



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1481

Case No. 1649

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 Sir Bob Hepple, First Vice-President; presiding: Ms. Brigitte Stern; Ms. Jacqueline R. Scott,

Whereas, on 28 July 2007, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), filed an application that did not fulfill all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, at the request of the Applicant, the President of the Tribunal granted an extension of the time limit for filing an application until 29 February 2008, and twice thereafter until 29 November 2008;

Whereas, on 28 November 2008, the Applicant, after making the necessary corrections, filed an Application containing pleas which read, in part, as follows:

“II. PLEAS

7. ...[T]o find:

....

b) that the present [A]pplication is receivable under [a]rticle 7 of its Statute.

8. ...[T]o find:

- a) the decision taken by the Commissioner-General of UNRWA overlooked many significant facts and did not take into account the recommendations of the Appeal Board that met in Amman;
- b) that none of the UNWRA entities (the legal office or the Director of UNRWA Operations and the Commissioner-General) have taken the trouble to meet with the Applicant to hear his defense at all. The decision of summary dismissal was taken without the Applicant ever being given the opportunity to defend himself, thus violating his due process rights.
- c) that the legal adviser of UNRWA was intimately involved in the conflict at the time the decision to dismiss the Applicant was taken and she was a major force behind the dismissal (for personal reasons having to do with the Applicant's refusal to cooperate with her husband); she was therefore biased against [the] Applicant
- d) that the blacklisting of [the] Applicant's name with [United Nations] agencies be immediately abated since it has produced the deleterious effect of making it hard for [the Applicant] to find work with other multilateral agencies despite the fact that the case is still ongoing. This eventuality has placed the Applicant and his family in dire financial circumstances.

9. ...[The Applicant requests]:

- a) [that the Tribunal reassesses his case]
- b) That the payment of [the] Applicant's provident fund from UNRWA together with the separation benefits and the interests paid into the fund since his termination should be reexamined
- c) That the Applicant be paid 50,000.00 USD compensation following his separation from the World Bank as a direct result of misinformation about him that was unfairly diffused by the lawyer of UNRWA.
- d) [Compensation in the amount of 50,000,00 USD for damage to his reputation as the result of] UNRWA deliberately supply[ing] false information about him to another organization without an official request for any such information
- e) Although the Applicant resigned from UNRWA to work at the World Bank he was dismissed from his new position at the World Bank because of misleading information supplied by UNRWA. [The] Applicant therefore requests that he be reinstated at UNRWA or in the alternative his separation benefits should be fully released to him.
- f) [The] Applicant requests appropriate monetary compensation for his disabilities incurred since December 2004 as a direct result of a work-related action which left him disfigured and functionally idle”

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 9 June 2009; and once thereafter until 13 July 2009;

Whereas the Respondent filed his Answer on 10 July 2009;

Whereas the Applicant filed Written Observations on 31 August 2009;

Whereas the Respondent filed an additional communication on 27 October 2009;

Whereas at the request of the Respondent, the Secretariat of the Tribunal granted an extension of the time to file a reply to the Applicant's Written Observations until 5 November 2009;

Whereas the Respondent filed his reply to the Applicant's Written Observations on 5 November 2009;

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

“SUMMARY OF FACTS

... Effective 5 October 1986, the [Applicant] was offered and accepted a Temporary Fixed-Term Appointment ('A' category Letter of Appointment) for the position of Academic Instructor, English, Grade 10, at Kalandia Vocational Training Centre, West Bank.

... By memorandum dated 24 January 1987, the [Applicant] requested permission from the Field Personnel Officer, West Bank, to teach part time at the Modern Community College, the Officer-in-Charge of UNRWA Operations, West Bank, granted the [Applicant] permission to do so.

... By letter dated 2 May 1990, the [Applicant] was offered the post of Academic Instructor English at Ramallah Men's Training Centre ('RMTC').

... By memorandum dated 4 June 1991, the [Applicant] requested permission from the Principal, RMTC, to teach at Al-Ummah College, on a part time basis after UNRWA working hours. The request was agreed to by the Acting DUO [Director of UNRWA Operations] on 17 June 1991.

... By memorandum dated 23 April 1992, the [Applicant] requested permission from the Field Education Officer, West Bank, through the Principal, RMTC, to teach at the 'Open University' on a part time basis. The request was approved by the Acting DUO on 11 May 1992.

... By memorandum dated 30 October 1993, the [Applicant] requested permission from the Principal, RMTC, to teach at the 'Open University', on a part time basis. The request was approved by the Deputy DUO on 11 November 1993.

... Effective 1 January 1994, the [Applicant's] post title was amended to 'Faculty Instructor English'.

... By memorandum dated 19 April 2001, the Principal, RMTC, reported to the Field Administration Officer, West Bank, ('FAO') (through the Chief Field Education Programme ('CFEP')) seven occasions during the period 17 December 1999 - 19 April 2001 on which the [Applicant] left RMTC during working hours without permission.

... By letter dated 29 June 2001, the Assistant DUO, censured the [Applicant].

... By letter dated 7 July 2001, the [Applicant] asked that the Assistant DUO

reconsider the decision to censure the [Applicant].

... On 29 October 2001, the [Applicant] submitted a 'Request for Engagement in Outside Activities and Interests' seeking permission to work as a part-time consultant on a 'Multi-Sector Review Project'. 3-4 hours per week until the end of December 2001. The Deputy DUO approved the request.

... By memorandum dated 8 July 2002, the Dean/Principal, RMTC, forwarded to the CFEP a letter dated 1 July 2002 from IPCRI in which IPCRI sought information on the employment status of the [Applicant] with UNRWA.

... On 11 July 2002, the Assistant DUO wrote to the DUO informing him of the letter received from the IPCRI and of a telephone conversation between the Assistant DUO and IPCRI.

... On 12 July 2002, the DUO issued a letter to the [Applicant] advising him that he was suspended from duty without pay pending the investigation of his unauthorized absences from work and apparent employment with IPCRI.

... In a memorandum dated 17 July 2002, the [Applicant] wrote to the DUO requesting reconsideration of the decision of 12 July 2002.

... On 26 July 2002, the Officer-in-Charge of UNRWA Operations, West Bank, constituted a Committee to investigate allegations that the [Applicant] 'engaged in outside employment without proper approval and was absent from duty without the permission of his supervisors'.

... On 15 September 2002, the [Applicant] lodged with the Secretary of the [JAB] his appeal against the decision of the DUO to suspend him from duty without pay.

... On the same day (15 September 2002), the [Applicant] wrote to the Commissioner-General and Deputy Commissioner-General requesting that his case be re-examined for substantially the same reasons as set out in the [Applicant's] appeal.

... In a memorandum dated 16 September 2002, the [Applicant] wrote to the DUO and the Assistant DUO again asking that the decision to suspend him from duty without pay be reconsidered.

... The August 2002 report of the investigation Committee was forwarded by the DUO to the Director of Administration and Human Resources ('DAHR') under cover of memorandum dated 26 September 2002. The DUO recommended that, in light of the Committee's findings, the [Applicant's] appointment be terminated.

... By memorandum dated 6 October 2002, the DAHR asked the DUO to provide information demonstrating that the [Applicant] had been afforded, due process. This prompted further investigations into the [Applicant's] employment with IPCRI and other organizations as well as the alleged employment of other area staff members with IPCRI.

... In the course of the further investigations, the Agency sought from IPCRI clarification regarding the [Applicant's] employment with IPCRI. By undated letter on 24 December 2002, the Committee interviewed the [Applicant] and offered the [Applicant] the opportunity to respond to numerous findings of the Committee, including the information received from IPCRI.

... By memorandum dated 15 January 2003, the Dean/Principal, RMTC, provided further information to the Field Legal Officer, West Bank ('FLO').

... By letter dated 3 February 2003, the DUO issued the [Applicant] with a 'Letter of Final Warning'.

... On 17 February 2002, the [Applicant] met with the Dean/Principal, RMTC, and the Deputy Principal, RMTC, to discuss his return to work. Amongst other things, the [Applicant] undertook to 'immediate[ly] halt ... all kinds of work/activities outside the college regardless of the circumstances'
(English translation).

... By letter dated 18 February 2003, the [Applicant] requested that the DUO reconsider the decision to treat the [Applicant's] suspension for the period from 12 July 2002 to the date he reported back to duty as suspension without pay.

... By letter dated 11 March 2003, the DUO informed the [Applicant] that, because no grounds had been identified to rescind the decision of 3 February 2003, the decision to treat the [Applicant's] suspension for the period from 12 July 2002 to the date he reported back to duty as suspension without pay would stand.

... The [Applicant] reported back to duty on 22 February 2003.

... For the period 27 September 2003 – 31 December 2003, the [Applicant] was absent from work on sick leave. In January 2004, the [Applicant] requested to be referred to a Medical Board. On 9 March 2004, the [Applicant] was absent from work on uncertified sick leave. For the periods 15 March 2004 – 28 April 2004, 2 May 2004 – 12 June 2004, 13 June 2004 – 17 June 2004 and 30 August 2004 – 6 October 2004, the [Applicant] was absent from work on certified sick leave. On 7 October 2004, the [Applicant] was examined by a medical board.

... By letter dated the same day, 7 October 2004, the [Applicant] submitted his resignation effective 7 November 2004.

... By memorandum dated 9 October 2004, the Principal, RMTC, forwarded the [Applicant's] letter dated 7 October 2004 to the Personnel Division, West Bank Field Office. On 11 October 2004, the West Bank Field Office Area Staff commenced a strike. The processing of the [Applicant's] resignation was, as a result, delayed.

... By e-mail dated 21 October 2004, the World Bank informed a number of recipients – including an employee of the Agency – that the [Applicant] had been employed by the World Bank as an 'Education Specialist'.

... On 21 November 2004, the West Bank Field Office Area Staff strike concluded. On 23 November 2004, the Personnel Division of the West Bank Field Office officially received the [Applicant's] resignation letter dated 9 October 2004.

... By memorandum dated 30 November 2004, the FAO advised the [Applicant] that 'it has been decided to defer the consideration of your resignation until the conclusion of your appeal [dated 15 September 2002]'.

... By e-mail to the Principal, RMTC, on 7 December 2004, the [Applicant] withdrew his appeal dated 15 September 2002 in order to facilitate the consideration of his resignation.

... In an e-mail dated 23 December 2004, an employee of Pinkerton Consulting, acting on behalf of the World Bank Group in the conduct of a background check in connection with an application for employment lodged with the World Bank Group by the [Applicant], requested information concerning the [Applicant's] employment with the Agency.

... By letter dated 13 January 2005, the DUO informed the [Applicant] of the DUO's decision to summarily dismiss [him].

... By facsimile on 14 January 2005, the European Commission provided to the Agency a certificate stating that the [Applicant] had 'been working for the EC Food Security Programme as Senior Facilitation Expert from December 2003 to October 2004'.

... By e-mail dated 15 January 2005, the World Bank Office Manager formally advised the FLO that the [Applicant] had been offered a position with the Bank on 21 September 2004 and that the [Applicant's] appointment became effective on 19 October 2004.

... By letter dated 19 January 2005, the [Applicant] requested that his resignation be withdrawn and that he be allowed to resume his duties.

... By letter dated 25 January 2005, the [Applicant] requested the DUO [to] reconsider the decision to summarily dismiss him. The [Applicant] asserted that the DUO's letter dated 13 January 2005 had been received by him on 24 January 2005.

... By letter dated 28 January 2005, the DUO informed the [Applicant] that, after thorough review of the [Applicant's] petition dated 25 January 2005, the DUO had concluded that the [Applicant] had provided no grounds on which to rescind the decision to terminate his services.

... By letter dated 18 February 2005, the [Applicant] appealed against the decision to summarily dismiss him."

The JAB considered the decision to suspend the Applicant without pay and the decision to summarily dismiss the Applicant from service. It adopted its report in April 2007. Its considerations and recommendation read, in part, as follows:

"EVALUATION AND JUDGEMENT

49. On its deliberations the Board examined all documents cited before it including the Appellant's personal file and came out with the following:

a) The Board noted that the Appellant has applied for resignation on 7 October 2004. The Agency failed to reply to his request in a timely manner, due to staff strike which took place on 11 October 2004. The first communication to the appellant regarding his resignation took place on 30 November 2004.

b) The Board believes that neither the Administration nor the Appellant should bear the consequences of the strike.

c) The Board noted the Administration's reply of 30 November 2004, on which the Agency informed the Appellant that consideration of his resignation would be deferred until his first appeal was concluded.

d) The Board could not see a logical link between consideration of the Appellant's resignation and his first appeal (dealing with suspension without pay which dates back to September 2002). However, and in order to facilitate the consideration of his resignation, the Appellant withdrew his first appeal.

e) The Board noted that the Administration summarily dismissed the Appellant on 13 January 2005.

f) By sequence of events, the Board considers the Appellant to have resigned his post effective 7 December 2004, and therefore, the Board would question the legality of such action on a resigned staff member.

g) Having said that, the Board is of the opinion that if the Administration still believes that a further disciplinary measure should be taken against the Appellant, the decision to summarily dismiss him would be considered disproportionate with the breach committed.

IV. RECOMMENDATION

50. In view of the foregoing and without any further oral or written submissions, the Appellant may deem pertinent, the Board unanimously makes its recommendation that the Administration's decision appealed against to summarily dismiss the Appellant be reviewed. In the meantime, and as regards the first appeal, which deals with suspension without pay, the Board recommends that it be dismissed."

On 25 July 2007, the Commissioner-General for UNRWA transmitted a copy of the report to the Applicant and informed him as follows:

"I have reviewed the Board's report and reference that, with regard to your appeal relating to your suspension without pay for having engaged in outside employment activities without prior Agency approval, the Board unanimously recommended that the appeal be dismissed. I have accepted the Board's recommendation and have therefore dismissed your first appeal.

With reference to your appeal relating to your summary dismissal for serious misconduct, I note that the Board 'unanimously makes its recommendation that the Administration's decision appealed against be reviewed'. However, I disagree with the Board's reasoning that you had resigned effective prior to your summary dismissal and that the disciplinary measure was disproportionate. With regard to the former, the Agency, while in the process of investigating your continued misconduct relating to not just one but several full- and part-time positions you held outside the Agency, was in no way required to accept your resignation, the effect of which would have been to permit you to escape the application of the Area Staff Regulations and Rules in regard to disciplinary action.

With regard to the issue of proportionality, I note that you had, sometime after late 1998, signed an undertaking to report any outside employment before committing yourself to it and to bear 'total responsibility' if you failed to do so, and in March 2003 had been served with a 'letter of final warning' relating to your unapproved outside employment activities. Nonetheless, you continued to engage in outside employment activities with several different organizations in violation of Area Staff Regulations and Rules and despite both your

express undertakings and the final warning that had been served. Accordingly, I am confident that the decision was not disproportionate to your continued serious misconduct.”

Whereas the Applicant’s principal contentions are:

1. The Organization violated his rights when it decided to suspend him without pay and to summarily dismiss him from service.
2. UNRWA’s sanctions were disproportionate to the alleged violations.
3. UNRWA’s legal adviser was prejudiced against him and supplied the World Bank with information which caused the Bank to terminate his employment.
4. The injuries incurred warrant compensation.

Whereas the Respondent’s principal contentions are:

1. The Commissioner-General has broad discretionary authority concerning disciplinary matters, including the determination of whether a staff member’s conduct amounts to misconduct and which sanction is appropriate.
2. The Applicant’s conduct constituted misconduct and the decision to summarily dismiss him was properly effected.
3. The decision to suspend the Applicant without pay was properly taken.
4. The contested decisions were not vitiated by prejudice or other extraneous factors.

The Tribunal, having deliberated from 26 October to 25 November 2009, now pronounces the following Judgement:

I. The Applicant joined UNRWA on 5 October 1987 on a fixed-term contract as academic instructor at the Kalandia Vocational Training Centre in the West Bank. His contract was renewed several times. On 2 May 1990, he was offered the post of English instructor at the Ramallah Men’s Training Centre (RMTC).

II. On many occasions, the Applicant had been authorized to engage in professional activities outside the Agency. On 29 June 2001, the Applicant was censured, however, for having absented himself without authorization from RMTC several times during his working hours. Moreover, during the summer of 2002, it became apparent that the Applicant was, without authorization, combining his work at UNRWA with employment at IPCRI. When informed of this situation, the Director of UNRWA Operations sent the Applicant a letter dated 12 July 2002, in which he informed him that he was suspended from duty without pay pending an investigation, which was to clarify the situation. This investigation was initiated on 26 July by the Officer-in-Charge of UNRWA Operations.

III. The Investigation Committee responsible for investigating allegations that the Applicant had engaged in outside employment without prior approval submitted its report in August 2002, in which it recommended that the Applicant's contract should be terminated. The Applicant was invited to respond to the allegations against him. Upon the conclusion of these proceedings, however, the Administration rejected the recommendation of termination, and instead sent the Applicant a "letter of final warning" dated 3 February 2003. In this letter, the Director of UNRWA Operations informed the Applicant that, if there were any further violations by him of his statutory obligations, the Administration would be obliged to take the appropriate action, which could even include termination. For his part, the Applicant, after meeting with the Dean and Assistant Principal of RMTC to discuss arrangements for his return to work, signed a memorandum in which he confirmed his understanding that, if he again agreed to take on outside work without prior approval, he would be subject to disciplinary measures.

IV. Meanwhile, the Applicant made several requests to his supervisors to rescind the decision to suspend him without pay, but the Administration did not accede to his requests. The Applicant also filed an appeal with the area Joint Appeals Board (JAB) on 15 September 2002.

V. The Applicant resumed work on 22 February 2003. Subsequently, reportedly owing to health problems, he was on sick leave from 27 September to 31 December 2003. He was also absent from 9 March to 6 October 2004, although he had no medical certificate for that entire period.

VI. On 7 October 2004, the Applicant was examined by a medical officer and on the same date he submitted his resignation to the Administration, effective 7 November. From 11 October to 21 November 2004, the staff members of the West Bank office were on strike and it was not until 30 November that the Administration informed the Applicant that his resignation would not be considered until the proceedings for the appeal to the JAB concerning the decision to suspend him without pay were concluded. In order to make his resignation effective, the Applicant then decided to withdraw the appeal to the JAB. Subsequently, after the Administration had been informed, on 21 October 2004 by an e-mail from the World Bank, that the Applicant had been employed by that organization since 19 October, UNRWA decided, on 13 January 2005, to summarily dismiss the Applicant. The next day, UNRWA was also informed directly by the European Commission that the Applicant had worked for a European programme from December 2003 to October 2004.

VII. The Applicant submitted an appeal for administrative review of the decision to dismiss him but it was rejected by UNRWA. On 13 February 2005, the Applicant requested that his appeal of 15

September 2002 against the decision to suspend him without pay should be reactivated. On 18 February 2005, the Applicant submitted a second appeal to the JAB regarding the summary dismissal decision.

VIII. In July 2007, the JAB submitted a report in which it stated, firstly, that the appeal concerning the decision to suspend the Applicant without pay should be dismissed and, secondly, that the decision to summarily dismiss him was a disciplinary measure that was disproportionate to the breach committed. The JAB therefore recommended that the decision should be reviewed. In a letter dated 25 July 2007, the UNRWA Commissioner-General informed the Applicant of her decision. The Commissioner-General accepted the JAB's recommendation that the first appeal should be dismissed. However, the Commissioner-General declined to follow the JAB's recommendations concerning the summary dismissal decision. She explained that the dismissal decision had been taken not because of a single misdeed by the Applicant but because of a series of misdeeds which affected the performance of the Agency's mission. The Commissioner-General also added that the Administration had in no way been required to accept the resignation which the Applicant had submitted and which could result in him avoiding disciplinary measures that might be adopted against him. For these reasons, the Commissioner-General declined to reconsider the summary dismissal decision.

IX. Before the present Tribunal, the Applicant requests:

- Reinstatement in his UNRWA post;
- Compensation of US\$50,000 for losses sustained as a result of his dismissal by the World Bank on the basis of misinformation provided by United Nations staff to the World Bank;
- Compensation of US\$50,000 for the harm suffered because his good name had been tarnished in the Agency;
- Appropriate compensation for the material harm and moral suffering caused by the situation in which he was placed;
- Lastly, review of the sums paid to him from the Provident Fund and the miscellaneous interest, in view of the subsequent decline in the value of the dollar.

X. The Tribunal can summarize the Applicant's arguments as follows: firstly, he considers that the summary dismissal decision is disproportionate and, secondly, he claims that the decisions taken regarding him were unfair and partial.

XI. As regards the disproportionate nature of the sanction, the Applicant emphasizes the fact that it was common practice for staff to hold jobs inside and outside the Agency concurrently and that the staff members concerned were not systematically dismissed, otherwise most of the staff

would have to be dismissed. In order to demonstrate more specifically the disproportionate nature of the sanction, the Applicant refers to the JAB's recommendations and to the decision of the World Bank Appeals Committee which, when asked to rule on the dismissal of the Applicant from the Bank - when that organization was alerted to his status as a United Nations staff member - considered that the dismissal was an arbitrary decision and that he should be paid compensation on those grounds.

XII. Regarding the violation of his right to due process, the Applicant states that he was not given the opportunity to respond to the allegations made against him. The Applicant also states that the UNRWA legal adviser had an obvious conflict of interest in dealing with his situation, since her husband had applied for a post at the World Bank at the time when the Applicant was a member of the committee considering that application, and he had experienced certain difficulties with her husband.

XIII. Lastly, the Applicant states that his name was on a "black list" of undesirable persons sent to all United Nations agencies, so that he would no longer be recruited to any post, as shown by the fact that he had, since his dismissal, applied for a large number of posts without success.

XIV. The Respondent, for his part, states that the facts on which the disciplinary measure is based are well established. To this end, the Respondent cites a number of documents included in the file: two e-mails from the World Bank certifying that it employed the Applicant; a fax from the European Community certifying that the Applicant was their employee from December 2003 to October 2004; the Applicant's curriculum vitae, as submitted to the World Bank with a view to obtaining a post there, mentioning employment in a number of organizations other than UNRWA; and, lastly, the admission of the Applicant himself that he had engaged in a consultancy mission while on sick leave. The Respondent then maintains that the Applicant deliberately engaged in outside activities, despite a letter of final warning dated 3 February 2003, warning him that there would be sanctions if that conduct were to continue. In addition, according to the Respondent, the Applicant was fully aware of the procedure for applying for permission to engage in outside employment, since he had used that procedure on several occasions between 1987 and 2001. Consequently, the Applicant wilfully breached UNRWA area staff rule 101.4 and had therefore committed serious misconduct. The Respondent also claims that the Applicant provides no evidence, aside from his assertions, that the summary dismissal decision was arbitrary, motivated by extraneous factors, or biased. In accordance with the Tribunal's jurisprudence, the Applicant bears the burden of proof, and he provides no tangible evidence or document justifying his allegations of prejudice.

XV. Concerning the decision itself, the Respondent submits that it was taken in compliance with all the rules of procedure and that it is proportionate to the Applicant's misconduct. Concerning the procedure, according to the Respondent, the fact that the Applicant repeatedly and deliberately violated UNRWA area staff rule 101.4, despite the various warnings, authorized the Respondent to take all necessary measures, including summary dismissal. In addition, the Respondent contends that any explanation provided by the Applicant concerning his repeated violations would not have affected the decision to summarily dismiss him, in view of the incontrovertible material evidence and the Applicant's own admissions in this matter. Finally, the Respondent asserts that the Applicant's arguments were in fact considered, since the DUO considered his letter of 25 January 2005 contesting the decision and since the Applicant was on many occasions allowed to explain his conduct at the various stages of the proceedings. As regards proportionality, the Respondent relies on the Commissioner-General's broad discretionary power and the fact that, around the end of 1988, the Applicant had signed a document whereby he undertook to report any outside professional activity before engaging in it and accepted total responsibility in the event of failure to do so. The Respondent also considered the Applicant's deliberate and repeated violations, especially in view of his knowledge of the procedures and determined that the decision of the Commissioner-General, was therefore, entirely proportionate to the Applicant's misconduct.

XVI. Before considering the various arguments of the parties, the Tribunal must point out that it has to rule on the appeal as it contests the decision of the Commissioner-General of UNRWA to follow or not follow the JAB recommendations. Hence, the Applicant's request concerning the revaluation of the funds deposited in his Provident Fund is not receivable before the present Tribunal because it has not been the subject of a prior appeal. In addition, in the case of the rejection of the Applicant's first appeal concerning the decision to suspend him without pay pending the disciplinary investigation, the Tribunal notes that the Applicant puts forward no argument directly concerning this question. The Tribunal, therefore, needs not address this issue.

XVII. The main question to which the Tribunal must respond is whether the decision to summarily dismiss the Applicant was disproportionate. At the outset, the Tribunal must emphasize that it does not have to take into consideration the decisions which were adopted outside the framework of the Administration, even if they relate to questions similar to those with which the United Nations Administration is dealing. For example, the Applicant includes in his submission the decision of the World Bank Appeals Committee stating that the decision to dismiss the Applicant was arbitrary. The Tribunal can in no case refer to this document to evaluate the decisions taken by the United Nations Administration, especially as, even if the facts are approximately the same, they necessarily occurred in different contexts, so that comparison of the decision adopted by the World Bank Appeals Committee with the decision taken by the Commissioner-General of UNRWA is irrelevant.

XVIII. In addition, the Applicant criticizes the Commissioner-General for not having taken the JAB recommendations into consideration when deciding that the summary dismissal should be maintained. However, the Tribunal recalls that the conclusions which the joint appeals bodies may reach are only “recommendations”. This being so, these recommendations provide clarifications for the Administration official responsible for taking the final decision on a particular situation. But they are not binding on that official. If he or she believes that different considerations should be taken into account in reaching a decision that differs from the recommendations made, that is perfectly within his or her competence. In this case, as the Tribunal will demonstrate below, it is clear that the Commissioner-General decided to take into account considerations additional to those studied by the JAB, which consequently led her to adopt a divergent solution. This divergence of solutions cannot, in itself, be criticized.

XIX. This being said, the Tribunal is required to rule on whether the dismissal decision, as a disciplinary sanction, was disproportionate. Before considering further the sanction contested in this case, the Tribunal deems it useful to recall the fundamental principle that must underlie the interpretation of such a measure. The Tribunal’s power to review is, in this area, limited because the Administration’s power to sanction is a discretionary power. The Secretary-General has a quasi-judicial role which is subject to review by the Tribunal. Accordingly, when such a measure is contested before it, the Tribunal considers whether the facts on which the sanction was based were properly established. If they were, the Tribunal then verifies the appropriateness of the characterization of these facts and, lastly, ascertains whether the sanction is proportionate to the characterization of the misconduct. (See, Judgement No. 1422 (2008), paras. XVIII-XIX).

XX. The Tribunal must here evaluate the disputed sanction in the light of this well-established jurisprudence. In addition, in order to better understand the reasons which led the Commissioner-General to adopt a decision different from the JAB recommendations, the Tribunal must in particular examine the motivations behind the decision and the recommendations.

XXI. Firstly, the JAB found that the Applicant had joined the World Bank staff only after announcing to the United Nations Administration his intention to resign. Because of a strike by Agency staff on the West Bank, there was a delay in the consideration by the Administration of the Applicant’s resignation decision. This combination of circumstances led the JAB to state correctly that neither the Applicant nor the Administration should suffer the consequences of the strike. This being so, the JAB considered that the Applicant had resigned before the summary dismissal decision, and that the disciplinary sanction should therefore have been less severe.

XXII. The Tribunal notes that the Applicant did not contest the summary dismissal decision based on the fact that he had resigned from service; on the contrary, his complaint was that the sanction of dismissal was disproportionate. For her part, the Commissioner-General noted that the Applicant's resignation could not be effective until such time as it was accepted by the Administration. Any other solution, she alleges, would enable staff members to escape disciplinary proceedings and the consequences attendant upon a disciplinary separation from service when that outcome seemed inevitable. In addition, the Commissioner-General stressed the fact that the dismissal decision was justified by the fact that it was not the first time that the Applicant was violating his statutory obligations by accepting outside employment without obtaining the approval of the Administration.

XXIII. Regarding the Applicant's resignation decision, the Tribunal recalls that UNRWA area staff rule 109.6 states that "[a] staff member resigns who gives to the Agency a written notice of resignation as required under paragraphs 2 and 3 ... A resignation as here defined is always initiated by a staff member". Paragraph 3 of the same provision states that "[e]very notice of resignation shall contain a written statement of the staff member's decision to resign, shall be signed by the staff member and shall specify the date on which he/she proposes that his/her resignation should take effect".

XXIV. The Tribunal in its jurisprudence has previously stated that under the Staff Rules a resignation becomes effective upon receipt and is not conditioned on acceptance by the Respondent. Any other conclusion would make a staff member's desire to leave dependent on the wishes of the Respondent — a result that the provisions of the Staff Rules concerning resignation obviously do not envisage (Judgement No. 874, *Abbas* (1998), para. III; Judgement No. 990, *Abu Sirdaneh* (2000), para. II). Consequently, the Tribunal cannot accept the Commissioner-General's reasoning that the Applicant's resignation had to be accepted by the Administration in order to take effect. The Commissioner-General also specifies that such acceptance was necessary insofar as resignation could enable the Applicant to escape possible disciplinary sanctions based on the fact that he had again violated his obligation not to engage in other outside employment without the Administration's approval. In the Tribunal's view, however, this explanation is not convincing insofar as the additional facts in the case which led to the summary dismissal occurred only after the Applicant had decided to resign.

XXV. The Tribunal recalls that notice must always be given in case of resignation. As it has already had occasion to explain, this notice period is in favour of the Administration, enabling it to arrange for the replacement of the resigning staff member (Judgement No. 990, *Abu Sirdaneh* (2000) para. III). In this case, the notice period given by the Applicant ran until 7 November 2004 and, under UNRWA area staff rule 109.6, staff members must continue to perform their duties during the

period of notice of resignation. Accordingly, until 7 November 2004, the Applicant was required to refrain from engaging in any outside employment, in accordance with UNRWA area staff rule 101.4. Yet the Applicant's recruitment to the World Bank was effective on 19 October, or 12 days after the notification of his resignation decision but 18 days before the date on which his resignation would take effect. The Tribunal therefore finds that the Applicant again failed to comply with his obligations regarding concurrent employment during the months of October and November 2004, not to speak of the fact that, after the dismissal decision, the Administration was also informed that the Applicant had been employed by the European Commission from December 2003 to October 2004, during which period he was supposed to be partly on sick leave.

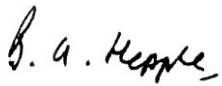
XXVI. In these circumstances, and particularly in view of the fact that the Applicant had been several times notified, censured, and warned about the consequences that he would face if he continued to disregard his obligations, the Administration was in a position to exercise its prerogatives in disciplinary matters. Indeed, the Applicant had signed a memorandum in which he stated that he knew the sanction to which he might be subject, in the event of further insubordination on his part. As the Administration had pointed out, these sanctions included separation from service. At that time, the Administration had chosen only to send the Applicant a last warning, so as to give him the possibility of resuming his career in compliance with his obligations. However, the facts show that the Applicant did not heed this last warning. He should have requested approval from the Administration for concurrent employment, which had already been granted to him on several occasions. These were the considerations taken into account by the Commissioner-General in deciding to maintain the summary dismissal decision. The Applicant's defence against the charges is that it is common practice in the Agency to accept concurrent employment without obtaining the prior approval of the Administration. But the Tribunal can in no case accept this argument to legitimize a practice that is clearly contrary to the statutory obligations of staff members. In addition, while the JAB considered the sanction to be disproportionate, the Tribunal finds the reasons given to be unconvincing. The Tribunal does not see how the occurrence of the resignation could affect the proportionate or disproportionate nature of the sanction. Moreover, the JAB gave no other explanations for its conclusion. On the basis of the foregoing, the Tribunal considers that the Commissioner-General did not exceed her discretionary power and that the sanction adopted was not disproportionate.

XXVII. Finally, the Tribunal must consider whether the Applicant's rights to due process were respected. In the case of a number of allegations, the Applicant does not provide convincing proof that the decisions taken regarding him were tainted by prejudice or improper motives. This is the case in respect of the alleged partiality of the UNRWA legal adviser and of the allegation that the Applicant would have been placed on a "black list" of undesirable persons in United Nations

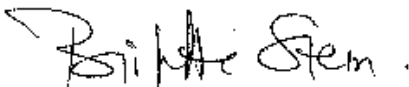
agencies. Moreover, the Tribunal finds, based on its review of the record, that one of the major concerns of the Administration was respect for the principles of adversarial procedure. For example, during the disciplinary investigation, the Director of Administration and Human Resources described to the Director of UNRWA Operations, in a letter of 6 October 2002, the various fundamental requirements of the Applicant's right to due process: that he must know the allegations against him; that he must see the evidence; and that he must be able to rebut the allegations and evidence. The body entrusted with the disciplinary investigation clearly complied with these prescriptions by inviting the Applicant to come and respond to the allegations. In addition, on the occasion of the censures or the last warning addressed to the Applicant, he was always in contact with the officials concerned. The memorandum signed by the Applicant in which he states that he understands the consequences that he faces in the event of another case of unapproved concurrent employment bears witness to the ongoing dialogue between the Applicant and the Administration. For these reasons, the Tribunal believes that the Applicant's rights to due process were respected.

XXVIII. For all these reasons, the Tribunal rejects the Application in its entirety.

(Signatures)



Bob Hepple
First Vice-President



Brigitte Stern
Member



Jacqueline R. Scott
Member

New York, 25 November 2009



Tamara Shockley
Executive Secretary