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Judgment No. 2017-UNAT-788

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

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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. [redacted]

> 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 co ncerned department to provide me with the guidelines, so that we do not stepout 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.

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

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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 th

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

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. Sol Mr. Soli Mi0716dbog ogDmember".7D was

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 specificprovisions on mid-term

notice by supervisors that they will issue a ba

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 JudgmentNo. UNRWA/DT/2017/007 is affirmed.

Original and Authoritative Version: English

Dated this 27th2 317.8(Signed)