



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

Case No. 2010-025

**Adwan
(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 Sophia Adinyira
Judge Mark P. Painter

Judgment No.: 2010-UNAT-038

Date: 1 July 2010

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: W. Thomas Markushewski

JUDGE LUIS MARÍA SIMÓN, Presiding.

Synopsis

1. This is a disciplinary case. Jamileh Taha Adwan (Adwan) filed an appeal against the decision taken by the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) to demote her from grade 12, Stock and Material Inspection Officer (SMIO), to Grade 9, Personnel Clerk. The appeal is time-barred. But even if it were filed on time, the appeal would be dismissed: the facts on which Adwan's demotion was based were established and amounted to misconduct. The demotion was proportionate to the offence and the decision to demote Adwan was taken, respecting Adwan's due process rights.

Facts and Procedure

2. Adwan joined UNRWA in December 1993 as a Personnel Clerk, grade 8. On 30 August 2005, she was promoted to grade 12 as SMIO and held this post at the time relevant to the events.

3. In May 2006, Adwan received two written reprimands for professional negligence associated with her failure to carry out correct procedures as an SMIO and for serious insubordination. By letter dated 11 May 2006, the Field Administration Officer, Jordan, censured Adwan for having made unsubstantiated accusations against her colleagues and for refusing to perform functions essential to her position.

4. Adwan sought administrative review of the decision to censure her. The disciplinary measure of censure was confirmed upon review and Adwan did not appeal the censure decision.

5. On 8 August 2006, Adwan's periodic report was signed. She received an overall rating of 2 ("A staff member who maintains only a minimum standard of efficiency") on a scale of 1 to 5, with 1 being the lowest and 5 the highest.

6. By letter dated 14 September 2006, the Field Personnel Officer, Jordan, informed Adwan that, in view of the reprimands, censure, and her latest periodic report, her

annual salary increment due on 1 September 2006 would be deferred for six months. Adwan did not appeal this decision.

7. In a memorandum to the Deputy Director dated 29 November 2006, UNRWA Operations, Jordan, the Field Procurement and Logistics Officer (FPLO) reported on the outcome of an investigation following the discovery of a large box of files and documents in Adwan's office in early July 2006. The FPLO concluded:

Mrs. Adwan is, therefore, an experienced SMIO but by raising duplicate, incorrect and incomplete records and failing to bring up outstanding unresolved matters, she has severely degraded the accuracy of the equipment records and built up a very large back-log of cases to be investigated and resolved. This has also rendered all equipment checking in 2006 suspect requiring it to be rechecked and in so doing, she has proven inconsistent and unreliable in these duties which are traits incompatible with the position of an SMIO.

8. The FPLO recommended that Adwan be removed from the post of SMIO due to her inability to perform her duties correctly and that she be demoted due to her negligence in the undertaking of her SMIO duties.

9. By letter dated 18 December 2006, the Field Administration Officer, Jordan, informed Adwan of the decision to demote her from Grade 12 to Grade 9 as Personnel Clerk, effective 24 December 2006.

10. In a memorandum to the Field Administration Officer dated 16 January 2007, Adwan expressed her surprise at the "hard hasten(ed)" decision of demotion and asked for reconsideration of the action taken against her. On 15 February 2007, Adwan filed an appeal with the Area Staff Joint Appeals Board (JAB) challenging the decision to demote her. By letter dated 18 February 2007, the Deputy Director, UNRWA Operations, Jordan, informed Adwan that her case had been reviewed, but that "the decision [would] be maintained unchanged".

11. In an undated report, the JAB concluded that there was evidence that Adwan had not complied with her job description and that "there was misconduct on [her] part". The JAB found no procedural irregularity in the process leading up to the impugned decision, improper motive or abuse of discretion, prejudice or other extraneous factors tending to taint the decision. The majority of the JAB panel found the disciplinary measure of demotion proportionate to the degree of the offence and recommended that

the appeal be dismissed in its entirety. The minority member, on the other hand, believed that demotion by three grades was “too severe in the circumstances”, especially since she had “admitted to making a mistake”, and recommended review of the demotion decision.

12. On 12 September 2008, the Commissioner-General approved the JAB majority recommendation to reject Adwan’s appeal. Adwan received the Commissioner-General’s decision on 17 November 2008.

13. Adwan filed an appeal with the former Administrative Tribunal under cover of a communication dated 28 June 2009. On 13 July 2009, the Executive Secretary of the Administrative Tribunal returned the appeal to Adwan because it did not meet the formal requirements, and requested her to resubmit her corrected appeal by 25 September 2009. On 15 December 2009, the former Administrative Tribunal received a corrected application from Adwan. The case was subsequently transferred to the Appeals Tribunal following the abolition of the Administrative Tribunal at the end of 2009. The Commissioner-General filed his answer to the appeal on 17 March 2010.

Submissions

Adwan’s Appeal

14. Adwan contends that she had an excellent performance record from 1995 to 2005. Only after Mr. Akhras, with whom she had a bad personal relationship, became Deputy Field Procurement and Logistics Officer, there were “sudden and unjust” complaints about Adwan’s performance in 2006, resulting in two reprimands and a censure, within ten days.

15. Adwan stresses that, contrary to the accusation that she had incorrectly completed the equipment records in 2006, she had properly recorded all newly acquired equipment. To the contrary, from 1999 to 2002, the equipment had not been correctly recorded and, from 2003 to 2005, the status of the equipment was not properly recorded, due to frequent changes in staff.

16. Adwan states that when she was promoted to SMIO in August 2005 and resumed her SMIO duties in February 2006, she worked hard and to the best of her abilities and was committed to her work.

17. Adwan requests the rescission of the disciplinary measure of demotion. She seeks her reinstatement to grade 12 and unspecified compensation for moral, psychological, and financial loss resulting from the demotion.

Commissioner-General's Answer

18. The Commissioner-General responds that the appeal is time-barred and not receivable. Even if the appeal were receivable, she contends that she did not err in law when, based on the recommendation of the JAB and the established facts, she dismissed Adwan's appeal.

19. The Commissioner-General argues that the decision to demote Adwan was taken within the broad discretionary power vested in the Commissioner-General in relation to disciplinary matters. The Commissioner-General submits, and the JAB agreed, that Adwan's wilful or negligent failure to carry out her duties constituted "misconduct". It was taken with objectivity and thoroughness and respected Adwan's due process rights. The decision was proportionate in light of Adwan's misconduct.

20. UNRWA submits that Adwan has failed to present any evidence to support her allegation of "sudden and unjust" complaints or "dictated and fabricated" process.

Considerations

21. Adwan received the impugned decision on 17 November 2008. The time-limit for filing an appeal is 90 days. She should have filed her appeal no later than 15 February 2009. Instead, Adwan filed her appeal on 28 June 2009, more than four months late.

22. This is not the only reason to find the appeal time-barred. The appeal she initially submitted did not fulfil the formal requirements and was returned to her. She was

requested to resubmit the appeal by 25 September 2009. It was not until 15 December 2009 that the appeal was received, late for a second time. Adwan provided no explanation for the delay. Therefore, the Appeals Tribunal must find the appeal not receivable.

23. The Appeals Tribunal holds that even if the appeal were not time-barred, it would be dismissed on the merits. Adwan does not provide any convincing reasons for her failures at work or to challenge the disciplinary measure taken in response to her conduct.

24. The Appeals Tribunal held in *Haniya* that “[w]hen reviewing a sanction imposed by the Administration, the Tribunal will 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”.¹

25. Adwan’s disciplinary records include two written reprimands for professional negligence associated with her failure to carry out correct procedures as an SMIO and for serious insubordination. She also received a censure letter which was confirmed upon administrative review. Adwan’s periodic report rating her as a staff member who maintains only a minimum standard of efficiency was therefore adequate and resulted in a minor sanction of deferment of the increment, which was not contested by Adwan.

26. Subsequently, the outcome of an investigation further revealed how Adwan had failed to properly perform her duties and that her conduct had serious implications for the functioning of the office. This investigation report led to the demotion contested in this appeal.

27. The Appeals Tribunal is satisfied that these established facts clearly constitute misconduct warranting a disciplinary measure. Because Adwan’s failure to perform had direct and important consequences for the functioning of the office, the Appeals Tribunal is further satisfied that the imposed sanction is proportionate to the offence. Finally, Adwan has not demonstrated any violation of her due process rights. The Appeals Tribunal therefore affirms the impugned decision to demote Adwan.

¹ *Haniya v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-024, para. 31.

Judgment

28. In view of the foregoing, the appeal is dismissed.

Dated this 1st day of July 2010 in New York, United States.

Original: English

(Signed)

Judge Simón, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Painter

Entered in the Register on this 16th day of August 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar
United Nations Appeals Tribunal