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 Markushewski
Introduction

1. This is an application by Jobran D. Sanbar (the “Applicant”) challenging the non-payment of interest by the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (the “Respondent”), in relation to an appeal awarding him the payment of retirement benefits.

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 International 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, until his separation on 31 January 1995.

5. On 1 February 1995, immediately after his separation the Applicant re-joined the Agency as an International Staff member in the post of Senior Auditor at Headquarters, Amman, Jordan, where he remained until the time of his retirement on 4 February 2008.
6. On 30 September 1996, following a successful appeal to the Area Staff Joint Appeals Board, the Applicant received a retirement benefit\(^1\) for his service with the Agency as an Area Staff member, in the amount of USD162,118.02. \(^2\)

7. By letter dated 28 March 2006 to the Director of Administration and Human Resources (“DAHR”), the Applicant requested to be paid interest on the retirements benefits - mentioned above in paragraph 6 - for the period between his separation as an Area Staff member and the Respondent’s 30 September 1996 payment, in line with former United Nations Administrative Tribunal (“UN Administrative Tribunal”) Judgments, i.e. an annual interest of 8%.

8. By letter dated 7 May 2006, the DAHR responded to the Applicant, rejecting his request and noting that the interest he referred to related solely to the implementation of UN Administrative Tribunal Judgments.

9. By letter dated 1 June 2006 to the Commissioner-General, the Applicant made several claims which are enumerated below in paragraph 12.

10. By letter dated 28 June 2006, the Commissioner-General rejected the Applicant’s claims.

11. On 17 July 2006, the Applicant filed an appeal with the International Staff Joint Appeals Board, reiterating his claims.

**Applicant’s contentions**

12. The Applicant contends that:

   (i) after 27 years of service as an Area Staff member, in 1995 he was selected for an International Staff post;

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\(^1\) The Applicant uses the terms “retirement benefit” and “termination indemnity” interchangeably. The Tribunal notes these are two very different entitlements and only the former is applicable in the case at bar.

\(^2\) In 1985 the Agency established a policy which paid “retirement benefits” to Area Staff members who left the Agency to work for other UN organizations in accordance with Area Staff Rule 109.2, paragraph 11. While the Applicant did not leave the Agency to work for another UN organization and therefore, the policy did not apply to the Applicant, he appealed the application of the policy to the Area Staff Joint Appeals Board. The Commissioner-General accepted the JAB’s recommendation and exceptionally awarded the Applicant payment of the “retirement benefits”.

(ii) he won an appeal against a decision not to pay him retirement benefits for the period he served the Agency as an Area Staff member;

(iii) on 30 September 1996, he received payment of his retirement benefits, 20 months after his termination by mutual consent on 31 January 1995;

(iv) recent jurisprudence of the UN Administrative Tribunal provided for an annual interest of 8%.

The Applicant requests payment of interest at 8% for the 20-month delay in the payment of his retirement benefits.

**Respondent’s contentions**

13. The Respondent contends that:

   (i) no appealable administrative decision has been presented;

   (ii) the application is time-barred.

The Respondent requests the Tribunal to dismiss the application.

**Considerations**

**Main Issues**

Is there an appealable administrative decision?

14. With regard to appeals relating to the conditions of employment of Area Staff members – although oddly enough the Applicant appealed to the International Staff Joint Appeals Board - former Area Staff Regulation 11.1(A), in effect at the time of the facts, provides that:

   The Commissioner-General shall establish a Joint Appeals Board with staff participation to advise him in case of any appeal by a staff member against an administrative decision alleging the non-observance of his or her terms of appointment, including all pertinent regulations and rules, or against disciplinary action.
15. It is not quite clear what, if any, administrative decision the Applicant is exactly appealing. If it is the non-inclusion of an interest component in the decision of the Commissioner-General, based on the recommendation of the Joint Appeals Board regarding the payment of his retirement benefits, the Tribunal is of the opinion that the decision of the Commissioner-General does not constitute a new or different appealable administrative decision for the purposes of former Area Staff Regulation 11.1(A).

16. If the Applicant is appealing the outcome of the process (including the non-inclusion of an interest element), the Tribunal is of the belief that the proper venue for such an appeal is the UN Administrative Tribunal.

17. If the Applicant is appealing, as an alleged “administrative decision”, the denial of his 2006 request for interest during the period between his separation as an Area Staff member and the date of payment of his retirement benefits, the Applicant is reminded that one does not “create” an appealable administrative decision by asking for a benefit which is not provided for in the relevant Staff Regulations and Rules, and then complaining when it is denied. Rather, an appealable administrative decision arises in the application of the Staff Regulations and Rules and other relevant issuances, and none provides for the payment of interest, as requested by the Applicant.

18. Furthermore, the Tribunal is of the belief that the International Staff Joint Appeals Board would not have had jurisdiction over the present application because it relates to the Applicant’s employment relationship with the Agency as an Area Staff member. Therefore, the Tribunal cannot consider the present application since its jurisdiction does not extend to applications which would not have otherwise been receivable by the International Staff Joint Appeals Board, United Nations Appeals Tribunal Ishak 2010-UNAT-050.

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3 The Tribunal notes that at the time of filing this appeal, the Applicant was employed as an International Staff member. However, it is important to note that the Applicant appealed to the International JAB in regard to a matter related to his previous appointment, i.e., that of an UNRWA Area Staff member.
19. In regard to the Applicant’s claim that interest should be awarded to him, the Applicant relied on two Judgments of the UN Administrative Tribunal, No. 1264, *Brenning* (2005) and No. 1277, *Hernandez* (2005). Apart from the fact that they address different issues than those raised in the case at bar, the Judgments were issued subsequent to the conclusion of the Applicant’s earlier appeal, and they do not support the principle of paying pre-judgment interest, as the Applicant suggests when asserting their relevance.

20. Given the above, the Tribunal finds that the Applicant has failed to challenge a discretionary administrative decision regarding the non-observance of his terms of appointment. Consequently, the application is *ratione materiae* not receivable.

*Is the application time-barred?*

21. The Applicant is seeking the payment of interest in connection with a recourse proceeding which was concluded on 30 September 1996 when the amount awarded was paid to him by the Agency. The Applicant raised the issue of interest in a letter dated 28 March 2006 addressed to the DAHR. Notwithstanding the fact that there is no appealable administrative decision in the present case, the Tribunal notes that the Applicant had until 30 October 1996 to submit a request for administrative review, pursuant to former Area Staff Rule 111.3 in effect at the time of the facts, which reads as follows:

1. A staff member who wishes to appeal under the terms of staff regulation 11.1, shall as a first step, address a letter to the Agency’s administration requesting that the administrative decision concerned, or the disciplinary action, be reviewed, and setting out his/her reasons for this request.

2. This letter shall be sent within thirty days from the date on which the staff member receives written notification of the decision in question…
The Applicant submitted his appeal to the International Staff Joint Appeals Board on 17 July 2006. The Applicant’s request came nine and a half years too late.

22. The United Nations Appeals Tribunal has consistently reaffirmed the importance of observing time limits prescribed for the various stages of the appeals process, *Mezoui* 2010-UNAT-043. The Applicant is reminded that it is important to observe the time limits so as to ensure the smooth functioning of the administration and these time limits must be interpreted restrictively. The United Nations Appeals Tribunal has also held that an appellant bears the burden of demonstrating that he or she was prevented from lodging his or her appeal in time due to “serious reasons” or “circumstances beyond his control”, *Diagne et al.* 2010-UNAT-067. The Applicant has failed to provide any reason for the nine-year delay in failing to lodge his appeal.

23. Given the above, the Tribunal finds that the application is *ratione temporis* not receivable.

**Conclusion**

24. In view of the foregoing, the Tribunal determines that the application is not receivable. The application is dismissed in its entirety.

(Signed)
Judge Bana Barazi
Dated this 22nd day of February 2012

Entered in the Register on this 22nd day of February 2012

(Signed)
Laurie McNabb, Registrar, UNRWA DT, Amman