



JUDGE LUIS MARÍA SIMÓN, Presiding.

Synopsis

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal filed by Mr. Osama Shahatit on 16 December 2010 against the decision of the Commissioner-General of the United Nations Relief and Works Agency for Refugees in the Near East (Commissioner-General) dated 11 December 2009, to demote him. The Commissioner-General filed his answer on 15 March 2011.
2. The Appeals Tribunal has consistently held that when reviewing a disciplinary sanction imposed by the Administration, the role of the Tribunal is to examine whether the facts on which the sanction is based have been established, whether the established facts constitute misconduct, and whether the sanction is proportionate to the offence.¹
3. The Appeals Tribunal finds that in the present case the sanctions imposed on him were lawful and it affirms the administrative decision that imposed them.

Facts and Procedure

4. On 1 May 2001, Mr. Shahatit accepted a two-year appointment as Head Storekeeper “B”, level 2B, step 1, in the Procurement and Logistics Department, Jordan Field. His appointment was extended, he received several promotions and transfers and, at the time of the appeal, Mr. Shahatit occupied the post of Head Storekeeper “A”, grade 9, step 6, in the Main Warehouse, Jordan Field.
5. On 27 November 2007, the Deputy Field Procurement and Logistics Officer (D/FPLO) reported to the Field Procurement and Logistics Officer that he had been informed by a driver that some staff members had been stealing paper reams after off-loading them at the UNRWA Headquarters Amman.
6. By memorandum dated 3 December 2007, the Director of UNRWA Operations, Jordan (DUO/J) constituted a fact-finding committee (FFC). He stated that he had been

¹ See e.g. *Masri v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-098; *Maslamani v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-028; *Haniya v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-024.

informed that a “systematic scheme has been operating whereby deliveries of A4 paper to various offices have been overloaded on the delivery vehicle or the correct quantity loaded but short delivered and the excess or short quantity then sold by the driver and labourer operating the vehicle”. He tasked the FFC with an investigation into the matter which was to be completed within two days.

7. On 10 December 2007, the FFC issued its report. It noted that “Mr. Mohammad Atiyeh admitted [...] that he took 26 boxes of paper (130 reams) and sold them for JD 130.000 of which JD 30.00 should have been given to Mr. Osama [Shahatit] for his 6 boxes and JD 50.00 should have been given to Mr. Sharif Al-Absi.” The FFC further noted:

Mr. Osama [Shahatit] [...] did not admit any wrongdoing, but he could not substantiate his

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19. The Commissioner-General submits that the disciplinary sanctions of censure and demotion were proportionate in light of the seriousness of Mr. Shahatit's misconduct. She specifies that the transfer of Mr. Shahatit did not constitute a disciplinary sanction, but rather was a natural consequence of his demotion.

20. Finally, the Commissioner-General submits that Mr. Shahatit failed to produce convincing evidence that the disciplinary sanctions were vitiated by substantive or procedural irregularities, improper motives or extraneous factors.

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

Considerations

22. The Appeals Tribunal has consistently held that, when reviewing a disciplinary sanction imposed by the Administration, the role of the Tribunal is to examine whether the facts on which the sanction is based have been established, whether the established facts constitute misconduct, and whether the sanction is proportionate to the offence.²

23. In the present case, the facts on which the Commissioner-General based her decision to demote Mr. Shahatit were established, in full respect of Mr. Shahatit's due process rights. The records show clear and convincing evidence establishing facts which amount to misconduct and these facts have not been successfully rebutted by Mr. Shahatit. Apart from the one incident of paper loss, and irrespective of whether or not the witnesses were credible, it is an accepted fact that there was excess paper in the warehouse which was in Mr. Shahatit's direct custody. While it was not established that Mr. Shahatit directly participated in the theft, the established facts show that his negligence as Head Storekeeper facilitated the misconduct of other staff members. His negligence was evidenced by the excess of merchandises in the store room under his control, and by his failure to keep an inventory of the items in his custody.

24. Mr. Shahatit has not demonstrated any flaws in the administrative and disciplinary procedures. Mr. Shahatit was given the opportunity to defend himself and we reject his

² Ibid.

claims with regard to this issue. Seeing that the main facts that were established amount to misconduct, the imposition of a sanction was lawful.

25. The sanction of demotion was itself lawful. Even though the JAB only recommended censure and transfer, the Commissioner-General was vested with the authority to also impose the demotion which she considered to be appropriate. As determined in *Aqel*, the level of the sanction falls within the remit of the Administration and can only be reviewed in cases of “obvious absurdity or flagrant arbitrariness”,³ which has not been demonstrated in the case at bar.

Judgment

26. For the foregoing reasons, the appeal is dismissed in its entirety. The administrative decision of the Commissioner-General is affirmed.

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