UNRWA DISPUTE TRIBUNAL

Before: Judge Bana Barazi

Registry: Amman

Registrar: Laurie McNabb

AL-SURKHI et al.

v.

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

JUDGMENT

Counsel for Applicants:
Self-represented

Counsel for Respondent:
Anna Segall
Introduction

1. These are applications by 18 Area Staff members (the “Applicants”) against the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (the “Respondent”), to deduct salary for unauthorized absence from work during a strike.

2. Considering that each application is a copy of the others, raising identical facts, asserting the same claims and seeking the same relief, distinguished only by the name, date, and signature of the individual Applicant, and that consolidating them will serve judicial economy and consistency without changing or affecting the rights of each party, the Tribunal has decided to join them. Each of the 19 Applicants is identified in the list attached as Annex 1 to the Respondent's reply dated 5 April 2012.

3. Pursuant to General Assembly Resolution 63/253 of 24 December 2008, the Joint Appeals Board (“JAB”) 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 JAB on the date of its abolition, including these applications, were transferred to the Tribunal.

4. 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 JAB had been submitted to the Commissioner-General.

Facts

5. On 12 May 2009 and 13 May 2009, the Area Staff Unions (the “Unions”), at UNRWA Headquarters Amman and the Jordan Field Office, organized a strike which resulted in the closure of a number of UNRWA offices and installations.
On 14 May 2009, several staff participating in the strike also failed to report for duty.

6. The Applicants participated in the strike without having authorization to be absent from work for any period of time between 12 May 2009 and 14 May 2009.

7. On 13 May 2009, representatives of the Agency and the Unions signed an agreement ending the strike. With regard to the issue of staff's salaries for the time not worked, part 3 of the agreement provides that:

   Based on the principle “no pay for time not worked”, the parties will conduct discussions to establish a mechanism to address this issue.

8. Following multiple discussions with the Unions, the Director of Human Resources issued Area Staff Circular No. 06/2009 on 23 July 2009 providing the following:

   In response to the recent strike action – which resulted in the closure of UNRWA offices and installations for three days (12 to 14 May inclusive) – the following action will be taken based on the principle of no pay for days not worked.

   12 and 13 May: 50% of staff absence will be covered by a payroll deduction from the next payroll; 50% will be recovered from annual leave.

   14 May 2009: Payroll deduction will be made for all staff who were absent from work on that day (1 work day).

   Staff members who prefer to work the extra day instead of using annual leave may submit a proposal to this effect through their supervisor and Department Director. Once the compensation proposal is implemented, the annual leave day will be returned to the staff member's leave balance.

9. The record indicates that between 30 September 2009 and 23 November 2009, the Applicants submitted identical memoranda to the Director of Human Resources requesting a review of the Agency's decision to make salary deduction in respect of the strike days.
10. Between 12 November 2009 and 16 December 2009, the Applicants filed with the Secretary of the JAB identical appeals against the administrative decision of 23 July 2009 to make salary deduction in relation to the strike days.

11. By letter dated 14 January 2010, the Director of Human Resources replied to the Applicants’ request for review. The decision to make salary deduction in relation to the strike days was upheld.

12. In March 2011, the Agency effected re-payment of the salary deduction for the days that the staff were on strike.

**Applicants’ contentions**

13. The Applicants contend that:

   (i) paragraph 3 of the agreement was introduced to find a way to compensate the strike days and not to make salary deduction;
   (ii) the Area Staff Union presented three proposals to address this issue;
   (iii) on 25 May 2009, the Director of Human Resources confirmed to the Chairperson, Inter Staff Union Conference (“ISUC”) that the Agency would consider the three proposals made by the Area Staff Union and that no salary deduction would be made;
   (iv) on 23 July 2009, the Director of Human Resources issued a circular in which it was stated that salary deduction would be made;
   (v) in August and September 2009, the Area Staff Union approached the Department of Legal Affairs to seek legal advice concerning the decision to make salary deduction but did not receive a response;
   (vi) in September 2009, the salary deduction was made with full rejection from the Area Staff Union.

Each Applicant requests the Tribunal to order the Respondent the following:

   (i) accept the proposals of the Area Staff Union for compensating the strike days;
   (ii) full repayment of the deducted salaries and reimbursement of any financial and psychological consequences caused by the salary deduction; and
(iii) an apology letter.

**Respondent’s contentions**

14. The Respondent essentially contends that:

(i) each application is not receivable *ratione temporis*;
(ii) since the Agency reached an agreement with the representatives of the Unions for re-payment of the sums deducted for days when staff were on strike, and the Agency effected the re-payment, there is no basis for any of the remedies requested by the Applicants.

The Respondent requests the Tribunal to dismiss each application.

**Applicants’ observations**

15. By email dated 24 April 2012, the Applicants submitted their "observations to the Respondent's reply". The Tribunal notes that while only three of the Applicants requested leave from the Tribunal to submit their observations, the observations were submitted on behalf of all the Applicants. Accordingly, the observations are rejected in respect of the Applicants who did not request leave.

16. The Tribunal finds that in their observations the Applicants essentially challenge what is an administrative decision and argue that the Agency did not abide by time limits. Although the Tribunal finds that these observations do not carry any new contentions, it will briefly address them in the interest of fairness and comprehensibility.

**Considerations**

17. Article 5 of the Rules of Procedure of the Tribunal provides that the Tribunal may determine, on its own initiative, that summary judgment is appropriate. This may happen when there is no dispute as to the material facts and judgment is restricted to a matter of law. The crucial question in these cases – whether the applications are receivable – is such a matter of law.
18. Article 2, paragraph 1, of the Tribunal's Statute confers jurisdiction to the Tribunal to hear applications appealing administrative decisions. An application is only receivable when a staff member has previously submitted the impugned administrative decision to decision review and the application is filed within the specified deadlines.

19. In the case at bar, the contested decision was made on 23 July 2009 and former Area Staff Rule 111.3 in effect at the material time provides:

(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…

20. Looking at the record, the Tribunal notes that the Applicants did not comply with the requirement to file a request for administrative review of the contested decision in a timely manner. The contested decision was made on 23 July 2009 when Area Staff Circular No. 06/2009 was issued. The Applicants thus had until 23 August 2009 to request review of the contested decision. However, it was not until 30 September 2009 to 23 November 2009 that the Applicants submitted their requests for review of the Agency's decision to make salary deduction in respect of the days of absence during the strike.

21. The Tribunal wishes to clarify that, as the contested decision was communicated to the Applicants by Area Staff Circular No. 06/2009, the time to contest the decision started to run as of the issuance of this Circular, i.e. 23 July 2009, irrespective of the date on which the salary deduction was actually made.

22. Furthermore, the Tribunal wishes to point out that irrespective of whether or not the Respondent complied with the time limits as set forth in former Area Staff Rules 111.3, the record shows that the Applicants did not pursue their claim
with due diligence as they did not request review of the contested decision within the mandatory time limits. The Applicants' explanation for the delay is that they were involved in negotiations in an effort to resolve the conflict informally. While the Tribunal commends the Applicants' attempts to informally resolve the conflict, it reiterates that informal negotiations between the parties do not have the effect of suspending the time limits for formally contesting an administrative decision and do not provide a valid excuse for an Applicant for not complying with deadlines.

23. Given the above, the issue then is whether the Tribunal has authority to suspend or waive the deadline for administrative review.

24. While former Area Staff Rule 111.3, paragraph 4, provided the JAB with the authority to waive time limits in exceptional circumstances, under the current system, the Tribunal's Statute expressly forbids waiving deadlines for decision review per Article 8, paragraph 3:

The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend, waive or extend the deadline for a limited period of time and only in exceptional cases. The Dispute Tribunal shall not suspend, waive or extend the deadlines for decision review [emphasis added].

25. The Tribunal also notes that the United Nations Appeals Tribunal has affirmed this on a number of occasions, most recently in Ajdini et al. 2011-UNAT-108:

This issue [authority to waive the deadline for administrative review] should now be considered as settled because the Appeals Tribunal in Costa, and other judgments such as Mezoui, Samardžić, and Trajanovska has consistently held that the UNDT has no jurisdiction to waive deadlines for management evaluation or administrative review.

26. The Tribunal therefore determines that since the Applicants have failed to comply with the time limits set forth in former Area Staff Rule 111.3, and given that it does not have jurisdiction to waive the deadline for administrative review, the applications are not receivable.
27. Furthermore, even if the Tribunal were to assume that the applications were not time-barred, the Tribunal is of the opinion that the applications became moot when the Agency reimbursed the staff the sums deducted from their salaries corresponding to the two days when they were on strike.

Conclusion

28. For the reasons provided above, each application is dismissed.

(Signed)

Judge Bana Barazi

Dated this 26th day of April 2012

Entered in the Register on this 26th day of April 2012

(Signed)

Laurie McNabb, Registrar, UNRWA DT, Amman