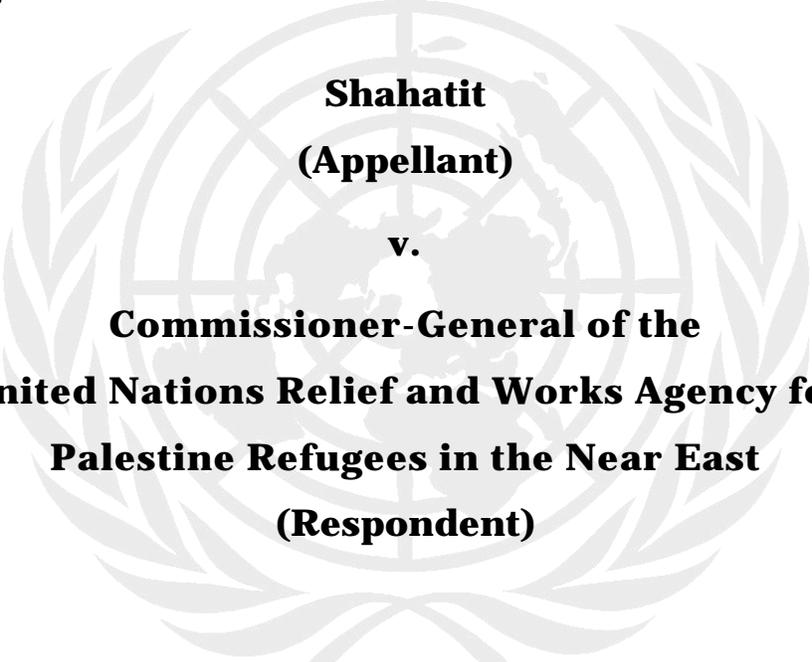




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2011-198



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

JUDGMENT

Before:	Judge Luis María Simón, Presiding Judge Inés Weinberg de Roca Judge Mary Faherty
Judgment No.:	2012-UNAT-195
Date:	16 March 2012
Registrar:	Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: W. Thomas Markushewski

JUDGE LUIS MARÍA SIMÓN, Presiding.

Synopsis

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal filed by Mr. Osama Shahatit on 16 December 2010 against the decision of the Commissioner-General of the United Nations Relief and Works Agency for Refugees in the Near East (Commissioner-General) dated 11 December 2009, to demote him. The Commissioner-General filed his answer on 15 March 2011.
2. The Appeals Tribunal has consistently held 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 constitute misconduct, and whether the sanction is proportionate to the offence.¹
3. The Appeals Tribunal finds that in the present case the sanctions imposed on him were lawful and it affirms the administrative decision that imposed them.

Facts and Procedure

4. On 1 May 2001, Mr. Shahatit accepted a two-year appointment as Head Storekeeper “B”, level 2B, step 1, in the Procurement and Logistics Department, Jordan Field. His appointment was extended, he received several promotions and transfers and, at the time of the appeal, Mr. Shahatit occupied the post of Head Storekeeper “A”, grade 9, step 6, in the Main Warehouse, Jordan Field.
5. On 27 November 2007, the Deputy Field Procurement and Logistics Officer (D/FPLO) reported to the Field Procurement and Logistics Officer that he had been informed by a driver that some staff members had been stealing paper reams after off-loading them at the UNRWA Headquarters Amman.
6. By memorandum dated 3 December 2007, the Director of UNRWA Operations, Jordan (DUO/J) constituted a fact-finding committee (FFC). He stated that he had been

¹ See e.g. *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; *Haniya v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-024.

informed that a “systematic scheme has been operating whereby deliveries of A4 paper to various offices have been overloaded on the delivery vehicle or the correct quantity loaded but short delivered and the excess or short quantity then sold by the driver and labourer operating the vehicle”. He tasked the FFC with an investigation into the matter which was to be completed within two days.

7. On 10 December 2007, the FFC issued its report. It noted that “Mr. Mohammad Atiyeh admitted [...] that he took 26 boxes of paper (130 reams) and sold them for JD 130.000 of which JD 30.00 should have been given to Mr. Osama [Shahatit] for his 6 boxes and JD 50.00 should have been given to Mr. Sharif Al-Absi.” The FFC further noted:

Mr. Osama [Shahatit] [...] did not admit any wrongdoing, but he could not substantiate his denial of his issuing the 6 boxes of paper from the store for his personal benefit. Moreover, he could not provide an acceptable justification for the presence of excess 237 paper reams at his store. As the Head Storekeeper, supervising the work and staff of the stores many wrongdoings have taken place without him correcting the situation.

8. By letter dated 14 January 2008, the DUO/J notified Mr. Shahatit of the FFC’s findings. He informed him that it had been decided to take disciplinary measures against him; to serve him with a letter of censure; to demote him to grade 8; and to transfer him to another location.

9. By letter dated 27 January 2008, Mr. Shahatit requested administrative review of the disciplinary measures and on 26 March 2008, he filed an appeal with the Area Staff Joint Appeals Board (JAB).

10. On 31 March 2008, the Officer-in-Charge, UNRWA Operations, Jordan, rejected Mr. Shahatit’s request for administrative review.

11. The JAB issued its report on 19 May 2009. It found that “some aspects of the facts upon which the disciplinary measures were based appear to have been reasonably established”. It however found that Mr. Shahatit’s demotion was disproportionate and recommended that the Commissioner-General review her decision to demote Mr. Shahatit.

12. By letter dated 11 December 2009, the Commissioner-General informed Mr. Shahatit that she had decided to reject the JAB's recommendation to review the decision to demote him.

Submissions

Mr. Shahatit's Appeal

13. Mr. Shahatit submits that the facts on which the disciplinary sanctions were based had not been established; and that the investigative process was flawed by procedural errors.

14. Mr. Shahatit further submits that the JAB process was flawed by procedural irregularities, in particular that he had been given insufficient time to reply to the JAB; and that the JAB had refused to accept his additional submissions.

15. Mr. Shahatit submits that the disciplinary measures were unfair because the demotion was disproportionate in relation to the disciplinary measures imposed on the other staff members and his salary after the demotion was lower than his salary prior to the demotion.

16. Mr. Shahatit requests that the Appeals Tribunal rescind the decision to demote him; order payment for the loss of salary he suffered due to the demotion; and order payment in the amount of USD 10,000 as compensation for his "psychological, mental and social distress".

Commissioner-General's Answer

17. The Commissioner-General submits that she did not err in law when she dismissed Mr. Shahatit's appeal. She further submits that she did not err by accepting the findings of the JAB that the facts established misconduct and by accepting the JAB's recommendation relating to the letter of censure and transfer, while rejecting the JAB's finding that the demotion was disproportionate.

18. The Commissioner-General submits that she had correctly concluded that the facts, as found by the FFC and confirmed by the JAB, on which the disciplinary sanctions were based, were adequately established for the purpose of a finding of misconduct.

19. The Commissioner-General submits that the disciplinary sanctions of censure and demotion were proportionate in light of the seriousness of Mr. Shahatit's misconduct. She specifies that the transfer of Mr. Shahatit did not constitute a disciplinary sanction, but rather was a natural consequence of his demotion.

20. Finally, the Commissioner-General submits that Mr. Shahatit failed to produce convincing evidence that the disciplinary sanctions were vitiated by substantive or procedural irregularities, improper motives or extraneous factors.

21. The Commissioner-General therefore requests that the Appeals Tribunal dismiss the appeal in its entirety.

Considerations

22. The Appeals Tribunal has consistently held 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 constitute misconduct, and whether the sanction is proportionate to the offence.²

23. In the present case, the facts on which the Commissioner-General based her decision to demote Mr. Shahatit were established, in full respect of Mr. Shahatit's due process rights. The records show clear and convincing evidence establishing facts which amount to misconduct and these facts have not been successfully rebutted by Mr. Shahatit. Apart from the one incident of paper loss, and irrespective of whether or not the witnesses were credible, it is an accepted fact that there was excess paper in the warehouse which was in Mr. Shahatit's direct custody. While it was not established that Mr. Shahatit directly participated in the theft, the established facts show that his negligence as Head Storekeeper facilitated the misconduct of other staff members. His negligence was evidenced by the excess of merchandises in the store room under his control, and by his failure to keep an inventory of the items in his custody.

24. Mr. Shahatit has not demonstrated any flaws in the administrative and disciplinary procedures. Mr. Shahatit was given the opportunity to defend himself and we reject his

² Ibid.

claims with regard to this issue. Seeing that the main facts that were established amount to misconduct, the imposition of a sanction was lawful.

25. The sanction of demotion was itself lawful. Even though the JAB only recommended censure and transfer, the Commissioner-General was vested with the authority to also impose the demotion which she considered to be appropriate. As determined in *Aqel*, the level of the sanction falls within the remit of the Administration and can only be reviewed in cases of “obvious absurdity or flagrant arbitrariness”,³ which has not been demonstrated in the case at bar.

Judgment

26. For the foregoing reasons, the appeal is dismissed in its entirety. The administrative decision of the Commissioner-General is affirmed.

³ *Aqel v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-040, para. 35.

Original and Authoritative Version: English

Dated this 16th day of March 2012 in New York, United States.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Faherty

Entered in the Register on this 7th day of May 2012 in New York, United States.

(Signed)

Weicheng Lin, Registrar