

UNITED NATIONS APPEALS TRIBUNAL

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Counsel for

Counsel for respo

Case No. 2019-UNAT-900, Art. 19 - AL. EL/ PRESIDENT.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UN/OA/3-T/2017/3042 rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA - Dispute Tribunal and UN/OA/3-T/2017/3042) on 1 July 2017, in the case of El Sadek v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East. Mr. Nadeh Al-Jadei filed the appeal on 17 August 2017 and the Commissioner-General filed an answer on 11 October 2017.



THE UNITED NATIONS APPEALS TRIBUNAL

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22. (5 e-mail dated 22 ) a5 201E ) r. &l #ade. responded to ) s. 8. !.s feedba%. and stressed that he had suff,%ent %ommun,%at,on and leadersh,p s. ,lls. \* e noted that leadersh,p aga,nst 9h,%h ) s. 8. !. had assessed h,s performan%e 9as not part of the %ompeten%,es under h,s 6ob des%r,pt,on or ,n h,s e-+&\$ . \* ,s e-+&\$ l,st of %ompeten%,es ,n%luded a management %ompeten%5 but not leadersh,p. An a subseGuent e-mail to ) s. 8. !. ) r. &l #ade. %ted some e; amples to sho9 that she had been 9ea. en,ng and underm,n,ng h,s leadersh,p and 9as tr5,ng to ?destro5 h,m ,n a non-human Cs,%D and non-d,gn,f,ed 9a5@. : urther e-mail e;%hanges ensued.

27. (5 ,nteroff,%e memorandum dated 1F June 201E ) s. 8. !. ,nformed ) r. &l #ade. that desp,te the s,gn,f,%ant efforts made b5 both ) r. &l



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, !. El Sadek' Appeal

70.



The Commission's final Appeal

74. In his appeal Mr. Ade repeats issues that were raised and addressed by the UNTOA -T. The UNTOA - dispute Tribunal's consideration of the issue of reopening Mr. Ade's 2017 appeal was reasonable and legally correct, it is supported by the jurisprudence of the Appeals Tribunal. Mr. Ade's shortcomings in management and communication were well documented. Consequently the issue of an alleged conspiracy does not arise. The proof that Mr. Ade alleges to have produced, is nothing but his assertions of facts.

75. The Commissioner-General submits that Mr. Ade also repeats issues related to the "TA process that were raised and addressed by the UNTOA - dispute Tribunal. He has failed to demonstrate how the UNTOA - dispute Tribunal's findings were in error. Consequently the UNTOA - dispute Tribunal's conclusions and findings remain unassailable.

76. The Commissioner-General submits that there is no basis for the consideration of Mr. Ade's pleas for compensation or an award of moral damages. He therefore requests that the Appeals Tribunal dismiss Mr. Ade's appeal in its entirety.

Conclusion

77. Mr. Ade appeals against the UNTOA -T Judgment which dismissed his second application regarding termination for poor performance after it had found that the decision to terminate his appointment had not been affected by formal irregularities or an abuse of power.

78. Although there was no explicit appeal against the UNTOA - dispute Tribunal's finding that Mr. Ade's first application challenging the reopening of his 2017 appeal and his placement on an "TA process" was not receivable Mr. Ade addresses in his appeal some of the issues related to the reopening of his 2017 appeal and his placement and follow-up during the "TA processes". That is because when reviewing the validity of the termination the UNTOA -T examined the merits of the case, including the reopening of the 2017 appeal for the

See 2019-UNAT-900 (paras. 47-49) and 2019-UNAT-900 (paras. 9138 (d) 83. 0438 (e) 4. 73951 (g) -1. 87086 (u) -2. 82619

that the Agency did not follow the applicable regulations and rules. In particular, he asserts that the one-month duration of the informal "TA" was too short, it should have been extended, and that his 2019 work plan would not have been accepted as the formal "TA" plan as it did not mention the unauthorised objectives or the remedial plan as set forth in A/33/327.

40. The Tribunal found no fault in the UNMOGIL's ruling on this subject. The UNMOGIL's dispute Tribunal did not err on a question of law or fact in reaching a manifestly unreasonable decision nor did it commit an error in procedure such as to affect the outcome of the case.

41. The issue of the effect of the other staff members under article 10.1 of the Charter, arising at the same time, was not raised before the UNMOGIL. In line with our jurisprudence, we conclude that article 10.1 cannot be introduced for the first time on appeal on an issue that was not raised earlier, in his request for decision, before the UNMOGIL.<sup>7</sup> This determination is based on the principle of administration of justice. We find that article 10.1 does not apply on this regard, as not relevant.

42. Our reference to the reopening of the 2019 appeal after it had been completed by the previous appeal, and the correction of the evaluation, in our jurisprudence, is well settled that, if a downgrade of one or more competencies does not detract from the overall satisfactory rating, it does not affect the terms or conditions of employment.<sup>4</sup> In the present case, the decision to reopen article 10.1 of the Charter of the United Nations and the subsequent downgrading of the individual competencies, planning and monitoring, did not affect the rating of the overall performance evaluation, which was maintained as fully meet expectations. Therefore, this decision on its own did not affect the terms and conditions of article 10.1 of the Charter. Consequently, it was not an administrative decision subject to judicial review.

<sup>7</sup> *Al-Jabir v. Secretary-General of the United Nations* Judgment No. 201E-UNAT-E91 para. 7EJ; *Al-Jabir v. Secretary-General of the United Nations* Judgment No. 201E-UNAT-E91 para. 7EJ; *Al-Jabir v. Secretary-General of the United Nations* Judgment No. 201F-UNAT-F4E para. 2FJ; *Simmons v. Secretary-General of the United Nations* Judgment No. 2012-UNAT-221 para. 21J; *Shashan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East* Judgment No. 201F-F02 para. 21J; *Al-Jabir v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East* Judgment No. 2014-UNAT-472 para. 20.

<sup>4</sup> *Al-Jabir v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East* Judgment No. 201E-UNAT-E91 paras. 22-23.

47. O,th regard to the term,nat,on ,tself the ūr,spruden%e of the Appeals Tr,bunal has been %ons,stent and %lear s,n%e ,ts frst #esson ,n 2010 9hen ,t 9as establ,shed that:F

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9. All staff members are to have clear objectives and accountability, against which they will be assessed.

9.1. There are clear lines between individual objectives and accountability, competencies, performance targets and organizational results.

9.2. Implementation of the flattening of overall ratings: the policy provides three ratings for grading the performance of staff members. There are three satisfactory ratings (best performer; meets expectations and fully meets expectations) and one rating for dealing with poor performance (does not fully meet expectations).

9.3. Implementation of performance evaluations to, therefore, to:

9.3.1. regard staff who perform at an exceptional level as per the regards and recognition policy and

9.3.2. address underperformance with the tool kit for managing underperformance.

9.4. Enhanced role of Human Resources Management in oversight and planning of human resources in the Department of Economic and Social Affairs.

PERFORMANCE APPRAISAL

9. The performance evaluation process involves formal and informal discussions between the staff member and their immediate superior about objectives and performance staff development needs and competencies. It is important to document and communicate these objectives and indicators to staff at the beginning of the performance cycle so that the performance levels and expectations are clear from the outset.

10. The immediate superior is to ensure that the

a. **5.1.1. The Dispute Resolution Process:** The Dispute Resolution Process is a formal process between the staff member and the immediate supervisor. Together they agree the Dispute Resolution Plan for the year along with the objectives for the staff member to achieve and the indicators that will be used to assess progress. The Dispute Resolution Process should encompass development needs that the staff member may have.

b. **5.1.2. Feedback:** This is a formal opportunity for the staff member to receive feedback from the immediate supervisor on his/her progress in the first six months of the year. It should be focused on the objectives, including development opportunities agreed at the beginning of the year. It is also an opportunity for the Dispute Resolution Plan to be updated.

c. **5.1.3. End of Year Review:** This stage wraps up the whole year reviewing the

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b. : ull5 ) eets &;pe%tat,ons I A performan%e rat,ng at th,s le'el ,s the norm represent,ng su%%essful performan%e ,n %omplet,ng o

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2E. As highlighted in the various reports submitted to good performance management, the environment where a continuous dialogue is maintained between staff members and their supervisors. Dialogue that encourages performance and builds a supportive environment is an essential ingredient in preventing under-performance. (5 strengthening the quality of informal supervisor-staff member communication there is an opportunity to understand and act on any perceived decline in performance.

2/. Supervisors have an obligation to their staff to bring to their attention areas where improvement is required and provide them with the opportunity to improve.

The process for managing under-performance has two major components - 3.16795(r) O77279(') 2.53553(e) I









unaffected objectives and the remedial plan, the 3A327 were not in to ) r. &I #ade. and were subjected to detailed information meetings and discussions.

F0. Consequently, it is our view that the procedural irregularities were immaterial and inconsequential, thus, in the context of ) r. &I #ade. < contrast.

F1. According to the UN\$OA -T Judgment ) r. &I #ade. < leadership, in leadership and communication was well documented. There was not only on-going dialogue but there were also efforts

harassment and abuse of power not substantiated and closed the matter and ) r. &l #ade. did not challenge the -A" #<de%,s,on.<sup>14</sup> All ,n all th,s has led to the %orre%t %on%lus,on that ne,ther the -A" # nor the UN\$OA -T found an5 serious de',at,on from the appl,%able regulator5 frame9or..

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F>. An th,s %onte;t 9e hold that the UN\$OA -T did not err 9hen ,t found that the Agen%5 had reasonabl5 and adeGuatel5 e;er%,sed ,ts d,s%ret,on ,n term,nat,ng ) r. &l #ade. < appo,ntment.

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FE. The appeal ,s d,sm,ssed and Judgment No. UN\$OA3- T3201/3042 ,s hereb5 aff,rmed.

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- ated th,s 29<sup>th</sup> da5 of ) ar%h 2019 ,n Ne9 =or. Un,ted #tates.

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<sup>14</sup> Ampugned Judgment para. 100.