UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Abu Ghali

(Appellant)

v.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Iyad Mohammad Khalil Abu Ghali against Judgment No. UNRWA/DT/2012/024, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA Dispute Tribunal or UNRWA DT, and UNRWA or the Agency, respectively) on 12 June 2012 in the case of Abu Ghali v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East. Mr. Abu Ghali filed his appeal on 15 November 2012, and the Commissioner-General filed his answer on 3 February 2013.

Facts and Procedure

2. At the time of the incident underlying Mr. Abu Ghali's termination, he was employed by UNRWA under a fixed-term contract as an Assistant Mental Health Supervisor, Grade 12, Step 5,

> boxes of potato chips actually contained 120 boxes of Tramal, totalling 11,889 tablets of Tramal, a prohibited drug in the Gaza Strip.
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> … [Mr. Abu Ghali] was arrested. Afana and Nabrees were also arrested after attempting to sell Tramal tablets to an undercover police officer at the place where [Mr. Abu Ghali] had dropped them off. All three were taken to the Police Station by the Anti Drug Police. Nine tablets of Tramal were found on [Mr. Abu Ghali's] person when he was taken into custody.
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> … The accused, including [Mr. Abu Ghali], underwent interrogation by the Anti Drug Police on 9, 10 and 11 April 2010.
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> … On 10 April 2010, another UNRWA employee, Ashraf Al Jabali ("Al Jabali"), a subordinate of [Mr. Abu Ghali's], was arrested for the possession of 68.5 tablets of Tramal.
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> … On 10 April 2010, [Mr. Abu Ghali] and three others (Zuruub, Afana and Al Jabali) were charged for the unauthorised possession of a prohibited drug pursuant to articles 4 and 36 of Pharmacy Law number 41 of the year 1921 and articles 72 and 95 of Pharmacy Practice Regulation of the year 2006.

4. On 11 April 2010, Christer Nordahl, then-Deputy Director of UNRWA Operations, Gaza (D/DUO/G), sent a letter to Mr. Abu Ghali informing him that, pursuant to Area Staff Rule 110.2,[2] he was being suspended without pay as of that date.

5. On 6 July 2010, the Court of Reconciliation (a trial court) found Mr. Abu Ghali guilty of possession of a prohibited drug, as charged against him in the bill of indictment. It sentenced him to three months incarceration, to be suspended for three years, and ordered him to pay a fine or be incarcerated for three months. Additionally, the Tramal tablets were ordered confiscated.

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[2] Area Staff Rule 110.2 provides for suspension without pay pending an investigation by the Agency, as follows:

> If a charge of misconduct is made against a staff member (for the purposes of paragraph 1 of rule 110.1) 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, then the staff member may be suspended from duty, with or without pay, pending investigation, the suspension being without prejudice to the rights of the staff member.

Area Staff Regulation 10.4 has identical provisions.

The A/DUO/G further explained:

> The Agency takes behaviour of a criminal nature extremely seriously. Its finding that you were found in possession of, and were involved in the trade of, a substantial number of illegal drugs constitutes a failure to maintain the standards of conduct befitting of an UNRWA staff member. This is considered serious misconduct warranting disciplinary measures. Your responses of 20 and 21 July 2010 to the charges against you do not rebut the allegations made, nor provide countervailing evidence or demonstrate mitigating circumstances.
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> Furthermore, as a community mental health worker with UNRWA, you should be well aware of the negative impact that the rising levels of Tramal addiction has had on the mental and physical health of the people of Gaza. Your actions in dealing in such a drug have fundamentally destroyed my confidence in you as an assistant mental health supervisor with UNRWA and made it impossible for you to continue in such a position.

12. On 19 April 2011, Mr. Abu Ghali sought review of the administrative decision to terminate his service. The Deputy Commissioner-General denied his request on 16 May 2011.

13. On 5 June 2011, Mr. Abu Ghali filed an application before the UNRWA DT challenging his termination. Attached to his application were 16 annexes. The Commissioner-General filed his answer to the application on 5 March 2012.

14. On 9 August 2011, Mr. Abu Ghali requested expedited consideration of his application, and the UNRWA DT granted his request on 11 October 2011 in Order No. 003 (UNRWA/DT/2011).

15. On 20 September 2011, Mr. Abu Ghali filed a motion for the disclosure and production of evidence seeking:

> of the detention for possession of illegal medical drugs on April 11, 2010 until the date of the Agency's response to the request of decision review on May 16, 2011. The production of evidence to include, but not limited to, the decision making processes, deliberations and conclusions related to conducting investigation, suspension for a year without pay pending investigation and termination of contract for misconduct retroactively.

16. On 4 November 2011, the Commissioner-General filed a response or opposition to Mr. Abu Ghali's request for disclosure and production of evidence, contending inter alia that the request was overly broad, amounted to a "fishing expedition", and that some of the documents sought were privileged.

17. On 21 November 2011, the UNRWA DT issued Order No. 008 (UNRWA/DT/2011) finding Mr. Abu Ghali's request to be "overly broad and vague" and amounting to a "fishing expedition". Nevertheless, the UNRWA DT ordered the Commissioner-General to provide it with a copy of the Investigation Report for review in camera to determine whether: (a) Mr. Abu Ghali "was made fully aware of the allegations and evidence against him and was accorded the opportunity to rebut those allegations and to produce evidence in his defence[;] … [and (b)] it [was] sufficient to enable the [UNRWA Dispute] Tribunal to render its Judgment on whether [Mr. Abu Ghali's] actions constituted misconduct and the Respondent had fully complied with the applicable Regulations, Rule[s] and Area Staff Personnel Directive when terminating [his] employment". On 28 November 2011, the Commissioner-General provided the UNRWA Dispute Tribunal with a redacted copy of the Investigation Report. Upon the request of the UNRWA DT, the Commissioner-General provided an unredacted copy of the report for review in camera on 24 February 2012.

18. On 27 February 2012, the UNRWA DT issued Order No. 006 (UNRWA/DT/2012) denying Mr. Abu Ghali's request for disclosure and production of evidence. The UNRWA Dispute Tribunal noted that it had reviewed in camera the Investigation Report, compared its contents to Mr. Abu Ghali's application and 16 annexes, and concluded "there is no relevant material" in the Investigation Report that Mr. Abu Ghali "does not already possess". The UNRWA Dispute Tribunal further concluded that "there is no additional material" in the Investigation Report that would assist it in addressing the merits of the application; thus, the UNRWA Dispute Tribunal removed the Investigation Report from the case file and stated it would "disregard" it in 43.06e9cti4eu3h

19. On 12 June 2012, the UNRWA DT issued Judgment No. UNRWA DT/2012/024, dismissing Mr. Abu Ghali's challenge to his termination.

Submissions

Mr. Abu Ghali's Appeal

20. Mr. Abu Ghali contends that the UNRWA DT made an error of law or procedure when it failed to consider his claims that the Agency did not comply with the Detained Staff Policy (DSP), ST/AI/299 (10 December 1982), the 1946 Convention on the Privileges and Immunities of the United Nations (Convention) and the 1996 Agreement Between UNRWA and the Palestinian Authority (Agreement). More specifically, Mr. Abu Ghali asserts that the search of the UNRWA vehicle was illegal and UNRWA's failure to challenge the search constituted a breach of its obligations to him as a staff member. He also claims that UNRWA breached its duty to him under the DSP when it failed to request immediate access to him while he was in custody and to obtain information about the charges against him.

21. Mr. Abu Ghali argues that the UNRWA DT made an error of law or procedure when it allowed the Commissioner-General to participate in the proceedings despite filing his reply or answer beyond the period allowed by Article 6 of the UNRWA DT Rules of Procedure and without an order from the UNRWA DT authorizing the late filing.

22. Mr. Abu Ghali further contends that the UNRWA DT made an error of law or procedure when it failed to grant his request for production of the Investigation Report and when it relied

The Commissioner-General's Answer

25. The Commissioner-General submits that the

Considerations

Mr. Abu Ghali's Request for An Oral Hearing Is Not Well Taken

30. On 20 March 2013, Mr. Abu Ghali filed a motion for an oral hearing, stating : "Due to the complexity of the events, we feelthat the Tribunal would benefit greatly by taking oral evidence."

31. An oral hearing and the taking of oral evidence are not the same thing under the Statute and the Appeals Tribunal Rules of Procedure (Rules). Oral hearings are governed by

i. Clear and Convincing Evidence Established That Mr. Abu Ghali Had Possession of, and Traded in, Tramal

34. The UNRWA Dispute Tribunal "admitted all of the witness statements into evidence". These statements were made by Mr. Abu Ghali and the other arrestees: to the Anti Drug Police at the time of their arrests; during their interrogations on 9, 10 and 11 April 2010; during their criminal proceedings; and to the Agency's Legal Aid Assistant, Gaza (LAA/G) during the Agency's investigation "since the investigation was conducted within a reasonable time and without prejudice".

35. The UNRWA DT found "many inconsistencies and contradictions in the individual statements". It then proceeded to assess the credibility of the witnesses and their statements to ascertain the weight to give the various statements in finding the true facts underlying the termination. Certainly, the UNRWA Dispute Tribunal "has a broad discretion to determine … the weight to be attached to … evidence".[5]

36. In assessing the credibility of the various witnesses and their statements, the UNRWA DT concluded that the statements "given to the Anti Drug police by [Mr. Abu Ghali] and the witnesses shortly after they were arrested, and before they could discuss their statements together and recant them" were more credible than their later statements to the police and the LAA/G during the Agency's investigation, which were made after the witnesses "had ample time to talk to each other and deliver a standardized version of the events". The UNRWA DT also found that Mr. Abu Ghali generally was not credible. The Appeals Tribunal agrees with the UNRWA DT's credibility determinations.

37. The UNRWA Dispute Tribunal further noted: "Despite the web of contradictions and inconsistencies in the witness statements", Mr. Abu Ghali does "not contest that on 9 April 2010, the Anti Drug Police found 120 boxes of a prohibited drug in the UNRWA vehicle [he] was driving, totaling 11,889 tablets of Tramal, and that he was alone at the time".

38. The UNRWA DT found that Mr. Abu Ghali's "repeated defence that he was unaware of the contents of the boxes" was "unconvincing". It determined that he "knew or at the very least should have reasonably known that there were drugs in the boxes". In reaching this conclusion, the UNRWA DT noted that "Afana is [Mr. Abu Ghali's] cousin and friend and it is difficult to

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[5] *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123, para. 33.