



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2020-UNAT-1006

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

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge Martha Halfeld Judge Kanwaldeep Sandhu
Case No.:	2019-1321
Date:	27 March 2020
Registrar:	Weicheng Lin

Counsel for Mr. Suleiman:	Self-represented
Counsel for Commissioner-General:	Rachel Evers

JUDGE SABINE KNIERIM, PRESIDING.

1. Mr. Ahmed Odeh Suleiman, a School Principal at the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) contested before the UNRWA Dispute Tribunal (UNRWA DT) the Agency's decision to impose upon him a disciplinary measure of a letter of censure and a fine equivalent to one month's base salary for using corporal punishment on a student. The UNRWA DT dismissed his application and upheld the Agency's imposed disciplinary measure. Mr. Suleiman appeals to the United Nations Appeals Tribunal (Appeals Tribunal). We dismiss the appeal.

Facts and Procedure

2. Mr. Suleiman has been employed with the Agency since 1988. At the time material to this appeal, Mr. Suleiman served as a School Principal at the Jarash Camp Preparatory Boys' School No. 1. On 26 October 2016, an Agency staff member, serving as a Donor Relations Officer (DRO), reported that, during his visit with visitors to the school on the previous day on 25 October 2016, he had witnessed Mr. Suleiman punish a student by severely hitting him on the back. The Agency conducted an investigation and interviewed the DRO on 16 May 2017. During his interview, the DRO stated:

I was in a visit to Jarash boys school along with donor representative [...]. I witnessed the school principal [the Appellant] hitting a student in the ground hallway. The donor saw the incident and expressed her resentment about the school principal's [conduct].

I informed the donor that UNRWA has procedure to deal with such issues, explaining to her UNRWA's policy of preventing corporal punishment in UNRWA schools. While the student was running in the hallway, [the Appellant] hit the student forcefully on his back. [...] There were no witnesses to this incidence but me and the donor. I do not know any details about the student.

3. On 3 July 2017, the investigation concluded, and the investigators issued its Report of Investigation. The Head, Field Legal Office, Jordan (H/FLO/J), recommended to the Director of UNRWA Operations, Jordan (DUO/J) that Mr. Suleiman be given a written censure and the Agency impose upon him a fine equivalent to one month of his base salary. The DUO/J agreed with this recommendation and, on 11 March 2018, sent a letter to Mr. Suleiman imposing upon him the censure and a fine.

4. On 2 April 2018, Mr. Suleiman requested a decision review and on 15 May 2018 he filed an application with the UNRWA DT requesting rescission of the disciplinary measures. On 26 September 2019, the UNRWA DT issued Judgment No. UNRWA/DT/2019/056 dismissing his application and upholding the Agency's disciplinary sanctions. The UNRWA DT found that the investigation had established the facts, that the established facts amounted to misconduct as Mr. Suleiman had violated the Agency's Educational Technical Instruction No. 1/08 prohibiting the use of corporal punishment, and that the imposition of a censure and a fine was a proportionate sanction to the offense.

5. On 15 October 2019, Mr. Suleiman appealed the UNRWA DT Judgment to the Appeals Tribunal. The Commissioner-General filed an answer on 16 December 2019.

Submissions

Mr. Suleiman's Appeal

6. Mr. Suleiman requests the Appeals Tribunal to rescind the disciplinary measures and vacate the impugned Judgment. He asserts that the UNRWA DT committed errors of law and fact resulting in a manifestly unreasonable decision. In support, he argues that the UNRWA DT erred in finding that his statements were not credible, and the statements of the sole witness were credible. He has worked for the Agency for 31 years, during which he has never engaged in misconduct and there were colleagues who were able to attest to his integrity and good character. In addition, he has received many letters of thanks and appreciation which are all located in his personnel file.

7. Mr. Suleiman also argues that the UNRWA DT erred in facts and law in finding that the alleged actions amounted to misconduct even though no student or parent had filed a complaint and no student had actually been assaulted. During the alleged incident, he had been in the laboratory with other teachers. These teachers all attested that they had not seen him strike a student. The investigators had interviewed 14 random students. Four testified they had seen him strike students on various occasions, and ten students testified they had never seen him strike a student. The four students are six years old and did not have legal capacity. Therefore, their statements should have been considered invalid. In addition, it is natural for a young child to build the question into his answer and it is also natural for a

young child to repeat the answer of the previous child. In light of the above, the sanction is arbitrary and harsh.

The Commissioner-General's Answer

8. The Commissioner-General requests the Appeals Tribunal to dismiss the appeal and uphold the impugned Judgment. The Commissioner-General objects to Mr. Suleiman's argument, brought for the first time on appeal, that the four student witnesses were incompetent. This argument was not made before the UNRWA DT and should not be entertained on appeal. The Commissioner-General argues that the appeals process is not an opportunity to reargue one's case. Mr. Suleiman's arguments that the investigation failed to identify the student he had allegedly struck and that there were no complaints brought by a parent have already been addressed by the UNRWA DT. Mr. Suleiman merely reargues these points without demonstrating how the UNRWA DT erred in law or fact.

9. The UNRWA DT did not commit any appealable errors. The facts established that Mr. Suleiman had acted in violation of the Agency's regulatory framework against corporal punishment. The UNRWA DT correctly considered the gravity of the offense in its determination that the sanction was proportionate to his actions.

Considerations

10. In disciplinary cases, the Tribunals will examine the following: (i) whether the facts on which the disciplinary measure is based have been established (where termination is the sanction imposed, the facts must be established by clear and convincing evidence; in all other cases preponderance of the evidence is sufficient); (ii) whether the established facts amount to misconduct; (iii) whether the sanction is proportionate to the offence; and (iv) whether the staff member's due process rights were respected.¹ The UNRWA DT did not err in law or fact in holding that the facts on which the disciplinary measure was based had been established. As the disciplinary sanction imposed in this matter was not termination but a fine and a written censure, it is sufficient that the Tribunals find that there was a preponderance of evidence. We agree with the UNRWA DT that the preponderance of the evidence shows that

¹ *Nadasan v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-917, para. 38; *Siddiqi v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-913, para. 28.

Mr. Suleiman hit a student forcefully on the back during the 25 October 2016 distribution of school bags.

11. In this regard, the UNRWA DT did not err in relying on the testimony of the DRO, which is of high value. He was a neutral witness without any personal interest in the matter and he did not know the Appellant before. He presented a vivid description of what he had observed while visiting the school with the donor representative. Additionally, he stated that it was the donor representative who initially drew his attention to the Appellant hitting the student. It follows that the DRO must have deemed it possible that the donor representative would also be heard as a witness. Under the circumstances, it is not likely that the DRO fabricated this story. As he did not know the Appellant, there was no reason to assume that the DRO wanted to harm him for personal reasons. The fact that he expressly mentioned the donor representative opened up the opportunity for the administration to validate his statement by hearing the donor representative as a witness.

12. The UNRWA DT did not err in accepting the statements of the pupils as corroborating evidence. Mr. Suleiman cannot, for the first time on appeal, allege that the four witnesses were first graders and therefore incompetent witnesses. This issue was not made before the UNRWA DT and therefore cannot be presented on appeal. Further, Mr. Suleiman's contentions are without merit. In numerous domestic jurisdictions wherein a case involving physical abuse, reliance is given to children as witnesses. Likewise, in the instant matter, there was reason to rely upon the children's testimonies as corroborating evidence in analyzing whether there was a preponderance of the evidence that the alleged misconduct had occurred. Several boys confirmed that they had seen Mr. Suleiman hitting students on various occasions. This was corroborating evidence which strengthened the value of the DRO's testimony. In the present case, the young age of the boys did not diminish the value of their testimonies.

13. Mr. Suleiman alleges that the evidence was implausible given his unblemished professional record and the fact that no complaint had been filed. We do not agree. As stated above, the DRO was a neutral witness and he had rendered a vivid description of Mr. Suleiman hitting a student forcefully on the back. Under the circumstances, the evidence was sufficient to establish Mr. Suleiman's wrongdoing.

14. The Appellant's behavior amounts to misconduct under UNRWA's relevant administrative provisions, which are set forth in pertinent parts below:

Educational Technical Instruction No. 1/08, July 2008, titled, "Establishing Discipline in a Violence-Free Educational Environment"

Section 1:1 Purpose:

...

b. Identify non-violent measures for encouraging positive student behavior and promoting discipline in UNRWA schools and institutions.

c. Articulate the prohibition of corporal punishment or any form of punishment that is humiliating, demeaning, or degrading to children in UNRWA schools and educational institutions and to outline the consequences of violating this prohibition.

1.2 Statement of Commitment

...

b. UNRWA is committed to upholding the [United Nations] Convention on the Rights of the Child and to eliminating all forms of intimidation and violence against children in its schools.

c. UNRWA is committed to enforcing the prohibition of corporal punishment, including through investigating allegations of corporal punishment and to enforcing relevant staff rules and regulations where such allegations are proven.

1.3 Principles informing the Education Department's Policy on school discipline

...

b. In complying with the undertakings in 1.3a above, education staff shall also be guided by three principal obligations:

...

To comply with and enforce the prohibition of corporal punishment, other cruel or degrading forms of punishment and all forms of violence against children.

...

g. Corporal punishment, other cruel and degrading forms of punishment and all violence against children or students are strictly forbidden in all UNRWA schools and Training Centres, at all times, and under all conditions and circumstances. This prohibition must be observed without exception by UNRWA Education Department staff.

Definition of corporal punishment [...]

h. Corporal punishment is defined as any punishment involving the application of physical force or the issuance of orders or instructions to a student with the intention of causing physical pain, discomfort, or humiliation. [...]

i. Corporal punishment may take a number of forms and includes, but is not limited to, hitting, slapping, smacking, spanking, punching, kicking, pinching, and causing physical discomfort to the student [...].

Section 4.

4.1 Corporal punishment as misconduct

...

b. Corporal punishment constitutes misconduct as provided for in UNRWA rules and regulations. UNRWA staff proven to have been involved in administering, aiding, or concealing corporal punishment will be liable to severe disciplinary measures as stipulated in UNRWA Staff Regulations Cod/A/59/Rev.25 and Personnel Directive No. A/10/Rev.1. These measures include written censure, suspension without pay, demotion, termination, and dismissal.

...

5.4 Instructors, teachers and other staff members:

1. [...] have a responsibility to familiarize themselves with and understand this important technical instruction and sign institutional registers to confirm that they have received and understood the instruction. Lack of awareness or understanding [...] will not be acceptable as a defense, should staff be involved in violation of this [...]

General Staff Circular No. 01/2013, 31 January 2013

Subject: PROHIBITION OF VIOLENCE

1. The Agency is committed to ensuring all UNRWA staff and other personnel work in and promote an environment free from violence. The Agency is committed to a zero tolerance approach to behaviour that is contrary to this General Staff Circular, which means that any allegations or complaints will be dealt with promptly in accordance with the Agency's regulatory framework, including its Staff Regulations, Rules, Personnel Directives and associated administrative issuances.

2. All forms of violence, including against children, by UNRWA staff and other personnel in the course of their duties and/or in UNRWA installations are strictly prohibited at all times and under all conditions and circumstances, and as such are considered misconduct. UNRWA staff and other personnel proven to have been involved in committing, aiding or concealing acts of violence will be liable to disciplinary measures, depending on the severity of the acts, as stipulated in

the Agency's Staff Regulations, Rules, Personnel Directives and associated administrative issuances.

3. The Agency's policy and procedures for reporting misconduct are set out in General Staff Circular No. 5/2007 Allegations and Complaints Procedures and Protection against Retaliation for Reporting Misconduct and Cooperating with Audits and Investigations ("GSC 05/2007"). To ensure consistency when dealing with allegations or complaints of violence as a form of misconduct, the following provisions are set out:

a. All UNRWA staff and other personnel have the duty to report incidents of violence witnessed, or allegations or complaints received from beneficiaries, as soon as possible after becoming aware of them (see paragraph 6, GSC 05/2007).

b. All UNRWA staff and other personnel have a right to be protected against false allegations or complaints (see paragraph 8, GSC 05/2007).

c. All UNRWA staff and other personnel should report incidents, complaints or allegations of violence to the:

i. immediate supervisor,

ii. Field Office Director or Headquarters Department Director,

iii. Director of Department of Internal Oversight Services,

iv. Director of Human Resources, v. Deputy Commissioner-General, or

vi. the Commissioner-General (see paragraph 10, GSC 05/2007).

d. Anonymous complaints or allegations of violence may be considered taking into account a number of factors including the seriousness of the complaint or allegation, its credibility, and the extent to which it can be confirmed or corroborated by attributable sources (see paragraph 12, GSC 05/2007).

e. The duty to investigate and act upon reported incidents, allegations or complaints of violence lies with Field Director or Headquarters Department Director (see paragraph 16, GSC 05/2007) or the Department of Internal Oversight Services, in accordance with Organization Directive 14.

f. All UNRWA staff and other personnel are protected against retaliation (see paragraphs 35 – 38, GSC 05/2007).

4. Since its establishment by the UN General Assembly in 1949, UNRWA, as the principal service provider to the Palestine refugees, has protected and assisted them. This General Staff Circular is being promulgated in the interest of ensuring that UNRWA staff and other personnel discharge the mandate invested in UNRWA to continue promoting the protection, well-being and human development of the Agency's beneficiaries, by delivering services in a violence free manner and environment.

15. The UNRWA DT did not err when it held that the sanction imposed was proportionate to the offence; and we refer to the DT's reasoning. In this regard, there was a broad discretion on the part of the Agency. Given the established misconduct, which is of a severe kind, the sanction seems quite mild.

Judgment

16. The appeal is dismissed and Judgment No. UNRWA/DT/2019/056 is hereby affirmed.

Original and Authoritative Version: English

Dated this 27th day of March 2020.

(Signed)

Judge Knierim, Presiding
Hamburg, Germany

(Signed)

Judge Halfeld
Bournemouth, United Kingdom

(Signed)

Judge Sandhu
Vancouver, Canada

Entered in the Register on this 19th day of June 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar