



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

Judgment No. 2014-UNAT-436

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

JUDGMENT

Before: Judge Inés Weinberg de Roca, Presiding
Judge Mary Faherty
Judge Luis María Simón

Case Nos.: 2013-498 & 2013-500

Date: 27 June 2014

Registrar: Weicheng Lin

Counsel for Mr. Walden: Ghada Yasin (UNRWA Staff Legal Office, Staff Assistance)

Counsel for Commissioner-General: Lance Bartholomeusz/Anna Segall

JUDGE WEINBERG DE ROCA, PRESIDING.

1. On 18 April 2013, the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA Dispute Tribunal or UNRWA DT and UNRWA or Agency, respectively) rendered Judgment No. UNRWA/DT/2013/011 in the case of *Walden v. Commissioner-General of UNRWA*. Mr. Bryan Walden appealed on 13 June 2013 and the Commissioner-General answered on 16 August 2013. The Commissioner-General appealed on 4 July 2013 and Mr. Walden answered on 5 September 2013.

Facts and Procedure

2. The facts established by the UNRWA Dispute Tribunal in this case read as follows:¹

... On 14 March 2000, in reply to a vacancy notice for a post of Senior Procurement Officer (“SPO”) at Headquarters Amman, Jordan, [Mr. Walden] submitted a Personal History Form (“PHF”) and a curriculum vitae (“CV”) which indicated, *inter alia*, that he had a Master of Business Administration (“MBA”) from Trinity College & University (“TC&U”), South Dakota, USA.

... [Mr. Walden] was short-listed for a personal interview by the hiring department and by the Recruitment Section. Following personal interviews, the interview board unanimously recommended the appointment of [Mr. Walden] to the SPO post.

... On 2 July 2000, the Director of Administration and Human Resources offered [Mr. Walden] a one year fixed-term appointment.

... On 20 July 2000, [Mr. Walden] entered the service of the Agency at HQ Amman as a SPO, P4, on a fixed-term appointment for one year. His appointment was subsequently extended.

... On 19 March 2005, he was transferred to the post of Field Procurement and Logistics Officer, P4, in the West Bank.

... On 5 April 2007, [Mr. Walden] applied for the post of Deputy Director of UNRWA Affairs, Syria, a P5 post. His application included a PHF and a CV.

... By letter dated 16 October 2007, the Director of Human Resources (“DHR”) referred [Mr. Walden] to a 2006 report by the United Nations Office for Human Resources Management (“OHRM”) titled “Diploma Mills: A Report on Detection and Prevention of Diploma Fraud” in which reference was made to TC&U, South Dakota. The DHR asked [Mr. Walden] to respond to a list of questions about his MBA.

¹ The following facts are taken from Judgment No. UNRWA/DT/2013/011, paragraphs 2 – 23 and 37 - 42.

... By memorandum dated 24 October 2007, [Mr. Walden] responded at length to the questions about his MBA stating, *inter alia*:

Your letter is a complete shock to me and I have never doubted the credentials of [TC&U] as it was recommended to me by UN employees before I joined the UN. In this [Inter-Office Memorandum] I have endeavoured to answer all your questions with as much detail as possible and to the best of my knowledge.

... By letter dated 21 November 2007, the DHR acknowledged receipt of [Mr. Walden]'s responses to her questions and informed him that she would be seeking advice from OHRM, New York and respond in due course.

... On 27 January 2008, the Agency sought guidance from OHRM on an appropriate response to [Mr. Walden]'s case.

... On 27 February 2008, OHRM responded and stated *inter alia*:

Our policy is that degrees obtained from diploma mills and unaccredited universities are not acceptable. Each case is analyzed on its merits. There have been several other cases involving degrees from diploma mills with varying outcomes, as the circumstances in each case were different. ...

... On 13 March 2008, the Chief Personnel Services Division ("CPSD") met with [Mr. Walden] to discuss the department's position in light of OHRM's advice.

... By email dated 27 March 2008, the CPSD informed [Mr. Walden] that the Agency would conduct a formal investigation of his case.

... By email dated 12 May 2008, OHRM advised the Agency *inter alia* that:

OHRM conducts a two-prong test to determine how to handle the case of a staff member (or prospective staff member) who claims a diploma obtained from a non-accredited institution: (i) whether the post for which the staff member was selected required the degree claimed, and (ii) whether the degree was claimed in good faith.

... By memorandum dated 1 August 2008, the Commissioner-General instructed the Acting Director, UNRWA Operations, Jordan ("A/DUO/J") "... to conduct the investigation into the facts related to Mr. Walden's submission of a Master's Degree in Business Administration from [TC&U], South Dakota, USA, in support of his applications for the posts of Senior Procurement Officer, General Stores, P4 and Deputy Director of UNRWA Affairs, P5, Syria Field Office."

... By memorandum dated 31 August 2008, the A/DUO/J after having interviewed [Mr. Walden] and one panel member from the 2000 recruitment board set out his findings to the Commissioner-General.

... Having reviewed the investigation report, the Commissioner-General then decided that:

The findings set out in the investigation report indicate that you have engaged in misconduct, and have failed to meet the standard of conduct and integrity expected of an international civil servant pursuant to International Staff Regulation 1.4, by submitting a non-accredited degree in support of your successful application for the post of Senior Procurement Officer, General Stores, P4. By submitting a non-accredited degree, you misrepresented your academic qualifications to the Agency, in direct violation of the statement you signed under paragraph 33 of your Personal History Form dated 14 March 2000.

... By letter dated 20 October 2008, [Mr. Walden] responded to the investigation's findings ... alleging that the investigation report misrepresented facts and that evidence used in the investigation was being withheld from him. ...

... By letter dated 14 November 2008, the Commissioner-General advised [Mr. Walden] ... that his response did not negate the findings set out in the investigation report, and she answered [Mr. Walden]'s specific inquiries and allegations. The Commissioner-General also advised [Mr. Walden] of her decision to refer the matter to the International Staff Joint Disciplinary Committee ("JDC").

... By memorandum dated 22 January 2009, the DHR on behalf of the Commissioner-General referred [Mr. Walden]'s case to the JDC ...

...

... On 18 and 19 May 2009, the JDC convened a meeting *in camera* and later provided its report dated 20 May 2009 to the Commissioner-General. ...

... Based on the facts it found:

... [Mr. Walden] was fully aware at the time of his initial and subsequent applications to the Agency for employment that the Masters Degree he had obtained from [TC&U], South Dakota, USA, was not a genuine degree on par with such degrees obtained through real study and course work ... By knowingly misrepresenting his academic qualifications by submitting a non-accredited degree in support of applications for employment with the Agency [Mr. Walden] gained employment with the Agency in a non-ethical manner.

... The JDC recommended the Commissioner-General to:

_ take disciplinary measures against [Mr. Walden] as per International Staff Rule 110.3 and to dismiss him;

_ consider to effect the dismissal by non-extension of his present employment contract with the Agency.

... By letter dated 27 May 2009, the Commissioner-General informed [Mr. Walden] that she agreed with the JDC's findings and that his appointment would be terminated for misconduct effective 1 June 2009. ...

... By letter dated 28 May 2009, [Mr. Walden] requested administrative review of the decision to terminate his appointment.

... By letter dated 23 June 2009, [Mr. Walden] filed a notification of appeal to the JAB against the decision to terminate his appointment, and on 10 January 2010, he filed the statement of appeal to the JAB.

3. On 18 April 2013, the UNRWA DT issued Judgment No. UNRWA/DT/2013/011. It found that the facts on which the decision to terminate Mr. Walden's employment for "knowingly" misrepresenting his academic qualifications were not established by clear and convincing evidence; that the facts as established by the Agency "do not lawfully amount to misconduct"; and that therefore the sanction was disproportionate. The Tribunal also found that the Commissioner-General had demonstrated bias and prejudice against Mr. Walden and that the decision was tainted and prejudiced. The Tribunal therefore held that Mr. Walden was denied due process. The Tribunal decided to offer *obiter dicta* "on what appear to be irregularities in the Agency's handling of the case".²

4. The UNRWA Dispute Tribunal set aside the decision of the Commissioner-General and ordered re-instatement of Mr. Walden in his post. In the alternative, and bearing in mind the exceptional circumstances of the case, the Tribunal set the amount of compensation at two years' net base salary plus six months' net base salary as compensation.

Submissions

Mr. Walden's Appeal

5. The UNRWA DT failed to exercise its jurisdiction when it failed to refer Mr. Walden's case to the Commissioner-General for accountability. Mr. Walden requested the accountability of the UNRWA officials who perpetuated the campaign against him.

² Impugned Judgment, para. 100.

6. The UNRWA DT failed to exercise its jurisdiction when it did not adequately compensate Mr. Walden for the infringement of his due process rights and the moral damages he suffered. He is entitled to increased compensation beyond the statutory limit because his case is exceptional within the meaning of Article 10(5)(b) of the UNRWA DT Statute.

7. The UNRWA DT failed to exercise jurisdiction vested in it when it failed to award Mr. Walden his net base salary between the time of the wrongful termination and the date of the Judgment.

8. Mr. Walden asks that the Appeals Tribunal submit the case to the Secretary-General of the United Nations “since the actors involved are now under the authority of the Secretary-General”; award additional compensation for the violation of his due process rights in the amount of 27 months’ net base salary as well as compensation equal to Mr. Walden’s loss of salary between his wrongful termination and the date of the Judgment; and order full payment of all entitlements owed to Mr. Walden due to the termination of his contract.

The Commissioner-General’s Answer

9. The UNRWA DT did not fail to exercise its jurisdiction when it did not refer Mr. Walden’s case to the Commissioner-General for accountability but rather acted within its jurisdiction based on the contents of Mr. Walden’s application. Considering that the issue of accountability was not raised before the UNRWA DT, the Commissioner-General submits that it does not constitute a valid ground of appeal arising from the impugned Judgment.

10. The UNRWA DT did not fail to exercise jurisdiction on the question of quantum of compensation. The Commissioner-General submits that Mr. Walden’s addition of new measures of damages should be deemed inadmissible as they present yet another attempt by him to impermissibly re-argue and re-litigate the issue of remedies.

11. The UNRWA DT did not fail to exercise its jurisdiction on the question of awarding net base salary between the time of the wrongful termination and the date of the Judgment. The issue of loss of salary is embedded in the amount determined by the UNRWA DT as an alternative to reinstatement.

The Commissioner-General's Appeal

12. The UNRWA DT erred on a question of law in its interpretation and application of “knowingly misrepresented” legal standard. The Commissioner-General submits that the UNRWA DT’s “improvised” definition of elements of “knowingly misrepresented” has no basis in the administrative framework of the Agency or in generally accepted principles of law. It resulted in an unduly narrow legal construction of the uncontroverted facts the Agency presented.

13. The UNRWA DT erred on a question of law or exceeded its competence in holding that Mr. Walden’s actions and omissions did not constitute misconduct. The UNRWA DT impermissibly considered the correctness of the decision to find Mr. Walden liable for misconduct and substituted its own judgment for that of the Commissioner-General.

14. The UNRWA DT erred in fact by failing to take into consideration Mr. Walden’s admissions, in his letter to the Director of Human Resources dated 24 October 2007 and in his conversation with the Chief, Personnel Services Division, which provide convincing evidence in that he engaged in misconduct.

15. The UNRWA DT erred on an issue of law by failing to make legal findings on procedural irregularities. The UNRWA DT failed to make the “necessary legal analysis and resulting legal holding” on whether Mr. Walden had discharged the evidentiary burden of proving that the decision was “arbitrary”. In addition, the UNRWA DT expressed its *obiter dicta* that are not properly part of the operative part of the judgment.

16. The UNRWA DT awarded excessive damages without providing a legal and factual basis. The award of damages should be reversed or considerably reduced to less than one year’s net base salary.

17. The Commissioner-General requests that the Judgment be reversed.

Mr. Walden’s Answer

18. The UNRWA DT was correct in its interpretation and application of the “knowingly misrepresented” legal standard. Mr. Walden was unaware that his MBA was from a non-accredited university prior to the 16 October 2007 letter from the Director of Human Resources and all the use from the non-accredited MBA prior to that date was made in good faith

and in the belief that the qualification was legitimate. Therefore, he could not have knowingly misrepresented this fact.

19. The UNRWA DT did not err on a question of law or exceed its competence in holding that Mr. Walden's actions did not constitute misconduct. He fully disclosed to the 2000 recruitment board that his MBA qualification was based on prior experience and not on campus studies. The UNRWA DT made findings of fact that called into question the Agency's finding of misconduct. The Agency failed to interview more than one of the members of the recruitment board and, when a second member was contacted and corroborated Mr. Walden's statements to the board, the Agency did not follow up with the other members of the board. Thus, the decision to dismiss him was a "foregone conclusion despite evidence to the contrary".

20. The UNRWA DT did not err on issues of fact by failing to take into consideration Mr. Walden's admissions as he did not make any admissions of fault. He also did not hide or misrepresent information relating to his MBA, which he did not know was not legitimate. His discussion with the Chief, Personnel Services was taken out of context.

21. The UNRWA DT did not err in making a finding that the decision to terminate Mr. Walden was tainted by procedural irregularities and that the evidence showed actual prejudice to his due process rights.

22. The damages awarded were not excessive.

23. Mr. Walden requests that the Appeals Tribunal reject the Commissioner-General's appeal.

Considerations

24. It is settled jurisprudence of this Tribunal that, "when reviewing a disciplinary sanction imposed by the Administration, the role of the Tribunal is to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offence".³

³ *Nasrallah v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-310, para. 23, quoting *Masri v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-098; *Maslamani v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-028; and *Haniya v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-024.

25. In the instant case Mr. Walden submitted a Personal History Form and a curriculum vitae which indicated, *inter alia*, that he had an MBA from Trinity College & University (TC&U), South Dakota, USA.

26. Following interviews by a recruitment board, he was offered a one-year fixed-term appointment on 2 July 2000 which was subsequently extended.

27. In 2006, a report by OHRM entitled “Diploma Mills: A Report on Detection and Prevention of Diploma Fraud” made reference to fake diplomas issued by TC&U, South Dakota, among other universities.

28. Mr. Walden was asked to respond to a list of questions regarding his MBA from the said university.

29. By memorandum dated 24 October 2007 he, *inter alia*, stated that he never doubted the credentials. He also said that when enquiring about his suitability for a P-3/P-4 position, he was advised that a person of his age, qualifications and experience should be looking to formalizing his skills and experience through a University such as TC&U. He explained that he questioned the ethics of accepting such a qualification and was advised that many people within the Organization had already obtained a qualification from this university and that it was acceptable to the Organization. The qualification was based on “recognition of prior learning” and no attendance was required. He was awarded a degree with distinction and never questioned it.

30. The undisputed fact is that Mr. Walden knowingly presented non-existent credentials in spite of questioning the ethics of accepting the document with his qualifications.

31. To determine whether this established fact amounts to misconduct we look at the International Civil Service Commission’s 2001 “Standards of Conduct for the International Civil Service” (circulated to UNRWA staff by Memorandum from the Commissioner-General dated 27 January 2003) which provide, with regard to the standard of conduct expected of United Nations’ staff: “The concept of integrity enshrined in the Charter of the United Nations embraces all aspects of behaviour of an international civil servant, including such qualities as honesty, truthfulness, impartiality and incorruptibility. These qualities are

as basic as those of competence and efficiency, also enshrined in the Charter.”⁴ The Charter of the United Nations of 1945 in Article 101.3 states, in part, that “[t]he paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity”. While the 2001 Code of Conduct post-dates Mr. Walden’s recruitment, the principles it enshrines were equally applicable in 2000.

32. Mr. Walden was aware that he had obtained his professional position within the Organization with an inexistent university degree.

33. International Staff Regulation 10.2 states: “(a) The Commissioner-General may impose disciplinary measures on staff members whose conduct is unsatisfactory. (b) The Commissioner-General may summarily dismiss a staff member for serious misconduct.”

34. Once having accepted the facts and the offence, the third test is that of proportionality. The Appeals Tribunal considers that termination is not disproportionate to the offence taking into account that Mr. Walden’s recruitment, in the first instance, was predicated on the existence of a degree subsequently established to be without merit and which never would have qualified him for selection by the Organization.

35. The UNRWA DT Judgment applied the right test but arrived at the wrong conclusion when determining termination as disproportionate to the misconduct.

36. The requirement of a university degree for a professional position within the Organization is mandatory and not a policy. The report on diploma mills was issued six years after the initial recruitment of Mr. Walden and this triggered the investigation and the specific questions regarding his degree.

37. The alleged friendly relationship between Mr. Walden’s ex-wife and a legal adviser of the JDC is irrelevant since the decision is based on the fact that Mr. Walden obtained a professional position without a professional degree.

38. In view of the above, the Commissioner-General’s appeal is granted and the UNRWA DT Judgment is vacated. Accordingly, Mr. Walden’s appeal has become moot.

⁴ Standards of Conduct for the International Civil Service, Section V, para. 5.

Judgment

39. The UNRWA DT Judgment is vacated.

Original and Authoritative Version: English

Dated this 27th day of June 2013 in New York, United States.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Faherty

(Signed)

Judge Simón

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

(Signed)

Weicheng Lin, Registrar