



Administrative Tribunal

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23 December 2009

Original: English

ADMINISTRATIVE TRIBUNAL

Judgement No.1488

Case No. 1559

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; Mr. Goh Joon Seng, Second Vice-
President; Ms. Jacqueline R. Scott,

Whereas on 27 August 2007, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), filed an Application containing pleas which read, in part, as follows:

“II. PLEAS

... [T]o order the following:

- a. [Consider the Applicant’s absence from service as] special leave with full pay.
- b. [Order that the Applicant be compensated in] full ... for the illegitimate and unwarranted termination exercised against [him].”

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 2008;

Whereas the Respondent filed his Answer on 29 May 2008;

Whereas the Applicant filed Written Observations on 19 August 2008;

Whereas the Respondent filed an additional communication on 31 October 2008;

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

“II. Summary of facts

[On or about July 2001, the Applicant submitted an application for an area staff post, including a Personal History Form (‘the Form’), to the Respondent, listing his preferred field of work as ‘Electrical-cars’, with references attesting to the Applicant’s technical capabilities as an automotive electrician and indicating his English language skill as ‘Read – Easily’, ‘Write – Easily’, ‘Speak – Fluently’ and ‘Understand – Easily’.]

... On 22 January 2002, the Director of UNRWA Affairs, Syrian Arab Republic (‘DUA/SAR’) approved the appointment of the [Applicant] ‘against the post of Electrician (Automotive), Level 2B, under the 1999 Area Staff Rules’ [and the Applicant was informed that ‘[c]onfirmation of your appointment shall be subject to successful completion of a probationary period of one year of satisfactory service.’]

... By letter dated 23 January 2002, the [Applicant] was offered an appointment to the post. The offer stated that the appointment would be subject to a one-year probationary period and that confirmation of his appointment shall be subject to successful completion of a probationary period of one year of satisfactory service’.

... The [Applicant] was appointed pursuant to a Letter of Appointment dated 13 February 2002 and signed by the [Applicant] on 20 March 2002. The [Applicant’s] appointment was effective 3 February 2002.

[The Applicant’s letter of appointment stated that ‘[t]his appointment shall be subject to probationary service of 12 month[s] as from 03.02.2002 and may be terminated by the Agency at its sole discretion and without notice at any time during this probationary period. Subject to your satisfactory work performance during this probationary period, this appointment shall be confirmed by the Agency in writing.’]

... The [Applicant] reported for duty on 3 February 2002.

... By memorandum dated 19 December 2002, the Vehicle Maintenance Officer (‘VMO’) informed the Field Procurement & Logistics Officer (‘FPLO’) of deficiencies in the [Applicant’s] performance.

... By e-mail dated 19 December 2002, the Transport Operations: Officer (TOO) advised the FPLO that he concurred with the VMO’s assessment of the [Applicant].

... By memorandum dated 22 December 2002, the FPLO advised the Field Administration Officer (the ‘FAO/SAR1) of the deficiencies in the [Applicant’s] performance listed in the VMO’s memorandum dated 19 December 2002.

... The [Applicant’s] Periodic Report for 2002 was completed by the VMO on 7 January 2003. [The VMO described the Applicant as] ‘not quite as industrious as might be’, [falling behind in work, producing work of poor quality,] ‘not reliable’, [having poor judgment, and tending to wait for direction.]

... On or about 9 January 2003, the Deputy, Field Procurement and Logistics Officer (‘D/FPLO’), Head Mechanic, VMO and TOO met with the [Applicant] and informed the [Applicant] of the identified deficiencies in his performance [.]

... On 12 [January] 2003, DIFPLO wrote on the [Applicant's] Periodic Report that, 'Having checked VMO and TOO's comments as well as a discussion with the II/Mechanic, the [Applicant's] performance proved to be unsatisfactory standard although he was given many opportunities to improve his work ... and because he is still under a probationary period, his appointment is not for the Agency interest'.

... By letter dated 5 February 2003, the DUA/SAR referred to the aforementioned deficiencies in the [Applicant's] performance and informed the [Applicant] that she had 'decided to terminate his appointment under 1999 Area Staff Rules without notice with effect from close of business on 9 February 2003'.

... By letter dated 16 February 2003, the [Applicant] requested that the DUA/SAR reconsider her decision of 5 February 2003.

... By e-mail dated 23 February 2003, the FPLO advised the DUA/SAR that, in his view, the decision not to confirm the [Applicant's] appointment should be upheld.

... By letter dated 5 March 2003, the DUA/SAR advised the [Applicant's] that the decision taken to terminate his services would stand.

...."

On 16 March 2003, the Applicant lodged an appeal with the JAB. The JAB convened on 3 April 2007 to consider the Applicant's appeal. Its considerations and recommendation read, in part, as follows:

“III. Evaluation and Judgement

23. 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 was still under probation when his appointment was not confirmed.
- b) Meanwhile, the Board could not convince itself with the Appellant's allegations that the termination was motivated by prejudice or bias.
- c) The Board recommends that more thoroughness be exercised in future staff selection in order to avoid reoccurrence of such incident.

IV. Recommendation

24. In view of the foregoing and without any further oral or written submissions, the Appellant may deem pertinent, the Board unanimously makes its recommendations to uphold the Administration's decision appealed against and that the Appeal be dismissed.”

On 31 August 2007, the Commissioner-General for UNRWA transmitted a copy of the report to the Applicant and informed him as follows:

“You appealed the decision by the Director of UNRWA Affairs, SAR, not to confirm your fixed-term appointment. The record indicates that, during your twelve-month probationary period, your performance had been less than satisfactory and that, as a result, by letter dated 5 February 2003 you were informed that, in accordance with the 1999 Area Staff Rules, your employment would be terminated as of close of business 9 February 2003.

The Board, finding that the record did not support your claims that the decision not to confirm your appointment was motivated by prejudice or bias, recommended that your appeal be dismissed. I have carefully considered the Board's report and agree with the Board's view. Accordingly, I have dismissed your appeal."

Whereas the Applicant's principal contentions are:

1. His appointment was terminated in violation of the Area Staff Rules.
2. There was no discussion or review of his periodic performance report.
3. He was not notified of any deficiencies in his performance.
4. The termination of his appointment was based on mistakes of fact and law, and other extraneous factors.

Whereas the Respondent's principal contentions are:

1. The Commissioner-General acted within his discretionary power in taking the decision to terminate the Applicant's probationary appointment.
2. The Applicant was notified regarding deficiencies in his performance prior to the decision to terminate his appointment.
3. The contested decision was not arbitrary or motivated by extraneous factors.

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

I. The issue in this Application is whether the Respondent's decision to terminate the Applicant's probationary appointment should be upheld.

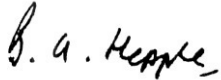
II. The Applicant's appointment was subject to a probationary period of twelve months. The letter of appointment also provided that confirmation of the appointment was "subject to successful completion of a probationary period of one year of satisfactory service". As indicated by the JAB, the Applicant's performance was assessed during his probationary period by several supervisors as less than satisfactory. Based on his poor performance during his probationary period, the Applicant's appointment effective 3 February 2002 was terminated on 5 February 2003, following several levels of performance assessment and review. This was in accordance with paragraph 4 of the Applicant's Letter of Appointment. Moreover, there is no evidence that the Applicant's termination was arbitrary or motivated by extraneous factors or otherwise vitiated by procedural irregularity. Thus, the Tribunal finds that the termination by the Respondent was proper.

III. The Tribunal however notes with concern the dilatory process before the JAB. The appeal was

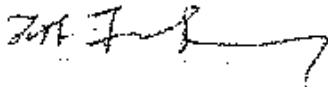
lodged on 16 March 2003, but the JAB, without any explanation, convened to consider the appeal on 3 April 2007. Justice delayed is justice denied. However, as the issues of delay and the reasons for it have not been argued, the Tribunal will not go beyond recording its concern.

IV. In view of the foregoing, the Tribunal rejects the Application in its entirety.

(Signatures)



Bob Hepple
First Vice-President



Goh Joon Seng
Second Vice-President



Jacqueline R. Scott
Member

New York, 25 November 2009



Tamara Shockley
Executive Secretary