnel and Deputy Administration Officer, Jordan, advised the Chief, Field Health Programme, Jordan, that the Applicant's fixed-term appointment was due to expire on 31 December 1999 and requested his views on the continuing need for the Applicant's post and on the Applicant's performance. The Chief responded on 9 November that, in his view, there was a continuing need for the Applicant's post but, as to the second issue, stated as follows: "[r]egarding the incumbent, the performance and the official conduct of [the Applicant] during the period under review (the three-year fixed-term appointment) was not satisfactory". He then proceeded to set out the matters enumerated in paragraph II (a) to (d) of this Judgement. He concluded

"during 1999, the performance of [the Applicant] improved but not to the extent expected of a Senior Staff Member. In addition his relationship with his supervisors remained tense and difficult. Based on the above, I do not recommend the extension of the fixed term appointment of [the Applicant]. In addition I request to advertise the vacancy internally and externally".

This recommendation appears to have been accepted by the Respondent as the Applicant's appointment was not extended beyond 31 December 1999 and he thereupon separated from service. The events leading to this decision are not as clear as one might expect them to be due to an unusual absence of documents in his personnel file which adds to the Tribunal's suspicion that he may not have been accorded full transparency.

There is a manuscript notation on that internal memorandum of 9 November that reads as follows:

"The 3-year 'X' contract of the above-named Obstetrician and Gynaecologist, grade 16 at Irbid Town Health Centre will expire on 31.12.1999.

As mentioned in the first part of this [9 November memorandum], the post is very essential and needs to be filled.

The second part of this [memorandum] indicates that the services of the incumbent during the 3 years were not up to a satisfactory standard. Please see [paragraphs] 1-4 above [which related the incidents contained in paragraph II of this Judgement].

Therefore [the Chief, Field Health Programme,] is recommending not to extend his contract. For your approval, please."

In the view of the Tribunal, neither the terms of the memorandum in question nor the notation written thereon accurately reflect or describe the Applicant's true situation. It was not correct to have described the Applicant's "performance and official conduct for the period under review (the three year fixed-term appointment)" as having been "not satisfactory" (as per the internal memorandum) or, as "not up to satisfactory standard" during "the three years" (as per the notation), when his conduct as rated in the Respondent's formal evaluation procedures had been rated as satisfactory for the last 21 months of that three-year period. Furthermore, complaints of any disciplinary or performance nature appear to have been neither found nor made against him during that 21 month period. Had there been such complaints, they should have been made against him in the ordinary way so that he would have had an opportunity of refuting or explaining them. If his performance was unsatisfactory, or less than satisfactory, this again should have been disclosed by his performance reports so that he would have had the opportunity to rebut such rating. It seems to the Tribunal that the advice given to the Respondent that the Applicant's appointment should not be extended was based on assertions which were at variance with the Applicant's performance reports, and that it was unfair and inaccurate to have characterized his performance as if it had been unsatisfactory for the entire three-year period without specifically advertent to his two most recent ratings as "a staff member who maintains a good standard of efficiency". It seems to the Tribunal that, when the Administration establishes and operates a formal performance evaluation system, it must take proper cognizance of its findings when deciding the fate of its staff members and cannot substitute for its results a contradictory assessment made behind closed doors, leaving a staff member in the dark as to the reasoning or grounds giving rise to such findings and leaving the staff member without any opportunity of disputing the basis of those adverse findings.

Here again, the Tribunal wishes to refer to the Applicant's periodic report for the 12-month period to 1 October 1999, as disclosed in his personnel file, as it gives rise to some disquiet on the part of the Tribunal. It appears from the said document that the contents of the report were discussed with the Applicant on 9 September 1999, when he was apprised that his overall rating would be categorized as "a staff member who maintains a good standard of efficiency" and that his annual increment for the year commencing 1 October 1999 was to be recommended. There is a notation made by the Chief, Field Health Programme, on 19 September 1999, some ten days thereafter, which records that the Applicant was "just

satisfactory. The extension of his contract beyond 31-12-99 will be reviewed in his due time." Here again, the note suggests that the rating that was equivalent to "satisfactory" should be read as "just satisfactory", meaning perhaps marginally satisfactory to perhaps something just short of what should be considered as satisfactory. If there was perceived dissatisfaction regarding the Applicant's performance or if his performance was to be considered such as would not merit a renewal or extension of his contract, then transparency and fairness require that he be acquainted with the real position and rated or scored appropriately. If there was a matter causing concern to his superiors of a sort which would justify a decision not to renew his appointment, this should have been stated in his periodic report before it was proffered to him, so that he would be informed as to the true position and the true views of his supervisors or those in authority over him, so that he could then choose to challenge such assessment, or the basis for that assessment, and to rebut the report. In the view of the Tribunal, it is patently unfair to proffer to a staff member a document which indicates that his performance has been assessed as satisfactory and then having obtained his approval to, in effect, review that assessment behind his back and without notice to him and to conclude that "satisfactory" really meant something a bit less than satisfactory and to find fault against him in a matter never ventilated against him or in a matter which he had no opportunity of challenging or refuting.

VI. Whilst the Applicant's contract was a fixed-term contract and carried no expectancy of renewal and whilst the Applicant has not sought to establish and has not inferred any promise or overt acts on the part of anyone in authority within the Agency which would have engendered a legitimate expectation on the part of the Applicant that his contract would be renewed after 31 December 1999, a problem clearly arises in that the stated reason why it was recommended that he should not be renewed, and the apparent reason his contract was not renewed (i.e., acceptance of this recommendation), was not supported by the evidence but was at variance with the true facts which were that his performance had been rated as "a staff member who maintains a good standard of efficiency" for the last 21 months of that three-year period.

The Applicant does not appear to have been challenged, cautioned or questioned about his behaviour or performance from the time since he was offered the new contract which was now due to expire. The very fact that he had been offered what was from his point of view a superior or more beneficial contract could only have suggested to him that his past wrongs were forgiven, at

least to the extent that they would not be used or considered against him when the time came to reconsider his position when that new contract was approaching its end, unless he was to incur further black marks against him in the meantime. It would be surely illogical to say to a staff member, "notwithstanding your unsatisfactory performance to date I am going to give you a new contract but I will rely on that unsatisfactory performance on the expiration of the new contract as a ground for refusing you a further renewal and I will then separate you from service". Illogical as that may be, it seems to be a fair description as to what happened here.

In the opinion of the Tribunal, the reasoning apparent for the non-renewal of the Applicant's appointment was irrational and erroneous and as a matter of law it was an unfair and prejudicial decision, although the Tribunal does not attribute any personal or malicious motive to anyone concerned. The Tribunal does not accept that the Applicant's activities as a Staff Representative played any part in arriving at the decision in question. The Tribunal merely finds that events which had occurred and which were known to the Administration before the Applicant had been offered the new contract should not then be relied upon as grounds for separating him from service when that new contract expired. The Applicant's final three years were all bulked together and misdescribed as showing that the Applicant's service was unsatisfactory for that period, when the Applicant's periodic reports had shown in fact that there had been a substantial improvement in his conduct and established that he had been performing his duties in a satisfactory way for the final 21 months of that three-year period. (See Judgement No. 1003, *Shasha'a* (2001) and see generally Judgement No. 951, *Al-Khatib* (2000).)

VII. In the opinion of the Tribunal, there was a lack of transparency on the part of the Administration in the manner in which it dealt with the Applicant leading up to his separation from service. The reports, when shown to him, presented a different view to the view ultimately taken by the Administration. It appears he was induced into accepting disciplinary sanctions and accepting the periodic reports because matters now said to cause disquiet to the Administration were not made known to him so that he was not afforded the opportunity to mount such challenges as he might otherwise have chosen.

In view of this lack of transparency and resulting lack of due process, the Tribunal orders the Respondent to pay the Applicant compensation of US\$ 2000, and rejects all other pleas.

(Signatures)

Julio BARBOZA  
First Vice-President, presiding

Kevin HAUGH  
Second Vice-President

Brigitte STERN  
Member

New York, 27 November 2002

Maritza STRUYVENBERG  
Executive Secretary