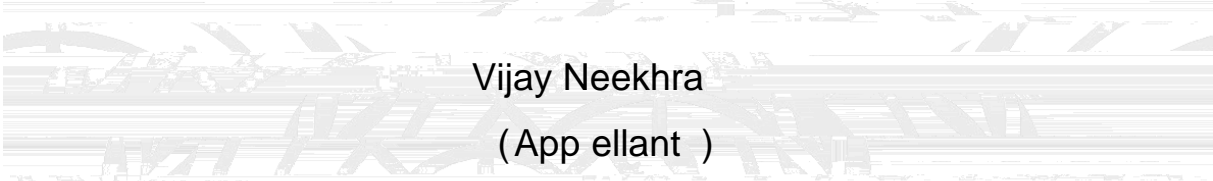


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UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D 'APPEL DES NATIONS UNIES

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Judgment No. 2023-UNAT-1335



Vijay Neekhra  
(Appellant)

v.

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

JUDGMENT

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Before: Judge Sabine Knierim, Presiding  
Judge Kanwaldeep Sandhu  
Judge Gao Xiaoli

Case No: 2022-1661

Date of Decision: 24 March 2023

Date of Publication: 2 May 2023

Registrar:

Counsel for Appellant: Amer Abu-Khalaf, LOSA

Counsel for Respondent: Natalie Boucly

JUDGE SABINE KNIERIM , PRESIDING .

1. Before the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT and UNRWA or Agency, respectively), Mr. Vijay Neekhra contested the decision to impose on him the disciplinary measures of a written censure and deferment of eligibility for consideration for promotion until 22 May 2020.

2. By Judgment No. UNRWA/DT/2021/065, the UNRWA DT dismissed the application. Mr. Neekhra appealed.

3. For the reasons set out below, we dismiss the appeal.

#### Facts and Procedure

4. Effective 25 May 2011, Mr. Neekhra was employed by the Agency on a fixed-term appointment as Senior Urban Planning Officer, Grade P-4, Headquarters, Amman.

5. On 7 August 2018, the Agency published, internally and externally, a vacancy announcement for the position of Deputy Director of UN3.1 (y)(D)2.8 (e)-1 ( an)4.71 (dqMt9go)5O (D2.8

10. By letter to Mr. Neekhra dated 26 August 2019, the DHR informed him about the findings of the Investigation Report and issued him an Opportunity to Respond letter. Mr. Neekhra responded on 10 September 2019.

11. By letter to Mr. Neekhra dated 20 January 2020, the DHR informed him of the decision to impose on him the disciplinary measures of a written censure and deferment of eligibility for consideration for promotion until 22 May 2020.

12. On 16 March 2020, Mr. Neekhra submitted his request for decision review. On 6 April 2020, he was informed that the contested decision had been upheld.

13. On 11 June 2020, Mr. Neekhra filed an application with the UNRWA D T.

14. On 5 December 2021, the UNRW/3evT. c0017 Tcg (W)-3.m

which Mr. Neekhra had been admonished in the contested disciplinary measures were established.

18. The UNRWA DT then turned to consider whether the established facts qualified as misconduct. The UNRWA DT considered that Mr. Neekhra, in his role as Senior Urban Planning Officer, as a candidate for the post of D/DUO/G as well as in view of his experience within the Agency, should have been aware of the notion of plagiarism and the basic principles of citations/quotations in the context of a written test. Such an awareness is part of his integrity, regardless of his intention when he copied excerpts from official reports into his answers, the difficulty in providing the citations/quotations and his unpersuasive allegations of “non- clarity on the test instructions”. Accordingly, the UNRWA DT held that Mr. Neekhra’s action to copy-paste excerpts from internal/external sources without proper citation was a violation of the Agency’s regulatory framework and that Mr. Neekhra did not conduct himself in a manner befitting his status as a staff member of the Agency.

19. The UNRWA DT was also satisfied that the disciplinary measures imposed on Mr. Neekhra were proportionate to the nature and gravity of his misconduct. The UNRWA DT found that the imposed disciplinary measures of a written censure and deferment of eligibility for consideration for promotion until 22 May 2020 were among the lowest measures that the Agency could impose on a staff member. Given Mr. Neekhra’s role as a senior officer and his misconduct involving a lack of integrity, the disciplinary measures imposed on him appeared to be proportional. Therefore, the UNRWA DT concluded that it would not interfere with the Agency’s discretion, as the imposed disciplinary measures were neither absurd nor arbitrary; nor was there any evidence that the measures taken were tainted by extraneous reasons or bias.

20. Mr. Neekhra filed an appeal on 1 February 2022, and the Commissioner-General filed an answer on 1 April 2022.



adopted only after he had taken the exam and therefore the alleged misconduct of plagiarism should not be applied to him.

28. Finally, Mr. Neekhra contends that the UNRWA DT erred in law and fact on the question of proportionality leading to a manifestly unreasonableness. Tw [(o)2.mpTJ -03.6 (nd f)-3. o8onTT2.82 Td [(2Tnre)1.2 (T2.82

repeatedly made before the UNRWA DT. Mr. Neekhra is merely rearguing his case in the face of an acknowledgment that he copied and pasted text from external sources without citation. In the Commissioner-Generals' view, plagiarism evinces a dishonest and deceptive intent attracting strict liability irrespective of one's intent as correctly found by the UNRWA DT in the instant case. Strict liability defines the circumstances in which an offender is held liable for wrongful conduct, regardless of his or her mental state. The UNRWA DT as such did not err in law on the question of intent.

33. As to the alleged error in law in finding that at the time Mr. Neekhra wrote the written





staff member's due process rights were respected. Applying these principles, we cannot find any errors in the Judgment of the UNRWA DT.

Information in the cover e-mail and test

40. Mr. Neekhra submits that the UNRWA DT committed an error of fact at paragraph 4 of its Judgment stating that "the Applicant applied for the post, was shortlisted and was invited to take a written test on 23 September 2018. The cover email and the test included information and instructions, inter alia on citations/quotations in the event a candidate uses external sources." He claims that there was no mention in the instruction about external sources.

41. We cannot find any factual error in the Judgment. As the UNRWA DT stated, both the 23 September 2018 cover email and the test contained information and instructions. The test specifically provided: "You are allowed to use internet or other resources, as long as anything you use is clearly referenced" "Internet and other resources" are the "external sources" mentioned by the UNRWA DT.

16 October 2018 communication

42. Mr. Neekhra further alleges that the UNRWA DT committed an error of fact in paragraph 5 of its Judgment stating that "[ o]]đ25 0 Td (})Tj 20 79

and information that had already been available to him as an UNRWA staff member; and that he had studied such information as a preparation for the written test.” Mr. Neekhra complains that his answer does not contain the words “only used” and that there is an error in understanding of basic facts and details.

45. We find that the UNRWA DT gave an accurate presentation of Mr. Neekhra’s 21 October 2018 answer where he wrote<sup>3</sup>

[W]ithin the allocated time for the test, I tried to quote and provide citation to reports to maximum extent possible such as UN report “Gaza in 2000 – a livable place?” and “Gaza – 10 years later”. Being an internal candidate and being involved in different type of discussions, preparation and review of many reports, I gained in-depth knowledge of issues, challenges, operations & managements, monitoring mechanisms, interlinkages between different programmes and departments with UNRWA, etc. which were very useful and helpful. I have earned ex7.6 (s)8.x 8nB(r)4.8 ettmiirtn:

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addition, as there was a nine months' interval from the referral to DIOS (4 November 2018) until the conclusion of the Investigation Report R (31 July 2019), the UNRWA DT did not consider this an excessive delay.

52. The UNRWA DT is correct in holding that the provisions of DTI 02/2016 do not impose absolute deadlines. This is apparent from paragraph 12 that all investigations should endeavour to be completed "as quickly as possible", and within six months of their initiation "whenever possible". We also agree that a duration of nine instead of six months does not constitute an excessive delay. The present situat.



International Staff Regulations

Staff Regulation 1.9: By accepting appointment, staff members pledge themselves to discharge their functions and to regulate their conduct with the interest of the Agency only in view. Loyalty to the aims, principles and purposes of the Agency is a fundamental obligation of all staff members by virtue of their status as international civil servants.

Staff Regulation 1.10: While staff members' personal views and convictions, including their political and religious convictions, remain inviolable, staff members shall ensure that those views and convictions do not adversely affect their official duties or the interests of the Agency. They shall conduct themselves at all times in a manner befitting their status as international civil servants and shall not engage in any activity that is incompatible with the proper discharge of their duties with the Agency. They shall avoid any action and, in particular, any kind of public pronouncement that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status.

General Staff Circular No. 07/2014 on the Revised Standards of Conduct for International Civil Service (GSC No. 07/2014)

4. International civil servants should share the vision of their organizations. It is loyalty to this vision that ensures the integrity and international outlook of international civil servants; a shared vision guarantees that they will place the interest of their organization above their own and use its resources in a responsible manner.

5. The concept of integrity enshrined in the Charter of the United Nations embraces all aspects of an international civil servant's behaviour, including such qualities as honesty, truthfulness, impartiality, and incorruptibility. These qualities are as basic as those of competence and efficiency, also enshrined in the Charter.

58.

mention mens rea (a blameworthy state of mind) as an element of prohibited conduct, the existence of such a requirement is ordinarily a matter of interpretation. Courts and tribunals usually presume that misconduct can consist of both intent or negligence, unless there are clear and convincing indications to the contrary.<sup>7</sup> With regard to a written exam in the context of a selection process for a promotion, any kind of plagiarism, whether intentional or negligent, will be considered a violation of the principle of integrity, as the candidate puts himself/herself into an advantage over other candidates (see above). The provisions cited by 2 (s) 8.1 FN-3 (t) At. 6 (pr) 8 (t) 6

62. However, this is not the case. An intentional act of plagiarism already occurs when a staff member knows that he or she is required



decision not to short-list him for advertised posts under a new selection policy which had not been published, and in Mousa,<sup>12</sup> the staff member challenged the decision to calculate his separation benefits according to rules which were not yet in force at the date of his retirement.

#### Proportionality

67. Mr. Neekhra claims that the UNRWA DT erred in fact and law in paragraphs 38 to 41 of the Judgment when dealing with the issue of proportionality. In the Fares case, the Agency accused the staff member of the same misconduct (plagiarism) but did not impose a disciplinary sanction and only issued a reprimand although Mr. Fares held a very senior position and had served in the Agency for over 30 years. In considering the rationality of a disciplinary sanction, an important factor is the extent to which the measure is in accordance with similar cases in the same organization. Mr. Neekhra claims that the UNRWA DT ignored such similar cases and therefore committed an error of law.

68. There is no merit in this argument. The UNRWA DT acknowledged the broad discretion of the Agency with regard to the decision to impose a disciplinary sanction. This is in full accordance with the jurisprudence of the Appeals Tribunal. In Appellant, we held:<sup>13</sup>

... The matter of the degree of the sanction is usually reserved for the Administration, which has discretion to impose the measure that it considers adequate in the circumstances of the case and for the actions and conduct of the staff member involved. This appears as a natural consequence of the scope of administrative hierarchy and the power vested in the competent authority. It is the Administration that carries out the administrative activity and procedure and deals with the staff members. Therefore, the Administration is best suited to select an adequate sanction able to fulfil the general requirements of these kinds of measures; to wit: a sanction within the limits stated by the respective norms, which is sufficient to prevent repetitive wrongdoing, punish the wrongdoer, satisfy victims and restore the administrative balance. That is why the tribunals will only interfere and rescind or modify a sanction imposed by the Administration where the sanction imposed is blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity. This rationale is followed without any change in the jurisprudence of this Tribunal. The Secretary-General also

has the discretion to weigh aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose.

69. The UNRWA DT then took into account that the imposed disciplinary measures are among the lowest measures that the Agency can impose on a staff member. Given Mr. Neekhra's role as a senior officer and his misconduct involving a lack of integrity, it held that the disciplinary sanction was proportionate. We cannot find any fault in this reasoning.

70. Contrary to Mr. Neekhra's allegations, the UNRWA DT did not have to take into account the Agency's decision in the case of Fares because the circumstances in the two cases are different. While Mr. Fares only copied a few lines without proper citations, large parts of Mr. Neekhra's test answers were copy-pasted without citation. While Mr. Neekhra had been expressly informed in the test sheet what would be considered plagiarism, and that plagiarism was not allowed, such information did not appear in Mr. Fares' test instructions. Finally, Mr. Fares openly admitted that he

Judgment

73. The appeal is dismissed, and Judgment No. UNRWA DT/2021/065 is hereby affirmed .

Original and Authoritative Version: English

Decision dated this 24<sup>th</sup> day of March 2023 in New York, United States.

(Signed)

Judge Knierim , Presiding

(Signed)

Judge Sandhu

(Signed)

Judge Gao

Judgment published and entered into the Register on this 2<sup>nd</sup> day of May 2023 in New York, United States.

(Signed)

Juliet Johnson , Registrar