



**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)**

JUDGMENT

Before: Judge Luis María Simón, Presiding
Judge Mary Faherty
Judge Sophia Adinyira

Case No.: 2013-492

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 Near East (UNWRA Dispute Tribunal or UNRWA DT and UNRWA or Agency, respectively) on 4 March 2013 in the case of *Musa v. Commissioner-General of UNRWA*.¹ Mr. Mousa appealed on 13 May 2013 and the Commissioner-General of UNRWA (Commissioner-General) answered on 5 August 2013.

Facts and Procedure

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

... Effective 26 October 1981, [Mr. Mousa] was engaged by the Agency as a Teacher “B”, Grade 08, Step 1 at Nasser Preparatory School, Central Lebanon Area (“CLA”). After several transfers and reassignments, effective 1 October 2003, [Mr. Mousa] was transferred to the post of teacher at Kabri School, Mar Elias Camp, CLA, with no change in grade or salary level.

... On 15 September 2008, [Mr. Mousa] was designated Acting Head Teacher at Kabri School, Mar Elias Camp, CLA until 30 June 2009 in the absence of the School’s Head Teacher. The designation of [Mr. Mousa] as Acting Head Teacher was extended for several months.

... The Operations Support Report for CLA and Beqaa dated 26 June – 2 July 2010 highlighted the existence of unauthorised electricity connections to the Kabri School supply of electricity. The report indicated:

Construction works on new water plant inside the school yard started and at the beginning of the works, [the] canteen had to be removed. After removal, it became clear that (hidden inside the canteen) at least three electrical wires are connected to school supply of electricity, one of them leading to the house of the Head Teacher (which is located next to the school) [...]

A person in charge of [the] canteen is non-UNRWA staff member and he has keys of the school, including all classrooms [...]

... Following the report, the Chief Area Officer, CLA, (“CAO”) conducted an on-the-spot investigation and made the following findings:

¹ The family name of the Appellant has been spelled differently as “Mousa” or “Musa. For this Judgment, we use only “Mousa”.

² The following facts are taken from Judgment No. UNRWA/DT/2013/007, paragraphs 2 - 16.

... [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.

... On 30 July 2010, the Deputy Director UNRWA Affairs, Lebanon ("D/DUA/L") directed the Field Security Officer, Lebanon ("FSO/L") to conduct an investigation "in order to determine the circumstances and eventual responsibilities for an alleged case of illegitimate electric connections found at that School".

... By memorandum dated 23 August 2010, the FSO/L submitted the investigation report to the DUA/L. The report states *inter alia* as follows:

... It was possible to establish that, before the specific situation under investigation – electric wires installed at the school's canteen and discovered during the water tank works – there had been already illegal electricity connections found before ...

... No efforts were made to determine where did those illegal wires connected [sic] or who could have installed them;

... In direct relation, it is commonly admitted in all relating statements that [the canteen contractor] had (has?) keys to most of its doors/gates, internal and external;

... In practice [the canteen contractor] has been acting as the School Attendant himself, sometimes as the school's "manager";

... His power of freedom of movement within the school has been absolute, undisputed and unquestioned;

... [Mr. Mousa] has always been well aware about this;

... 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 lines 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 1 September 2010. Upon accepting the offer of employment, Mr. Mousa was appointed to such post.

... By letter dated 7 September 2010, the D/DUA/L informed Mr. Mousa of the findings and conclusions of the investigation conducted into the misuse of electricity at Kabri School and invited him to provide comments in this regard. He was also informed of his suspension with pay pending completion of the investigation.

... By letter dated 17 September 2010 to the D/DUA/L, Mr. Mousa provided his comments with respect to the findings and conclusions of the investigation.

... By memorandum dated 6 October 2010 to the DUA/L, the D/DUA/L made comments on Mr. Mousa’s response to the findings of the investigation and concluded as follows:

[Mr. Mousa] did not demonstrate the level of diligence that the Agency can reasonably expect of a head of installation to ensure that its resources and property are not abused. Knowing that the canteen contractor was the provider of illegal electricity in the camp; knowing that the canteen contractor had free access to the school; knowing that illegal wires had been found on a previous occasion, [Mr. Mousa] should have done significantly more to protect the Agency’s property and resources. In my view, [Mr. Mousa] should not be left in charge of an installation. At the very least, [(he)] should be

demoted to Assistant Head Teacher. Given the pressure that the popular committee and canteen contractor have been exerting in the course of this investigation, it is not in the best interests of the Agency nor [(Mr. Mousa)] for him to remain in Kabri School.

... By letter dated 6 October 2010, the DUA/L informed [Mr. Mousa] of the decision to “re-assign” him to an Assistant Head Teacher position outside of Mar Elias Camp. The letter reads *inter alia* as follows:

The evidence clearly establishes that unauthorized connections had been made to the school’s electrical supply by the canteen contractor. The evidence establishes that you did not demonstrate sufficient diligence to protect the Agency’s premises and property from this abuse. As the head of the installation, you had a duty of care towards the Agency and its property that you failed to discharge.

It has been decided that you should not remain in charge of an UNRWA installation. The decision has been to re-assign you to an Assistant Head Teacher position outside of Mar Elias Camp...

... Effective 11 October 2010, [Mr. Mousa] was transferred to the post of Assistant Head Teacher at El Bireh Preparatory Boys’ School, B/Barajneh, CLA.

... By letter dated 10 November 2010 to the DUA/L, [Mr. Mousa] requested review of the impugned decision.

... By letter dated 18 November 2010, the DUA/L replied to [Mr. Mousa’s] request for decision review. The contested decision was upheld.

... On 16 February 2011, the Applicant filed an application with the [UNRWA Dispute] Tribunal.

3. The UNRWA DT dismissed Mr. Mousa’s application in its entirety, finding that the facts on which the disciplinary measure was based had been reasonably established; that the facts legally supported the characterisation of misconduct; that the disciplinary measure was proportionate to the offence; and that the Respondent’s discretionary authority was not tainted by evidence of procedural irregularity, prejudice or other extraneous factors, or error of law.

4. Based on the findings of the investigation report and Mr. Mousa’s own admissions in his rejoinder, the UNRWA Dispute Tribunal was satisfied that the facts on which the disciplinary measure was based were reasonably established. The evidence showed that Mr. Mousa “did not demonstrate the level of diligence that the Agency can reasonably expect of a head of installation to ensure that its resources and properties are not abused” and “the fact that he did not discharge

his duty of care towards the Agency's properties legally supports the characterisation of misconduct".³

5. According to the UNRWA Dispute Tribunal, the decision to demote and consequently transfer Mr. Mousa was taken in compliance with the requirements of applicable Area Staff Regulation 10.2 and Area Staff Rule 110.1. Moreover, in the Tribunal's view, the transfer "did not constitute a disciplinary sanction, but rather was a consequence of the Applicant's demotion" and thus "an appropriate administrative decision taken under Area Staff Regulations 1.2 and 4.3".⁴

6. The UNRWA Dispute Tribunal found that the investigations that established Mr. Mousa's misconduct were properly conducted and that he did not provide any convincing evidence to demonstrate that the decision to demote and transfer him was exercised arbitrarily or capriciously, motivated by prejudice or extraneous factors, or flawed by procedural irregularity or error of law.

7. Although Mr. Mousa was not provided with a copy of each of the witness statements collected during the investigation, he received an unredacted copy of the investigation report attached to the Respondent's reply which accurately summarized all the evidence gathered. He was given the opportunity to file a rejoinder to the reply, his testimony was taken into consideration during the investigation and he was given the opportunity to provide comments with respect to the findings and conclusions of the investigation before the decision to demote and transfer him was made.

8. Moreover, Mr. Mousa did not substantiate his argument that "the CAO and the DUA/L did not want him to have [the] post of Head Teacher", as he was appointed to the post of Head Teacher at Kabri School effective 1 September 2010, well before the 6 October decision to demote him was made.

9. With regard to the proportionality of the sanction, since Mr. Mousa failed to discharge his responsibility to safeguard the school property and resources from abuse, the UNRWA Dispute Tribunal found that his demotion and reassignment to the post of Assistant

³ *Ibid.*, para. 52.

⁴ *Ibid.*, para. 54.

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, Mar Elias 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