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Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 935

Case No. 1036: ISMAIL

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Julio Barboza, Vice-President; Mr. Victor Yenyi Olungu;

Whereas at the request of Ziad Abdullah Ismail, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), the President of the Tribunal, with the agreement of the Respondent, extended until 31 March 1998 the time-limit for the filing of an application with the Tribunal;

Whereas, on 24 March and 15 June 1998, respectively, the Applicant filed an application that did not fulfill all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 11 August 1998, the Applicant, after making the necessary corrections, again filed an application containing pleas which read, in part, as follows:

A...

1. That the decision of the Joint Appeals Board recommending that the Respondent=s decision >be reviewed with a view to accepting the Applicant=s withdrawal [of his resignation]=, be fully reinstated by the Tribunal.

2. That the Respondent=s decision rejecting the Joint Appeals Board be rejected.

3. That [the] Applicant be reinstated in his position as of the date of his supposed resignation with full rights and back pay from that day till his reinstatement with normal raises he would have been entitled to had he not been improperly dismissed.≅

Whereas the Respondent filed his answer on 28 January 1999;

Whereas the Applicant filed written observations 15 April1999;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 20 July 1987, on a temporary-indefinite appointment as a Medical Officer, at grade 14, in Nablus Area, West Bank. His appointment was subject to a probationary period of one year and he was Aconfirmed in [his appointment]≅ on 5 July 1988.

In June 1995, the family of a female patient submitted a complaint against the Applicant, accusing him of improper behaviour toward the patient during an examination in the Clinic at the Balata Refugee Camp. The problem was resolved, the complaint was withdrawn and a deed of reconciliation was published in Al-Quds newspaper on 3 July 1995.

On 17 July 1995, the Area Officer, Nablus, informed the Field Administration Officer, West Bank, of the incident involving the Applicant. The Area Officer stated, that despite a lack of concrete evidence, the investigation had revealed that A[the Applicant=s] behaviour with his clients and colleagues went beyond his professional limits≅, and recommended that he be served with a letter of censure. A handwritten note on the same letter from the Field Administration Officer to the Field Personnel Officer (FPO), West Bank, advised against such a letter of censure, but suggested that the Applicant be reminded to always have a female nurse present during examinations of female patients.

On 11 August 1995, the Applicant submitted his resignation to the FPO, with effect from 11 September 1995. On 15 August 1995, the FPO wrote to the Applicant and informed him that his resignation was accepted effective close of business on 10 September 1995.

By letter dated 17 August 1995, the Applicant wrote to FPO requesting withdrawal of his resignation. He claimed that he had submitted his resignation under duress, following a threat by the Chief,

Field Health Programme in the presence of the Area Health Officer, Nablus, and the Area Officer, Nablus, that if he did not submit his resignation, his services would be Acompulsorily≅ terminated. On 21 August 1995, the FPO wrote to the Applicant advising him that his resignation would stand and that a Separation Personnel Action Form was being issued.

On 24 August 1995, the Applicant wrote another letter to the FPO, concerning the withdrawal of his resignation. He reiterated that he had signed his resignation under duress, and stated that he had withdrawn his resignation before it had been approved by the Administration. He added that he did not Aconsider himself resigned≅ as he had not done anything to deserve separation from service, and requested that the matter be investigated. The letter was copied to the Director of UNRWA Operations, West Bank and Gaza Strip, for Atransfer [of his] problem to the Committee of Appeal in Vienna≅.

On 6 September 1995, the Applicant wrote to the Headquarters Coordinator of Operations, West Bank and Gaza, and requested that his letter of 24 August 1995 be withdrawn.

On 8 September 1995, the Applicant again wrote to the Headquarters Coordinator of Operations, West Bank and Gaza, and advised him that the letter of 6 September 1995 was itself written under duress. He again requested that the matters associated with his resignation be investigated and that the letter be sent on to Vienna. On 25 October 1995, the Applicant wrote to the Director of Administration and Human Resources, UNRWA Headquarters, Vienna, reiterating his complaint and requested him to Aappoint a ... committee≅ to look into his case.

On 31 October 1995, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report in May 1997. Its evaluation, judgement and recommendation read as follows:

> A**III. EVALUATION AND JUDGEMENT**
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> 12. In its deliberations the Board examined all documents cited before it, including the Appellant=s personal file and came out with the following:
>
> (a) By reference to the appeal, the Board noted that the Appellant=s contention that the refusal to allow him to withdraw his notice of resignation was unjust.
>
> (b) By reference to the Administration=s reply the Board noted ... the Administration=s contention that the refusal to withdraw the Appellant=s resignation was

properly exercised and based on valid managerial considerations and without any personal prejudice or bias against him.

(c) By reference to the Appellant=s personal file the Board noted that the Appellant had a satisfactory performance during his service with the Agency, in fact his overall ratings in most of his periodic reports were four.

(d) The Board noted that the circumstances in which the Appellant submitted his resignation were unusual, where the Appellant was summoned to the field office to submit his resignation in the presence of [the] Area Officer, Chief, Field Health Programme, and [the] Area Health Officer, Nablus, which in the opinion of the Board constitutes an atmosphere of doubt in these circumstances. Moreover, the Board believes that the Appellant should have submitted his resignation by himself and without any external interference, as stated in Area staff rule 109.6.

(e) The Board also noted that no letter of censure was issued against the Appellant and it was noted that there was not enough substantive and documented evidence to issue such a letter, nor any disciplinary measures were taken against the Appellant, before this incident in fact a deed of family reconciliation was issued and an official apology was submitted to the Appellant and that the incident was a mere misunderstanding.

(f) The Board believes that the Administration should have conducted a Board of Inquiry to investigate the incident and give a final report, and that the Appellant should have been suspended pending the investigation which in the opinion of the Board gives rise to the question of actual prejudice against the Appellant, also the Appellant resumed working for 45 days after the incident and kept on examining lady patients, and no complaints were made against him.

(g) In view of the above, the Board believes that some extraneous factors interfered in the case of the Appellant, and that the Appellant should be given the benefit of the doubt.

IV. RECOMMENDATION

13. In view of the foregoing and without prejudice to any oral or written submission to any party, the Board unanimously makes its recommendation that the decision appealed against be reviewed, with a view of accepting the Appellant=s withdrawal of his resignation.≅

On 3 July 1997, the Commissioner-General transmitted to the Applicant a copy of the JAB report and informed him as follows:

A... I have carefully reviewed the Board=s report and noted its conclusions. The Board was of the opinion that the circumstances in which you had submitted your resignation were unusual

in that you had done so in the presence of senior Agency staff. It noted that there had been no finding of misconduct in relation to the allegations made against you and opined that a Board of Inquiry should have investigated the matter. It was accordingly of the view that extraneous matters interfered in the case and that you should have been given the benefit of any doubt. The Board accordingly recommended that the decision not to allow the resignation to be withdrawn be reviewed, with a view to allowing you to do so.

I agree with the Board that misconduct had not been established against you; however, this was not the primary issue in this appeal. Instead, at issue was whether the Agency should have allowed you to withdraw your resignation. The Board did not examine the circumstances in which you came to resign, except to note that you did so in the presence of senior Agency officials. The Board did not apparently consider the evidence of Chief, Field Health Programme, which was to the effect that you freely resigned rather than face a full investigation. In addition, the Board did not consider the reasons why the Agency does not allow the ready withdrawal of resignations. Accordingly, I can not accept the Board=s conclusions and recommendation. Your appeal is dismissed.

In accordance with Area staff rule 111.3 (12), a copy of this letter and the Board=s report will be sent to the local Staff Union from West Bank, thirty days after receipt of this letter by you. Kindly inform the Administration within this period if you object to a copy being sent to the Staff Union.≅

On 11 August 1998, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant=s principal contentions are:

1. The Applicant did not resign voluntarily, but was pressured into doing so.

2. The Respondent did not follow the normal procedures for dealing with resignations.

3. The decision not to accept the withdrawal of his resignation was tainted by improper motivation and the influence of extraneous factors.

Whereas the Respondent=s principal contentions are:

1. A staff member resigns by giving written notice to the Agency. It is a unilateral act of a staff member and does not need to be accepted by the Agency.

2. The Applicant submitted a valid and effective resignation. Any request by the Applicant to have his resignation withdrawn is subject to the Agency=s rules regarding re-employment.

3. The Applicant has not met the burden of proving that the decision not to re-employ him was tainted by prejudice or improper motivation.

The Tribunal, having deliberated from 2 to 15 November 1999, now pronounces the following judgement:

I. The facts on which the Tribunal is to pronounce judgement are not very consistent. A complaint was submitted by a patient of the Applicant, a physician in the service of UNRWA, but the complaint was withdrawn and the patient=s family apologized to the Applicant. The incident appeared to have been closed, but the Applicant was nonetheless summoned to Jerusalem by the UNRWA medical authorities (the Chief of the Field Health Programme, along with some of his colleagues), who, according to the Applicant, asked him to resign, failing which his employment would be terminated without compensation. On 11 August 1995, the Applicant signed a letter of resignation which had been prepared for him. A few days later the Applicant withdrew his resignation (letter of 17 August 1995), which, in the interim, had been accepted by the Administration. Following an exchange of correspondence with the Agency in this connection, the Applicant retracted this withdrawal but, on 8 September, alleged that he had done so under duress. The Applicant is requesting the Tribunal to rule that the withdrawal of his resignation should be accepted by the Administration and that the salary he would have received if he had not been considered to have resigned should be paid to him.

II. The Tribunal will not render a decision on all the episodes briefly summarized above, which give rise to conflicting accounts. However, it appears to the Tribunal that, to echo the terms used by the JAB, the conditions in which the Applicant formulated his resignation are Aunusual≅ and not fully compatible with the provisions of Area staff rule 109.6, which applies to local UNRWA staff. It appears that psychological pressure, at least, was brought to bear on the Applicant. The Tribunal has carefully studied the conclusions of the JAB, to the effect that Athe circumstances in which the Appellant submitted his resignation were unusual, where the Appellant was summoned to the field office to submit his resignation in the presence of [the] Area Officer, Chief, Field Health Programme, and [the] Area Health Officer, Nablus, which, in the opinion of the Board, constitutes an atmosphere of doubt in these circumstances. Moreover, the Board

believes that the Appellant should have submitted his resignation by himself and without any external interference, as stated in Area staff rule 109.6. ... [T]he Board believes that some extraneous factors interfered in the case of the Appellant, and that the Appellant should be given the benefit of the doubt.≅ The Tribunal endorses the conclusions of the JAB, which, by reason of its proximity, is particularly well qualified to determine the facts.

Accordingly, the Applicant should be given the benefit of the doubts as to the free and voluntary nature of his resignation and as to the episodes which followed that event. Based on the conclusion of the JAB that the resignation was influenced by some extraneous factors, the Tribunal finds that the Applicant should be awarded damages amounting to six months= net base salary at the rate in effect on the date of his separation from service.

III. For the foregoing reasons, the Tribunal decides:

(a) That the Applicant should be awarded damages amounting to six months= net base salary at the rate in effect on the date of his separation from service;

(b) To reject all other pleas.

(Signatures)

Hubert THIERRY
President

Julio BARBOZA
Vice-President

Victor YENYI OLUNGU
Member

New York, 15 November 1999

Maritza STRUYVENBERG
Executive Secretary