UNRWA DISPUTE TRIBUNAL

Before: Judge Bana Barazi
Registry: Amman
Registrar: Laurie McNabb

SANBAR

v.

COMMISSIONER GENERAL
OF THE UNITED NATIONS RELIEF AND
WORKS AGENCY FOR PALESTINE REFUGEES

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
W. Thomas Markusewski
Introduction

1. This is an application by Jobran D. Sanbar (the “Applicant”) challenging the non-consideration by the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (the “Respondent”), of an appeal to the International Staff Joint Appeals Board relating to his status as an “expatriate” for purposes of the Agency’s Area Staff Regulations and Rules.

2. Pursuant to General Assembly Resolution 63/253 of 24 December 2008, the Joint Appeals Board was abolished as of 1 July 2009. Effective 1 June 2010, as set out in Area Staff Regulation 11.1, the Agency established the UNRWA Dispute Tribunal (the “Tribunal”) and all appeals pending with the Joint Appeals Board on the date of its abolition, including this application, were transferred to the Tribunal.

3. As a transitional measure, Article 2, paragraph 5 of the Statute of the Tribunal provides that the Tribunal shall be competent to hear and pass judgment on cases filed prior to the establishment of the Tribunal and in respect of which no report of the Joint Appeals Board (JAB) has been submitted to the Commissioner-General.

Facts

4. On 18 March 1968, the Applicant joined the Agency as an Area Staff member at its former Headquarters in Beirut, Lebanon.

5. On 14 July 1978, in connection with the relocation of the Agency’s Headquarters from Beirut, the Applicant was transferred and relocated to UNRWA Headquarters, Vienna.
6. On 13 April 1982, the Applicant notified the Agency that he had acquired Austrian nationality. Accordingly, effective 13 April 1982, the Applicant - as a national of Austria - lost his non-resident (i.e. expatriate) status with the Agency.

7. On 18 June 1993, the Applicant appealed to the Area Staff Joint Appeals Board the Agency’s decision to consider him a national of Austria and to thus discontinue his expatriate status, requesting: (i) to be reinstated to his expatriate status; and (ii) to be compensated for financial losses incurred as a result of his acquisition of Austrian nationality.

8. On 20 April 1994, the Area Staff Joint Appeals Board communicated its Report to the Commissioner-General, recommending that the Applicant’s request for reinstatement of expatriate status and compensation for alleged financial losses incurred by him since the date he acquired Austrian nationality be rejected.

9. On 12 May 1994, the Commissioner-General accepted the recommendation of the Area Staff Joint Appeals Board and dismissed the appeal.

10. On 17 August 1994, the Applicant filed an appeal with the United Nations Administrative Tribunal, seeking to reverse the decision of the Commissioner-General.

11. On 16 July 1996, the former United Nations Administrative Tribunal dismissed the Applicant’s claims in their entirety, stating:

   IV. When the Applicants chose to acquire Austrian citizenship, they acquired a new “home country” … By changing their status, the Applicants relinquished their right to expatriate benefits … Had they wished to retain this right, they could have done so. In giving up the right, presumably they acquired other benefits associated with Austrian citizenship that other Area Staff members, who retained the right to expatriate benefits, did not enjoy …

   V. The consequences of the decision to acquire Austrian citizenship are established by the applicable staff rules and regulations. These rules and regulations … do not provide for consideration of motives. Neither can the Tribunal enter into consideration of motivation for acquiring
nationality. However, the Tribunal cannot establish an exception based on such consideration, for that would require legislative or administrative action which is beyond the purview of this Tribunal.

12. On 28 January 2007, the Applicant wrote to the Acting Director, Department of Administration and Human Resources (“Acting Director, DAHR”) citing his closer ties with Palestine than Austria and alleging the Agency’s policy was inconsistent, that he had not been treated fairly by the Agency and requesting his case to be reconsidered.

13. On 12 February 2007, the Acting Director, DAHR replied to the Applicant that the matter of his expatriate status was closed as it was subsequently considered by the former United Nations Administrative Tribunal.

14. In a letter dated 11 March 2007 to the Commissioner-General, the Applicant reiterated what he had written to the Acting Director, DAHR on 28 January 2007.

15. On 28 May 2007, the Applicant filed an appeal with the International Staff Joint Appeals Board.

16. On 12 July 2007, the Director of Human Resources responded to the Applicant’s 11 March 2007 letter to the Commissioner-General, noting among other things that since the former United Nations Administrative Tribunal rendered its Judgment in his case, there had been no new administrative decision, concluding that there was no basis for the requested administrative review, or appeal, and directing him to address his request to the former United Nations Administrative Tribunal directly.

Applicant’s contentions

17. The Applicant essentially contends that while recognizing that the former United Nations Administrative Tribunal had dismissed his earlier appeal, he had noted that the Agency has been treating cases similar to his in a different manner. He requests retroactive payment of “losses” associated with the non-payment of expatriate benefits.
Respondent's contentions

18. The Respondent essentially contends that no appealable administrative decision has been presented.

Considerations

Main Issue: Is the application receivable?

19. The Tribunal will not cite to any Area Staff Regulation, Rule or relevant administrative issuance in effect at the material time governing the Applicant’s conditions of employment. Rather, the Tribunal will go directly to the heart of the matter, which is consequently an issue of procedure, i.e. whether the application is receivable.

20. The Tribunal notes that the Applicant has exhausted the Agency’s recourse processes, and the former United Nations Administrative Tribunal rendered a 19-page decision in the Applicant’s case on 16 July 1996. Since then, there has been no new administrative decision relating to the terms of the Applicant’s appointment. It is the Tribunal’s belief that the Applicant is seeking revision of the Judgment merely because he is dissatisfied with the pronouncement of the former United Nations Administrative Tribunal and wants to have a second round of litigation.

21. Furthermore, the Tribunal notes that the Applicant subsequently appealed to the International Staff Joint Appeals Board relating to his employment relationship with the Agency as an Area Staff member (emphasis added). As the International Staff Joint Appeals Board would not have had jurisdiction over the current application as a matter relating to the Applicant’s employment relationship with the Agency as an Area Staff member, and since the Tribunal’s jurisdiction cannot extend to applications which would not have otherwise been

---

1 Noting that the Applicant had appealed the Agency’s decision as recommended by the Area Staff Joint Appeals Board.
receivable by the International Staff Joint Appeals Board, the Tribunal cannot consider the present application, United Nations Appeals Tribunal *Ishak* 2010-UNAT-050.

22. The proper forum for the reconsideration of a decision of the former United Nations Administrative Tribunal is the former United Nations Administrative Tribunal itself because it was seized of and accepted the Applicant’s 17 August 1994. The application was therefore beyond the competence of the Agency’s International Joint Appeals Board, and consequently of the UNRWA Dispute Tribunal. Reference is made to the United Nations Appeals Tribunal which held in *Gakehmi* 2011-UNAT-166, paragraph 15:

> Only the court that handed down the decision has the power to revise it unless a rule of law determines to transfer it to another court.

23. The Applicant claims the existence of new “evidence”, i.e. alleged examples of a different application of the Area Staff Rules regarding expatriate status. The Tribunal takes note of the former United Nations Administrative Tribunal’s Statute, specifically Article 12, providing the avenue for any reconsideration by that Tribunal in relation to a matter which it had previously considered:

> … the applicant may apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement.

24. The Tribunal draws the attention of the Applicant to the fact that the former United Nations Administrative Tribunal had determined that his expatriate status had been established in accordance with applicable Staff Regulations and Rules. Therefore, the alleged inconsistent application of Area Staff Rules regarding expatriate status in relation to other staff, i.e. the new evidence claimed by the Applicant, “would [not] have led to different findings of fact and changed the outcome of the case”, as held by the United Nations Appeals Tribunal in *Abbassi* 2011-UNAT-110, and *Messinger* 2011-UNAT-123.
25. The Applicant also claims as a decision the denial of his 2007 request to re-open and reconsider the earlier decision regarding his expatriate status. The Applicant is reminded that one does not “create” an appealable administrative decision by asking for a benefit that is not provided for in the relevant Staff Regulations and Rules, and then complaining when it is denied. He is also reminded that an appealable administrative decision arises in the application of the Staff Regulations and Rules and other relevant issuances, and none provides for the reconsideration by the Agency of a case which has already been decided by the former United Nations Administrative Tribunal.

26. The Tribunal finds that the matter which the Applicant is asking it to review is res judicata as the former United Nations Administration Tribunal rendered its final Judgment on the merits on 16 July 1996 regarding the issue of the Applicant’s eligibility for expatriate status, and the Applicant has failed - 11 years later, in 2007 - to provide new and relevant evidence which could rebut the res judicata test.

Conclusion

27. The Tribunal finds no merit to this application. The application is dismissed in its entirety.

(Signed)
Judge Bana Barazi
Dated this 20th February 2012

Entered in the Register on this day of 20th day of February 2012

(Signed)
Laurie McNabb, Registrar, Amman