



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2015-UNAT-514

**Abu Nada
(Appellant)**

v.

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



Date: 26 February 2015

Registrar: Weicheng Lin

Counsel for Mr. Abu Nada: Self-represented

Counsel for Commissioner-General: Lance Bartholomeusz

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... By letter dated 23 October 2008, the Director, UNRWA Operations, Gaza (“DUO/G”) advised [Mr. Abu Nada] that effective 23 October 2008 he was suspended without pay, pursuant to Area Staff Rule 110.2, pending the outcome of an investigation on the following allegations:

It has come to the Agency’s attention that you may be guilty of misconduct or serious misconduct. Specifically, it would appear that (a) you have been in receipt of money from the Palestinian National Authority’s Ministry of Prisoners’ Affairs as part of their job creation programme whilst also a staff member of UNRWA; (b) you have been engaged in continuous or recurring outside occupation or employment without the prior approval of

5. The UNRWA DT also noted that Mr. Abu Nada's challenges to the deductions made against his personal Provident Fund contributions related to a separate administrative decision which was outside the scope of its Judgment.

6. Regarding the summary dismissal for serious misconduct in December 2010, the UNRWA DT held that the decision was lawful given that: (i) the facts of Mr. Abu Nada's outside employment and unauthorized public statements had been established; (ii) such actions constituted serious misconduct; and (iii) the sanction of summary dismissal constituted a proper exercise of the Commissioner-General's discretionary authority. The UNRWA DT noted that Mr. Abu Nada had not provided any convincing evidence to demonstrate that such decision was tainted by procedural irregularities, prejudice or other extraneous factors or errors of law.

7. The UNRWA DT, however, found that there had been excessive delay in carrying out the investigation with respect to the alleged misconduct resulting in his suspension without pay. It noted that it took 25 months for UNRWA to communicate a final decision to Mr. Abu Nada after its initial "findings of the investigation". The UNRWA DT considered this to be "inhumane and a flagrant abuse of power" given that Mr. Abu Nada lived in the Gaza Strip, an economically depressed region. The UNRWA DT determined that such delay breached the principles of natural justice and caused Mr. Abu Nada to suffer stress and

suffering for his family. He contends that the compensation awarded by the UNRWA DT

20. Mr. Abu Nada argues that the UNRWA DT focused on the formal aspect of the decision to dismiss him without taking sufficient consideration of his explanations regarding the reasons he looked for outside work. He refers to the following matters: his suspension without pay for 26 months; the failure of the Agency to conclude the investigation; the failure to establish an investigation committee; the lack of response to his letter of 22 December 2009; and the failure to give him a warning prior to his dismissal or establish a committee prior to his dismissal in order to he

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27. Mr. Abu Nada complains that the Judgment fails to refer to a “grave and obvious distortion” insofar as the Agency asserted that he received the Agency’s instructions, regulations and rules in March 2004,⁴ although the Arabic translations of such documents were disseminated only on 12 October 2009, after Mr. Abu Nada’s suspension. We find this complaint also to be without merit. The UNRWA DT properly noted the due process deficit which the absence of translated documents gave rise to, but concluded that as the 2008 decision to suspend Mr. Abu Nada was not receivable, the UNRWA DT could not award damages for violation of due process. Mr. Abu Nada has failed to show how the UNRWA DT erred in its determination of this issue.

28. Mr. Abu Nada asserts that the UNRWA DT failed to assess the gravity of what essentially he describes as a wrongful characterization by the UNRWA Field Legal Officer of his employment by the de facto authorities of Gaza. It is apparent from its Judgment that the UNRWA DT had recourse to the communications about which Mr. Abu Nada complains; the weight or relevance which the UNRWA DT attached to the description of Mr. Abu Nada’s employment in the said communications was a matter for that Tribunal. Mr. Abu Nada’s arguments on appeal do not convince us that the UNRWA DT committed any error in failing to have regard to the issue in circumstances where the UNRWA DT’s remit on compensation related to the prolonged period of suspension without pay endured by Mr. Abu Nada until he was ultimately summarily dismissed in December 2010. Furthermore, the Appeals Tribunal agrees with the Commissioner-General’s submission that Mr. Abu Nada’s arguments concerning the communications are speculative.

29. The question for determination by this Tribunal is whether the UNRWA DT erred in fact in its assessment of damages such as to give rise to a manifestly unreasonable decision. At paragraph 84 of its Judgment, the UNRWA DT stated:

[I]t is up to this Tribunal as the trier of fact to assess the magnitude of the breach based on the evidence before it. According to the evidence, it is clear that the Agency failed to keep the Applicant informed of the progress of its “ongoing” investigation and failed to respond to his inquiries into the duration of his suspension. Essentially, the Agency suspended the Applicant and seemed to have forgotten about him. When the evidence gathered did not support a finding of misconduct the Agency did nothing. It almost appears as if the investigators were hoping for evidence to fall into their laps -

⁴ The actual date is 27 April 2004 according to the Commissioner-General’s Response to Order No. 113 (UNRWA/DT/2013).

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Original and Authoritative Version: English

Dated this 26 day of February 2015 in New York, United States.

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Chapman

(Signed)

Judge Simón

Entered in the Register on this 17th day of April 2015 in New York, United States.

(Signed)