

THE UNITED NATIONS APPEALS TRIBUNAL

Case No. 2010-030

10. The JAB's report was reviewed by the Commissioner-General, who notified Doleh on 28 May 2008 that "after carefully weighing the material facts and relevant regulations, I have decided to reject the recommendation of the JAB and dismiss your appeal, upholding the termination, in the interests of the Agency".

Doleh presented her appeal before the former United Nations Administrative Tribunal on 24 September 2008 but the appeal was returned to her as it did not fulfill certain formal requirements. She was advised to re-file her appeal by 29 May 2009. The appeal was in fact re-filed on 27 May 2009. The case was subsequently transferred to the United Nations Appeals Tribunal following the abolition of the Administrative Tribunal at the end of 2009.

Submissions

Doleh's Appeal

12. Doleh has sought judicial review of the administrative action taken against her and asked to be re-instated to her post. She also sought forms of ancillary relief. Doleh's case is that after the impugned decision of 22 June 2006 had been communicated to her, she filed an appeal before the JAB, which unanimously recommended to the Commissioner-General that the decision to terminate her services be reviewed. However, the Commissioner-General rejected the JAB's recommendation and upheld the termination order. Doleh concedes that she had made corrections due to double-checking of the blood pressure of the deceased during her first and last visit, but she had no more access to the deceased's file after her death. Doleh sought to bolster her arguments by submitting that the JAB report was in her favour.

UNRWA's Answer

13. UNRWA claims that the appeal being time-barred. In the alternative, argues that under UNRWA Area Staff Regulation 9.1, the Commissioner-General enjoys broad discretionary powers, though they are not unfettered and cannot be exercised arbitrarily or capriciously, or be motivated by prejudice or extraneous fa

14. UNRWA recalls that Doleh was not accused of, or investigated for, causing the maternal death of a patient. However, the decision to terminate her services was based on identified deficiencies in patient management and negligent record keeping. The decision was performance based and did not constitute a disciplinary measure. Doleh had been careless in the performance of her duties and had changed the patient's medical records to cover up certain defects in her poor patient management. UNRWA acknowledges that while the death was caused by factors other than Doleh's flawed performance, her acts had posed a risk to the health of pregnant women treated by the Agency's Health Programme.

Issues

15. The issues which arise in this appeal are: firstly, whether the appeal is time-barred and therefore not receivable; secondly, whether the FFC's findings were flawed; thirdly, whether the Commissioner-General erred in rejecting the JAB's recommendation; and lastly, whether the Commissioner-General erred in exercising her discretion in upholding Doleh's termination.

Considerations

16. We hold that the appeal was receivable as it was filed within the time granted for re-filing. We fail to understand why this objection was at all taken by UNRWA. The appeal was originally filed on 24 September 2008, but was returned to Doleh for re-filing by 29 May 2009. Doleh re-filed the appeal on 27 May 2009. Therefore, UNRWA's plea that the filing of the appeal, which was lodged with the former Administrative Tribunal on 27 May 2009, constituted a delay of nearly eight months is baseless. It was UNRWA's duty to check when the appeal was first filed, when it was returned for re-filing, and whether it was re-filed within the time granted. We find that it is fairly common for the Administration to raise pleas of appeals being time-barred without verifying the facts. This practice deserves to be deprecated in the strongest possible terms.

17. We shall now proceed to decide the questions regarding the validity of the decision of termination. The decision was said to be based on the UNRWA Area Staff Regulation 9.1 and the UNRWA Area Staff Rule 109.1, which are reproduced below:

sledgehammer to crack a nut. Decision-makers enjoy a wide discretionary area of judgment. Into this area a court applying the test of proportionality will never intrude. We are not undertaking a merits review of Doleh's case. We have shown due deference to the decision taken by UNRWA, but we strongly feel that the decision is, on the facts of the case, disproportionate. An innocuous act of indiscretion shall leave a huge impact on the reputation and livelihood of Doleh, if the decision is not reversed.

21. Under the wide power granted by Area Staff Regulation 9.1, inefficient staff members, or persons who are corrupt and do not possess the required high level of integrity, or are simply dead wood, must be sent home. But Doleh's case does not fall in any of the above categories.

22. The changes in the records that were made by Doleh showed that she had originally not reflected that the patient suffered from DM type I and hypertension. The deceased is stated to have died of a hypoglycemic shock, a condition of dangerously low levels of blood sugar. The evidence is that the deceased received an overdose of insulin. Blood tests had revealed DM type I after which the dose of insulin was determined but not properly monitored, leading to overdose. This aspect was not explored by the FFC. No autopsy was conducted. The Medical Officers who treated the patient or who fixed the insulin dose were not examined by the FFC. Doleh was never involved in the actual treatment of the deceased; she was not the one who had prescribed insulin which caused the death. She had merely made some changes in the records which had no connection with the death of Tahrir Khalil.

23. There are substantial reasons in this case to hold that the decision to terminate Doleh's service under Regulation 9.1 was disproportionate.

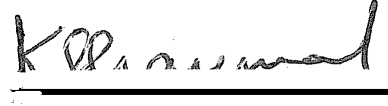
Judgment

24. For the foregoing reasons, the decision of the Commissioner-General is set aside and Doleh is re-instated in service. She should be warned to be careful in the future. An entry shall be made in her service record about the warning given to her. Furthermore, under Article 9(1)(a) of the Statute of the United Nations Appeals Tribunal, UNRWA may elect to pay as an alternative to the specific performance ordered, compensation

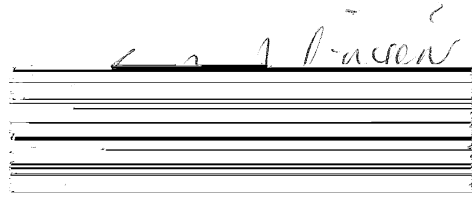
equivalent to two years net base pay. The appeal is allowed in the above terms, and all other forms of relief are denied.

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Case No. 2010-030



Judge Garewal, Presiding



Judge Adinyira



Judge Boyko

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