



ADMINISTRATIVE TRIBUNAL

Judgement No.1497

Case No. 1606

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. Brigitte Stern;

Whereas on 28 March 2008, 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 on 24 May 2008, the Applicant after making the necessary corrections, filed an Application containing pleas which read, in part, as follows:

“II. PLEAS

....[T]o find:

....

b. that the present application is receivable under [a]rticle 7 of its statute.

....[T]o find that:

[the] UNRWA administration failed to carry out procedures related to probation period by overlooking the personnel Directive No.A/11-Rev.2 ... [and] also failed to consider rule No. (Ref. PDA/4/part v11Rev lot No. 2387 effective date 1 [February] 1993 ....

...[T]o order:

- a. confirmation of [the Applicant's] appointment in [his] job as chief of institute of education and to rescind the termination and reinstate [the Applicant] to [his] post.
- b. the compensation for all the financial recurring losses which were being entailed since the termination in [February] 2007 [and compensation for the severe damage for defaming [the Applicant's] professional reputation resulting from such termination.

....”

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 28 February 2009;

Whereas the Respondent filed his Answer on 24 February 2009;

Whereas the Applicant filed Written Observations on 10 April 2009;

Whereas the Respondent filed an additional communication on 26 October 2009;

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

#### **“[Applicant's] Professional Record**

... [The Applicant] entered the service of ... UNRWA ... on 27 December 2005 on a fixed term appointment as Chief Institute of Education [CIE] UNRWA HQ Amman, grade 20. The appointment was subject to inter [a]lia [a] 12 [m]onths probationary period.

... By letter dated 17 December 2006, the Administration and Finance Officer HQ (A) wrote to the [Applicant] transmitting a decision to terminate his appointment effective 26, December 2006.

... By letter dated 26, December 2006, the [Applicant's] probationary period with the Agency was extended by one month.

... By letter dated 18 January, 2007 the [Applicant] was informed of the Commissioner-General's decision not to extend his appointment beyond 18 February 2007.

#### **Summary of Facts**

... The [Applicant's] Mid-Term Evaluation Report ('PER') covering the first six months of the probation indicated that the overall performance of the [Applicant] was satisfactory. The report indicated that the [Applicant] lacked initiatives and new ideas in the work of the institute and his ability to negotiate and persuade was not yet adequate.

.... By undated letter to the [Applicant], the DE [Department of Education]/HQ (A) confirmed to the [Applicant] a discussion they had in July 2006 regarding issues related to the [Applicant's] performance.

In the letter, the DE/HQ (A) noted his serious concerns about the [Applicant's] professional and technical competence, and identified weakness in the [Applicant's] leadership, communication and persuasive skills, essential for a Chief.

... By letter dated 4 December 2006, the DE/HQ (A) confirmed to the [Applicant] the discussion that they had in a meeting on 3 December 2006 regarding issues related to the [Applicant's] performance and work relations. The letter covered the issues that were raised by the [Applicant] and were responded to by the DE/HQ (A) who confirmed his earlier conclusion not to recommend the continuation of services of the [Applicant] beyond the probationary period.

... The [Applicant's] subsequent Annual PER completed on 10 December 2006 indicated that except for routine work that was carried out, the professional competence of the [Applicant] left 'a great deal to be desired'. The report noted that the quality of work was insufficient, that no progress was made by the [Applicant] to demonstrate aptitude to produce new and innovative ideas. The report also indicated that the [Applicant's] communication skills were considered inadequate and it was noted that he lacked the leadership competence essential as a Chief, Institute of Education. He was rated overall as a staff member with a performance that does not fully meet the standards.

... On 17 December 2006, the Administration and Finance Officer, HQ (A) wrote to the [Applicant] informing him it had been decided to terminate his services with the Agency.

... By letter dated 26 December 2006 the Officer-in-Charge of Administration and Finance informed the [Applicant] that the 'HRC', in its meeting 22/2006 dated 23 December 2006, had decided to extend his probationary period for one month.

... On 16 January 2007, the HRC reviewed the submission of the Administration and recommended to the Commissioner General that the [Applicant's] appointment not be extended further beyond one month after the date of approval of the HRC recommendation.

... By letter dated 18 January 2007 the Administration and Finance Officer wrote to the [Applicant] and informed him of the Commissioner-General's decision dated 18 January 2007 not to extend his appointment beyond 18 February 2007.

... By e mail dated 21 January 2007 to the Acting Director of the Department of Human Resources, HQ (G) (A/DDHR/HQG), the [Applicant] sought a review of the decision not to confirm him in the post as Chief, Institute of Education. [Subsequently, the A/DDHR/HQG rejected the Applicant's request and maintained that the contested decision should stand.]

....”

On 25 January 2007, the Applicant lodged an appeal with the JAB. The JAB adopted its report in April 2003. Its considerations and recommendation read, in part, as follows:

**“Considerations**

*Admissibility*

23. Concerning receivability *ratione temporis*, the Panel considered the various time lines under the Area Staff Rules in light of the steps taken by the Appellant and concluded that the appeal was admissible *ratione temporis*.

24. Concerning receivability *ratione materiae*, the Panel confirmed that the appeal was receivable.

25. In view of the foregoing, the appeal was deemed admissible.

*Merits*

26. The Board at the outset took note of the provisions of Area Staff Rule 111.1, paragraph 3, that '[i]n the case of an appeal against a decision based on inefficiency, relative efficiency or redundancy of a staff member, the Board shall not consider the substantive questions of efficiency or redundancy, but only evidence that the decision has been motivated by prejudice or by some other extraneous factor.'

27. The Board having regard to the above provisions which preclude examination of substantive issues of efficiency focused on the following issues:

- (i) Whether attention was drawn to the Appellant on his performance.
- (ii) Whether the decision was tainted with prejudice, ill motive or extraneous motivations.

28. The Board noted that attention had been drawn to the Appellant on his performance. In particular, the Board noted that the Appellant accepted and signed against the narrative in the Mid Year Evaluation Report of 24, July 2006. The Board observed in this respect that though rated satisfactory, the narrative was a direct criticism and direction to the Appellant in areas of critical importance to him as CIE HQA.

29. The Board further noted that the Appellant's attention had been drawn in relation to the Management Development Programme. The Board observed that by 10 September 2006, seven months later, the Appellant had showed no progress in Management Development Programme. In this respect, the Panel notes that the Appellant did not comment on this aspect in his Appeal, accordingly and with consideration of the foregoing, the board noted that no prejudice was exercised.

30. The Board noted that since the Appellant's performance was inadequate, attention had been drawn to it and he occupied a sensitive position at grade 20, and leads senior members of staff, his performance should be distinguished. The Board concludes that the decision was not arbitrary.

31. The Board considered that since the Mid Year Evaluation was not over ruled, it was therefore fair and not vitiated by bias. In this respect the Board observed that evaluation concentrated on weaknesses where initiative and leadership was crucial for such posts. There was therefore no extraneous consideration.

32. On procedural issues, the Board considered the issue of want for notice as made out by the Appellant. The Board took note of the provisions of Area Staff Rule 109.1 paragraph 1 which precludes the notice period and concluded that was no need for such notice.

*Findings*

33. The Board finds by majority of its votes (2:1) that the [A]ppellant didn't receive any written confirmation to his post as CIE, although his service was extended for one month beyond the 12 months probationary period.

34. The Board further finds by a majority of its votes (2:1) that the Appellant has not provided evidence warranting interference with the impugned decision and therefore agrees with the Respondent's submission.

### Conclusions and Recommendations

35. After a thorough review of the documents on file, and the arguments of both parties, the Board by a majority of its votes (2:1) concludes that the respondent has dealt within the framework of standing rules and regulations and adhered to the terms and conditions of the Appellant's appointment with the Agency in not confirming the Appellant to the post of Chief Institute of Education HQ Amman.

36. In view of the foregoing, the Board by a majority of its votes (2:1) makes its recommendation to Commissioner-General to dismiss the Appeal in its entirety."

A dissenting member of the JAB concluded:

"1. The Board member underscored the complex nature of the appeal and having regard to the elements on file, observed that the Appellant should have been given right directions for expected performance to meet the tasks needed. The Board member stressed that criticism regarding the Appellant's performance was only given in the last 10 days to his termination when a decision had already been taken and noted that no evidence of complaints against the Appellant in respect of his performance had been raised by staff.

2. In respect to the Mid Year Evaluations, the Board member considered that the evaluation was satisfactory and had given the Appellant the impression that he was progressing. The Board member noted that, if the evaluation had been unsatisfactory, it would have woken up the Appellant as 'C' is a normal performance as opposed to 'D' rating.

3. The Board member considered that the letter issued by the DIE was preparatory for the Appellant's termination and not advice to the staff.

4. Regarding the letter of 17 December 2006 issued by the Administration and Finance Officer terminating the Appellant's appointment, the Board member considers that the letter brings forth evidence that the matter was not properly handled and indicative of the suspicious decision to terminate the Appellant's appointment.

### Conclusion

5. In light of the above, the Board member concludes that the decision not to confirm the Appellant to his post was too severe. Consequently, the Board member recommends to the Commissioner General to consider a review of the decision to terminate the Appellant's appointment as Chief, Institute of Education, HQ Amman."

On 4 March 2008, the Applicant was informed of UNRWA's Commissioner-General's decision to accept the conclusions and recommendation of the majority of the JAB to dismiss his appeal in its entirety.

On 24 May 2008, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. His Application is receivable.
2. The Respondent did not implement the correct procedures in relation to the probationary period and the non-observance of his terms of appointment. This constitutes a violation of his rights as a staff member.

3. The contested decision should be rescinded and he should be reinstated to his post.
4. He should be awarded compensation for loss of income and damage to his reputation.

Whereas the Respondent's principal contentions are:

1. The Application is not receivable.
2. The correct procedures were followed throughout the probationary period leading to the non-renewal of the Applicant's contract, and the Applicant's rights were not violated.
3. The Applicant's probationary period of service was exceptionally extended in order to allow the Human Resources Committee to thoroughly review the matter.
4. The Applicant's appointment was never confirmed.
5. The Applicant's case does not warrant compensation.

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

I. The Applicant entered the service of UNRWA on 27 December 2005 on a fixed-term appointment expiring on 26 December 2008, as Chief, Institute of Education, UNRWA HQ, Amman, grade 20. This appointment was subject to a 12-month probationary period. Clause 4 of the Letter of Appointment stated:

“This appointment shall be subject to probationary service of twelve months effective 27 December 2005 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.”

II. On 17 December 2006, the Administration and Finance Officer wrote to the Applicant to inform him of the Agency's decision not to extend his fixed-term appointment on the expiry of the probationary period. However, by letter dated 26 December 2006, the Officer-in-Charge of the Administration and Finance, Headquarters, informed the Applicant that the Human Resources Committee (HRC) had decided to extend the probationary period by one month until 26 January 2007, to allow a proper review of the case by the HRC. On 17 January 2007, the Applicant was informed that the HRC had reviewed his submissions protesting the decision and those of the Administration, and recommended to the Commissioner-General that his appointment not be extended beyond one month after approval of the HRC recommendation. By letter dated 18 January 2007, the Applicant was informed of the Commissioner-General's decision not to extend his employment beyond 18 February 2007. The Applicant unsuccessfully sought a review of this decision and then filed an appeal to the Area Staff Joint Appeals Board (JAB). By a majority decision, the JAB recommended to the Commissioner-General that the appeal be dismissed in its entirety. On 3 March 2008, the Commissioner-General accepted the recommendation of the majority of the JAB and the Applicant was notified of the decision.

III. The Applicant now asks the Tribunal to reverse this decision and to confirm him in the post of Chief, Institute of Education. He also seeks compensation for financial loss resulting from the contested decision and for damage to his reputation. The Application lists a large number of criticisms of the decision and the procedure followed by UNWRA. In particular, he claims that his performance was evaluated “upon arbitrary and personal basis and not on using normative standards”. He also claims that there were a number of procedural irregularities.

IV. The Tribunal’s jurisprudence recognizes the broad discretion enjoyed by the Administration in matters of personnel, including the decision of whether to maintain a staff member in the employ of the United Nations or one of its specialized Agencies. (See, Judgement No. 1231 (2005)). It has repeatedly been held that:

“the [Administration]... generally enjoys broad discretion in making decisions of this kind. Only where the Respondent’s discretion is tainted by extraneous factors, such as prejudice, arbitrariness, improper motive, discrimination, for example, is such discretion subject to limitation.” (See Judgement No. 981, *Masri* (2000), para. VII.)” (Judgement No. 1163, *Seaforth* (2003).)

In Judgement No. 940, *Nag* (1990) the Tribunal held that:

“...in accordance with general principles of international administrative law and as in the case of other administrative decisions such as transfer (Judgement No. 167, *Fernandez Rodriguez* (1973)) and promotion (Judgement No. 275, *Vassiliou* (1981)), the Administration has discretionary authority to terminate appointments for unsatisfactory service. The determination whether performance is unsatisfactory is also a matter within the discretion of the Administration. As in the case of discretionary powers in general (cf. Judgements No. 616, *Sirakyan* (1993); No. 834, *Kumar* (1997); No. 862, *Szekielda* (1997); and No. 892, *Sitnikova* (1998)), the Tribunal will not substitute its judgement for that of the Respondent. However, the discretion to terminate employment for unsatisfactory service is not unfettered. In general, the Tribunal reviews the exercise of discretion to determine whether it is vitiated by substantive or procedural irregularity, by improper motive or purpose or prejudice or by any other abuse of discretion.”

The limits on the Administration’s discretion were indicated in Judgement No. 951, *Al-Khatib* (2000):

“Whilst the Respondent enjoys a wide discretion as to what constitutes ‘the interest of the Agency’ it is not a discretion that is unfettered. It is a discretion which must be exercised rationally. If a decision to terminate the appointment of a staff member under the provisions of staff regulation 9.1 is made capriciously or arbitrarily, that decision will be neither lawful nor valid. Furthermore, the reasons for such a decision should be apparent so that they may be reviewed by a JAB or another body or by the Tribunal. Otherwise the staff member concerned would be unable to exercise fruitfully his or her rights.”

V. The limits on the JAB’s power to set aside a decision on probation are indicated by Area Staff Rule 111.1, para. 3 which states:

“In the case of an appeal against a decision based on inefficiency, relative inefficiency or redundancy of a staff member, the board shall not consider the substantive questions of efficiency

or redundancy, but only evidence that the decision has been motivated by prejudice or by some other extraneous factor.”

Area Staff Rule 111.1, para. 4 provides:

“In all cases, the staff member making the appeal shall be required to show cause, in conformity with the provision of staff regulation 11.1 (A) and of these rules, why the decision which is subject of the appeal should be changed or reversed.”

VI. In the present case, the majority of the JAB found that the Applicant had not provided evidence warranting interference with the impugned decision. The minority member considered that the decision not to confirm the Applicant was too severe. The Tribunal agrees with the majority of the JAB that it has not been shown that the decision not to confirm the Applicant in his post was motivated by prejudice or some other extraneous factor. The Applicant complains that his achievements and accomplishments were not considered. However, the record, which has been carefully considered by the Tribunal, shows that the Applicant’s Mid-Term Evaluation Report, dated 24 July 2006, covering the first six months of probation, did note his achievements, in particular that the Applicant’s routine work and supervision of work had been carried out satisfactorily, that he always met deadlines, provided adequate responses to document requests, and was highly punctual. However, it drew his attention to a number of weaknesses, including the need for more injection of new ideas reflecting the current developments in UNRWA, and also educational innovation. It pointed to “[v]ery little in the way of initiatives in the work of the Institute”, and the need for improvement in communication in group work. Overall, his performance was graded as “satisfactory”. The performance review in July 2006 was followed some time later by an undated letter from the Director of Education, reminding the Applicant of “subsequent and more recent discussions” of matters which caused him concern. These included the lack of progress on the management development programme, the failure of the Institute to respond to requests from Field Chiefs for technical training, the failure to produce new training materials, and the need for improvement in training skills. There was also reference to the Applicant’s failure to familiarise himself with UNRWA procedures, and “aggressive and threatening” behaviour, and lack of proper staff management by the Applicant. The Director stated that progress since the last report was “less than satisfactory” and that the Applicant had reacted emotionally rather than professionally to criticisms of his work. The Director further stated that his conclusion was that it would not be in the interests of the Institute to recommend that the Applicant’s service be continued after the end of the probationary period. There was a further meeting on 3 December 2006, confirmed in a letter of 4 December from the Director of Education, who stated that he could not recommend continuation of the Applicant’s services. The annual staff performance evaluation report dated 10 December 2006 provided a number of detailed criticisms and failure to make progress, concluding that overall performance “does not fully meet standards”.

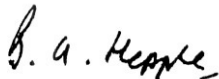


VII. The Applicant alleges that the Director did not properly evaluate his performance, and that a number of the factual statements made by the Director (e.g. concerns raised by Field Chiefs, failure to produce training materials, and lack of educational innovation), were untrue. The documentary evidence, however, shows that complaints were made about the Applicant, and that the paucity of training materials and lack of innovations were genuine concerns. The Applicant alleges four different occasions when the Director of Education did not nominate him to participate in events. There is, however, no evidence to suggest that this was as a result of bias or prejudice, rather than simply a lack of confidence in the Applicant's abilities to fulfill these tasks. The Tribunal considers that the JAB was fully entitled to reach the conclusion, on the evidence as a whole, that the decision not to confirm the probationary employment was not tainted by prejudice or bias.

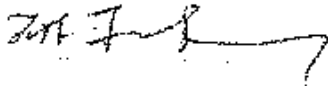
VIII. In regard to alleged procedural irregularities, the Applicant refers to his case as one of "termination" but, strictly speaking, as the Respondent points out, it is one of non-confirmation of a probationary appointment. The Applicant complains first about the manner of communication of the decision not to confirm his probationary appointment, in particular that he received notification thereof from the Agency's Administration and Finance Officer, Headquarters Amman. The Tribunal notes that the Agency's Regulations, Rules, and Personnel Directives are silent regarding which Agency Official should communicate such decisions, and do not require the Director of Education or any specific individual to send the letter. The Officer clearly had the authority of the Director of Education, who made the recommendation to communicate the decision. The Tribunal notes that it is apparently normal practice for this Officer to communicate personnel decisions (e.g. the letter of appointment accepted by the Applicant). The Applicant also complains that his services were extended for about two months (twice, for one month each) beyond the probationary period. This is a curious complaint because both extensions were entirely for the Applicant's benefit. The employment was "subject to satisfactory work performance during [the probationary] period", and the extensions allowed the HRC to review the decision based on work during that period. Therefore, the Tribunal concludes that there was no procedural irregularity in this respect.

IX. 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



**Brigitte Stern**  
Member

New York, 25 November 2009



**Tamara Shockley**  
Executive Secretary