



# Administrative Tribunal

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## ADMINISTRATIVE TRIBUNAL

Judgement No. 1278

Case No. 1361

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, President; Ms. Brigitte Stern; Ms. Jacqueline  
R. Scott;

Whereas, on 12 September 2004, a 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, in part, as  
follows:

### “SECTION II PLEAS

Applicant prays Tribunal to [order] the following:

- a. Rescission of [the] contested decision.
- b. [Reinstatement of the] Applicant to [her] previous status,  
including payment of deducted salary and allowance and interest.
- c. Payment of a fair compensation for the unjustified injury  
caused to the Applicant.
- d. Payment of expenses sustained [i]ncluding secretarial and  
legal, [to be assessed by the Tribunal].”

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 30 April  
2005 and once thereafter until 30 June;

Whereas the Respondent filed his Answer on 20 June 2005;

Whereas the Applicant filed Written Observations on 26 August 2005 and the Respondent commented thereon on 28 October;

Whereas the statement of facts, including the employment record, contained in the report of the Area staff Joint Appeals Board (JAB) reads, in part, as follows:

“.... On 22 December 1970 the [Applicant joined] the Agency as a Daily Paid Medical Officer at the Dera’a Office in [the Syrian Arab Republic].

... Effective 1 October 1971 the [Applicant] was offered and accepted a temporary indefinite appointment with the Agency as a Medical Officer ‘B’, grade 14 at Yarmouk Camp Clinic, Damascus Area.

... On 1 September 1975 the [Applicant] was promoted to the post of Field Preventive Medicine Officer, grade 16.

... On 14 October 1980 the [Applicant] received a letter of reprimand ... following her late arrival at her duty station on two occasions.

... Effective 20 January 1987 the [Applicant] was transferred to the post of Senior Medical Officer, grade 16 at Yarmouk Health Centre.

... On 24 December 1987 the [Applicant] received a [second] letter of reprimand ... [following] complaints about her supervision and sense of responsibility. ...

... On 15 July 1990 the [Applicant] was reprimanded ... [following] a finding by a Board of Inquiry that she bore some responsibility for ... mistakes [which] led to the forgery of Authorization Forms for Pregnant Women’s Rations.

... On 28 December 1992 the [Applicant] was reminded by the [Field Health Officer (FHO)] of her responsibilities regarding her absences from duty and certifying sick leave for other staff members.

... On 19 August 1993 the [Applicant] was reprimanded by the FHO for the improper use of Emergency Patient cards and the improper dispensing of prescriptions.

... On 19 June 1994 [the Chief, Field Health Programme (CFHP)] reprimanded the [Applicant] for arriving at her duty station late.

... Effective 5 December 1995, the [Applicant] was transferred to the post of Medical Officer ‘A’ (grade 15) at Jaramana Health Centre with grade and salary protection.

... On 21 December 1995 [the] CFHP advised that he had met with the [Applicant] on 3 December ... [and] had explained [to her that] the reason for her transfer from Senior Medical Officer to Medical Officer ‘A’ (without a change to her grade or salary), [was] that her work performance over the past years, in particular her managerial abilities, had been the subject of criticism.

[On 8 January 1996, the Officer-in-Charge (OiC), UNRWA Affairs, Syria, while acknowledging the Applicant’s objection to the above transfer, informed

her that he had decided, in the interest of the Agency, that the decision be maintained.]

... On 6 August 1996, the [Applicant] was reprimanded for not reporting that medicines were approaching their expiry dates, as she had repeatedly [been] instructed to do.

[In August 1998, the Applicant was reminded that the Jaramana Health Centre was to be opened at 7:30 a.m., however, on 28 November, the Applicant, along with several other staff members, was recorded as arriving late.]

[On 14 April 1999, UNRWA was informed of complaints made by Jaramana Camp residents about the Jaramana Health Centre, including complaints about the late opening thereof.]

...

... On 4 May 1999 the [Applicant] was served with a written censure ... [She] was warned that:

‘If your official conduct or attendance should again be the subject of complaints, the Agency shall be obliged to take appropriate action. Such action may include the imposition of additional disciplinary measures.’

[In September 2000, 36 Jaramana Camp residents signed a letter addressed to the Director, UNRWA Affairs, Syria (DUA) complaining about the overall functioning of the Jaramana Medical Centre, the behaviour of its staff and the delays in opening the clinic. On 3 October, the Applicant refuted the complaints substantively and requested that an investigation be carried out, claiming that some of the signatures on the complaint may have been forged.]

[The Applicant’s performance evaluation reports (PER) since 1991 consistently included remarks concerning the need for her to improve her supervisory and managerial skills and frequently included remarks about her tardiness and lack of punctuality.]

... On 8 February 2001, [the DUA] made an unannounced visit to Jaramana Health Centre [at 8 a.m.] and found the Health Centre unprepared to receive patients. In addition, several staff members, including the [Applicant], were not at their duty station. ...

...

... On 15 March 2001, the [Applicant] was advised that her official conduct and performance were under consideration.

...

... On 22 March 2001 ... the [Applicant was advised] of [the DUA’s] decision, [to demote her as a disciplinary measure] from grade 16 Step 21 to grade 15 Step 21 (resulting in the loss of a Senior Professional Officer Allowance [(SPOA or SOA)]) and [to transfer her] to the post of Medical Officer ‘A’ at Palestine Health Centre, effective 1 April 2001.

... By letter dated 28 March 2001, the [Applicant] requested [that the decision be reviewed.]

On 27 May 2001, the Applicant [lodged an appeal with the JAB in Amman.]

... On 15 July 2001, [the] FAO responded to the [Applicant's] letter of 28 March ... and advised that the decision had been reviewed but that there was no reason why it should be reversed."

The JAB submitted its report on 2 October 2003. Its evaluation and judgement and recommendation read, in part, as follows:

**"III. EVALUATION AND JUDGEMENT**

...

- (a) The Board noted that the Appellant worked from 1970 to 1998 without perpetrating any technical error, however she made a number of managerial mistakes for which she was 'reprimanded'. She received no letter of censure during this long period of service with the Agency.
- (b) The Board noted the Appellant was served with a letter of censure justified by her late arrival on 15 April 1999 plus a recall of a similar late arrival on 28 November 1998.
- (c) The Board noted ... the visit of [the DUA] to the clinic on 8 February 2001 (two years after the letter of censure), [when the Appellant] had arrived 35 minutes late. Consequently, the Appellant was demoted from grade 16 step 21 to grade 15 step 21 losing her SPOA which represents 60% of the Appellant's salary.

...

- (g) The Board noted that the Appellant's technical performance record is clear and it was not subject to criticism. ...
- (h) The Board believes that there was a hasty, mechanical and unfair application of disciplinary measures against the Appellant.
- (i) The Board also believes that the nature and the size of the mistakes made by the Appellant (late arrivals) does not deserve a disciplinary measure of 'demotion' with a loss of a grade and SPOA which represents 60% of the Appellant's salary after 30 years of service with the Agency.
- (j) It is the opinion of the Board that the Appellant could have been given a last opportunity in the form of suspension for an appropriate period prior to demotion which is a severe disciplinary measure.

**RECOMMENDATION**

32. In view of the foregoing ... the Board unanimously makes its recommendation that the case be reviewed, and in particular the loss of the SPOA allowance."

On 5 May 2004, the Commissioner-General transmitted a copy of the JAB report to the Applicant and informed her as follows:

“The [JAB] noted that you worked from 1970 to 1998 without committing ‘any technical error’ but that you made a number of ‘managerial mistakes’ for which you had been reprimanded. The Board also noted that you received no letter of censure during this long period of service with the Agency. This is not entirely accurate. You were reprimanded six times within the period 1980-1996, not only for ‘managerial mistakes’ but also for violations of the Agency’s rules.

The Board stated that your performance record was not subject to criticism, which is not correct. Some of your PERs had reflected that you did not strictly adhere to punctuality and lacked the ability to supervise your staff.

... The Board also believed that the ‘nature and the size of [your] mistakes’ (late arrivals) did not deserve a disciplinary measure of ‘demotion’ with a loss of grade and SOA which represented 60% of your salary after 30 years of service with the Agency.

You were not only disciplined because you as an individual arrived late, but also because you failed once again to make sure that the Health Centre staff who were under your supervision were at their workplace ready to receive patients. The fact that somewhat less than two years had passed since you last were disciplined for your failure to adhere to punctuality and to supervise your staff does not make the measure less appropriate.

...

I do not believe that it was necessary to give you yet another ‘last opportunity’ before resorting to a ‘demotion’, which was in reality the elimination of the salary and grade protection you had enjoyed since being demoted in 1995. In the 1999 written censure you had been informed that a repeat of the behaviour would result in further disciplinary action.

I also do not believe that the elimination of the salary and grade protection was inappropriate or disproportionate in the light of the history of your conduct. The fact that the measure taken seemed too severe to the [JAB] was probably related to the fact that it resulted in the loss of the SOA. ... Usually the elimination of salary and grade protection does not have such a significant financial impact on a staff member. In your case, however it had a considerable financial impact because of the large disparity in pay between grade 16 and grade 15 in the [Syrian Arab Republic] Field (as a result of the payment of SOA to those at grade 16).

You had been warned in the 1999 letter of censure that a repeat of your inappropriate behaviour would result in additional disciplinary measures, and you were thus aware that you were at risk of losing the salary and grade protection, which would lead to the loss of your SOA. You did not pay heed to this warning, despite the fact that you knew what you had to lose. In view of the foregoing, I have rejected the recommendation of the JAB that the Administration’s decision appealed against should be reviewed and have dismissed your appeal.”

On 12 September 2004, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Application is not time-barred.
2. The Applicant's late arrival at the Jaramana Health Centre was unavoidable as a result of the heavy traffic in Damascus. The delay of some of the Centre's staff was due to the delays by the UNRWA transportation.
3. The Applicant should not be held accountable for the delays of some of the staff.
4. Even though there were some delays, treatment of patients was not disrupted.
5. The Applicant was punished because "her post was needed for a favourite".
6. The punishment was premature and exaggerated.
7. The punishment imposed on the Applicant did not exist when she signed her contract of appointment, thus contradicting the principle of protection of acquired rights.

Whereas the Respondent's principal contentions are:

1. The Application is time-barred and therefore not receivable by the Tribunal.
2. The contested decision was a valid exercise of discretionary authority under Area staff regulation 10.2 and Area staff rule 110.1.
3. The facts on which the disciplinary measure was based were established by documentation on record and amount to unsatisfactory conduct warranting disciplinary measures.
4. The decision was proportionate to the offence.
5. The decision was not vitiated by substantive or procedural irregularity, improper motive or any other extraneous factor.

The Tribunal, having deliberated from 3 to 23 November 2005, now pronounces the following Judgement:

I. The Applicant appeals from the Commissioner-General's decision imposing on her a disciplinary measure of demotion. The Tribunal notes that in December 1995, the Applicant was transferred from a grade 16 post to one at grade 15, albeit with salary and grade protection, but nonetheless constituting a *de facto* demotion. The decision

contested by the Applicant in the present case eliminated the grade and salary protection afforded to her when she was transferred in 1995, resulting in significant financial loss to the Applicant, which was not an outcome of any previous sanctions imposed on her.

II. The Tribunal will first address the issue of receivability. The Respondent alleges that the Application is time-barred, since it was filed after the 90 days prescribed by articles 7(2) and 7(4) of the Tribunal's Statute, and since there are no exceptional circumstances that would warrant waiving the time-limits. The Respondent claims that the Commissioner-General rejected the recommendation of the JAB on 5 May 2004, and therefore the Application should have been filed no later than 3 August 2004; the present Application is dated 12 September 2004 and was not received by the Tribunal until 4 November 2004, thus exceeding the 90 days' legal term and therefore is time-barred.

III. However, it has been the invariable practice of the Tribunal to consider the date of the Application, rather than the date on which it was effectively received by the Tribunal, as the determining date for compliance with the time-limit for filing an Application, or for the non-compliance therewith. It would be impractical to do otherwise, as using the date of receipt as the determining date could potentially place applicants serving in the field or at duty stations other than New York, where the Secretariat of the Tribunal is located, at a clear disadvantage vis-à-vis the length of time they have to prepare *and submit* their application.

Furthermore, it is a generally accepted principle that all time limits prescribed in law start immediately following the date on which the interested party has been duly notified of whatever measure is applied. In the present case, the Tribunal has no means of knowing exactly when such notification to the Applicant was made, since the Respondent has not submitted evidence regarding the date of notification, as opposed to the date of the letter. The Applicant alleges that, despite the fact that the Commissioner-General's letter is dated 5 May 2004, it was received by her in June 2004; she does not provide the precise date in June. Under these circumstances, the Tribunal decides to give the Applicant the benefit of the doubt - a benefit that may not be granted in future cases, where the applicant is so negligent as to omit the precise dates in question. Having found the case to be receivable, the Tribunal shall proceed to consider its substantive elements.

IV. The Tribunal has previously held that it will uphold decisions imposing disciplinary measures, where, *inter alia*, the following have been complied with: a) the decision was taken by the authorized authority - in this case, the Commissioner-General - in the exercise of the discretionary powers conferred upon him by a legal rule; b) the decision was applied to the Applicant with no discrimination, arbitrariness, or other improper motivation, and in full respect of due process. (See, for example, Judgement No. 815, *Calin* (1997).) Additionally, the Tribunal will examine whether or not the measure taken was proportionate to the offence. (See Judgements No. 941, *Kiwanuka* (1999); No. 1090, *Berg* (2002); and, No. 1244 (2005).) It is this latter requirement for proportionality which the Applicant alleges, and the JAB seems to agree, was not respected.

V. Area staff regulation 10.2 stipulates that “[t]he Commissioner-General may impose disciplinary measures on staff members whose conduct is unsatisfactory”. Having reviewed the Applicant’s record of employment, the Tribunal is satisfied that it would not have characterized her conduct as “satisfactory”. This is a staff-member whose history in the service of UNWRA is a litany of reprimands for late arrivals to work as well as for other breaches of regulations. Furthermore, as the Head of a health centre, the Applicant, instead of setting a positive example for her subordinates, demonstrated by her conduct that this sort of behaviour is acceptable. Consequently, the health centre was plagued by a pattern of total lack of respect for punctuality and keeping to time-tables by other doctors and staff members.

Moreover, the Tribunal notes that, as a result of her pattern of disrespect for various rules, the Applicant had been the object of a prior censure and of a prior demotion. In fact, as explained above, she had already been transferred from a grade 16 post to one at grade 15 but, at that time, the Respondent had granted her salary protection and the transfer did not involve any economic loss to the Applicant.

The Tribunal considers that the sanction imposed by the Commissioner-General is not disproportionate considering the cumulative behaviour of the Applicant, on whom sanctions of a growing gravity had already been imposed, namely reprimands (though not a disciplinary measure *per se*), censure and demotion. Moreover, the Applicant had previously been warned that if her “official conduct or attendance should again be the subject of complaints, the Agency shall be obliged to take appropriate action. Such action may include the imposition of additional disciplinary



measures.” The Applicant was thus forewarned but apparently chose not to heed the warning.

VI. The *onus probandi* regarding discrimination, arbitrariness, improper motivation or undue process of law falls on the Applicant. This has been the consistent jurisprudence of the Tribunal, as previously stated in Judgement No. 834, *Kumar* (1997): “the burden of proof in matters where prejudice or discrimination is alleged rests upon the Applicant”. Similarly, in Judgement No. 874, *Abbas* (1998), the Tribunal stated that “[t]he burden is on the Applicant to present convincing evidence when alleging that the decision ... is tainted by prejudice or improper motivation.” The Tribunal recently reaffirmed this position in Judgement No. 1103, *Dilleyta* (2003): “[i]t has been the consistent jurisprudence of the Tribunal that, where an Applicant alleges bias or other improper motivation or extraneous factors vis-à-vis a contested decision, that he carry the burden of proof in relation thereto.”

In the present case, while the Applicant suggests that some improper motivation was behind the contested decision, she did not bring any proof in support of this claim. The Applicant has thus not carried her burden of proving such legal deficiencies in the Respondent’s decision.

VII. The Tribunal notes that the JAB recommended that the Applicant’s case be reviewed by the Respondent with a view to imposing a more lenient sanction, which recommendation the Commissioner-General decided not to follow. The Tribunal is satisfied that giving the Applicant another chance, as the JAB proposed, would have served no useful purpose; moreover, the Tribunal believes that pardoning the Applicant in this case would have undermined the authority of the Commissioner-General. Furthermore, the Tribunal finds that the JAB erred in determining that “there was a hasty, mechanical and unfair application of disciplinary measures against the [Applicant]”. The decision was based on a pattern of behaviour which was demonstrated over the years, and was not based solely on the DUA’s visit to the Jaramana Health Centre on 8 February 2001, as the Applicant mistakenly claims.

The Tribunal is of the view that the decision taken was justified and within the discretionary powers of the Respondent and was not tainted by extraneous factors.

VIII. The Applicant alleges that “downgrading accompanied by salary reduction” is a sanction which was established only a few years ago, and that it did not exist when

she signed her letter of appointment. Thus, the imposition of this sanction on her by the Respondent contradicts the principle of protection of acquired rights, as guaranteed by Area staff regulation 12.

The Tribunal is satisfied that the disciplinary measure applied to the Applicant did not violate her acquired rights, whatever those alleged acquired rights might be. The Tribunal notes that, in signing her letter of appointment as an Area staff member, the Applicant declared the following:

“I hereby accept the appointment described in this letter subject to the terms and conditions therein specified and to those laid down in the Staff Regulations and Staff Rules applicable to area staff members, *and to any changes or amendments which may from time to time be made thereto*”. (Emphasis added.)

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

*(Signatures)*

Julio **Barboza**  
President

Brigitte **Stern**  
Member

Jacqueline R. **Scott**  
Member

New York, 23 November 2005

Maritza **Struyvenberg**  
Executive Secretary