UNRWA DISPUTE TRIBUNAL

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

FARAJ

v.

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

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Anna Segall
Introduction

1. This is an application by Mohammad Yousef Faraj (the “Applicant”) 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 terminate his appointment in the interest of the Agency.

2. 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 at 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 JAB has been submitted to the Commissioner-General.

Facts

4. Effective 26 March 1990, the Applicant was employed by the Agency as a Welfare Worker at Doura, in the Hebron Area, West Bank. After having served as a Social Worker in the Hebron Area between October 1993 and March 1996, the Applicant was transferred, effective 1 April 1996, to the post of Relieving Health Centre Clerk at the Health Department in the Agency.

5. On 1 November 2005, the Applicant accepted a Fixed-Term Appointment for the post of Chief, Field Relief and Social Services, based in Jerusalem.

6. By e-mail dated 22 June 2009 addressed to the Applicant, the Director of UNRWA Operations, West Bank (“DUO/WB”) inquired about the Applicant’s plans to deal with the management of his staff, and urged him to address the situation in order to restore trust between him and his senior team.
7. By memorandum dated 24 June 2009 to the DUO/WB, the Applicant submitted a plan to improve management of the Department of Relief and Social Services, and by memorandum dated 28 June 2009 to the DUO/WB, the Applicant outlined suggestions to restore his leadership and help improve management within the Department.

8. By e-mail dated 1 July 2009, the DUO/WB expressed her concerns about the Applicant’s failure to reflect her guidance on how to solve “the very serious management issues” which she had highlighted to him, and asked to discuss those issues with him once again.

9. By e-mail dated 24 July 2009 to the Applicant, the DUO/WB listed the points agreed upon in order to restore the confidence between them as well as between the Applicant and his senior team.

10. By e-mail dated 31 July 2009, the Applicant responded to the DUO/WB highlighting his achievements.

11. By letter dated 14 August 2009, the DUO/WB informed the Applicant that his contract would be terminated effective 31 October 2009, stating:

   This letter is to confirm our understanding of August 12 that in your interests and in the interests of the Agency, your contract with UNRWA will terminate effective October 31, 2009. You have explained to me your desire to pursue other interests.

12. By an undated e-mail addressed to the Deputy Commissioner-General, the Applicant sought his support for a fair treatment by the DUO/WB and her Deputy Director.

13. By memorandum dated 17 August 2009 to the Director of Human Resources, the Applicant complained about the decision to terminate his contract made by the DUO/WB and her Deputy.

14. By e-mail dated 18 August 2009 to DUO/WB, the Applicant expressed his disagreement with the termination letter of 14 August 2009 and requested a review of the decision.
15. By memorandum dated 5 September 2009 to the Commissioner-General and to the Deputy Commissioner-General, the Applicant requested suspension of the decision to terminate his employment, suspension of the hiring for the post he occupied and a formal investigation into the threats he received from the DUO/WB on 12 and 14 August and from her Deputy on 29 August 2009.

16. By memorandum dated 9 September 2009 to the Acting Director of UNRWA Operations, West Bank, (“OiC/DUO/WB”) the Applicant requested review of the decision to terminate his employment in the interest of the Agency.

17. On 19 October 2009, the Applicant resent the 9 September 2009 memorandum (request for administrative review) once again to the OiC/DUO/WB.

18. By letter dated 22 October 2009, the DUO/WB responded to the Applicant confirming the decision to terminate his employment in the interest of the Agency and advising him about the time limits to follow in order to file an appeal.

19. By memorandum dated 1 November 2009 to the DUO/WB, the Applicant again requested a review of the contested decision.

20. By letter dated 22 December 2009, the DUO/WB responded to the Applicant’s letter of 1 November 2009 saying that his termination in the interest of the Agency had been agreed by him in a meeting with her in which he expressed interest in pursuing other career and personal avenues. In her letter, the DUO/WB stated, *inter alia*, the following:

   I take this opportunity to reiterate once again that your separation was mutually agreed by the two of us following numerous discussions in the preceding months; as the Agency has kept to the terms of our agreement, I cannot agree with your contention that the decision was unfair or unjust in any way.

21. By memorandum dated 27 December 2009 to the DUO/WB, the Applicant denied having agreed to be terminated, and accused the DUO/WB of threatening him to accept his termination.
22. By memorandum dated 28 January 2010, the DUO/WB advised the Applicant again about the Agency’s procedures for addressing grievances and referred him to previous correspondence regarding the appeals process.

23. By memoranda dated 5 and 13 January 2010, the Applicant submitted his appeal to the JAB. On 24 January 2010, he filed a completed JAB form.

24. On 20 May 2012, the Respondent submitted his reply to the Tribunal.


26. On 3 June 2012, the Applicant submitted his observations on the Respondent’s reply and corrigendum to the Tribunal.

**Applicant’s contentions**

27. The Applicant contends that:

   (i) the decision was based on “biased judgments” and “circumstantial evidences [sic]”;

   (ii) the DUO/WB accused him of several shortcomings in his work only two months before he was given a letter of termination, thus according him no chance for gradual improvement of his alleged “bad performance”;

   (iii) his termination was the result of a disagreement between him and the DUO/WB about the case of a senior staff accused of perceived misconduct;

   (iv) the abrupt manner in which his contract was terminated caused damage to his personal and professional reputation.

The Applicant requests reinstatement in his post, compensation for the two years remaining on his contract, compensation for moral damage and a fair letter of recommendation based on his performance of over four years.

**Respondent’s contentions**

28. The Respondent contends essentially that the application is time-barred and requests the Tribunal to reject it as non-receivable.
Considerations

Is the application time-barred?

29. Looking at former Area Staff Rule 111.3, in effect at the time, the Tribunal notes that a staff member who wishes to appeal against a decision is guided by paragraph 3 of this Rule stipulating that:

A staff member who wishes to appeal under the terms of staff regulation 11.1, after having sent a letter to the Agency’s administration in accordance with the foregoing provisions of this rule, shall submit a written appeal, specifying his/her allegations, to the Secretary of the Joint Appeals Board within the following time limits:

* * *

(B) in the case of staff members of Field Offices, within thirty days from the date of the receipt of a reply from the UNRWA Field Office Director, or, if no reply has been received from the latter within thirty days of the date of the staff member’s letter, then within the next thirty days.

30. In the case at bar, the record indicates that the Applicant made his first request for review of the 14 August 2009 decision to terminate his employment, by e-mail to the DUO/WB dated 18 August 2009 (emphasis added). The Applicant reiterated his request for review of the impugned decision by memorandum dated 9 September 2009 to the OiC/DUO/WB. A third request for review was sent by the Applicant dated 19 October 2009 to the OiC/DUO/WB. Finally, a fourth request for review was sent by the Applicant by memorandum dated 1 November 2009 to the DUO/WB.

31. The Applicant is reminded of the jurisprudence of the United Nations Appeals Tribunal, which held in Sethia 2010-UNAT-079, at paragraph 20, that an applicant’s repeated requests for review are:

…a mere restatement of his original claim, which did not stop the deadline for contesting the decision from running or give rise to a new administrative decision thereby restarting the time period…
In other words, any further correspondence between the Applicant and the
DUO/WB, her Deputy or the OiC/DUO/WB, does not alter the prescribed
deadlines for initiating the appeals process.

32. As held by the former United Nations Administrative Tribunal in
Judgment No. 1211, *Muigai* (2004), paragraph III:

In this regard, the Tribunal wishes to reiterate two points: a) once it
is clear that a decision is made, the time for initiating the appeals
process begins to run and, thus, further correspondence on the
issue would normally not stop it from running; and, b) bringing up
an issue on which a decision had previously been communicated to
the staff member and which was not the subject of a request for
administrative review does not normally start the process anew,
*i.e.*, the Administration’s response to the renewed request would
not constitute a *new* administrative decision which would restart
the counting of time.

33. Again for the sake of clarity for the Applicant, the Tribunal will recall the
chronology of the events;

- the Applicant requested review of the contested decision by e-mail
dated 18 August 2009;
- he did not receive a response 30 days later, i.e. by 17 September 2009;
- therefore, he had 30 days, i.e. until 17 October 2009, to file his appeal.

The Applicant did not file his appeal with the JAB until 5 January 2010, over two
and a half months late.

34. The Applicant blames his unfortunate situation on two protagonists: i) the
DUO/WB; and ii) the Area Staff Union (“ASU”). The Applicant claims that the
DUO/WB gave him erroneous instructions about the appeals process.
Furthermore, in his observations on the Respondent’s reply and corrigendum, the
Applicant claims that the ASU advised him to “wait to receive a response from
the Agency to his request for decision review before he filed his appeal”.

35. The Tribunal is dismayed that a senior manager, in a post as important as
the DUO/WB, would not know about the Agency’s Regulations and Rules, which
she is required and expected to observe and implement, let alone give erroneous
advice to a staff member regarding the appeals procedures. However, this being said, the Applicant was a senior manager at the time of the material events and had been working for the Agency since 1990. As a senior manager with responsibilities towards his managers and his staff, the Applicant should have known about the Regulations and Rules which govern him and his staff members. The Tribunal finds that the Applicant has no one but himself to blame because a mere reading of the Regulations and Rules would have shown the necessary procedures to follow and allowed him to file his appeal within the regulatory time limits.

36. As for the erroneous advice given to him by the ASU, the Applicant has not submitted any evidence in support of his allegation. In any case, it is up to him to take it up with his Union. The Applicant is reminded, as are all staff members, that ignorance of the Regulations and Rules is no excuse.\(^1\)

37. The former United Nations Administrative Tribunal in Judgment No. 1213, Wyss (2004) has consistently reaffirmed the importance of observing the time limits for the various stages of the appeals process, stating that time limits are of utmost importance for ensuring the smooth functioning of any administration and must be interpreted restrictively. Moreover, former Area Staff Rule 111.3, paragraph 4, provides that the JAB may, in its discretion, waive the time limits in former Area Staff Rule 111.3 in exceptional circumstances. However, it is the Applicant’s burden to demonstrate that he was prevented from filing his application in due time due to “serious reasons” or “circumstances beyond his control”, as affirmed by the United Nations Appeals Tribunal in Diagne et al 2010-UNAT-067. The Tribunal finds that the Applicant failed to provide any evidence that demonstrates the reasons or circumstances that justify his late filing.

\(^1\) The Tribunal notes that in the Applicant’s 9 September e-mail, it appears that the Applicant is unclear as to the appeals procedure when he stated:

…I would like to ask you either to review your decision or facilitate the appeal process towards that end.

Nevertheless, as stated above, ignorance of the Agency’s Regulations and Rules is no excuse, as it is the staff members’ responsibility to be familiar with the regulatory framework, which governs their employment.
38. In his observations on the Respondent’s reply and corrigendum, the Applicant claims that the Respondent submitted his reply on 20 May 2012, i.e. two years and two months past the deadline of 5 March 2010 and therefore it is “unacceptable for the Respondent to argue non-receivability”. While the Tribunal acknowledges that the Respondent is indeed late in his filing, this does not change the fact that the Applicant filed his appeal beyond the statutory deadline. Simply stated, the Applicant failed to meet the deadlines as prescribed by the Area Staff Regulations and Rules, irrespective of the Respondent’s tardy reply.

39. The Tribunal finds that the Applicant has failed to comply with the time limits as set out in both former Area Staff Rule 111.3 and Article 8 of the Tribunal’s Statute and has failed to demonstrate that the delay was due to serious reasons or to circumstances beyond his control.

40. The Tribunal determines that the application is not receivable because it is time-barred. Consequently, the Tribunal will not examine the merits of the case.

Conclusion

41. Given the above, the application is dismissed.

(Signed)

Judge Bana Barazi
Dated this 27th day of June 2012

Entered in the Register on this 27th day of June 2012

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