



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

Judgment No. 2017-UNAT-788

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

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge Richard Lussick Judge John Murphy
Case No.:	2017-1072
Date:	27 October 2017
Registrar:	Weicheng Lin

Counsel for Mr. Soliman:	Amer Abu-Khalaf, LOSA
Counsel for Commissioner-General:	Rachel Evers

JUDGE SABINE KNIERIM, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2017/007, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or UNRWA Dispute Tribunal and UNRWA or Agency, respectively) on 2 March 2017, in the case of *Soliman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Tamer Soliman filed the appeal on 5 April 2017, and the Commissioner-General filed his answer on 6 June 2017.

Facts and Procedure

2. Effective 22 February 2015, Mr. Soliman was employed by the Agency on a fixed-term appointment for one year as an Area Support Officer (ASO), Grade P-3, at the Syria Field Office (SFO) of UNRWA. Mr. Soliman's contract was subject to a probationary period of 12 months. His immediate supervisor was Senior Area Support Officer (S/ASO) Ms. Lubna Ehsan who joined the office on 4 March 2015. His second supervisor was Deputy Director of UNRWA Affairs, Syria (D/DUA/S), Mr. Dejan Potpara.

3. The minutes of a "meeting with Tamer Soliman" held by Ms. Ehsan and Mr. Potpara on 25 March 2015 read as follows:

The D/DUA[/S] explained the purpose of the meeting is to give an initial feedback of the [staff member's (SM)] performance as well as the next steps to operationalize the ASO programme and SM's role within that.

It was clarified that the feedback given will be honest and upfront and is based on the observation[s] of both the D/DUA[/S] and the S[/]ASO as well as other colleagues in SFO with whom the SM has interacted for various professional and personal matters.

The SM was informed that his attitude and behavior depicted thus far is not in line with the required organizational values of respect and team work. The SM was warned that UNRWA operates in a highly sensitive external and internal context where news travel fast and all of the staff members, in particular international staff members are under a subtle surveillance almost all the time. It was also stressed that such a behavior can not only tarnish amicable working relations among staff but can also jeopardize a fellow[] colleague[']s security.

The SM was also informed that he has not shown the desired level of professional competence and desired level of ability to assess the context and adapt his approach accordingly and timely. The D/DUA[/S] gave a detailed feedback to SM on weak

performance he exhibited when he was tasked to lead preparation and an advance team for [the Commissioner-General's] visit to Qabr Essit camp in Rural Damascus. The D/DUA[/S] also explained that management was not happy with the feedback that we were getting from SFO senior staff regarding SM's participation and attention to induction programme that he was attending.

The D/DUA[/S] told the SM that his contract, like other contracts of the new staff in UNRWA, is on a probationary period of one year and that the Agency holds the right to take any decision during this period. The D/DUA[/S] also explained management concerns in particular in regard to displayed attitude and behavior towards the fellow colleagues including the area staff. He expressed management expectations to see considerable improvement in SM's performance and attitude within the next couple of months.

The SM listened carefully and though contested "allegations" regarding his attitude and behavior, assured that he will work on it and do his best to improve.

4. On 19 May 2015, Mr. Soliman sent a draft of his work plan for 2015 to his immediate supervisor.

5. By detailed confidential memorandum dated 25 June 2015 to the D/DUA/S, the S/ASO recommended the termination of Mr. Soliman's contract with immediate effect on grounds that he had "failed to depict [the] required professionalism, competence, integrity, and attitude for the position of an Area Support Officer", that he "need[ed] constant close supervision and lack[ed] professional ability and behavio[u]ral attitude to work independently" and "did not show the required interest to improve his understanding and learning during his induction period and from the various meetings scheduled for the purpose". The memorandum expressly refers to three meetings with Mr. Soliman held on 25 March, mid-April and mid-May. During a meeting on 15 July 2015, the 25 June 2015 memorandum was handed over to Mr. Soliman and he was given the opportunity to comment on it.

6. By e-mail dated 29 September 2015, the S/ASO informed the Human Resources Officer (HRO), Mr. Dejan Jasnic, that she had discussed with Mr. Soliman how to proceed with his termination as well as possible concessions in case he agreed to resign. The e-mail, which was copied to the Director of UNRWA Affairs, Syria (DUA/S), Mr. Kingsley-Nyinah and Mr. Soliman, reads as follows:

Dear Dejan,

I think that a joint meeting would be useful to clarify all the doubts that Mr. Soliman may still have. Let me clearly put down below in writing the outcome of my discussion with [Mr. Soliman] on 10 Sep[tember].

While acknowledging the efforts that [Mr. Soliman] has been putting into the tasks that I assign to him, I explicitly stated that he is still NOT considered suitable to be deployed to any of the Area offices, which is the main task in the job description of his post – as the very title of it implies, AREA SUPPORT OFFICER. In that meeting I made it clear that there will be NO change in the decision and that it is NOT POSSIBLE to accept his request to allow him to complete the full probation period. The only matter left was to decide the most feasible way to proceed; either termination of contract by the [Human Resources] or [Mr. Soliman's] resignation. Mr. Soliman, agreed to take the course of resignation for the obvious advantages over termination and asked me the following concessions;

- His performance appraisal would not reflect negative evaluation
- For his future jobs if his employer contacts me as his last supervisor, I will not give a negative review
- Extend the notice period close to end of his contract in Feb 2016
- Consider waiver of any deductions of the advance amount that he was paid upon joining

While I gave him assurance for the first two, I advised him to discuss the other[s] with you and the DUA[/S] at the meeting that the DUA[/S] had proposed to schedule immediately after your return (and in my absence).

I hope that clarifies the matter from my end.

Best regards

7. By several e-mails dating from 25 to 27 October 2015, the S/ASO and Mr. Soliman discussed the final version of his work plan. Ms. Ehsan advised him to submit a final version so that his mid-term review could be started. By e-mail dated 29 October 2015, Mr. Soliman informed the S/ASO that he had received notification that his mid-term review had been completed. On 31 October 2015, Mr. Soliman referred to the mid-term review and requested the S/ASO to send him, *inter alia*, the minutes of the meetings that were mentioned there, namely, the meetings held on 25 March, in mid-April and on 13 May 2015. In a follow-up e-mail to the S/ASO dated 7 November 2015, Mr. Soliman reiterated his request for the minutes of the above-mentioned meetings, and he attached the minutes he had prepared for the meetings which had been held on 15 July, 7 September, 14 and 29 October 2015.

8. By a confidential memorandum dated 26 November 2015, the HRO sought the recommendation of the S/ASO whether Mr. Soliman's appointment should be extended. On 30 November 2015, the S/ASO recommended that Mr. Soliman's appointment should not be extended, and on 3 December 2015, the DUA/S agreed with this recommendation.

9. By e-mail dated 20 December 2015, Mr. Soliman complained that he had not received any response to his request for the minutes of several meetings which had been held on 25 March, in mid-April, on 13 May, on 15 July, 7 September, 14 October and 29 October 2015.

10. By letter dated 29 December 2015, the Officer-in-Charge (OiC), Human Resources Department, informed Mr. Soliman of the expiry of his fixed-term appointment on 21 February 2016.

11. On 18 January 2016, Mr. Soliman submitted a complaint of prohibited conduct alleging harassment, intimidation and abuse of power against his immediate supervisor and the senior management of SFO.

12. Mr. Soliman's immediate supervisor and the DUA/S, his second supervisor, completed, respectively, on 19 January 2016 and on 24 January 2016, their appraisal of Mr. Soliman's performance in the electronic Performance Evaluation Report (e-PER). His performance was evaluated as "does not fully meet expectations".

13. Mr. Soliman commented on his mid-term review on 1 January 2016 and on the final evaluation on 31 January 2016.

14. On 25 January 2016, Mr. Soliman's direct supervisor, Ms. Ehsan, sent him the following e-mail:

Dear Tamer,

From the sequence below, you deleted my e-mail ... in which I reminded you that I was waiting for you to come for the agreed upon meeting between us. I am sorry to inform you that I am overloaded with work, and it took me a lot of efforts to schedule that meeting, for which you did not show up. Hence, I will try to re-schedule and inform you accordingly.

I contacted Mr. Hani ALKHATIB ... and he excused himself. As for your request on recording the meeting[,] it is not in our procedures.

Best

Lubna

P.S. By the way, for your information 4Ws[] is a reporting mechanism that you as a professional should know; it doesn't mean "4 weeks".

15. A second e-mail sent to Mr. Soliman by his direct supervisor dated 26 January 2016 reads as follows:¹

Dear Tamer,

With all due respect, there is no need for you to use such a disrespectful language, at least in formal correspondences.

It seems that there is a genuine confusion for both of us here, which has led us to a position of misunderstanding. I sent you an email at 21:42 on Sunday (24 Jan) and invited you for the meeting next day, meaning Monday 25 Jan at 11:30 am. ... I sent you an e-mail on Monday, 25 Jan at 11:45 drawing your attention that I am still waiting for you, but in your consequent responses you did not clarify that the meeting (in your understanding) was on Tuesday. After receiving your last e-mail, I reviewed the entire sequence and found out that there was a confusion regarding the timing of the meeting due to the difference in sending and receiving timings of my e-mail. I hope that clarifies the matter.

Since you are asking for some unfamiliar procedures to be included in the exit interview, therefore I will refer to the concerned department to provide me with the guidelines, so that we do not step out of UNRWA's regulatory framework.

As soon as I get a reply on the above, and as I mentioned in my e-mail below, a new appointment will be scheduled accordingly.

Best regards

Lubna

16. By e-mail to the S/ASO dated 28 January 2016, the Deputy Director of UNRWA Operations, Jordan Field Office (D/DUO/JFO) provided his assessment of Mr. Soliman's performance during the period when he was Mr. Soliman's direct supervisor in the SFO.

17. On 21 February 2016, Mr. Soliman submitted a request for decision review regarding the decision not to renew his appointment. On that same day, he was separated from the Agency.

¹ Emphases omitted.

18. On 27 April 2016, Mr. Soliman submitted his application to the UNRWA Dispute Tribunal concerning the non-renewal of his appointment. His first application was registered under case number UNRWA/DT/SFO/2016/006.

19. As regards Mr. Soliman's complaint of prohibited conduct, in a preliminary assessment report dated 8 May 2016, the Department of Internal Oversight Services (DIOS) concluded that the complaint should be closed as there was no *prima facie* evidence of misconduct. Mr. Soliman was informed of the closure of the investigation.

20. In a memorandum dated 9 May 2016, the Director of DIOS brought to the attention of the DUA/S the need to ensure compliance with the rules on performance evaluations during a probationary period as set out in UNRWA International Personnel Directive 104.4 on Probation (IPD/I/104.4).

21. On 2 June 2016, the Director of Human Resources acknowledged receipt of Mr. Soliman's request for decision review of the decision to close the investigation.

22. On 30 August 2016, Mr. Soliman filed another application with the UNRWA Dispute Tribunal contesting the decision to close the investigation. His second application was registered under case number UNRWA/DT/SFO/2016/033.

23. The UNRWA DT rendered its Judgment on 2 March 2017. At the outset, the UNRWA DT considered that Mr. Soliman's two applications against the Agency's decisions (i) not to extend his appointment, and (ii) to close the investigation following his complaint of prohibited conduct raised "common questions of law and fact" and it therefore decided to consolidate the two cases and dispose of them in a single Judgment.² On the merits, the UNRWA DT dismissed both applications in their entirety. With respect to the Agency's decision not to extend Mr. Soliman's appointment, it found that as he had "no right or expectation of renewal of his appointment, and as his performance did not fully meet expectations, the Agency appropriately exercised its discretion by not renewing [Mr. Soliman's] appointment".³ Regarding the second contested decision, the UNRWA DT found that the Commissioner-General had appropriately closed the investigation because the Agency's actions of giving Mr. Soliman a choice between termination

² Impugned Judgment, paras. 1-2.

³ *Ibid.*, para. 49.

and resignation and discussing possible advantages and disadvantages of each option with him did not constitute acts of harassment or abuse of power.

Submissions

Mr. Soliman's Appeal

24. Mr. Soliman submits that the UNRWA DT erred in fact and in law when assessing the evidence before it. In particular, he argues that the UNRWA DT disregarded the evidence with respect to the meeting on his mid-term review of 25 June 2015, which he maintains did not take place. Moreover, the UNRWA DT did not take into consideration that he was not given a fair chance to carry out his duties and be assessed according to the rules and procedures of the Agency. His assessment took place after only one month of service and before the end of his induction. Mr. Soliman also contends that his work plan was not “agreed or signed off” before the mid-term review in violation of the procedure set out in UNRWA International Staff Personnel Directive I/112.6/Rev.1 (IPD/I/112.6) and that the mid-term review was submitted two months early and was not previously discussed with him.

25. Mr. Soliman further asserts that the UNRWA DT erred in fact and law when it decided that the Commissioner-General was correct in closing the investigation into his complaint of prohibited conduct. The UNRWA DT disregarded the fact that a preliminary investigation would bring up information that should have been investigated such as the question of whether the meeting of 25 March 2016 had taken place. Moreover, the e-mails he received from his direct supervisor on 25 and 26 January 2016 should have been sufficient proof to initiate an investigation into all his claims of harassment and humiliation. The UNRWA DT also disregarded the admission of an indirect threat vis-à-vis Mr. Soliman in an e-mail of 29 September 2015 by his supervisor. Even though the UNRWA DT agreed that threatening to give him a bad review if he did not resign could generally be considered harassment, it incorrectly concluded that because there were open discussions of the advantages and disadvantages of resignation and termination, this was not an act of harassment in the case at hand. In fact, he was “targeted and threatened with a bad review” which amounted to an act of harassment and abuse of power. In addition, the UNRWA DT—when stating that it was unacceptable for the Agency to agree to modify a negative to a positive mid-term review—incorrectly assumed that the offer of resignation was created only after the midterm-review had been submitted. Finally, he asserts that the UNRWA DT erred in fact and in law when considering that the Agency

had acted free from harassment and abuse of power when it assessed his performance and decided not to renew his appointment.

26. Mr. Soliman contends that the UNRWA DT erred in fact and in law when it failed to assess the case based on the evidence provided by both parties “but instead implemented the [a]rguments of the [Commissioner-General] as seen in previous judgements” of the Appeals Tribunal such as *Niedermayr*,⁴ *Zamel*,⁵ and *Harb*.⁶

27. Based on the foregoing, Mr. Soliman requests that the Appeals Tribunal (i) “reverse the decision of the UNRWA DT in finding contrary to the UNRWA DT that in fact there was an error in procedure, misconduct and harassment carried out against him and that this caused an abuse of power which led to the non-renewal of [Mr. Soliman’s] contract”; (ii) “reverse the decision of the UNRWA DT that the investigation into his complaint was correctly closed and to request for a proper investigation into [Mr. Soliman’s] complaint should be made”; (ii) decide that he be “re-instated and assigned to the field with a proper assessment of his capabilities”; and, (iii) compensate Mr. Soliman for “moral damages incurred for stress, anxiety and harassment suffered”.

The Commissioner-General’s Answer

28. The Commissioner-General submits that the UNRWA DT did not err on a question of law and fact in its assessment of the evidence and arrived at reasonable conclusions. Having regard to the totality of the evidence, irrespective of whether the meeting of 25 June 2015 took place or not, it remains in evidence and the UNDT correctly found that Mr. Soliman’s performance during the probationary period was poor and that he was repeatedly informed by his supervisors of his poor performance and of ways to remedy it. Moreover, Mr. Soliman’s characterization of his assessment as having taken place after only one month of service is misleading as his assessment was carried out over a longer period of time. As to his claim that he did not have the opportunity to demonstrate his abilities, the UNRWA DT chose a “very reasonable approach” by stating that in light of the precarious situation in Syria, the Agency had broad discretionary power regarding

⁴ *Niedermayr v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-603.

⁵ *Zamel v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-602.

⁶ *Harb v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-643.

the deployment of staff members to the field. With respect to Mr. Soliman's assertions regarding his work plan, the Commissioner-General argues that Mr. Soliman had in fact submitted his work plan before the mid-term review and that, pursuant to paragraph 12(b) of IPD/I/112.6, the mid-term review is an opportunity for the work plan to be updated and Mr. Soliman's direct supervisor had commented on the work plan in her comments on the mid-term review. Furthermore, contrary to Mr. Soliman's assertion, the mid-term review was not submitted two months early.

29. Moreover, he argues that the UNRWA DT did not err when it concluded that the Agency had appropriately closed the investigation into the complaint of prohibited conduct. Recalling the wide discretion afforded to Management with respect to such complaints by the Appeals Tribunal jurisprudence, the Commissioner-General argues that there is no basis for Mr. Soliman's criticism of the UNRWA DT's conclusion regarding the meeting of 25 March 2015 since the question of whether or not the meeting had taken place was never raised in his complaint before DIOS. As to the e-mails of 25 and 26 January 2016, the UNRWA DT correctly found that while the tone of these e-mails might have been unfriendly, they could not be considered as acts of harassment or humiliation. The Commissioner-General undertook a preliminary investigation into this matter and appropriately exercised his discretion when he decided to close the investigation without any further action following the recommendation of DIOS.

30. Finally, the Commissioner-General asserts that the remedies sought by Mr. Soliman have no legal basis. In light of the above, there are no grounds for a rescission of the impugned decisions. In addition, Mr. Soliman's plea for reinstatement is untenable as reinstatement is a remedy for illegal separation and the Agency had correctly exercised its discretion not to renew his appointment. Neither is there a legal basis for his plea to be assigned to a position in the field since, according to established jurisprudence, it is not the role of the Tribunals to substitute their own decision for that of the Administration. Finally, there is no basis for an award of moral damages as claimed.

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

Considerations

Non-renewal of Mr. Soliman's fixed-term appointment at the end of the probationary period

32. We find that the UNRWA DT did not err in law and/or fact resulting in a manifestly unreasonable decision when it found that the Agency's decision not to renew Mr. Soliman's fixed-term appointment at the end of the probationary period was a lawful exercise of its discretion.

33. Following our jurisprudence, there is a presumption that official acts have been regularly performed.⁷ This is called the presumption of regularity. But this presumption is a rebuttable one. When non-renewal is based on performance, it is imperative that the Administration adheres to the rule of law and standards of due process in its decision making.⁸ Given that Mr. Soliman's performance was the principal reason for the decision not to renew his appointment, the Administration was required to provide a performance-related justification for its decision.⁹ The UNRWA DT correctly found that this was properly done with his e-PER. Although there occurred some mistakes with respect to the assessment of Mr. Soliman's performance, such irregularities are not sufficiently substantial and consequential as to rebut the presumption that the non-renewal decision was lawful and to shift the burden of proof to the Administration to show that the decision was objective, fair and well-based.¹⁰ We are convinced not only that the decision was taken without bias towards Mr. Soliman but also that he had enough knowledge about the alleged shortcomings and ample opportunity to comment on them and to improve his performance.

34. Mr. Soliman's submission that the first meeting regarding his performance between him and his supervisor took place as late as 15 July 2015 is without merit. We are convinced that he was informed about his shortcomings already at an early stage during a meeting held on 25 March 2015. There is sufficient evidence that a meeting took place on that day during which Mr. Soliman's performance and behaviour were discussed with his two supervisors Ms. Ehsan and Mr. Potpara. The minutes of this meeting are part of our case file. We note, further, that on various occasions, this meeting was mentioned in official documents made

⁷ *Rolland v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-122, para. 26.

⁸ *Ncube v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-721, para. 18.

⁹ Cf. *Das v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-421, para. 26, citing *Rees v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-266, para. 65.

¹⁰ *Ncube v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-721, para. 18.

known to Mr. Soliman. Already in the 25 June 2015 memorandum, Ms. Ehsan stated that “on 25 March, both, myself and the D/DUA, held a meeting with the SM and gave a clear feedback expressing our lack of confidence in his ability to work independently as well as his general attitude and behavior”; meetings in mid-April and mid-May are also mentioned. This memorandum was handed over to Mr. Soliman in the meeting on 15 July 2015 as he himself wrote in the minutes he prepared afterwards. If a meeting on 25 March 2015 (or the other meetings) had not taken place, Mr. Soliman would and should have questioned the 25 June 2015 memorandum in this regard and mentioned this in his minutes. In his e-PER, the 25 March 2015 meeting is also expressly mentioned along with other meetings in mid-April and on 13 May. Had such a meeting or such meetings not taken place, Mr. Soliman would and should have said so in his comments; however, he did not. On the contrary, on several occasions he explicitly requested the minutes of meetings having taken place on various dates, among them a meeting on 25 March 2015.

35. Mr. Soliman’s contention that 25 March 2015 was far too early to render an assessment of underperformance does not take into account the applicable legal framework. In accordance with IPD/I/104.4, paragraph 14, “[o]nce underperformance is identified, the immediate supervisor is to discuss the matter with the staff member”. Consequently, if his supervisors already felt at an early stage, only several weeks after the beginning of Mr. Soliman’s probation period, that both his performance and behaviour did not meet the standards of the Agency, they not only were allowed but even obliged under IPD/I/104.4 to make this known to Mr. Soliman.

36. Mr. Soliman’s submission that the assessment was unfair as he had not been deployed to the field and was thus deprived of the opportunity to carry out his duties is without merit. We agree with the UNRWA DT that the Agency has a broad discretionary power regarding the deployment of staff members to the field. As, from the beginning, his supervisors had doubts concerning both his performance and his behaviour, it is understandable and reasonable that they did not want to run the risk of having Mr. Soliman work in a precarious situation like in Syria.

37. With regard to the “Date of Mid-term discussion: 25-Jun-2015” mentioned in Mr. Soliman’s e-PER, this was possibly an error as the 25 June 2015 memorandum was only made known to and discussed with Mr. Soliman during the 15 July 2015 meeting. However, as this is only an error with respect to the exact date of the discussion, and Mr. Soliman’s minutes of the 15 July 2015 meeting leave no doubt that he was duly informed about the 25 June 2015

memorandum, it is of no consequence. We note, further, that IPD/I/104.4 alone (as pointed out in its paragraph 4) is applicable to staff members under probation and, unlike IPD/I/112.6 (paragraphs 18 - 20), does not contain any specific provisions on mid-term review. Due to their unconfirmed status, the assessment of staff members under probation is more flexible. Pursuant to paragraph 12 of IPD/I/104.4, “[a] decision that probationary service is not satisfactory based on performance, and therefore warrants termination of appointment does not require completion of a full cycle, but will not normally be made until at least three months of probationary service has been completed”. Consequently, staff members under probation will not always be subject to a strict mid-term and end of cycle review as provided in IPD/I/112.6 for staff members who are confirmed in their posts. The 25 June 2015 memorandum clearly shows that, at the time, Mr. Soliman’s supervisors intended to terminate his appointment before the end of his probation period. Only in October 2015 was it decided that Mr. Soliman’s probationary appointment would not be terminated before its expiry date of 21 February 2016; this explains why in the 2015 e-PER the mid-term review was (retroactively) set to be 25 June 2015.

38. Mr. Soliman has not presented any convincing reasons allowing this Tribunal to conclude that one of his supervisors acted in bad faith or with bias towards him. It is mere speculation that Ms. Ehsan simply adopted Mr. Potpara’s view on Mr. Soliman’s performance and behaviour and that her evaluation of Mr. Soliman was, therefore, not based on her own opinion and assessment. In this regard, we note that Ms. Ehsan started her position on 4 March 2015 which was only a few days after the beginning of Mr. Soliman’s probationary period on 22 February 2015 and thus was his immediate supervisor almost from the very beginning. As they worked together on a daily basis and apparently even shared an office, we have no doubt that she had ample opportunity to form her own opinion. We also note that in the 25 June 2015 memorandum as well as in Mr. Soliman’s e-PER, she gave a very thorough assessment on Mr. Soliman’s performance and behaviour. The handling of his supervisors with regard to the question as to how Mr. Soliman’s service would come to an end is also without bias towards Mr. Soliman. Their notice at various meetings in September and October 2015 that he would receive a bad evaluation and be terminated should he not resign from his appointment does not constitute harassment or show bias towards him. Supervisors, under the Agency’s legal framework, have a duty to carefully and honestly evaluate the staff members’ performance including their behaviour towards colleagues, supervisors and others. This is particularly important for staff members under probation. The main goal of the evaluation system is to ensure the Agency’s efficiency. Consequently, a

notice by supervisors that they will issue a bad evaluation cannot be regarded as a threat or harassment if a staff member's performance is in fact poor. While, under IPD/I/104.4, an evaluation of a staff member's performance is always necessary in case the probationary service is to be terminated or the appointment is not to be renewed, there is more flexibility when a staff member resigns. In such a situation, there might not be a duty of supervisors to nonetheless closely adhere to IPD/I/104.4 and to issue a negative evaluation. We agree with the UNRWA DT that, as the advantages and disadvantages of a resignation in comparison with termination were openly discussed with Mr. Soliman, the behaviour of his supervisors cannot be regarded as bias or harassment. However, like the UNRWA DT, we want to clearly state that supervisors are not allowed to issue a better evaluation where a staff member resigns than he or she would have received had he or she stayed within the Agency. Not only would this be unfair towards other staff members who are still working for the Agency but it would also be a risk for future employers, possibly including other United Nations entities.

Decision to close the investigation into Mr. Soliman's complaint of harassment and abuse of power

39. The UNRWA DT did not err in law and/or fact resulting in a manifestly unreasonable decision when it found that the Agency appropriately decided to close the investigation into Mr. Soliman's complaint of harassment and abuse of power.

40. As already stated above, the UNRWA DT did not err by finding that the repeated suggestions to Mr. Soliman to resign in lieu of termination did not amount to harassment and/or abuse of power in the circumstances of the case at hand because the details and possible advantages and disadvantages of resignation versus termination were openly negotiated and discussed.

41. The UNRWA DT correctly stated that all other alleged acts of misconduct did not constitute harassment or abuse of power or were not raised in the complaint. As to the decision not to deploy Mr. Soliman to the field, we have already stated above that this decision was within the discretionary power of the Agency due to shortcomings in Mr. Soliman's performance and behaviour. The 25 and 26 January 2016 e-mails do not contain any words or expressions that could be regarded as harassment or humiliation of Mr. Soliman. With regard to the 25 March 2015 meeting, we agree with the UNRWA DT that Mr. Soliman did not raise this

point in his complaint to DIOS. Further, as stated above, we find that there is sufficient evidence that such a meeting took place; Mr. Soliman did not substantially put this into doubt.

Judgment

42. The appeal is dismissed and Judgment No. UNRWA/DT/2017/007 is affirmed.

Original and Authoritative Version: English

Dated this 27th day of October 2017 in New York, United States.

(Signed)

Judge Knierim, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Murphy

Entered in the Register on this 8th day of December 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar