



Before: Judge Jean-François Cousin

Registry: Amman

Registrar: Laurie McNabb

MOUSA

v.

COMMISSIONER-GENERAL OF THE
UNITED NATIONS RELIEF AND WORKS
AGENCY FOR PALESTINE REFUGEES
IN THE NEAR EAST

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Rachel Evers (DLA)

Introduction

1. This is an application by Raed Mousa (“Applicant”) against the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (“Respondent”), to impose on him the disciplinary measures of a written censure and a suspension without pay for one month.

Facts

2. Effective 5 August 2002, the Applicant was employed by the Agency on a fixed-term appointment, Level 4C, Step 1 as Ophthalmologist, Gaza Field Office (“GFO”). At the time material to the present application, the Applicant occupied the post of Ophthalmologist, Level L8.

3. On 15 June 2019, the Director of UNRWA Operations, Gaza (“DUO/G”) obtained information through social media that, on 13 June 2019, some patients received an avastin injection at the International Eye Centre (“IEC”), one of the Agency’s contracted hospitals. These patients developed complications known as endophthalmitis as a result of the injection. Afterwards, UNRWA Health Programme conducted a preliminary investigation and subsequently constituted a Board of Inquiry (“BoI”). The BoI’s report established, and the Applicant concedes, that the avastin injections were performed by the Applicant.

4. By letter dated 6 August 2019, the DUO/G instructed the Senior Field Investigator to conduct an investigation into the following allegations against the Applicant: 1) Working for the IEC without a valid UNRWA authorisation for outside activities; 2) Working for the IEC while on sick leave from the Agency; and 3) Contributing to malpractice leading to complications for patients during his work at the IEC.

5. By letter dated 7 August 2019, the DUO/G placed the Applicant on administrative leave without pay pending the outcome of investigation.

6. By letter dated 27 October 2019, the DUO/G issued the Applicant a due process letter and invited him to respond to the allegations. The Applicant provided his response to the due process letter on 7 November 2019.

7. On 22 January 2020, the DUO/G imposed on the Applicant the disciplinary measures of a written censure and a suspension without pay for one month.

8. On 3 February 2020, the Applicant submitted a request for decision review.

9. On 3 March 2020, the present application was filed with the UNRWA Dispute Tribunal (“Tribunal”). The application was transmitted to the Respondent on 10 March 2020.

10. On 19 March 2020, the Respondent filed a consolidated motion for exceptional extensions of deadlines in 18 applications, including the present application, based on his inability to access information and conduct other necessary tasks, due to the COVID-19 pandemic and lockdowns across the Agency’s areas of operations. Due to the exceptional circumstances, and in order to protect the confidentiality of the various Applicants, this motion was not transmitted to the concerned Applicants.

11. By Order No. 046 (UNRWA/DT/2020) dated 29 March 2020, the Tribunal granted, *inter alia*, the Respondent’s motion for an exceptional extension of time to file his reply in the present case.

12. On 27 April 2020, the Respondent filed his reply without several of the referred annexes. The reply was transmitted to the Applicant on 3 May 2020.

13. On 7 May 2020, the Applicant filed a motion for leave to file observations on the Respondent’s reply. The motion was transmitted to the Respondent on 10 May 2020.

14. By Order No. 071 (UNRWA/DT/2020) dated 21 May 2020, the Tribunal granted the Applicant’s motion to file observations on the Respondent’s reply.

15. On 21 June 2020, the Applicant filed his observations on the Respondent's reply. The Applicant's submission was transmitted to the Respondent on the same day.

16. On 4 August and 7 September 2020, the Tribunal's Registry reminded the Respondent to submit the missing annexes to his reply.

17. By Order No. 221 (UNRWA/DT/2020) dated 1 November 2020, the Tribunal ordered the Respondent to submit the missing annexes referenced in his reply without any further delay.

Applicant's contentions

18. The Applicant contends:

- i) The BoI's investigation and the decision placing him on suspension without pay pending investigation had a negative impact on his reputation and career;
- ii) The reason behind the accusation of malpractice was a personal dispute between the former Director of St John Eye Hospital Group, Gaza and the Director of IEC;
- iii) The investigation did not prove the allegations of malpractice against him; and
- iv) He did not sign any documents/record during the BoI's investigation.

19. The Applicant requests:

- i) The Agency to conduct a new investigation;
- ii) To be transferred to another department; and
- iii) To be compensated for the moral and material damages he sustained.

Respondent's contentions

20. The Respondent contends:

- i) The disciplinary measures were properly effected;
- ii) The facts on which the disciplinary measures were based were established; the facts constituted misconduct;
- iii) The disciplinary measures were proportionate to the offence;
- iv) The Applicant's due process rights were fully respected;
- v) The Applicant's reference to the BoI's investigation represents a remarkable misunderstanding of the process and basis of the impugned decision;
- vi) The Applicant failed to prove that the decision to impose on him the disciplinary measures was arbitrary or capricious, was motivated by prejudice or other extraneous factors, or was flawed by procedural irregularity or error of law; and
- vii) The relief sought by the Applicant has no legal basis.

21. The Respondent requests the Tribunal to dismiss the application in its entirety.

Considerations

22. The Applicant contests the decision to impose on him the disciplinary measures of a written censure and a suspension without pay for one month.

23. The Applicant is the Ophthalmologist who performed avastin injections in the IEC on 13 June 2019. Several patients who had received the injection developed complications known as endophthalmitis. Following a preliminary investigation conducted by UNRWA's Health Programme, the BoI was constituted. The BoI's report established that the avastin injections were performed by the Applicant on 13 June 2019. Subsequently, the DUO/G ordered

the Senior Field Investigator to conduct an investigation into allegations that the Applicant had been working at the IEC while he was on sick leave from UNRWA and without a valid authorisation and that he had contributed to malpractice.

24. The Applicant was disciplined based on the findings that he was working at the IEC while on sick leave from UNRWA and without a valid authorisation.

25. The Applicant does not contest the facts upon which the disciplinary measures were based, nor does he contest that the established facts constitute misconduct or the proportionality of the disciplinary measures. Therefore, the Tribunal has no contentions to address pertaining to the impugned decision.

26. The Applicant's contentions are related to the allegation of malpractice; however, malpractice was not established during the Agency's investigation and therefore was not one of the bases for the disciplinary measures imposed on him. The Tribunal notes that the Applicant's contentions related to malpractice are not relevant to the present application and therefore are without merit.

27. In the view of the foregoing, the application must be dismissed.

Conclusion

28. In view of the foregoing, the Tribunal DECIDES:

The application is dismissed.

Judge Jean-François Cousin

Dated this 16th day of November 2020

Entered in the Register on this 16th day of November 2020

Laurie McNabb, Registrar, UNRWA DT, Amman