

**JUDGE SOPHIA ADINYIRA, Presiding.**

### **Synopsis**

1. The Appellant, Abdulla Hanan Abu Hamda (Abu Hamda), a staff member of the United Nations Relief and Works Agency for Palestine Refugees (UNRWA), was demoted from the post of Deputy Field Pharmacist (grade 12) to Librarian (grade 10) with loss of salary, for misconduct. This Court affirms the decision of the UNRWA Commissioner-General that Abu Hamda committed misconduct, but finds mitigating factors. It therefore substitutes the disciplinary measure of demotion with that of a written censure.

### **Facts and Procedure**

2. Abu Hamda joined UNRWA on 4 June 1979 as Assistant Field Pharmacist (grade 10) in the Syria Field Office. He was promoted to the post of Deputy Field Pharmacist (grade 12) effective 1 January 2001.

3. On 15 July 2002, the Assistant Field Pharmacist and two packers discovered four empty boxes of hormonal contraceptive pills during a stock replacement. The missing 10,500 sachets of Microgynon were valued at EUR 2,278.50.<sup>1</sup> Abu Hamda and the Field Pharmacist (FP) were informed on the same day. According to the documents on the record, Abu Hamda wrote to the FP on 21 July 2002 and 1 December 2003 urging the latter to take action, without success. No survey report was initiated to document the loss.

4. On 25 April 2004, Abu Hamda informed Chief, Field Health Programme (CFHP), about the missing Microgynon pills. A BoI was established soon thereafter.

5. In its report dated 1 June 2004, the BoI stated that it was “unable to ascertain whether the medicine [had] been misplaced or stolen (nor by whom, should the latter be the case)”, mainly due to the failure of the FP and Abu Hamda to make a timely report of the loss for almost two years. It found that Abu Hamda had failed to timely report the loss of a quantity of hormonal contraceptive pills; that, despite his knowledge of the manipulation of the stock, he had failed to

to inform his supervisor; and that he submitted a false trimester report to cover up the missing quantity.

6. Since the BoI report raised more questions than answers, the UNRWA Commissioner-General approved the launching of another investigation by the Audit and Inspection Department (AID) into the missing medicine. On 24 September 2004, the AID submitted its report, in which it found that “the missing stock of Microgynon was indeed stolen/misappropriated and that [the FP] is responsible for the misappropriation”.

7. In a letter dated 25 October 2004, the Director of UNRWA Affairs, Syria (DUA/SAR), advised Abu Hamda of the BoI findings and charged him with “irresponsible failure on [his] part to comply with the relevant instructions of the Health Programme and a direct breach of Area Staff Regulations 1.1 and 1.4”. He invited him to respond to the allegations, which Abu Hamda did on 30 October 2004.

8. On 16 February 2005, Abu Hamda was removed from his post and demoted to grade 10 against the post of Librarian at Damascus Training Centre, subject to successful completion of one-year probation. UNRWA’s decision was essentially based on the BoI’s findings.

9. On 12 April 2005, Abu Hamda appealed the demotion decision to the UNRWA Area Staff Joint Appeals Board (UNRWA JAB). He requested access to ‘all documents that lead [sic] to the contested decision.’ After seeking clarification as to which documents Abu Hamda requested, the UNRWA Administration forwarded the BoI report and AID investigation report for Abu Hamda’s review on 25 January 2006.

10. In an undated report, by a majority of two to one, the UNRWA JAB found that there was “sufficient and cogent evidence” to support the decision to demote Abu Hamda. The minority JAB member, on the other hand, recommended that the UNRWA findings. fc3. orTc 0

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11. On 22 November 2008, Abu Hamda appealed the decision to demote him for misconduct to the former United Nations Administrative Tribunal (Administrative Tribunal). The application was returned to him for refiling by 20 March 2009. Abu Hamda resubmitted his application on 25 February 2009. UNRWA's Answer was received on 2 November 2009. The case was subsequently transferred to the United Nations Appeals Tribunal following the abolition of the Administrative Tribunal at the end of 2009.

### **Submissions**

#### **Abu Hamda's Appeal**

12. Abu Hamda submits that the contested decision ignored the conclusions reached by AID, and that the UNRWA Administration would have dropped the charges against him had it read the BoI findings in conjunction with the AID conclusions.

13. With regard to the finding that he had submitted a false trimester report to cover up the missing quantity, Abu Hamda claims that the report was presumably changed by the FP.

14. Abu Hamda alleges that UNRWA violated his due process by initially withholding some documents from him, and that he was denied due process because he was not permitted to make further submissions following the cut-off set by the UNRWA JAB Secretariat when docketing the appeal for consideration.

#### **UNRWA's Answer**

15. UNRWA responds that the Appeal is time-barred. Abu Hamda received the impugned decision on 29 September 2008.w

findings against Abu Hamda, which were subsequently confirmed by the AID. Furthermore, Abu Hamda's credibility was questionable.

17. UNRWA had considered the conclusions of both the BoI and the AID before it determined that Abu Hamda's conduct constituted misconduct, which justified the imposition of the disciplinary measure.

18. Abu Hamda was made fully aware of the allegations and evidence against him and was accorded fullest opportunity to rebut them and produce evidence in his defense.

19. The disciplinary measure of demotion was not disproportionate to Abu Hamda's willful, negligent, or irresponsible failure to perform the responsibilities of his post.

20. Abu Hamda failed to produce any evidence to show that the decision was biased, improperly motivated, or flawed by procedural irregularity or error of law.

21. Finally, UNRWA contends that the alleged violation of Abu Hamda's due process rights is without merit. While the UNRWA Area Staff Rules limit the proceedings before

**Substantive Issues**

24. The main issue for consideration in this matter is whether Abu Hamda has shown sufficient grounds for this Court to interfere in the disciplinary measure taken by UNRWA against him.

25. In doing so we have to consider (1) whether the facts on which the disciplinary measure was based have been established; (2) whether the established facts legally



**Whether the Established Facts Legally Amount to Misconduct**

35. We consider that Abu Hamda's failure to make a timely report about the manipulation of the stock amounted to a cover-up of a malfeasance which resulted in the loss of the Agency's property. It is the duty of every staff member to safeguard the property of his or her organisation. We consider the conduct of Abu Hamda in this respect to be irresponsible and inconsistent with his obligations to the Agency under the Area Staff Regulation 1.1, which provides: "[s]taff members, by accepting appointment, pledge themselves to discharge their functions with the interests of the Agency only in view."

36. We accordingly hold that the established facts amount to misconduct under the Area Staff Regulations and Rules.

**Whether the Decision to Demote Abu Hamda was Arbitrary or Disproportionate**

37. Disciplinary matters are within the discretion and authority of the Commissioner-General of UNRWA. It .22U1ry bMev01(y g(y bd0s46g-0.0005 Tc 0.22288.a 0 Tfvncy 4009 dTa9




40. It was stated in the BoI Report that: “[t]he Board considers that the Agency’s rules and procedures provide sufficient guidance to staff in the case of missing supplies”.

41. However, no such guidelines were pointed out to Abu Hamda throughout the process. During the inquiries it was apparent that the junior members of the pharmacy staff felt that once they had made a report to their immediate supervisor that was the end and it was left to their supervisor to take the necessary disciplinary steps.


42. We find this very unsatisfactory. We recommend that adequate measures (in addition to those for the protection of

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Judge Adinyira, Presiding

  
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Judge Garewal

Dated this 30th day of March 2010 in Geneva, Switzerland.

Original: English

Entered in the Register on this 26th day of April 2010 in New York, United States.



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Weicheng Lin, Registrar, UNAT