



# Administrative Tribunal

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## ADMINISTRATIVE TRIBUNAL

Judgement No. 1269

Case No. 1352

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 20 June 2002 and on 25 February 2004, 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 applications that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 18 May 2004, the Applicant, after making the necessary corrections, again filed an Application requesting the Tribunal, *inter alia*:

- “[1. To pay the Applicant her salary up to 13 November 2003, so that she may take early retirement;
2. To convert her termination benefits to early termination benefits;
3. To calculate her termination benefits on the basis of Grade 11, step 9, plus annual increments from 1 November 2000 to 13 November 2003;
4. To pay the Applicant appropriate compensation.]”

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 September 2004 and periodically thereafter until 31 March 2005;

Whereas the Respondent filed his Answer on 31 March 2005;

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

**“II. SUMMARY OF FACTS:**

... Effective 1 December 1980, the [Applicant] was offered and accepted a temporary indefinite appointment as an Area staff member as a 'Clerk A', Grade 07 at the Finance Division in the Jordan Field Office[, UNRWA].

... On 25 April 1995, the [Applicant] was transferred to the post of Finance Clerk and 1 August ... she was promoted to the post of Assistant Accounting Control Officer, Grade 11. On 20 April 1998, [she] was transferred to the post of Assistant Claims Examination Officer at the same grade level.

... On 2 January 2001, the Deputy Director and Officer-in-Charge [(OIC)] of UNRWA Operations informed the [Applicant] that it appeared that she may be involved with an overpayment made to a teacher ..., as she may have omitted to properly file the record of an advance payment made to [the teacher]. Pending a final decision in connection with the matter, the [Applicant] was temporarily assigned to the vacant post of Registration Analyst (Grade 10) in the Relief and Social Services Department.

... On 15 January 2001, the [Applicant] responded ... and explained her position in relation to the overpayment ... She complained that she had been transferred from her post and further stated that she was not properly qualified for the post of Registration Analyst, which post was one grade below her personal level.

... The [OIC] again wrote to the [Applicant] on 18 January 2001 and advised her that an Investigation Committee had been formed which would interview her and other staff members as soon as possible. He also advised her that her assignment to the post of Registration Analyst was a temporary one pending completion of the investigation and made without prejudice to her rights.

... The [Applicant's] Periodic Report for 1 November 1999 to 1 November 2000 was completed on 7 March 2001. The Periodic Report reflected shortcomings ... and as a consequence the [Applicant's] annual increment, due on 1 November 2000, was deferred for six months.

... On 22 March 2001, the [Applicant] wrote to the Field Administration Officer and again set out her position in connection with the overpayment ...

She argued that as she had no responsibility for the overpayment, she should not have been transferred from her post.

... On 6 June 2001, the [Applicant] learned that she had not been paid her annual increment ... [and] wrote to the Director of UNRWA Operations, Jordan. In addition to complaining about the non-payment of her annual increment, she also noted that the case involving [the teacher] had been under investigation since January 2001 and that her transfer had been without prejudice to her rights. She asserted that a staff member should be informed of any action taken against him or her and that periodic reports should be discussed with a staff member.

... On 26 June 2001, the Director of UNRWA Operations replied to the [Applicant] and advised that her case was presently under review and that she would receive a reply as soon as the review was completed.

...

... The Investigation Committee ... submitted its report on 2 July 2001[, finding that the overpayment resulted from the Applicant's failure to confirm that the cancellation of the Cash Payment Voucher for the advance had taken place prior to submitting the Voucher for final payment and from her negligence to take timely action when she learned that the cancellation had not taken place. It recommended that action be taken against her].

... On 18 July 2001, the Director of UNRWA Operations, Jordan, forwarded the report to the Director of Administration and Human Resources for his views indicating that [he believed that the Applicant bore the full responsibility not only for the initial act of gross negligence, but for covering up the consequences] and recommending that [she] be terminated 'in the interest of the Agency'.

[On 29 August 2001, the Applicant lodged an appeal with the Area JAB in Gaza.]

... In a Note for the Record dated 27 November 2001[, the] Field Personnel Officer, Jordan, stated that an Interview Board had determined that the [Applicant] was the most suitable candidate amongst the candidates who had applied for the post of Technical Instructor [(Business and Office Practice)], Amman Training Centre. ... [H]er appointment to the post, if approved, would be with grade protection to her present grade (11) and her promotion to the full grade of the post, Grade 12, would be considered once she met all the requirements.

...

... On 23 January 2002[, the] Deputy Director of UNRWA Operations, Jordan, informed the [Applicant] that a serious complaint had been received concerning her work performance, in particular that she had been directly involved in an overpayment to an ex-staff member which resulted in financial loss to the Agency in the amount of US\$ 21,100. The investigation of the overpayment had established that the [Applicant] had been irresponsible in performing her duties. Therefore it had been decided to serve her with a letter

of censure and to demote her from her present Grade 11, step 9 to Grade 10, step 9. It had also been decided to transfer her to the post of Technical Instructor (Business [and] Office Practice) at Amman Training Centre.

... On 18 February 2002, the [Applicant] requested ... administrative review of the 23 January 2002 decision indicating, inter alia, that the Deputy/Field Finance Officer bore the main responsibility for the overpayment by signing the two cheques. She also stated that she had been transferred to posts that were not suitable to her experience.

... On 5 March 2002[, the] Principal, Amman Training Centre, informed the Chief, Field Education Programme that ... the [Applicant's] performance as a teacher was ... not up to standard ... [and] recommended that another position be found for [her].

... On 9 March 2002, the Principal, Amman Training Centre, wrote again to the Chief, Field Education Programme, attaching a complaint from the [Applicant's] students about her teaching. ...

... On 11 March 2002, [the] Chief, Field Education Programme, informed the Field Administration Officer, Jordan, about the deficient performance of the [Applicant] ...

[On 25 March 2002, the Appellant lodged a second appeal with the JAB against the decision dated 23 January 2002, to serve her with a letter of censure, to demote her to Grade 10, step 9, and to transfer her to the post of Technical Instructor at Amman Training Centre.]

...

... On 28 March 2002, the Principal, Amman Training Centre, wrote again to the Chief, Field Education Programme, attaching a complaint about the performance of the [Applicant].

... On 4 April 2002[, the] Field Personnel Officer, Jordan, recommended to [the Director of UNRWA Operations, Jordan,] that given the [Applicant's] deficient performance as Technical Instructor and the fact that there were no other suitable vacant posts available, [she] should be terminated in the interest of the Agency.

... On 14 April 2002[, the] Director of UNRWA Operations, Jordan, advised the [Applicant] that complaints had been received concerning her performance as Technical Instructor; in particular she lacked teaching, communication and management skills. The [Applicant] was informed that given her deficient performance in her present post and the fact that there was no other vacant post commensurate with her qualifications, it had been decided to terminate her services in the interest of the Agency.

[On 6 May 2002, the Applicant lodged a third appeal against the 14 April 2002 decision to terminate her in the interest of the Agency.]

..."

On 14 May 2003, the JAB (“First Board”) issued its report in all three cases. Its evaluation and judgement and recommendation read, in part, as follows:

**“Evaluation and judgement**

33. ... [T]he Board ... came out with the following:
- a) Concerning the appeal of 29 August 2001, the Board dwelt on the preliminary issue of receivability and resolved the case not receivable ... [as the time limits set out in Area staff rule 111.3 had not been met]
  - b) Furthermore, the Board is of the opinion that due to lack of supporting documents and the absence of [a] personnel file, it would like to postpone the review of the case.

**IV. Recommendation**

36. In view of the foregoing ... the Board unanimously makes its recommendations that the appeal of 29 August 2001 be dismissed.

Concerning the second and third appeals ... the Board would like to postpone the review of the case due to lack of supporting documents and the absence of [a] personnel file.”

The JAB reconvened on 17 November 2003 (“Second Board”) and adopted its report in all three cases on the merits. Its evaluation, judgement and recommendation read, in part, as follows:

**“III. Evaluation and judgement**

35. ... [T]he Board ... came out with the following:
- a) Concerning the appeal of 29 August 2001, the Board dwelt on the preliminary issue of receivability and agrees with the first Board that the case is not receivable ... [as it was time-barred.]
  - b) The Board agrees that the Appellant has caused severe avoidable financial loss to the Agency.
  - c) The Board note[s] that [the] Appellant was offered two opportunities to continue her service with the Agency but [that] she did not show competence in either of them.
  - d) In this context, the Board believes that the Administration has acted within the framework of standing Rules and Regulations without prejudice or bias to the Appellant.

**IV. Recommendation**

36. 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 27 April 2004, the Commissioner-General transmitted a copy of the JAB report to the Applicant and informed her as follows:

“Please find enclosed copies of two reports from two separate [JAB’s] in relation to your appeal. ...

Concerning your appeal against the withholding of your annual increment for six months and your transfer to the post of Registration Analyst, the Board (“First Board”) determined that this part of the appeal was not receivable.

...

I agree with the Board’s determination that the appeal against the withholding of your annual increment for six months and your transfer to the post of Registration Analyst was not receivable. Accordingly, I have accepted the Board’s recommendation and have dismissed that part of the appeal on the recommended basis.

Regarding the decisions to serve you with a letter of censure, to demote you to Grade 10, step 9, to transfer you to the post of Technical Instructor at Amman Training Centre and then to terminate your services in the interest of the Agency, I agree with the [“Second”] Board’s findings and its conclusion that the Administration acted in accordance with Staff Regulations and Rules and without prejudice or bias towards you. Accordingly, I have accepted the Board’s recommendation that the administrative decisions be upheld and have dismissed this part of your appeal as well.

...”

On 18 May 2004, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant’s principal contentions are:

1. The Applicant was not responsible for the overpayment of US\$ 21,000.
2. The decision to transfer her to posts lower in grade than her own post and for which she did not possess the required experience or receive the proper training, violated her rights.
3. The Investigation Committee ignored all the facts as well as the explanations provided by her.

Whereas the Respondent's principal contentions are:

1. The Applicant's appeal relating to her annual increment and her temporary assignment are time-barred.
2. The decisions to censure, demote and transfer the Applicant were valid exercises of discretionary authority and were not vitiated by substantive or procedural irregularity, improper motive, or any other extraneous factor. The facts on which the disciplinary measures were based were established by the evidence on record and raised a reasonable inference that the Applicant was guilty of irresponsible conduct warranting disciplinary measures.
3. The above-mentioned decisions were not flawed by substantive irregularity; they were not motivated by prejudice or extraneous factors and were not an abuse of discretion; they were legal; and, they were proportionate to the offence.
4. The decision to terminate the Applicant's services in the interest of the Agency was in accordance with the Staff Regulations and Rules and was not motivated by prejudice or bias.

The Tribunal, having deliberated from 2 to 23 November 2005, now pronounces the following Judgement:

I. When these proceedings were commenced before the JAB, it was unclear to the Respondent precisely what administrative decisions were intended by the Applicant to be covered by her appeal. In the circumstances, the Respondent interpreted her appeal in the widest way so as to ensure, in the interest of the Applicant, that all matters which she might have wished to have reviewed were dealt with in those proceedings. The issues which were addressed by the Respondent and which were considered by the JAB were as follows:

- (1) The Respondent's decision not to grant the Applicant the annual increment which would ordinarily have been paid as from 1 November 2000, the decision not to pay the said increment having been made because of deficiencies or inadequacies in her work performance as identified in the Applicant's periodic report;
- (2) The decision to temporarily assign the Applicant to the post of Registration Analyst pending an investigation into an allegation that

she had been negligent in the performance of her duties which had resulted in an overpayment being made to a retiring staff member as outlined at sub-paragraph (3) below;

- (3) The decision of 23 January 2002 to serve the Applicant with a letter of censure and to demote the Applicant and to transfer her to a post of Technical Instructor (Business and Office Practice) as a result of her involvement in the making of an overpayment of US\$ 21,100 to a retiring staff member of UNRWA; and,
- (4) The Respondent's decision of 14 April 2002 to terminate the Applicant's service in the interest of the Agency when her performance proved to be unsuitable in the Technical Instructor post.

II. As to the issues set out in sub-paragraphs (1) and (2) of paragraph I above, the JAB found these aspects to be irreceivable on the grounds that the time limits for the submission of appeals on those matters as provided by Area staff rule 111.3 had been exceeded and it found no grounds for the waiver of the time limits or for extending the time for seeking administrative review in relation thereto. The Applicant has not applied to the Tribunal to review that conclusion which had been accepted by the Respondent and who had accordingly dismissed such appeals so that the Tribunal does not propose to deal with those issues.

III. As to the issue in sub-paragraph (3) which concerns the letter of censure and the decision to demote and transfer the Applicant, she argues on the merits that she should not have been found to bear any responsibility or to have been found culpable in relation to the matters which prompted those actions and further submits that, since the Administration did not seek reimbursement from her in respect of the overpayment, this indicates that she should not have been found to have been responsible for the said matter. As to the latter submission, the Respondent counters by saying that the amount of the loss when compared to the Applicant's salary meant that charging her personal account would not have been a practicable proposition. In either event, the Tribunal is satisfied that a decision by the Administration not to seek to charge a staff member's personal account in no way establishes that such staff member was not responsible for the loss sustained.



IV. The Applicant's involvement in the events giving rise to the overpayment issue was examined by an Investigation Committee who found on cogent evidence that the Applicant had been involved in the processing of documents central to the transactions which resulted in the overpayment being made. The Applicant had, in the first instance, been involved in processing documents so that an advance on the final sum due to the retiring staff member could be made so as to accommodate her urgent needs and then, some short time later, in the preparation of documents leading to the making of the final payment to the staff member. When preparing documents in relation to the said final payment, the Applicant failed to allow credit for the amount of the advance so that the final payment was made to the retiring staff member without deducting therefrom the amount which had already been advanced. This resulted in an overpayment of about US\$ 21,100 being made to the said staff member.

V. The Applicant, in answer to the said allegation, argued that she was informed and believed that a decision had been made to cancel the arrangement for payment of the said advance to the retiring staff member and that she had been informed that the arrangement had been cancelled. She accordingly claims that she should not have been faulted or found to have responsibility for failing to deduct the amount of the advance payment when calculating the final amount to be paid. She further claims that it is a matter of established United Nations or UNRWA practice or of customary law that the person who wrote the cheque should carry the responsibility, if there was an overpayment. She also claims that she was not responsible for the Cash Payment Voucher for the advance payment not having been cancelled since the Deputy Field Finance Officer told her he personally would take care of it. This according to her "superceded all Agency rules, regulations, procedures, etc".

VI. The Investigation Committee which had investigated the circumstances surrounding the said overpayment concluded that the Applicant had culpably failed to check properly as to whether the arrangement made to make an advance payment had in fact been cancelled and, whilst it accepted that this was a result of human error, perhaps excusable by reason of the procedures and the very substantial amount of paperwork passing through the Applicant's section, it found that thereafter when the Applicant appreciated that a mistake may well have been made she wilfully obstructed an early effort made to investigate the matter. It found that this delay to the

investigation may have prejudiced the Agency's prospects of obtaining a refund of the overpayment made. In the view of the Tribunal, these findings and conclusions were made on cogent and credible evidence and the Tribunal, like the JAB, considers that the Administration was entitled to act on those findings and conclusions.

VII. As to the Applicant's submission that only the writer of the cheque could be held responsible, this proposition must be rejected. In the instant case, the writer of the cheque was found to bear some responsibility but this did not preclude the Investigation Committee from concluding that the Applicant was also at fault. The Tribunal is satisfied that the Investigation Committee and, consequently, the Respondent was entitled to conclude that the Applicant had been guilty of irresponsible conduct of a sort reasonably characterised as "unsatisfactory conduct" within the meaning of Area staff regulation 10.2 so that the Administration was entitled to impose disciplinary measures against the Applicant in relation thereto.

VIII. The Tribunal, like the JAB, is satisfied that in deciding to impose disciplinary measures consisting of the letter of censure and a demotion (which included a transfer), the Administration acted within the framework of the Rules and Regulations of the Agency. It further shares the JAB's finding that the decision had been reached without prejudice or bias against the Applicant and, accordingly, the Applicant's claim insofar as it relates to these issues is rejected and dismissed.

IX. In relation to the issue in sub-paragraph (4), *supra*, in the implementation of the aforesaid measures, the Applicant was transferred to the position of Technical Instructor (Business and Office Practice), a post for which she had been interviewed successfully, with demotion from Grade 11, step 08 to Grade 10, step 09.

X. The Applicant claims that she had been forced to attend the interview for the said post but offers no evidence in support of this allegation. Since this complaint does not appear to have been made in the proceedings before the JAB, the JAB unsurprisingly did not investigate it nor was it dealt with in the JAB Report. The Respondent denies this assertion and says that in the light of her expressed desire to obtain an instructor post she had been invited by letter of 15 November 2001 to appear before an interview board on 20 November to be interviewed for the Technical Instructor (Business and Office Practice) position in question. He further provides

evidence that the Applicant had applied for the post in question, which again belies her assertion that she had been forced to attend the said interview. In those circumstances, the Tribunal must reject her unsupported and uncorroborated assertion.

XI. It is clear beyond doubt that the Applicant's performance in the Technical Instructor post was totally unsatisfactory. She admits so much herself, claiming that she had been moved to a post for which she lacked aptitude. It appears that not only did she lack aptitude but that she also lacked the skills or commitment appropriate for the job and her attendance record was far from satisfactory. Whilst the Interview Board had found that she was the most suitable candidate, it had observed that she lacked the appropriate qualification and that she would need training. This training was offered to her but despite training she proved quite unsuitable for the task and her skills, or the lack of them, were the subject matter of many complaints from her students. Since it became clear that she could not be kept on in the said position, the Administration sought to see if she could be accommodated in some other position appropriate to her skills. They failed to find such a post for her so that she was ultimately terminated "in the interest of the Agency" in accordance with Area staff regulation 9.1.

XII. The Applicant seeks review of this decision to separate her from service in the interest of the Agency claiming that it was a consequence of the improper finding that she had been irresponsible, and therefore liable, for the loss to the Agency occasioned by the said overpayment and she further makes various allegations of improper motivation as a result of prejudice or bias against her.

XIII. The Tribunal, like the JAB, must reject the Applicant's contentions. The jurisdiction of the Tribunal in relation to termination "in the interest of the Agency" under the said Area staff regulation has been reviewed and summarised in Judgement No. 1181, *Abu Kashef* (2004) as follows:

"In addressing the issue of whether the Respondent's decision to terminate was proper within the Respondent's managerial discretion, the Tribunal has previously held that the Commissioner-General has the discretion to make managerial decisions with regard to staff members. (See Judgements No. 681, *Maqari* (1994); No. 682, *Dabit* (1994); and, No. 709, *Nabhan* (1995).) This managerial discretion, however, is not unfettered, and '[a]dministrative decisions affecting a staff member must not run counter to certain concepts

fundamental to the Organization. They must not be improperly motivated, they must not violate due process, they must not be arbitrary, taken in bad faith or discriminatory'. (See Judgement No. 1134, *Gomes* (2003), citing Judgement No. 981, *Masri* (2000).) Where a staff member seeks to vitiate the Respondent's decision on the basis of prejudice, improper motive or other extraneous factors, the burden of proving such prejudice or improper motive is on the staff member, who must adduce convincing evidence. (See Judgement No. 834, *Kumar* (1997).) Thus, the Tribunal must consider whether the Respondent's exercise of discretion was vitiated by any violation of due process or by any arbitrariness, bad faith, discrimination or other such extraneous factors."

XIV. Whilst it may be unfortunate that the Applicant proved to be incapable of properly discharging the duties of Technical Instructor (Business and Office Practice) and failed to find the enthusiasm to apply herself towards improving her performance, she has not established that there was any *mala fides* on the part of the Administration in assigning her to the said post when implementing the decision that she would be transferred and demoted. It is not a case where she was wilfully placed into a position where she was unlikely to succeed with the intention that her performance would be found to be unsatisfactory so that she could then be terminated "in the interest of the Agency". This is clear, as the Investigation Committee had recommended that the Applicant be terminated but the Administration took a more benign or understanding view and determined to impose a less severe penalty consisting of transfer and demotion. The Applicant has further failed to establish any lack of good faith on the part of the Administration in seeking yet another position for her when her performance in the Technical Instructor post proved to be unacceptable. It was reasonable not to assign her back to the Field Finance Office as the Administration had lost confidence in her ability to give satisfaction there by reason of the previous shortcomings which had been found against her. In these circumstances, this aspect of the Applicant's claim must likewise be rejected.

XV. Finally, the Applicant makes the claim that the Investigation Committee lacked the financial skills, experience or acumen to investigate the circumstances surrounding the previously mentioned overpayment. However, the Tribunal is satisfied from reading the report of the said Committee that it carried out its investigation in a highly competent manner and that the Applicant's answers to the case made against her were given full and fair consideration. It is apparent that the said Committee had a clear

understanding of the issues, the evidence and the arguments made by both parties and this claim is likewise rejected.

XVI. Accordingly, 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