



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

**Maslamani
(Appellant)**

v.

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

JUDGMENT

[No. 2010-UNAT-028]

Before: Judge Mark P. Painter, Presiding
Judge Inés Weinberg de Roca
Judge Jean Courtial

Case No.: 2010-033

Date: 30 March 2010

Registrar: Weicheng Lin

Counsel for Appellant: Self-Represented

Counsel for Respondent: W. Thomas Markushewski

JUDGE MARK P. PAINTER, Presiding.

Synopsis

1. Appellant Jamil M. Maslamani (Maslamani) appeals from a decision of the Director of Administration and Human Resources, HQ/Gaza, United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) (delegated from the Commissioner-General) terminating his employment. We hold that Maslamani's termination was legal, and that it was not disproportionate to the offences.

Facts and Procedure

2. In 1990, Maslamani was appointed to the post of Placement and Career Guidance Assistant at HQ/Amman, UNRWA. In October 1998, Maslamani was promoted to the post of Deputy Principal, Wadi Seer Training Centre (WSTC) and transferred to the Jordan Field Office. Effective 1 September 2001, Maslamani was appointed Acting Principal, WSTC, in addition to his normal duties; and effective 1 August 2002, he was promoted to the post of Principal, WSTC.

3. During October and November 2002, UNRWA's Audit and Inspection Department (AID) conducted an audit of service contracts awarded by WSTC for the years 1999, 2000, and 2001. In its report to the Commissioner-General dated 24 November 2002, the AID reported that the audit had revealed cases of non-compliance with UNRWA's rules and procedures regarding the service contracting process as well as irregularities relating to the internal control system. The report noted that

[i]nquiries made during the course of the audit resulted [in] conflicting answers and in allegations of improprieties being perpetrated during the service contracts process and of other questionable activities that occurred at WSTC. AID recommends that the Jordan Field Office, in coordination with the Department of Education [...] investigate the matter, and [...] determine those responsible for the irregularities and the corrective action to be taken.

4. In January 2003, the Commissioner-General composed an Investigation Board (Board) in response to the findings of the AID "to look into the audit findings and investigate further as necessary to determine whether [n]on Compliance with Agency Rules and

regulations did occur when awarding contracts by WSTC during the years 1999, 2000 and 2001; and/or [i]rregularities relating to internal control were committed”.

5. Later in January 2003, the Deputy Commissioner-General extended the scope of the investigation to include the year 2002. On 17 February 2003, the Board submitted its report to the Commissioner-General. The Board’s report stated that Maslamani had been involved in the awarding of contracts that did not comply with the Agency’s regulations, rules, and procedures regarding service contracts. The report also indicated that Maslamani had failed to properly report cheating in state examinations at WSTC in 2001.

6. On 24 March 2003, the Commissioner-General reconvened the Board to conduct further investigations into matters raised in the Board’s first report. On 17 April 2003, the Board submitted its second report to the Commissioner-General, confirming the conclusions reached in its first report. The Board also concluded with respect to Maslamani:

Mr. Maslamani was [the Deputy Principal], WSTC when Mr. Aqeel was [the Principal], WSTC. It is the view of the Board that he was fully aware of all Service Contract-related issues, including [Oxy-Acetylene System / Refrigeration and Air-Conditioning]. Moreover, he had full knowledge of cheating having taken place in the Comprehensive Examinations during Mr. Aqeel’s tenure as P/WSTC. Despite this, he chose not to inform [the Deputy Chief], [Field Education Programme], [the Chief], [Field Education Programme], or any other superior officer in the field of such serious issues. His argument that as [Deputy Principal], WSTC, his ‘ceiling’ for reporting was [the Principal], WSTC and hence he could not approach other superiors, is unacceptable and could imply gross negligence if not collusion. Commonsense would dictate that he needed to go at least one level above his immediate supervisor, to report such issues of grave misconduct. Regrettably, he did not do so. The Board believes that cheating also took place during the 2002 Comprehensive State Examinations and that Mr. Maslamani as [Principal,] WSTC along with Mr. Mustapha Hashem, Dean/WSTC instigated the cheating. The Board is also of the view that Mr. Maslamani and Mr. Hashem tried to cover up their role in the cheating through threats made against staff members of WSTC who were aware of their misconduct.

7. Having reviewed the Board’s reports dated 17 February and 17 April 2003, the Director of Administration and Human Resources sent Maslamani a letter dated 20 May 2003, setting out the allegations of misconduct against him as well as the supporting evidence, requesting him to reply within 14 days of receipt of the letter. On 4 June 2003, Maslamani responded to the letter, denying all allegations. On 25 June 2003, the

Commissioner-General delegated his authority to terminate a staff member in the interest of the Agency and to impose disciplinary measures to the Director of Administration and Human Resources, HQ/Gaza with respect to the investigation at the WSTC. The same day, the Director of Administration and Human Resources dismissed Maslamani from service of the Agency for misconduct, under Area Staff Regulation 10.2 and Rule 110.1, with immediate effect. The grounds of misconduct were stated as follows:

1. You knowingly and irresponsibly failed to perform your assigned duties and responsibilities as Deputy Principal, [WSTC], Jordan, by failing to apply Agency rules, regulations, and procedures regarding Service contract WS/00/007 (specifically Organisation Directive No. 10 and the Manual of Supply Procedure No. 3), and by failing to properly supervise your staff in completion of such contracts. In reaching this conclusion I note that in your statement to the Board of Inquiry dated 26 January 2003, pages 7 and 12, you specifically admit your failure to follow proper procedures regarding the awarding of this contract.
2. With respect to Service Contract WS/11/01, you have been guilty of wilful misconduct and/or irresponsible conduct and/or wilful failure to perform your assigned duties and responsibilities. The evidence in support of this charge, which you have been unable to refute, confirms that you were instrumental in the awarding of WS/11/01 for the repair of the Oxy-acetylene system at the Refrigeration and Air-Conditioning workshop to a company called 'Zahran for Refrigeration' whereas the work was at all times known by you to be carried out by two instructors employed at [WSTC], Mohammed Abu Eid and Husni Saleh, in breach of Organisation Directive No. 10.
3. As Deputy Principal, [WSTC], you knowingly and irresponsibly failed to report cheating in state examinations at the Centre in the year 2001 involving the Principal, [WSTC] and others, to more senior UNRWA officials including the Chief, Field Education Programme, Jordan and the Director of UNRWA Operations, Jordan. Your explanations for failing to take this action, which include your concern for following 'proper channels' and ... maintaining a 'ceiling' of reporting, are wholly inadequate given your duty and responsibility as a senior staff member to maintain the integrity of the Agency.
4. In your capacity as Principal, [WSTC], you knowingly committed serious misconduct by organizing the distribution of answers to students taking state examinations at [WSTC] in 2002. You have been unable to refute the evidence in support of this charge.

8. On 24 July 2003, Maslamani sent a letter to the Director seeking reconsideration of the decision to terminate his appointment. On 28 August 2003, the OiC, Administration and Human Resources Department sent a letter to Maslamani, denying his request for reconsideration. On 15 September 2003, Maslamani appealed the decision to the Joint Appeals Board (JAB). By letter dated 1 December 2004, Maslamani was notified of the constitution of the JAB. Upon Maslamani's request, the letter was delivered to Dr. Mustafa Hashim on 19 December 2004. The JAB convened on 15 February 2005 to consider the appeal. In its report, the JAB concluded that "Maslamani '[a]s admitted by himself' has committed a gross negligence by not properly reporting the case of cheating and failed to comply with the Agency contracting procedures". It recommended, by majority vote, to uphold the Administration's decision and to dismiss the appeal. One member of the JAB attached a dissenting opinion, acknowledging that Maslamani had made "mistakes", but stating that, in his view, the disciplinary measure was "severe" and "not commensurate with the level of the mistakes". The Commissioner-General approved the JAB majority recommendation to uphold the decision to dismiss Maslamani.

9. Maslamani filed an application with the former United Nations Administrative Tribunal. In December 2009, Maslamani was informed that the former Administrative Tribunal had held its final session and that his case had not been considered. Maslamani was informed that, as mandated by the General Assembly his case would be transferred to this Court upon the former Administrative Tribunal's abolishment at the end of 2009.

Submissions

Maslamani's Appeal

10. Maslamani submits that he had not been informed of the composition of the JAB; and that had he been duly informed, he would have requested the recusal of one of its members, Mr. Moayad Ahmad. He contends that, at the time the two service contracts were issued, Mr. Ahmad was an engineer at the Field Engineering and Technical Department in the Jordan Field Office and that since this Department is responsible for the certification of the satisfactory completion of service contracts related to maintenance or installation of equipment or premises, Mr. Ahmad had a conflict of interest.

11. Charges 1 and 2: Awarding Service Contracts in violation of Agency regulations, rules, and procedures regarding service contracts and Organization Directive No. 10. At the time

that the two relevant service contracts were awarded, Maslamani was filling the post of Deputy Principal, WSTC and Chief Vocational Training Instructor. Maslamani submits that in this capacity, he was not involved in awarding service contracts. He avers that service contracts are prepared by the Administration Officer, signed by the Principal and approved by the Chief, Field Education Programme in accordance with UNRWA Organization Directive No. 10. He contends that none of the service contracts issued during his tenure as Deputy Principal carried his signature or initials.

12. Charge 3: Failure to Report Cheating. Maslamani contends that he heard, as others, that cheating had taken place in the 2001 State Examination. But he submits that he had no evidence to support the allegations. He submits that when, in 2002, he was informed by Dr. Ziadeh (Director of General Examinations and Evaluation at the Balqa Applied University) that they had received a letter from an instructor informing them that cheating had taken place in 2001, he immediately informed the OIC of the Education Programme and the Director of UNRWA Operations, Jordan. He contends that, as confirmed by the Board of Inquiry, no action was taken by the Field's Administration.

UNRWA's Answer

13. UNRWA replies that, contrary to Maslamani's contention, Maslamani had been notified of the constitution of the JAB by letter dated 1 December 2004. Upon Maslamani's request, the letter was delivered to Dr. Mustafa Hashem on 19 December 2004.

14. UNRWA recalls both Maslamani's questionable credibility as well as his statements revealing the extent of his involvement in contracting at WSTC. UNRWA submits that Maslamani's own statements as well as the statements from witnesses found to be credible by the Board demonstrate Maslamani's knowledge of, and establish the facts associated with Maslamani's failure to correct (if not his collusive involvement in), the irregular contracting procedures at the WSTC.

15. UNRWA submits that the Deputy Principal's post description includes oversight duties at the WSTC. Maslamani clearly failed to perform those duties or to maintain the minimum standard expected of an Agency staff member under the Area Staff Regulation 1.4.

16. While Maslamani claims that he did not report cheating because he lacked evidence in this regard, UNRWA points out that Maslamani himself acknowledged that cheating had taken place in the 2001 State Examinations.

17. UNRWA contends that on Maslamani's own admissions, the Board properly concluded that he was fully aware that the former principal, WSTC, masterminded cheating at the WSTC during the 2001 examinations and that Maslamani consciously chose not to inform senior Agency officials of the situation and the facts had been adequately established that Maslamani failed to report cheating during the 2001 examinations and instigated cheating during the 2002 examinations.

18. UNRWA states that the (now former) Administrative Tribunal has consistently held that in disciplinary matters, the Commissioner-General has broad discretionary authority; and that in reviewing this kind of decisions, the Administrative Tribunal generally examined (i) whether the facts on which the disciplinary measures were based have been established; (ii) whether the established facts legally amount to misconduct or serious misconduct; (iii) whether there has been any substantive irregularity (e.g. omission of facts or consideration of irrelevant facts); (iv) whether there has been any procedural irregularity; (v) whether the sanction is legal; and (vi) whether the sanction was disproportionate to the offence.

19. UNRWA submits that in the present case, the above criteria were met and that the appeal should be denied in its entirety.

Considerations

20. This Court holds that (1) the Commissioner-General has broad discretionary authority in disciplinary matters; (2) the facts on which the Maslamani's termination was based were established; (3) the established facts legally amount to serious misconduct; (4) there has been no substantive or procedural irregularity.

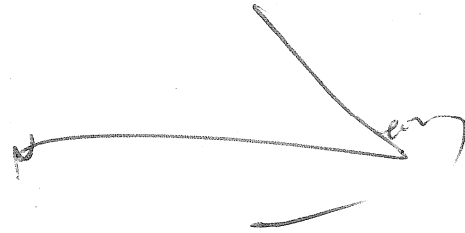
21. We further hold that Maslamani's termination was legal, and that it was not disproportionate to the offences.

Judgment

22. This Court affirms UNRWA's decision to terminate Maslamani's service.



Judge Painter, Presiding



Judge Weinberg de Roca



Judge Courtial

Dated this 30th day of March 2010 in Geneva, Switzerland.

Original: English

Entered in the Register on this 26th day of April 2010 in New York, United States.



Weicheng Lin, Registrar, UNAT