

**Administrative Tribunal**

Distr.: Limited
31 January 2006

Original: English

ADMINISTRATIVE TRIBUNAL

Judgement No. 1259

Case No. 1332

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. Kevin Haugh, Vice-President, presiding; Ms. Brigitte Stern;
Mr. Goh Joon Seng;

Whereas, on 10 May 2003, 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, the Applicant, after making the necessary corrections, again filed an Application, which was received by the Tribunal on 29 January 2004, containing pleas which read as follows:

“II. PLEAS

This is an appeal against the decision of the Respondent to reject the recommendation of the Joint Appeals [Board (JAB)] to re-employ [the Applicant]. The [Applicant] appeals the decision of the Respondent not to allow him to return to his former job after the Court of Appeals suspended the sentence against him. The [Applicant] requests that he be returned to his former job.”

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 7 June 2004 and periodically thereafter until 31 March 2005;

Whereas the Respondent filed his Answer on 28 March 2005;

Whereas the statement of facts contained in the report of the JAB reads, in part, as follows:

“... Effective 1 November 1990, the [Applicant] was offered and accepted a temporary indefinite appointment as an area staff member in the capacity of Teacher “D” Grade 06, at Jerusalem Preparatory Boys’ School.

[On 11 December 1994, an Israeli Court in Ramallah found the Applicant innocent of murdering a man on 1 January 1989. On 11 February 1999, the Palestinian Criminal Court in Ramallah convicted the Applicant of attempted murder for the same incident and sentenced him to 10 years’ imprisonment, reduced to 5 years. The Applicant appealed the decision and was released on bail on 17 February 1999.]

... On 18 February 1999, [the] Director of UNRWA Operations, West Bank, wrote to [the] Head of the General Security, West Bank, requesting ... the facts related to the arrest of the [Applicant] by the Palestinian Authority ...

... The [Applicant] was suspended without pay effective 1 June 1999.

... On 12 August 1999, [the] Officer-in-Charge, UNRWA Operations, West Bank, wrote to the [Applicant] informing him of the Administration’s decision to terminate his services in the interest of the Agency under the provisions of Area staff regulation 9.1 [effective 1 June] 1999.”

On 7 September 1999, the Applicant requested administrative review of this decision, noting “President Arafat gave his orders that the charges against me (attempted murder) should be withdrawn and the case closed”. On 9 September, the Director of UNRWA Operations, West Bank, responded that his request had been “seriously considered”, but “the Agency’s policy on staff convicted of criminal offences ha[d] been properly observed” and, thus, the decision would stand.

On 12 October 1999, the Applicant lodged an appeal with the UNRWA Area staff JAB in Amman.

On 18 December 1999, the Palestinian Court of Appeal suspended proceedings in the Applicant’s appeal, pursuant to a motion to stay proceedings filed by the Assistant Attorney-General of the Palestinian Authority on 23 September. According to the Respondent, on 2 May 2000, the Chief Judge of the Court of Appeal orally

informed the Agency that the Court of Appeal had not considered the Applicant's innocence or guilt but had issued an "administrative" verdict in accordance with "President Arafat's instruction to stop the proceedings, in order to close all the files with regard to incidents that occurred during the Intifada". The Chief Judge apparently indicated that the Applicant's sentence would not be imposed, as he had a right to appeal and his appeal had not been heard due to President Arafat's order.

The JAB adopted its report on 20 July 2000. Its evaluation and judgement, and recommendation, read, in part, as follows:

“... **EVALUATION AND JUDGEMENT**

12. ...

a) The Board noted that since the Appellant was released on bail and his appeal to the Court of Appeal was suspended and the case closed and he was a free man the Agency should consider re-employment for the Appellant.

b) By reference to the Appellant's personal file the Board noted that the Appellant had a clean personal file and a good record that would qualify him for re-employment.

[c]) In this context, the Board is of the opinion that the Appellant was released and he was not convicted by the Court of Appeal and there is a chance that he might be considered innocent, [thus] the Appellant is innocent until proven guilty. Therefore, the Board resolved that the Appellant should be considered for re-employment.

... **RECOMMENDATION**

13. In view of the foregoing ..., the Board unanimously makes its recommendation that the Administration's decision appealed against be reviewed.”

On 6 August 2000, the Commissioner-General transmitted a copy of the JAB report to the Applicant and informed him as follows:

“I have carefully reviewed the Board's report. I do not agree with the Board's findings. As you were found to be at fault by a competent judicial authority and detained on that basis, your conviction and the imposition of a prison sentence for more than three months was a proper basis for your termination as set out in the Agency's policy on detained staff. The fact that your earlier conviction was not confirmed by the Court of Appeal and that there was a chance that you could have been found innocent if the appeal process continued might be relevant for a re-employment decision but does not affect the validity of the Agency's decision to terminate you. The Court of Appeal's decision of 18 December 1999 to administratively suspend the case did not

have the effect of cancelling or invalidating your conviction in the Court of First Instance.

Accordingly, I have rejected the recommendation of the Joint Appeals Board that the Administration's decision appealed against should be reviewed and have dismissed your appeal."

On 6 September 2000, the Applicant wrote to the Commissioner-General requesting reconsideration of this decision, and attaching a letter from the General Prosecutor of the Palestinian Authority which stated that the Applicant was no longer wanted by the Prosecutor's Office. UNRWA responded on 19 September that the Commissioner-General's decision stood.

On 29 January 2004, the Tribunal received the above-referenced Application.

Whereas the Applicant's principal contentions are:

1. The decision taken by the Respondent violates the most basic, fundamental principle of law: that a person is considered innocent until he is proven guilty. The case against the Applicant was closed. He can do nothing to reverse his conviction, but the Courts regard him as innocent.
2. The Applicant's good personnel record warrants his re-employment.

Whereas the Respondent's principal contentions are:

1. The Application in its entirety is not receivable by the Tribunal.
2. The decision to terminate the Applicant's employment was made in the interest of the Agency and in accordance with the Agency's policy of 1 February 1984 in respect of staff who have been arrested, detained or brought to trial. In this context, the Agency was justified in recognising the decision of the Palestinian Criminal Court at first instance in the application of its policy.
3. The Applicant has failed to demonstrate that the Commissioner-General's decision was the result of any abuse of discretion whether by way of improper motive, prejudice, improper purpose or substantive irregularity.

The Tribunal, having deliberated from 28 October to 23 November 2005, now pronounces the following Judgement:

- I. The Tribunal finds no fault with the Agency's policy which provides that staff members convicted of a criminal offence and sentenced to a term of imprisonment of,

or exceeding, three months would normally be terminated “in the interest of the Agency” unless the facts of the case were such that the Agency considered that the staff member was not at fault. The policy contains the safeguard that where a staff member is released without charge or trial, he should normally be allowed to resume duties if the information available to the Agency does not indicate misconduct or improper activity on his part, and makes provision that a staff member sentenced might possibly be re-employed by the Agency if he completed his sentence, thus paying his debt to society. It goes without saying that it would be damaging to the reputation and standing of the Agency if it was not entitled to terminate such staff members but was obliged to retain them in its employ. It is right and proper that the policy contain a provision which spares staff members so convicted and sentenced on criminal matters from being barred from continuing employment where the Agency accepts that the conviction was wrongful, as it is axiomatic that it is not in the interest of the Agency to be seen to have to terminate staff members when there are sound reasons for believing that the conviction was wrong, as punishment of the innocent is abhorrent to all right-thinking people and is contrary to the values enshrined in the Charter of the United Nations and the Universal Declaration of Human Rights.

II. The Applicant was convicted of the offence of attempted murder by the Palestinian Criminal Court arising from events said to have occurred on 1 January 1989, notwithstanding the fact that he had, some years previously, been acquitted by an Israeli Court in Ramallah of a charge of murder arising from the self same events. The Palestinian Criminal Court sentenced him to a period of five years’ imprisonment in respect of the said offence.

III. Following his conviction, the Applicant launched an appeal against the conviction to the Palestinian Court of Appeal and within six days from having commenced to serve his sentence he was admitted to bail pending the conclusion of his said appeal. The Agency, however, terminated his employment “in the interest of the Agency” by reason of his said conviction and sentence in accordance with the above-mentioned policy. The Applicant sought to have this decision rescinded or changed on the grounds that it was made prematurely and that his conviction might be set aside on appeal but the Respondent declined to do so, asserting that the conviction was valid

and that the termination was consequently appropriate and valid in accordance with its policy.

IV. In due course, the Assistant Attorney-General of the Palestinian Authority applied to the Court of Appeal pursuant to an order made by the President of the Palestinian Authority to have further proceedings against the Applicant stayed and to have the file closed on the basis that the trial court, the Palestinian Criminal Court, had exceeded its jurisdiction by trying the said case because the events alleged to constitute the offence of which he had been convicted occurred prior to the establishment of the Palestinian Courts so that they had no jurisdiction in relation to the matter. This is consistent with the history of the case for, as mentioned earlier, the Applicant had been previously tried for murder by an Israeli Court which had acquitted him of the charge before it. The Palestinian Court of Appeal acceded to the motion of the Assistant Attorney-General and made an order staying all further proceedings and closing the file. The General Prosecutor of the Palestinian Authority has confirmed to the Agency that the matter is now closed and that no further proceedings can arise in relation thereto.

V. The Applicant has, accordingly, contended that his termination from the Agency should now be rescinded and that he should be allowed to resume his employment as, in the circumstances which now prevail, he has, due to no fault of his own, been denied the opportunity of a hearing of his appeal which may have quashed his conviction and declared his innocence of the offence. He claims that, in such circumstances, it is unjust to treat him as a guilty man because the legitimacy of his conviction cannot be challenged through the ordinary appellate process, and he should be treated as not guilty. The Respondent declined to rescind the said termination. The Applicant appealed this refusal to the UNRWA Area staff JAB, which concluded that he should be considered as innocent and that the Respondent should now consider re-employing the Applicant. It recommended that the impugned decision be reviewed. The Respondent, however, once again declined to rescind the termination, explaining in his letter to the Applicant of 6 August 2000 that he was rejecting the conclusions of the JAB and dismissing the Applicant's appeal, justifying his decision as follows:

“As you were found to be at fault by a competent judicial authority and detained on that basis, your conviction and the imposition of a prison sentence

for more than three months was a proper basis for your termination as set out in the Agency's policy on detained staff. The fact that your earlier conviction was not confirmed by the Court of Appeal and that there was a chance that you could have been found innocent if the appeal process continued might be relevant for a re-employment decision but does not affect the validity of the Agency's decision to terminate you. The Court of Appeal's decision of 18 December 1999 to administratively suspend the case did not have the effect of cancelling or invalidating your conviction in the Court of First Instance."

VI. The position taken by the Respondent in his said letter might be considered by some persons as being unduly legalistic and they might wonder why he did not instead deal with the real issue of re-employing the Applicant which was, after all, presumably the principal objective of the Applicant's appeal to the JAB. Had this matter been considered, time would have been saved and, had it been decided that the Applicant should be re-employed in his old position, then the question of back-pay and other such issues could have been discussed or argued over at a later time.

VII. The Applicant has now applied to the Tribunal for review of the Respondent's decision not to rescind the termination. The proceedings raise many interesting issues, not least amongst them being:

(i) Can the Administration rely upon the conviction by the Palestinian Criminal Court as justification for the decision to have terminated the Applicant's employment in the interest of the Agency when, due to no fault of the Applicant, he has been denied the ordinary right of a convicted person to argue against his conviction in the Court of Appeal which might have resulted in the quashing of the guilty verdict and declaring the Applicant innocent of the said charges?

(ii) Can the said conviction now be relied upon when, in essence, on the Judgement of the Palestinian Court of Appeal the verdict was made without jurisdiction or in excess of jurisdiction and when it was ruled that the five year sentence was in effect invalidly imposed?

(iii) Apart from the possible infirmities arising from (i) and (ii), is the conviction of the Palestinian Court a safe and proper conviction when the Applicant had been previously acquitted of the murder charge arising from the self same incident by the Israeli Court?

VIII. Unfortunately, these interesting questions must remain unanswered, at least for the time being, as it is clear that the Application to this Tribunal is well and truly time-barred. In accordance with the provisions of article 7, paragraphs 2 and 4, of the Statute of the Tribunal, the Applicant had 90 days from 6 August 2000 to file his Application with the Tribunal, as time commenced to run when the Respondent rejected the recommendation of the JAB and dismissed the Applicant's appeal. These proceedings were not received by the Tribunal until 29 January 2004 and no reasonable explanation has been offered for this long delay.

The Tribunal is, of course, empowered by article 7, paragraph 5, of its Statute to "suspend the provisions regarding time limits", but this is not an exercise it undertakes lightly. In Judgement No. 359, *Gbikpi* (1985), the Tribunal held

"in this particular case, there are no grounds for suspending the provisions regarding time-limits, as article 7, paragraph 5, empowers it to do. ... [T]he 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; that is not the case here."

The Tribunal is of the same opinion in the instant case, sympathetic as it may be to the Applicant's situation. In this regard, the Tribunal recalls its Judgement No. 1106, *Iqbal* (2003), wherein it "reiterate[d] the importance it attaches to complying with procedural rules, as they are of utmost importance for ensuring the well functioning of the Organization", and pointed out that "there can be no justification for a staff member who believes that he or she has been victimized, to delay pursuing the appropriate procedural recourse. (See Judgment No. 364, *Marazzi* (1986).)"

IX. In closing, however, the Tribunal wishes to point out that the Applicant may now wish to consider applying to the Agency for re-employment as, in a sense, he was invited to do by the Respondent's letter of 6 August 2000, as quoted in paragraph V, *supra*. He may, in due course, have an opportunity of having the questions set out in paragraph VII answered by the Tribunal, should the Agency decline to re-employ him on the basis of the said conviction and should he this time institute his proceedings and prosecute them without delay. The parties may find the Judgement of the Tribunal in Judgement No. 951, *Al-Khatib* (2000) of interest, should the Applicant pursue this course of action.

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

(Signatures)

Kevin Haugh
Vice-President, presiding

Brigitte Stern
Member

Goh Joon Seng
Member

New York, 23 November 2005

Maritza Struyvenberg
Executive Secretary