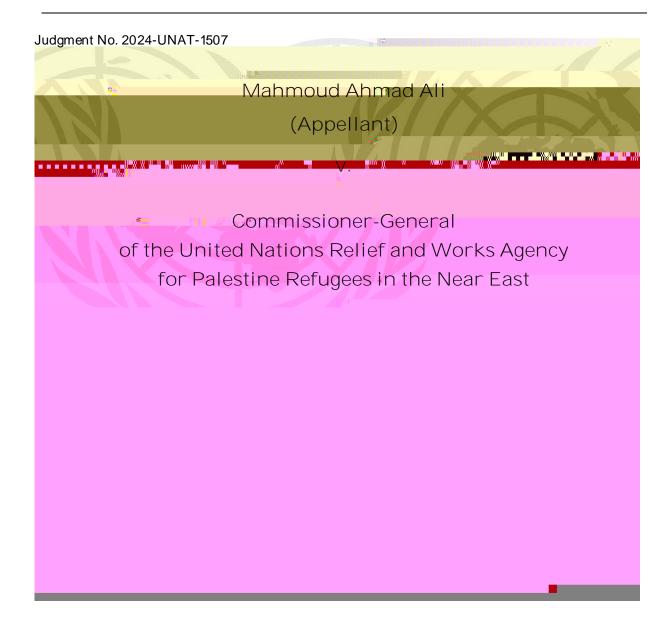
UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL DEAPPEL DES NATIONS UNIES



Counsel for Appellant: Self-represented

Counsel for Respondent: Matthew Hoisington

JUDGE ABDELMOHSEN SHEHA, PRESIDING.

1. Mr. Mahmoud Ahmad Ali, an employee of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency), has filed an appeal of Judgment No. UNRWA/DT/2023/044 (impugned Judgment)¹ with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).

2. In the impugned Judgment, the UNRWA Dispute Tribunal (UNRWA DT or Dispute

Administrative Leave without Pay (ALWOP) pending the outcome of an investigation into allegations of sexual abuse (contested decision).

3. For the reasons set forth herein, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

4. At the time of the events in question, Mr. Ali held a fixed-term appointment with the Agency and was working as a Practical Nurse at the Dbayeh Camp Health Centre out of the Lebanon Field Office (LFO).²

5. -wife (the Complainant) filed a complaint with a Juvenile Court in Lebanon alleging that Mr. Ali had sexually abused their children.³

6. On 17 February 2017, the Juvenile Court ordered that the three minor children have treatment sessions with a therapist, that Mr. Ali and the Complainant undergo psychological evaluations, and that reports of these sessions would be made to the Court. In the interim, the children were placed in temporary custody with the Complainant (First Decision).⁴

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the divorce agreement; (ii) confirmed the Second Decision; (iii) found that Mr. Ali had violated

by an MSF psychiatrist (Fourth Decision).¹²

15. On 11 August 2021, the Deputy Director of UNRWA Affairs, Lebanon (D/DUA/L) documented in a note for the record that (i) the Complainant had informed the D/DUA/L in a video call that Mr. Ali had threatened her and warned her to withdraw her complaint with the Agency, and that (ii) a Protection Officer in LFO had refused to assist the D/DUA/L in relation to the complaint because Mr. Ali had previously threatened the Protection Officer due to her

16. On 19 August 2021, the Complainant withdrew her complaint against Mr. Ali with the Agency and undertook not to revoke her withdrawal. This withdrawal was in writing, and Mr. Ali and two UNRWA staff members also signed it.

17. On 6 April 2022, the Commissioner-General of UNRWA placed Mr. Ali on ALWOP pending the outcome of an investigation into allegations that he had engaged in sexual abuse of his three minor children (contested decision). The letter conveying this decision stated:¹³

As you are aware credible allegations were initially received in August 2018 by the Lebanon Field Office and referred to the Department of Internal Oversight Services (DIOS) for investigation. In light of the allegations received, you were reassigned to administrative duties in the Health Centre, where you are currently working.

In May 2022, the Agency received detailed evidence from the Juvenile Court in Baabda, Lebanon, in relation to the sexual abuse allegations. On review of these allegations and the new evidence provided, I consider, pursuant to Area Staff Regulation 110.2, that there is probable cause that you have engaged in sexual abuse warranting your placement on administrative leave without pay.

18. On 29 April 2022, the Association pour la Protection de l nfant de la Guerre (APEG), the association that was allegedly assigned to undertake the psychiatric exam following the First Decision of the Juvenile Court, issued a letter stating that from their evaluation of the

¹² ., para. 14.

¹³ 6 April 2022 Letter from the Commissioner-General. The reference to May 2022 was corrected to March 2022 and acknowledged by Mr. Ali.

32. On 29 December 2023, Mr. Ali submitted an appeal of the impugned Judgment to the Appeals Tribunal, to which the Commissioner-General submitted his answer on 2 April 2024.

Submissions

A f"5`] by Appeal

33. Mr. Ali alleges that beginning in 2015 he had a marital dispute with his ex-wife. He alleges

the Complainant slandered him with the claim that he had molested their children. He submits that this was an attempt to pressure and discredit him to obtain a judicial ruling that she would have custody of the children.

34. Mr. Ali alleges that in 2017, APEG produced a report to the Juvenile Court in which it concluded that there was no danger to the children, that the children had not been sexually molested by him, and that he should be permitted to see them.

35. Mr. All submits that in 2018, when a new Judge was appointed to the Juvenile Court, she issued the Second Decision which contradicted the proceedings. He argues that the Second Decision was based on the fabricated report of MSF, which was not the organization commissioned by the Court in the First Decision, which was APEG.

36. Mr. Ali claims that he was investigated by the Agency in 2018, and that this investigation ended with him staying in his post as Practical Nurse u224 292.01 Tm0 g0 G[Am10(n)26(v)19()hsinv9()-(v9()

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and he should be restored to his original job as a nurse and paid all of the wages and entitlements he is owed by UNRWA for the time that he was separated from work owing to the contested decision.

The Commissioner-; YbYfU`Bs Answer

57. The Commissioner-

application, after carefully assessing the evidence and applying the relevant standard of proof.

58. The Commissioner-General avers that the appeal is not well-founded, because Mr. Ali is effectively relitigating his case by making the same submissions that were already considered and rejected by the UNRWA DT.

59. The Commissioner-

disregarded, the Commissioner-General submits that there was sufficient evidence in the record to uphold the lawfulness of the contested decision.

63. The Commissioner-

understand the difference between a protective order and a criminal conviction. The Dispute Tribunal was cognizant of the difference but pointed out that a criminal conviction was not required to place a staff member on ALWOP, which only requires probable cause.

64. The Commissioner-General submits that the UNRWA DT did not err in failing to consider the report of the forensic doctor, given that the existence of this report was not before the Agency when it took the contested decision as it came to light during the investigation. In any event, Mr. Ali failed to raise this point before the UNRWA DT and it should be disregarded.

65. The Commissioner-

70. The Commissioner-General requests that the Appeals Tribunal dismiss the appeal because

ailed to establish any

reversible error of fact, law or procedure.

Considerations

71. Mr. Ali maintains that the UNRWA DT erred in law when it grounded its determinations on mere suspicion, rather than on solid evidence, established facts, and full conviction of his culpability. He also submits that the UNRWA DT erred in law when it overlooked the agreement reached between him and his ex-wife to settle their disputes and to discontinue all on-going proceedings. Finally, he contends that the UNRWA DT erred in its appreciation of the facts related to the charges of sexual abuse made against him.

72. The error of law advanced by Mr. Ali is without merit.

73. Suspension from functions through administrative leave, with or without pay, is governed by Area Staff Regulation 10.4, Area Staff Rule 110.2, and Area Personnel Directive A/ 10/ Rev. 3 on Disciplinary Measures and Procedures.

74. Area Staff Regulation 10.4 provides:

If a charge of serious misconduct is made against a staff member and the Commissioner-General considers that the charge is 'prima-facie' well founded or that the staff member's continuance in office pending an investigation of the charge would prejudice the interests of the Agency, the staff member may be suspended, with or without pay, from his/her functions pending investigations, such suspension being without prejudice to the rights of the staff member.

75. Further, Area Staff Rule 110.2, on Administrative Leave Pending Investigation, reads:

1. A staff member may be suspended pending investigation by being placed on administrative leave, subject to conditions specified by the Commissioner-General, at any time pending an investigation until the completion of the disciplinary process.

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continuance in the post and/or the duty station would be contrary to the interests of the Agency.

3. Such administrative leave shall be with full pay except (i) in cases in which there is

or on ALWOP is made after a cursory review, considering the evidence available at that point in time, before a complete investigation of the subject matter, and without prejudice to the subject s rights of defense.

78. The concepts

serious or reasonable grounds to believe (

), that the staff member might have in fact committed the alleged misconduct.²⁷ The Administration is not, therefore, required, at this early stage of investigation, to satisfy itself that there is a preponderance of evidence to support the misconduct allegation, or to meet the higher bar of clear and convincing evidence. Evidence showing reasonable grounds would suffice for the decision of placing a staff member on ALWP or on ALWOP.

79. In the impugned Judgment, the UNRWA DT rightly identified the applicable standard of proof, limiting its review to the required standard of reasonable suspicion or reasonable grounds to believe.²⁸ In doing so, we find that the UNRWA DT did not err in law, and Mr. Ali s contention cannot succeed.

the withdrawal by Mr. Ali s ex-wife of her complaint to the Agency appeared to be made under duress which significantly undermined the reliability of such withdrawal.

82. Mr. Ali takes issue with that second determination. He contends that his ex-wife voluntarily agreed before the notary public in 2019 to withdraw the complaint she made to the Agency, before presenting that withdrawal in 2021. Therefore, he claims that the UNRWA DT erred in law when it disregarded her voluntary act.

 In order to overturn a finding of fact by the UNDT, the Appeals Tribunal must be satisfied that the finding is not supported by the evidence or that it is unreasonable. The Appeals Tribunal considers that some degree of deference should be given to the factual findings by the UNDT as the court of first instance, particularly where oral evidence is heard.

87. In the present appeal, Mr. Ali takes issue with the UNRWA DT s assessment of multiple facts that, in his view, led the Dispute Tribunal to render an unreasonable decision.

88. We recall first that part of Mr. Ali s contentions on the assessment of facts derived from his belief that the UNRWA DT erred in not grounding its decision on strong evidence. As we have held earlier, the UNRWA DT did not need to do so, as serious grounds to form a reasonable belief suffice to reach the conclusion that misconduct could have occurred. In so affirming, we find no need to address that part of Mr. Ali s contentions which were firmly related to his incorrect understanding of the applicable standard of proof.

89. We turn now to Mr. Ali s contentions of the UNRWA DT s assessment of facts.

90. Mr. Ali first contends that the long duration between the beginning of the first investigation in 2018 and the rendering of the contested decision in 2022 casts serious doubts on the proper grounds of that decision. However, it appears, as observed by the UNRWA DT, that the Agency did not have all the documentation related to the alleged sexual abuse misconduct against Mr. Ali, including the MSF report, until such documentation was requested by the Agency and released by the Juvenile Court in March 2022, following the escalating dispute between Mr. Ali and his ex-wife. The contested decision was made directly after the

assessment of such documentation, on 6 April 2022. Therefore, we do not find, in the circumstances, that the UNRWA DT erred in fact when it did not consider the extended period between the beginning of the investigation and the placement of Mr. Ali on ALWOP as a determinative factor such that it would undermine the proper grounds of the contested decision.

91. Mr. Ali also took issue with the UNRWA DT s reliance on the MSF medical report, while ignoring the APEG s letters. We agree with Mr. Ali that the case record does not support the narrative that MSF, as an entity, was requested by the Juvenile Court s First Decision to prepare a medical report on the allegations of sexual abuse made against him. However, the same could be said for APEG as the record shows that the Juvenile Court did not order APEG to do anything either, but rather ordered an examination by a named psychiatrist, without

referring to any particular entity. Furthermore, the record shows that the Juvenile Court relied, in its Second Decision, on the medical report prepared by MSF to conclude that Mr. Ali s children were subject to sexual abuse. The MSF report was part of the documentation sent from the Juvenile Court to UNRWA, and the Agency did not have the APEG letter before making its determinations.³⁰ In any event, the MSF report, although being very brief and incomplete in some parts, shows with some degree of authority that a psychological assessment had been made of Mr. Ali s children, showing a psychological reaction to inappropriate actions made by their father. Although, as contended by Mr. Ali, the report does not define those , it can be reasonably inferred, drawing on the transcripts of the

hearings before the Juvenile Court and on the UNRWA confidential note to file of 7 August 2018, that such actions were related to the alleged sexual abuse inflicted by Mr. Ali on his children. In contrast, the APEG letters provided by Mr. Ali were merely letters not medical reports, which were made four years after the alleged assessment, and signed by a person other than the psychologist who undertook the assessment. Therefore, we do not find that the UNRWA DT erred in fact, resulting in an unreasonable decision, when it considered the MSF medical report while finding

Mr. Ali s contentions are, therefore, dismissed.

92. Mr. Ali also contended that the UNRWA DT erred in disregarding the report of the forensic doctor appointed by the Agency itself. The Commissioner-General submits that this issue was not raised before the UNRWA DT and cannot, therefore, be raised for the first time on appeal. We have reviewed the full case record and could not find that Mr. Ali had raised this issue before the UNRWA DT. As rightly observed by the Commissioner-General, this issue cannot be raised for the first time on appeal. If Mr. Ali had discovered a fact related to that document after the issuance of the impugned Judgment, he should have filed an application for revision, pursuant to Article 12(1) of the UNRWA DT Statute, or requested this Tribunal to exceptionally admit that supplementary evidence to the case record. Mr. Ali neglected to do either and his contention cannot, therefore, be reviewed.

93. Finally, Mr. Ali submits that the UNRWA DT erred when it disregarded his unblemished record and academic achievements, including in the period between 2017 to 2022. Indeed, the UNRWA DT did not specifically address this issue in the impugned

³⁰ Indeed, the APEG letter that Mr. Ali refers to as being ignored is dated 23 November 2022, which post-dates the contested decision, which was taken on 6 April 2022.

Judgment

95. Mr. Ali s appeal is dismissed, and Judgment No. UNRWA/DT/2023/044 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 25th day of October 2024 in New York, United States.

Judge Sheha, Presiding

Judge Ziadé