



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2014-UNAT-431

Mousa
(Appellant)

v.

Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East
(Respondent)



Date. 27 June 2014

Registrar: Weicheng Lin

Counsel for Mr. Mousa:

Diab Tabari

Counsel for Commissioner-General:

Lance Bartholomeusz

JUDGE LUIS MARÍA SIMÓN , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Imad Mousa against Judgment No. UNRWA/DT/2013/007, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the

... [The canteen contractor] confessed that all electric lines found in the canteen were illegal and not connected to UNRWA network. He reported that those lines were made to supply power to the canteen whenever the EDL Supply is cut off. He added that there is one illegal connection made to the Bakery of the son of [Mr. Mousa]. He denied that no illegal connection were [sic] made from UNRWA premises to other places!

... [Mr. Mousa] has denied his knowledge about any illegal connection to the canteen since he was nominated as [Acting Head Teacher]. He stated that there are a lot of electrical lines above the school and doesn't have any idea about them. On questioning him about the illegal line taken to his son's bakery, he denied his knowledge and swore [sic] that it is a private business between [the canteen contractor] and his son without his knowledge. Asking him about the reason of keeping copy of the main gate key, [he] confessed that [the canteen contractor] has a key only to the main gate to safe guard the school being residing nearby. CAO, CLA requested [Mr. Mousa] to immediately withdraw the keys of the school from [the canteen contractor] and to inform him with [the CAO's] decision that he is not allowed to enter the school.

3 " (... On 30 July 2010, the Deputy Director UNRWA M8f/in
f
d

... The existence [of] illegitimate electric wire connection subject of this investigation – formally reported by [Operations Support Officer] is undisputed. It is corroborated by all the relevant statements and denied by none;

... The installation of that specific cable is assumed by [the canteen contractor] and refuted by none of the other statements;

... It was not established if [(Mr. Mousa)] had [his] house or that of his family supplied with electricity coming from the school;

... [(Mr. Mousa)] assumes having two different electrical cables supplying his house with power: one from EDL and other from [the canteen contractor];

... He adds that he pays [the canteen contractor] for the “emergency line” 50, 000 LP per month and that this line comes from a cable [the canteen contractor] manages from EDL [Electricité du Liban], not from the school.

[The report concluded that it had been sufficiently proved that Mr. Mousa had “failed to defend the school’s interests” and recommended that he be released “from his assignment confining him solely to the role of teaching”.]

... By letter dated 24 August 2010, Mr. Mousa was informed by the Field Personnel Officer, Lebanon (“FPO/L”) that he had been selected for the post of Head Teacher, Grade 10, at Kabri School, Burj Barajneh Camp, CLA, effective

THE UNITED NATIONS APPEALS TRIBUNAL

Head Teacher was “a logical and proportionate response to his own actions” and “not so disproportionate as to amount to an injustice”.

Submissions

Mr. Mousa's Appeal

10. The Administration made a mistake in procedure when it advised Mr. Mousa that he would be reassigned while in fact he was being demoted. This should be enough for him to “win the case on procedural grounds”.

11. Although the investigations established that illegal electricity connections existed in the school, there was no evidence of any unauthorized use of such electricity by Mr. Mousa or his family. Thus, the UNRWA Dispute Tribunal's conclusion that Mr. Mousa did not demonstrate sufficient diligence to protect the Agency's premises and property from abuse is not correct.

12. The UNRWA DT failed to exercise jurisdiction with regard to the issue of failure to provide him with all the supporting documents of the investigation report.

13. Mr. Mousa was appointed Head Teacher on 1 September 2010 and demoted on 11 October 2010, which shows a lack of support, guidance, induction and training by his supervisors. Also, the probation period of his new job was never respected and he received no advice on how to handle things.

14. The Respondent failed to advise the UNRWA Dispute Tribunal of Mr. Mousa's five per cent loss of salary (the difference in allowance between the position of Head Teacher and Assistant Head Teacher) which is a procedural breach.

15. Mr. Mousa seeks his reinstatement as the Head Teacher, payment of his back allowance as the Head Teacher and compensation in the amount of USD 20,000 for moral damages.

The Commissioner-General's Answer

16. The Commissioner-General submits that the Judgment of the UNRWA DT was, as a matter of law, free of error. Mr. Mousa makes a number of references to “discrepancies” in the UNRWA DT Judgment, but fails to provide the grounds relied upon. Mr. Mousa has not

demonstrated in what respect the UNRWA DT erred by finding that his demotion was properly made or that his transfer was a proper exercise of the Commissioner-General's discretionary authority.

17. The Commissioner-General also submits that no prejudice was occasioned to Mr. Mousa by the initial characterization of the impugned decision as he had the opportunity to respond to this mischaracterization.

18. The elements relating to Mr. Mousa's probationary period and not being provided with proper guidance and support are new matters which were not raised before the UNRWA DT. Thus, they do not constitute valid grounds of appeal arising from the impugned decision and are inadmissible.

19. Mr. Mousa has not demonstrated that the UNRWA DT erred in finding that unauthorized electricity connections had been made to the school's electricity supply and that he had not been sufficiently diligent in protecting the Agency's premises and property from abuse. Contrary to Mr. Mousa's assertions, the investigation report "read as a whole" supports the findings of the UNRWA DT.

20. The Commissioner-General submits that the UNRWA DT did not fail to exercise its jurisdiction on the question of failure to provide Mr. Mousa with the supporting documents of the investigation report as he received an unredacted copy of the investigation report which accurately summarized all the evidence gathered during the investigation and was given the opportunity to file a rejoinder.

Considerations

21. The Appeals Tribunal holds that the Appellant did not succeed in establishing any error of fact or law which would warrant the reversal of the UNRWA DT's Judgment under appeal. Therefore, the impugned Judgment will be affirmed.

22. The UNRWA DT correctly characterized the contested administrative decision subject to its judicial review as a demotion and subsequent transfer, which was taken after disciplinary proceedings. That conclusion is firmly supported by the evidence related to the sequence of the administrative activities which took place while Mr. Mousa was performing as Acting Head Teacher at Kabri School, MarElias Camp (Lebanon) and in reaching it, the

UNRWA DT actually reasoned in favour of the Appellant, examining the facts from the most respectful perspective of the rights of the staff member.

23. Thus, even if the Administration considered the impugned decision to be a reassignment, it is not correct to argue, as the Appellant does, that this circumstance should be enough for him to “win the case on procedural grounds”.

24. Neither was the UNRWA DT mistaken when, after conducting an adequate review of the requirements for the adoption of a disciplinary measure, illustrated by this Tribunal’s jurisprudence, it concluded that there had been misconduct and the sanction was legal and proportionate to the offence.

25. The Appellant did not deny his own admission that during his term as Acting Head Teacher, irregularities about the electricity installation were reported, but he did not take any measure to address them. Despite the fact that it was not established that the Appellant himself had benefitted from the irregular connections or that the situation existed on the watch of the previous Head Teachers, the Appellant cannot use this to negate the basis of the findings made at the administrative level and by the judicial first instance: negligent inactivity with regard to protecting UNRWA’s property and premises.

26. The senior position encumbered by the Appellant required at least that after the discovery of the irregularities, he would have taken action to eliminate the situation and prevent further damage, and particularly, to demonstrate that he, and not the non-UNRWA person who was running the canteen and had complete access to the facilities, was in charge at the school.

27. The finding of a lack of due diligence reasonably expected of the Head of the School and the conclusion that it amounted to misconduct were not effectively rebutted by the Appellant.

28. Those facts having been established, the argument about the failure to provide a copy of the documents supporting the investigation report becomes immaterial, since the Appellant was involved in the investigation, was provided with an adequate chance to make observations and did not contest the irrefutable facts.

29. There is no merit in the claim of lack of guidance and training: the level of the position involves what was required of the Appellant, as Assistant Head Teacher for many years and also as Acting Head Teacher. The transfer to another school seems reasonably convenient for the Administration and the staff member, in this particular case, because his remaining at the same school after demotion would have had a negative impact on the interests of both parties.

30. Lastly, the imposed sanction is well within the legal discretion of the UNRWA Administration, as it does not appear to be absurd, arbitrary or tainted by extraneous reasons or bias, which would otherwise be grounds for judicial review, if proven.⁵

31. As exposed in *Abbassi*, “[i]t is the duty of an appellant to demonstrate that the UNDT’s judgment is defective”.⁶ The Appellant has not satisfied this burden in the present case.

Judgment

32. The appeal is dismissed and the UNRWA DT Judgment is affirmed.

⁵ *Aqel v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-040.

⁶ *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110, para. 22.

Original and Authoritative Version: English

Dated this 27th day of June 2014 in Vienna, Austria.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Faherty

(Signed)

Judge Adinyira

Entered in the Register on 29th day of August 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar