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 Markushevski
Introduction

1. This is an application by Jobran D. Sanbar (the “Applicant”) challenging the acceptance by the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (the “Respondent”), of a recommendation regarding the need to upgrade the Information Technology capabilities within the Department of Internal Oversight Services.

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 Headquarters in Beirut, Lebanon, and served in various capacities until his separation on 31 January 1995.

5. On 1 February 1995, immediately following his separation as an Area Staff member, the Applicant re-joined the Agency as an International Staff member in the post of Senior Auditor, Electronic Data Processing (“EDP”), at Headquarters in Amman, Jordan.

6. On 20 September 2007, a Peer Review Team (“PRT”) from the Institute of Internal Auditors (“IIA”) tasked by the Agency to undertake a Quality
Assessment Review of the Department of Internal Oversight Services (“DIOS”), reported to the Commissioner-General that:

DIOS provides minimal IT [Information Technology] coverage. DIOS has outsourced IT audit work, but to effectively monitor and evaluate such work, sufficient IT knowledge must exist within DIOS. DIOS currently has no auditors with current IT skills. The IT auditor post within UNRWA is open due to lack of funding. The risks that are inherent in IT make it important to build some internal capabilities in this regard…

7. In an e-mail dated 26 September 2007 to the Director of DIOS (“D/DIOS”), the Applicant complained about inaccurate information reported by the PRT in its 20 September 2007 presentation to the Commissioner-General, and asked the D/DIOS to convey to the PRT his complaint with regard to their conclusions that (i) the IT auditor position within UNRWA is open due to lack of funding; and (ii) DIOS currently has no auditors with current IT skills.

8. By e-mail dated 1 January 2008 to the D/DIOS, recalling his e-mail of 26 September 2007, the Applicant requested detailed information on the methodology used by the PRT in assessing the Agency’s IT capability, and the manner in which it had reached the conclusions reported in its first report regarding the lack of IT capability and the need to update IT capability within the Agency.

9. By e-mail dated 28 January 2008, the Applicant reminded the D/DIOS of his request.

10. On 29 January 2008, the D/DIOS responded to the Applicant’s e-mails of 1 and 28 January 2008, advising that, at the Applicant’s request, the PRT had revised its final report to remove reference that the Senior Auditor position was vacant but, with respect to the PRT finding that “DIOS currently has no auditors with current IT skills”, the D/DIOS concurred that “… the department does not have sufficient current IT audit skills and we need to improve in that area. I have accepted the recommendation accordingly.”
11. On 4 February 2008, the Applicant retired.

12. By e-mail dated 9 February 2008 to the D/DIOS, the Applicant reiterated his earlier objections and complained, among other things, that the final PRT report incorporated his comments after the presentation to the Commissioner-General, that the D/DIOS never asked him to improve his IT skills, and that none of his previous supervisors had considered his IT skills insufficient.

13. By e-mails dated 17, 18, 22 and 25 February 2008; and 9, 10, 11 and 13 March 2008, the Applicant communicated directly with the Head of the PRT and the President of the IIA to seek clarification regarding the PRT’s statements that the EDP position in UNRWA was vacant, and that the DIOS had no auditors with current IT skills.

14. On 6 June 2008, the Applicant filed an appeal with the International Staff Joint Appeals Board.

**Applicant’s contentions**

15. The Applicant asserts that the briefing by the PRT to the Commissioner-General and senior members of the administration on 20 September 2007 contained inaccurate and unsubstantiated information which constituted a serious insult to his person. He requests:

   (i) “an official apology for the insult … caused [to him] by accepting PRT **inaccurate and unsubstantiated** statement which stated that ['']**DIOS current IT audit skills are limited and not sufficiently current['']**; and

   (ii) appropriate damages for the insult caused [to him] through the PRT **inaccurate and unsubstantiated** information that were reported to the Commissioner-General and senior members of her administration”.

**Respondent’s contentions**

16. The Respondent essentially contends that no appealable administrative decision has been presented. The Respondent requests the Tribunal to dismiss the application.
Considerations

Main Issue

Is there an appealable administrative decision?

17. In regard to appeals relating to the conditions of employment of International Staff members, former International Staff Regulation 11.1, in effect at the time of the facts, provides that:

The Commissioner-General shall establish administrative machinery with staff participation to advise him in case of any appeal by staff members against an administrative decision alleging the non-observance of their terms of appointment, including all pertinent regulations and rules, or against disciplinary action.

18. Looking to the above Regulation, the Tribunal, try as it might, fails to see what administrative decision the Applicant is challenging in this application.

19. As to what constitutes an appealable administrative decision, the Tribunal would like to refer to the former United Nations Administration Tribunal’s Judgment No. 1157, Andronov (2003), paragraph V:

… an “administrative decision” is a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.

20. The Tribunal would also like to refer to the recent jurisprudence of the United Nations Appeals Tribunal regarding administrative decisions which do not affect a specific staff member’s terms of appointment, Andati-Amwayi 2010-UNAT-058:

In other instances, administrative decisions might be of general application seeking to promote the efficient implementation of
administrative objectives, policies and goals. Although the implementation of the decision might impose some requirements in order for a staff member to exercise his or her rights, the decision does not necessarily affect his or her terms of appointment or contract of employment.

21. Reminding the Applicant 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, the Tribunal finds that:

   (i) the Agency’s decision to engage outside experts to assess the IT capacity or any other capacity of the Agency,
   (ii) the contents of a briefing report or any report to the Commissioner-General by external consultants related to their assessment, and
   (iii) the Agency’s acceptance of findings or recommendations of those consultants

do not constitute an administrative decision for the purpose of International Staff Regulation 11.1.

22. The Tribunal also finds that the Applicant’s terms of appointment were not affected by the above, and that no disciplinary action was imposed on the Applicant in connection with the above.

23. Finally, the Tribunal finds that the Applicant has failed to present any appealable administration decision. Consequently, his application is not receivable.

24. The Tribunal notes that this is the third application filed by the Applicant. The first two applications, filed in 2006 and in 2007 respectively, have been dismissed. The Tribunal is of the opinion that the Applicant’s legal actions constitute an abuse of process, not to mention a waste of time and resources. One would reasonably expect that as a former staff member of UNRWA for 40 years, 13 of which were spent as Senior Auditor, the Applicant would have a better knowledge and understanding of UNRWA Staff Regulations and Rules, and would not have lodged an application so frivolous.
Conclusion

25. The Tribunal determines that the application is not receivable. The application is dismissed in its entirety.

(Signed)
Judge Bana Barazi
Dated this 23rd day of February 2012

Entered in the Register on this 23rd day of February 2012

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